

Public Statement of Consultation Practices

The European Securities and Markets Authority (ESMA) has approved the following statement establishing its consultation practices:

The purpose of consultation:

The aim of consultation is to build consensus where possible between all interested and affected parties on what legislation or regulatory action is appropriate and to improve the decision making process of ESMA by:

1. Benefiting from the expertise of market participants, consumers and end-users, notably in assessing and analysing regulatory issues and possible solutions;
2. Assisting the determination of whether a problem exists which requires a regulatory action, and if so, what form of regulatory action is appropriate;
3. Providing opportunities for alternative approaches to a given issue to be considered;
4. Obtaining information and views on the potential impact of proposals, in particular responses may provide critical data for the development of an Impact Assessment;
5. Obtaining feedback on ESMA's work;
6. Promoting understanding of ESMA's work and role.

To deliver this aim, ESMA emphasises:

1. **Mutual obligations:** Effective consultation places mutual obligations on ESMA and those consulted to work in a manner that promotes the success of the process. This has particular significance when ESMA provides technical advice to the European Commission and when it develops draft regulatory or implementing technical standards, guidelines and recommendations. Timely and complete responses are critical. The scope and timetable of ESMA's work is often determined by external factors, such as legislative deadlines and mandates from the European Commission.
2. **The need for a flexible and proportionate approach to consultation** that can be adapted according to the significance of an issue.
3. **The need to actively seek out the views of retail investors** is considered critical. For this reason, ESMA will place high importance on liaising with the retail investor network, which brings together national associations representing their interests.



The guiding principles for consultation:

Notwithstanding the need for flexibility, ESMA will be guided by the following three key principles:

On **when** it consults, ESMA:

1. may organise informal discussions at an early stage with those most likely to be directly affected, such as organising roundtables with key stakeholders;
2. will consult at a sufficiently early stage to enable the Authority to take the responses into account;
3. will allow those consulted adequate time to respond, given the complexity of the issue and the time available. For significant issues, ESMA will generally apply a three month consultation period as a standard, unless an external timetable is imposed or the measure requires urgent action to ensure the smooth functioning of the markets. For 'Calls for Evidence', the minimum period of generally 1 month will be applied. Where ESMA deviates from these standards, it will provide a clear explanation of the need to alter its process.

On **who** it consults, ESMA will:

1. Target the full range of all interested parties, including market participants, consumers and end-users;
2. Make consultation proposals widely known, primarily through ESMA's website;

In addition to ESMA's public consultation, it also takes steps in advance of the public consultation and during the consultation to discuss elements of its proposals with interested parties, work plans etc. In particular, this can take place with the Securities and Markets Stakeholder Panel; consultative working groups which are linked to standing committees and the retail investor network. Annex I sets out briefly the role of each.

On **how it consults**, ESMA will:

1. Publish an anticipated annual work programme, so that all interested parties know when to expect output from the Authority;
2. When appropriate, provide an opportunity for interested parties to make submissions on receipt and publication by ESMA of a mandate from the European Commission or on work launched by ESMA at its own initiative. This is done through a 'Call for Evidence';
3. When necessary, release its thinking at various stages;
4. Produce reasoned consultative proposals, based on thorough analysis of the issues and objectives of the proposal and, where possible, on statistical information, expressed in concise and clear lan-

guage. A cost-benefit analysis will be included in proposals unless this is disproportionate or inappropriate;

5. Consult using a variety of means, including public hearings/roundtables, technical workshops as well as written consultations;
6. Use appropriate processes when necessary to target consultations better to particular affected parties (such as face-to-face meetings, conference calls with specific stakeholders such as the retail investor network).

On **how it responds** to consultation, the ESMA will:

1. Give due consideration to all responses received;
2. Make public all responses to formal consultations, unless the respondent requests otherwise, or make public a summary of the responses received;
3. Publish feedback addressing all major points raised;
4. Consult, if possible, for a second time if the response to the first consultation reveals significant problems, or where revised proposals are radically different from the original proposals on which consultation was based;
5. Publish all formal proposals and advice, including advice to the European Commission, as well as draft technical standards, guidelines and recommendations.

If it is not possible for ESMA to follow the principles described above, it will publicly explain its reasons.

When necessary, ESMA will review this statement of consultation practices.

A diagrammatic representation of the consultation process is set out in Annex II.



Annex I

ESMA has a number of groups and networks it uses to consult in addition to its public consultation. In particular these include: the Securities and Markets Stakeholder Group; Consultative Working Groups and a Retail Investor Network. These are described briefly below:

- **Securities and Markets Stakeholder Group**

In accordance with the ESMA Regulation (Article 37), ESMA has established a Securities and Markets Stakeholder Group (herein referred to as ‘The Group’). The Group consists of 30 members. These individuals are appointed to represent in balanced proportions financial market participants operating in the Union, their employees as well as consumers, users of financial services and representatives of SMEs. At least five of its members are independent top-ranking academics. Ten of its members represent financial market participants. A further minimum of five panel members represent retail investors. The Group will meet at least 4 times a year. The Members of the Group shall serve for a period of two-and-a half years, following which a new selection procedure shall take place through a public call for interest published on ESMA’s website.

According to the Regulation, the main tasks of the Group are:

1. to advise the Authority on actions taken in accordance with the Regulation concerning regulatory technical standards and implementing technical standards;
2. to advise the Authority on actions taken in accordance with the Regulation concerning guidelines and recommendations, to the extent that these do not concern individual financial institutions;
3. to advise and assist the Authority in assessing the potential impact of the proposed draft regulatory and implementing technical standards, guidelines and recommendations, to the extent that these do not concern individual financial institutions.

The Group may submit opinions and advice on any issue related to the tasks of the Authority with particular focus on the areas listed above and on the following ones, thus:

1. requesting, as appropriate, the Authority to investigate the alleged breach or non-application of Union law;
2. contributing to the Authorities¹ efforts to establish a European common supervisory culture and consistent supervisory practices;
3. advising the Authority on its peer review activity;
4. contributing to the Authority’s assessment of market developments.

¹ The European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).



The list of Members will be published on ESMA's website. Participants are natural persons with significant experience individually can represent the wide range of stakeholders affected by ESMA's work.

- **Consultative Working Groups (CWG)**

Many of ESMA's standing committees, use the specific expertise of market participants who specialise in the specific area or work stream that the group has been mandated to work on. The purpose of these groups is to provide informal advice during the course of developing a policy line in relation to specific technical matters, or to give a view on specific aspects of the proposals. These groups are also used as a sounding board for work plans. These members are requested to provide expertise and not advocacy for specific national or institutional positions. Members of the CWG are appointed and participate in their personal capacity. The composition of the CWG is made public through ESMA's website. Members of the CWG are selected for a term of 2 years and are renewable. The advice that ESMA submits to the European Commission will be under the authority of ESMA and will, in no way imply the agreement of the CWG.

- **Retail Investor Network**

In order to ensure the voice of retail investors is heard more effectively, ESMA organises approximately, two yearly meetings with representatives of retail investors from across Europe, to explain work which is underway and in particular, to provide technical background on key consultations which may affect them. Throughout the year, ESMA alerts the Members of the network to important consultations or progress on work-streams of particular interest to retail investors. On occasion, when appropriate, ESMA will organise conference calls to explain the proposals under consultation more fully, in order to enable the retail investors representatives to respond to consultations and in order to assist them in identifying the potential priority and impact for retail investors. We note that in addition to the Retail Investor Network, a minimum of 5 members of the Stakeholder Group will be either retail investors or representatives of retail investors.

Annex II: ESMA's Consultation Process

