

TERMS OF REFERENCE

Corporate Finance Standing Committee Prospectus Operational Working Group

1. Having regard to the ESMA Regulation, particularly in relation to ESMA's task of promoting supervisory convergence, the Corporate Finance Standing Committee (CFSC) decided in February 2012 to set up an Operational Working Group (OWG), with a view to contributing towards building a common supervisory culture and consistent supervisory practices.
2. This objective corresponds with the relevant part of ESMA's scope of action (as set out in Article 1 of the ESMA Regulation): "The Authority shall contribute to: (a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision ..., (d) preventing regulatory arbitrage ..., and (f) enhancing customer protection".
3. The terms of reference for this CFSC Prospectus OWG are set out below, and are to be read together with the ESMA Regulation (in terms of ESMA's task of fostering supervisory convergence) and the 'Procedures for ESMA groups' (ESMA/2012/236rev2).

Objectives

4. The main objective of the CFSC Prospectus OWG is to promote common supervisory approaches and practices across Member States by enhancing mutual understanding, thereby improving convergence across the EU.
5. The main areas of focus will be issues related to the Prospectus Directive¹ and its implementing measures² and related advice (including FAQ³).
6. Members of the CFSC Prospectus OWG will organise ad hoc sessions of supervisors to discuss operational issues and supervisory practices, and exchange views on issues of particular importance or difficulty.

¹ Directive No 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC and Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

² Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements and ref: CESR/05-054b, CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses n° 809/2004.

³ ESMA's Frequently Asked Questions on Prospectuses: Common positions agreed by ESMA Members, 23rd updated version – December 2015



7. This could include, but is not limited to, sharing views on issues arising from the practical and operational implementation of the Prospectus Directive as amended by Directive 2010/73/EC. In the specific area of prospectuses, this exercise should benefit supervisors, and ultimately should contribute to reinforced investor protection and more efficient framework for issuers.
8. There will be a synergy of task givers to the CFSC Prospectus OWG. The Chair will ensure an adequate balance of dealing with top-down as well as bottom-up issues.
9. The CFSC Prospectus OWG shall promote supervisory convergence on operational and supervisory matters on prospectus related issues.

Structure and governance

10. The CFSC Prospectus OWG is established as a permanent working group under the auspices of the Corporate Finance Standing Committee. It is accountable to, and will report the results of its activities to, CFSC.
11. The CFSC Prospectus OWG will be composed of representatives of Board members from competent authorities having the necessary authority and day-to-day responsibilities in the field of operational and supervisory issues.
12. Representatives from the European Commission will be invited to take part in the CFSC Prospectus OWG meetings, except for issues that are covered by confidentiality.
13. The CFSC will set the timing for specific mandates.

Review

14. The Terms of Reference of the CFSC Prospectus OWG will be reviewed every two years by the Board of Supervisors in order to assess if this structure is appropriate for ensuring operational supervisory convergence in this area.