

TERMS OF REFERENCE

Financial Innovation Standing Committee

1. ESMA achieves its mission to enhance investor protection and promoting stable and orderly financial markets through four activities: (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) supervising specific financial entities.
2. According to Regulation 1095/2010 of the European Parliament and Council, ESMA shall act within the powers conferred by its establishing Regulation and shall create a 'Committee on financial innovation' (as set out in Article 9(4) of the ESMA Regulation).
3. In order to fulfil its mission the Board of Supervisors has established the Financial Innovation Standing Committee. The Terms of Reference cover the responsibilities and tasks of this group and the Procedures for ESMA groups (Annex: ESMA/2011/BS/236rev) set out the rules concerning its structure, governance and working methods.

Responsibilities

4. In line with the ESMA 2016-2020 Strategic Orientation (ESMA/2015/935), the Financial Innovation Standing Committee contributes to ESMA's mission by monitoring new and existing financial activities and in turn assessing risks to investors, markets and financial stability.
5. The term 'financial innovation' in Article 9(4) is to be interpreted as relating to 'financial activities' with regard to both (i) innovative products/activities as it relates to both retail and professional investors (investor protection), and (ii) wider financial activities, including certain behaviour in the wholesale market that could have an impact on orderly markets and financial stability. This is based on the fact that Article 9(4) refers to 'financial activities' rather than only to consumer financial products and services (like Article 9(1)).
6. As several ESMA SCs already conduct policy-making work in the area of investor protection, orderly and stable markets within their own areas of responsibility, the remit of the Financial Innovation Standing Committee (FISC) is two-fold: co-ordination, and provision of advice.

Co-ordination

7. In its co-ordination role, FISC takes account of relevant work at ESMA level, but also at national level.
 - a. At ESMA level, FISC considers work done by the existing ESMA SCs and other groups to facilitate efficient co-ordination and to avoid any duplication. In the areas that fall within the mandate of the other ESMA SCs, FISC can recommend that those SCs work, if



appropriate, on policy measures in their areas of expertise, ensuring appropriate co-ordination between the SCs in the area of financial innovation.

- b. FISC may also make proposals on the co-ordination of responses to any issues identified in the area of financial innovation being considered, or to be adopted at national level.
8. Co-ordination will be issue-driven (i.e. not necessarily driven by legislation). Issue and risk identification (to investor protection, financial stability and orderly markets) is the responsibility of all involved. FISC can be informed by anyone of an issue arising in the area of financial innovation or of a risk identified in that area. There is no threshold at which to accept issues for assessment (i.e. notification is not limited to cross-border problems only). FISC aims at considering the potential for 'domestic' issues and risks to apply more widely, being at the same time cautious about the extent of work undertaken where issues seem capable of being best addressed by a national authority.
9. FISC co-ordination can range from FISC proposing, for example, (i) an exchange of views on national authorities' practices in certain areas, or (ii) a review and assessment of regulatory/supervisory practice with regard to (or treatment of) new or innovative financial activities across the EU (in order to take account of any action taken at national level), or (iii) based on its founding regulations ESMA may employ a number of different legal instruments in response.
10. In line with ESMA's product intervention powers under Article 39, 42 and 43 MiFIR, the Financial Innovation Standing Committee will put in place means to identify potential investor protection concerns, threats to the orderly functioning and integrity of financial/commodity markets and to the stability of the financial system and, where appropriate, assess them in accordance with the agreed methodology and procedures or refer them to another committee for such assessment.

Advice

11. FISC provides advice on the basis of any work undertaken such as monitoring, gathering empirical evidence on trends, assessing that data, consulting with the relevant ESMA SCs on what policy measures may need to be taken, if any.
12. The extent and shape of any assessment done is underpinned by sufficient analysis (including on costs and benefits) to determine whether some action is required to contain, reduce, restrict, or eliminate a given problem. The extent and shape of any assessment will depend on what the problem is in each case. Such analysis can encompass both an assessment of the scope, nature and impact of potential risks and an analysis of possible regulatory responses.
13. The Financial Innovation Standing Committee shall liaise and coordinate with other relevant groups reporting to the Board of Supervisors where its activities relate or are complementary to those of other groups.

Structure and governance



14. The responsibilities of the Chair, rapporteur and members of the Financial Innovation Standing Committee are as set out in the Procedures for ESMA groups.
15. Permanent or temporary groups reporting to the Standing Committee may be set-up when required in line with the Procedures for ESMA groups.
16. The Financial Innovation Standing Committee has established a Consultative Working Group.
17. The Financial Innovation Standing Committee will meet on a regular basis as required in order to deliver ESMA's annual work programme. Meetings of substructures will be organised as necessary to enable the Standing Committee to fulfil its tasks.

Review

18. The Terms of Reference will be reviewed every two years by the Board of Supervisors.