

## Terms of reference of the Operational Working Group of the Investment Management Standing Committee

### Background

1. ESMA achieves its mission to enhance investor protection and promote 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. Issues related to consistent application and coordination between national competent authorities (NCAs) are likely to continue emerging as a critical topic, notably in light of the significant changes in the EU legislative framework for collective investment management in recent years.
3. Having regard to the ESMA Regulation, particularly in relation to ESMA's task of promoting supervisory convergence, the ESMA Board of Supervisors agreed to establish the Operational Working Group (OWG) of the Investment Management Standing Committee (IMSC) in order to place greater focus on enhancing supervisory convergence. The OWG supports the work of the IMSC with a view to contributing towards building a common supervisory culture and consistent supervisory practices.
4. The terms of reference for the OWG are set out below and are to be read together with the mandate of IMSC and the 'Procedures for ESMA groups' (ESMA/2011/BS/236 (rev 2)).

### Objectives

5. The main objective of the OWG is to promote common supervisory approaches and practices across Member States by enhancing mutual understanding, thereby improving convergence across the EU. When conducting this work, the OWG shall endeavour to ensure investor protection and promote stable, orderly and efficient financial markets.
6. The main areas of focus will be issues related to collective investment management activity under the legislation referred to in paragraph 2 of the Terms of Reference of IMSC (ESMA34-47-351).
7. The OWG should achieve its objectives by sharing knowledge and experiences on supervisory issues emerging from the practical and operational implementation of the relevant EU legislation, with particular focus on the cross-border operation of funds and management companies as well as from challenges raised by market innovations in the sector. In this context, OWG members will also discuss practical issues affecting the cross-border operation of specific entities.

## Main tasks

8. The OWG is assigned the following main tasks:
- share supervisory knowledge and experiences on queries relating to the practical application of EU legislation in the area of investment management;
  - support exchange of supervisory knowledge and experiences on real supervisory cases<sup>1</sup> and practical supervisory issues;
  - identify areas of divergence in supervisory practices or approaches, where further harmonisation might be necessary;
  - support convergent implementation of recent or upcoming EU legislation and ESMA guidance into supervisory practices;
  - facilitate the organisation of ESMA supervisory workshops in the area of investment management and follow-up discussions on supervisory issues;
  - develop ESMA supervisory briefings and similar operational documents aiming to ensure convergence in the way national supervisors approach relevant supervisory issues in practice;
  - operationalise Common Supervisory Action (CSA) and similar ESMA exercises on supervisory actions with a view to ensuring effectiveness and supervisory convergence.

## Structure and governance

9. The OWG is established as a permanent working group under the auspices of the IMSC. It is accountable to, and will report the results of its activities to, IMSC.
10. The OWG will meet on a regular basis and organise ad hoc meetings or conference calls, where needed, to discuss operational issues and supervisory practices and cases, and exchange views on issues of particular importance or difficulty.

## Composition

11. The OWG will be composed of representatives of Board members and observers having the necessary expertise, authority and day-to-day responsibilities in the field of operational and supervisory issues.
12. Given the supervisory focus of the OWG, NCAs shall appoint at least one representative, who currently qualifies as supervisory staff within its organisation. Where investment management-related authorisation or enforcement matters are discussed by the OWG, NCAs are encouraged to also ensure participation of authorisation and/or enforcement<sup>2</sup> staff.
13. Representatives from the European Commission will be invited to take part in the OWG meetings, except for discussions relating to individual financial market participants, unless otherwise provided for in the acts referred to in Article 1(2) of the ESMA Regulation.

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<sup>1</sup> Which can be presented in an anonymous manner.

<sup>2</sup> This is without prejudice to the work carried out by ESMA's Enforcement Network.

## **Review**

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