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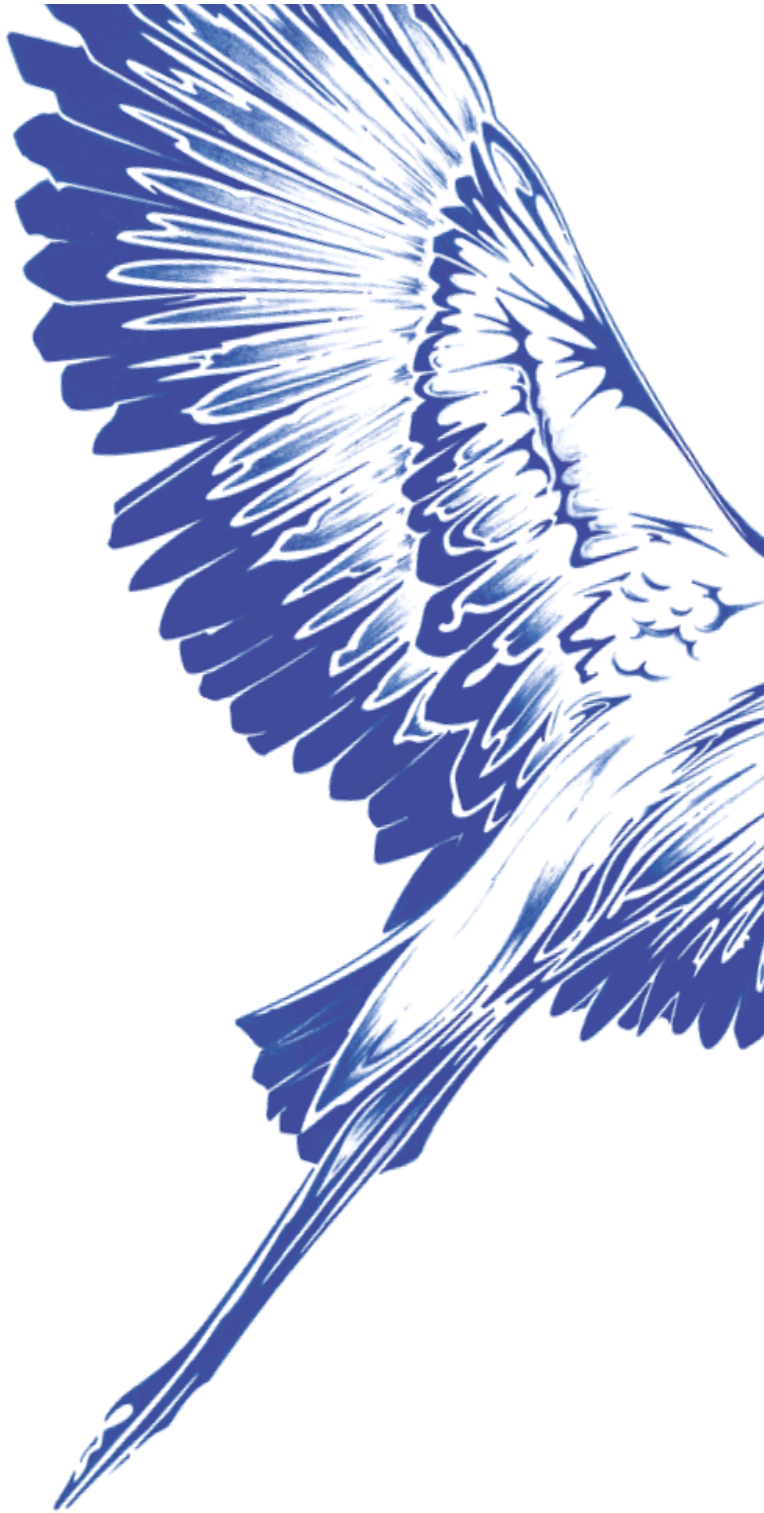
External in-house counsel

ESMA WORK PROGRAMME 2019

October 2018



ESMA's initial set-up period until 2015 aimed at creating a single rulebook for EU financial markets and establishing themselves as a credible direct supervisor. Following ESMA's Strategic Orientation 2016-2020, along with National Competent Authorities ("**NCAs**"), ESMA is now focusing on supervisory convergence and assessing risks. In 2019, apart from enhancing its role in these areas, ESMA will also work on fulfilling its responsibilities which stem from the Capital Markets Union initiatives.

This means there will be a huge change in ESMA's mandate. New direct supervisory responsibilities under the Securities Financing Transactions Regulation ("**SFTR**") and the Securitisation Regulation, as well as new supervisory convergence powers and responsibilities under the European Social Entrepreneurship Funds ("**EuSEF**") and European Venture Capital Funds ("**EuVECA**") Regulations will be given to ESMA. ESMA is also planning to support sustainable finance so as to integrate environmental, social and governance considerations as part of the investment chain.

For 2019, ESMA's focus will include supervisory convergence work in the area of Prospectus and Securitisation Regulation. The continued implementation of MiFID II and the Markets in Financial Instruments Regulation ("**MiFIR**") will be a point of focus, whilst ESMA will also work on the third-country regime under MiFIR particularly in respect of equivalence assessments and concluding co-operation arrangements. Moreover, coping with the uncertainty in post-Brexit policy, ESMA will persistently and prudently continue its work in 2019 to support a smooth and resilient withdrawal of the UK from the European Union, even by planning for a 'no-deal' scenario.

Finally, during 2017, the European Commission made two legislative proposals that, if approved in 2018, would significantly affect ESMA's planning environment for 2019. The amendment to the European Market Infrastructure Regulation (EMIR 2.2) proposal aims to enhance the supervision of third-country Central Counterparties ("**CCPs**") and make the supervision of EU CCPs more coherent. In September 2017, an amendment to ESMA's founding regulation, as part of a wider review of the European System of Financial Supervision ("**ESAs' Review**"), was proposed. The ESAs' Review proposal would set up a new governance and funding structure for ESMA, as well as new objectives, tasks and powers.

THE BUDGET

ESMA provided a multi-annual 'Programming Document' on 31 January 2018 that included a detailed budget and staffing plan for 2019. The budget for ESMA's 2019 work programme is expected to be € 48,382,458 with a projected staff of 254 people.

ACTIVITY-BASED MANAGEMENT

ESMA's plans use an activity-based method that allocates budgeted financial and staff resources per activity, as opposed to per function cost or per internal management hierarchy.

WORK PROGRAMME 2019

For the 2019 work programme, ESMA has prioritised the following key areas of work:

- promoting supervisory convergence;
- assessing risks to investors, markets and financial stability;
- completing the single rulebook for EU financial markets; and
- directly supervising specific financial entities.

Below you will find further information on the tasks and key areas of ESMA's Work Programme 2019.

Activity	Key deliverables	Further explanation

1. PROMOTING SUPERVISORY CONVERGENCE

Implementing the objective set in the Strategic Orientation to ensure a consistent supervisory convergence between Member States, ESMA is working on the co-ordination in and adoption of a consistent approach to supervisory convergence work across different areas.

a) Corporate finance

Activity	Key deliverables	Further explanation
ESMA aims at achieving measurable improvements in the level of convergence regarding the application by NCAs of the EU legislation on corporate finance matters. Particular focus will be reserved for the development and application of practices in the prospectus, transparency and securitisation areas.	– Publish guidelines in the prospectus area; – Update existing Q&As in the prospectus area and publish new ones (as necessary); – Issue Q&As and guidelines in the securitisation area, depending on needs; – Review recommendations, supervisory briefings and opinions; and – Launch of the new Prospectus Register.	By taking a series of actions, ESMA will increase the level of supervisory convergence in the area of prospectus in order to ensure supervision by NCAs in line with the provisions of the new Prospectus Regulation that will apply from 21 July 2019. As required under the Securitisation Regulation, ESMA will ensure that all competent authorities under the Regulation fulfil their mandates and provide support to the Securitisation sub-committee. In addition, ESMA will also monitor the application and implementation of the Transparency Directive, the Takeover Directive, and the Shareholder Rights Directive II.

Activity	Key deliverables	Further explanation
b) Corporate reporting ESMA will increase supervisory convergence in the area of supervision of financial information, non-financial reporting and alternative performance measures as well as enhance co-operation between accounting and auditing enforcers.	– Statements on the yearly common enforcement priorities and monitoring the implementation of the priorities for the year before; – Publications of selected enforcement decisions; – Publications of a study on an accounting topic and on implementation of the ESMA Guidelines on Alternative Performance Measures; and – Publication of the Annual Report on enforcement activities, including analysis of specific indicators of performance on enforcers.	ESMA will continue to foster supervisory convergence on supervision and enforcement of financial information and will continue to prepare common supervisory enforcement priorities on an annual basis.
c) Investment management ESMA aims to achieve greater convergence and consistency of NCAs' supervisory approaches and practices in relation to the EU legislation on investment management, with a particular focus on the Undertakings for Collective Investment in Transferable Securities ("**UCITS**") Directive and the Alternative Investment Fund Managers Directive ("**AIFMD**").	– Launch of the Money Market Funds ("**MMFs**") database and register; and – Guidance on liquidity stress testing and leverage.	ESMA promotes supervisory convergence of NCAs' practices in relation to the following EU legislations: the UCITS Directive, AIFMD, the Regulations on Packaged Retail and Insurance-based Investment Products ("**PRIIPs**"), , MMF, European Long-term Investment Funds ("**ELTIF**"), EuVECA and EuSEF Regulations. According to the revised EuSEF and EuVECA Regulations, ESMA will have access to all relevant information in regard to the registration and notification procedures of these entities, as well as other information such as annual reports, valuation data, etc. ESMA will also develop guidance on the

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		liquidity stress testing by investment fund managers and leverage limits under the AIFMD. In 2019, ESMA will finalise the creation of a central database for MMFs and will develop a system to keep a central public register identifying each MMF authorised under the MMF Regulation. ESMA will also continue its work in ensuring supervisory convergence on the topic of performance fees.
d) Investor protection and intermediaries ESMA will promote consistent application of MiFID II/MiFIR and co-ordination between NCAs in the area of investor protection and intermediaries.	– Q&As Guidelines, Opinions and Statements on MiFID II/MiFIR; – Opinions on product intervention measures; – Participation in peer reviews and follow-up to previous Peer Reviews on MiFID topics related to investor protection and intermediaries; and – Workshops and training sessions on MiFID II/MiFIR topics.	ESMA will continue its focus on the consistent application of MiFID II/MiFIR by developing Q&As, guidelines and other supervisory convergence tools concerning authorisation of investment firms, conduct of business and organisational requirements.
e) Market integrity and market data ESMA plans to implement data strategy following the enactment of the Securities Financing Transactions Regulation (“**SFTR**”), the European Market Infrastructure Regulation (“**EMIR**”) and	– Guidelines on EMIR/MiFIR and SFTR data requirements. – Q&As on EMIR/MiFIR and SFTR data requirements, and BMR;	ESMA is required by the BMR to work with European Central Bank and European Commission to promote and monitor the efficient, effective and

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MiFIR reporting regimes. It will improve supervisory convergence on Market Abuse Regulation (“**MAR**”) implementation and Benchmarks Regulation (“**BMR**”), including on the treatment of third-countries, benchmark colleges and on the Short Selling Regulation (“**SSR**”).	– Q&As and supervisory briefings on MAR; and – Ongoing activities in colleges of critical benchmarks to promote consistent application of BMR.	consistent functioning of colleges across the EU. ESMA is responsible for facilitating the sharing of the practical supervisory experience under MAR and fulfilling its co-ordination role in respect of short selling bans under SSR.
f) Post-Trading		
ESMA will provide guidance to market participants and NCAs on the application of EMIR and the Central Securities Depositories Regulation(“**CSDR**”). It also contributes to the consistent application of EMIR and to the convergence of supervisory practices for CCPs by initiating, co-ordinating and conducting an EU-wide stress test and a peer review on CCP supervision.	– Guidance on implementation of CCP requirements; – Preparation and initiation of the annual EU wide CCP stress tests; – Preparation and initiation of the annual peer review on CCP supervision; and – Guidance on CSDR implementation.	To incorporate the further CPMI-IOSCO Guidance for Principles for Financial Market Infrastructures into the EU framework for CCPs, ESMA might provide guidance to NCAs. ESMA will develop guidance and implement supervisory convergence mechanisms under CSDR. ESMA will start co-ordinating the regular EU CCP stress test and a regular peer review on CCP supervision.
g) Secondary markets		
ESMA aims to provide guidance and promote consistent implementation of MiFID II/MiFIR in order for markets to become more transparent. It will co-ordinate to ensure supervisory convergence on the backdrop of the UK’s withdrawal from the EU.	– Opinions on position limits, on waivers for equity and non- equity instruments and on the temporary suspension from pre- and post-trade transparency; – Assessment of third-country venues in the context of transparency and position limits; and – Annual reports: on double volume cap, on transparency waivers (equity and non-equity), on the	ESMA has various tasks under MiFID II/MiFIR, including: assessing third-country venues and waivers of pre-trade transparency, issuing opinions on position limits and on the temporary suspension on transparency and reporting and monitoring tasks.

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	use of deferred publication arrangements (equity and non-equity), on the international application of principles laid down by the trading obligation for derivatives, on the implementation of the trading obligation by third countries benefiting from an equivalence decision.	ESMA will continue to give guidance on the consistent application of the MiFID II/MiFIR regime for all secondary markets and commodity derivative issues.
h) Cross-cutting supervisory convergence themes ESMA is promoting a consistent approach among NCAs and across different areas by fostering "real case discussions" among supervisors and enforcers, conducting peer reviews and assisting NCAs to deal with convergence issues arising in the context of the UK's withdrawal from the European Union.	– Set priorities for supervisory convergence by publishing the 2019 Supervisory Convergence Work Programme; – Reach common views on files where firms seek authorisation and relocation of business in the EU27; – Peer reviews on EMIR and MAR; – Fostering more consistent use of supervisory convergence tools, including as need be through workshops and training sessions; and – Enhanced approach to Q&As.	ESMA will continue to strive for a consistent approach across areas through setting annual convergence priorities within a concise convergence work programme. Peer reviews will be undertaken in relation to EMIR and MAR. ESMA will promote coordination among NCAs in respect of dealing with the firms seeking for relocation and authorisation. The Interactive Single Rulebook 5 will be focused on MiFID II and MiFIR.

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2. ASSESSING RISKS TO INVESTORS, MARKETS AND FINANCIAL STABILITY

Activity	Key deliverables	Further explanation
a) Data management and statistics ESMA will improve data quality, integration and usability to support ESMA's activities through data management and statistical analyses.	– Data processes to support policy, supervisory and supervisory convergence activity; – Ongoing data quality analysis; – Processing of internal and commercial data and statistical generation to support ESMA and NCA activities; and – Maintenance of ESMA's databases and IT systems.	In light of the importance of data analysis to ESMA, ESMA will manage the datasets by preparing basic and automatised reports as well as sophisticated analytical tools and methods. ESMA has been developing and applying data process and statistical analysis to support ESMA's objectives, and ESMA will also continue implementing its Data Strategy.
b) Market and infrastructure risk analysis ESMA will continue identifying financial market risks and report on these risks to the relevant institutions.	– Risk monitoring (including Brexit); – In-depth research / thematic analysis; and – Contributions to risk monitoring by EU and international bodies.	ESMA contributes to the European systemic risk monitoring work and international risk monitoring work.

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c) Financial innovation and product risk analysis To achieve a co-ordinated approach to the regulation and supervisory treatment of new or innovative financial activities, ESMA is providing advice to present to the EU institutions, market participants or consumers. ESMA will also implement the framework for the use of the product intervention powers provided by MiFIR.	– Ongoing monitoring of retail investor trends, financial activities and innovation, including Fintech; and – Ongoing market intelligence gathering.	To identify the risks and intervene in the market appropriately, ESMA monitors financial activities and retail investor trends, with a particular focus on financial innovation including Fintech and crypto-assets.

3. COMPLETING A SINGLE RULEBOOK FOR EU FINANCIAL MARKETS

Activity	Key deliverables	Further explanation
a) Corporate finance ESMA will contribute to the development of Level 2 measures in relation to the revised prospectus regime.	– Technical Advice on Prospectus Regulation; and – Possible Regulatory Technical Standards and Implementing Technical Standards.	Further to the review of the prospectus regime, ESMA will draft the Technical Standards (“**TS**”) and Implementing Standards (“**ITS**”) under the new Prospectus Regulation.
b) Corporate reporting ESMA will contribute to the set-up of high-quality accounting standards through providing enforcers’ views on new pronouncements and endorsement advice. In addition, ESMA will contribute to the implementation of the Council	– Technical positions on new IFRS pronouncements and amendments.	ESMA will continue being engaged with European Financial Reporting Advisory Group (“**EFRAG**”) and International Accounting Standards Board (“**IASB**”). It also promotes single-rulebook work in

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work-plan to tackle Non-Performing Loans ("**NPL**") in Europe.		the auditing area by providing comments on International Standards on Auditing and participating in the new Committee of European Audit Oversight Bodies ("**CEAOB**").
c) Investment management ESMA will seek to frame and implement Technical Standards and Technical Advice.	– Standards, advice and opinions on fund legislation.	ESMA will provide professional assistance in the UCITS Directive, AIFMD and PRIIPs, MMF, ELTIF, EuVECA and EuSEF. ESMA is empowered by the revised EuSEF and EuVECA Regulations to implement detailed rules. Additional work might occur as the result of the European Commission's review on UCITS Directive, AIFMD and PRIIPs Regulation. ESMA will provide technical advice on the integration of sustainability risks.
d) Investor protection and intermediaries ESMA will contribute to the development of a single rulebook in the area related to the provision of investment services and applying the third-country firm regime.	– Reports required under MiFID II (preparatory work); – Register of third-country firms; – Co-operation arrangements with relevant third-country authorities; and – Support on equivalence assessments of third-country regimes.	ESMA will assist the European Commission under MiFID II to prepare a report in investor protection and intermediaries, as well as reviewing and updating Level 1 and Level 2 (including the regulatory technical standard ("**RTS**") and/or ITS) in this area.

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e) Market integrity and market data		
ESMA will transpose internationally adopted codes into EU legislation via revised Regulatory Technical Standards. It will also review the third-country regimes for data providers and the BMR. Besides, ESMA will provide MiFIR reports on the assessment of the reporting requirements.	– Advice on the possible amendment to the MAR and BMR (including revising TS); – Advice on recognition of third country benchmark administrators by NCAs; – ESMA may revise and expand its previous Advice on the Short Selling Regulations; – Revised reporting standards/review of Technical Standards on reporting standards; and – Provided EMIR Refit is adopted, review of Reporting Technical Standards under EMIR.	ESMA is expected by international institutions to amend EU legislation to incorporate the new standards. It is therefore expected that there will be updates on reporting standards under MAR (or EMIR) and MiFIR. MAR and the BMR might be reviewed, in which process ESMA will also provide technical support. In terms of BMR, ESMA may issue the opinion to NCAs on recognition of third country administrators. ESMA may provide technical support in SSR.
f) Post-Trading		
ESMA will review/update the EMIR framework, and also develop the relevant reports on post trading matters.	– Review Clearing framework; – Reports on post trading matters; and – Provided EMIR Refit is adopted, possibly the development of a range of reports and technical standards.	ESMA may update the RTS on clearing obligation. ESMA will provide technical support for CCPs in anti-procyclicality measures and EMIR Refit (if it is approved). ESMA will also issue various guidance on post-trading matters.
g) Secondary markets		
ESMA will deliver MiFID II/MiFIR review reports.	– MiFID II/MiFIR review reports; and	ESMA will work on the MiFID II/MiFIR review reports assessing the functioning

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ESMA will revise the RTS on the transparency requirements for non-equity instruments (RTS 2) provided that the yearly assessment of non-equity transparency supports this. Existing RTS on MiFID II/MiFIR will also be reviewed if needed.	– Revised RTS under MiFID II/MiFIR.	of the MiFID II/MiFIR requirements. ESMA will carry out in 2019 an assessment of the operation of the transparency regime for bonds and derivatives. In light of the assessment, ESMA may revise the RTS on the transparency requirements for non-equity instruments. ESMA may revise existing RTS on MiFID II/MiFIR and may draft additional RTS on the trading obligation of derivatives subject to the Clearing Obligation. ESMA may also need to revise level 2 rules following any potential impact of the UK's withdrawal from the EU.
f) Policy activity to support our supervisory mandates ESMA will continue to contribute to the establishment of a robust regulatory framework under the Credit Rating Agency ("**CRAs**"), Trade Repository ("**TRs**"), Securities Financing Transactions and Securitisation Regulations and provide support to ESMA's supervisory activities.	– Clear and common understanding of the regulatory framework for CRAs, TRs and Securitisation Repositories: – Revised RTSs and additional guidance.	CRAs: ESMA will continue developing the CRA single rulebook, co-operating with institutions to provide a mapping to newly registered External Credit Assessment Institutions ("**ECAIs**") and monitoring and performing assessments of third-country regulatory frameworks. TRs, Securities Financing Transactions, and Securitisation Repositories: With the expansion of ESMA's supervisory mandates, its co-ordinating role will also be extended to the SFTR and

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		Securitisation Regulations.

4. DIRECTLY SUPERVISING SPECIFIC FINANCIAL ENTITIES

a) Credit Rating Agencies

ESMA continues supervising CRAs ensuring lasting impact of supervisory activities at individual CRA level.	– Investigations, including on-site inspections; – Monitoring; – Assessment of registration applications; and – Reports for the Independent Investigation Officer (“**IIO**”).	ESMA’s supervision of CRAs encompasses day-to-day supervision. ESMA assesses registration applications under the CRA Regulation, conducts perimeter monitoring activities, and prepares any necessary reports for IIO where possible breaches of the regulation have been identified.

b) Trade Repositories

ESMA continues supervising Trade Repositories under EMIR ensuring lasting impact of supervisory activities at individual TR level.	– Investigations, including on-site inspections; – Monitoring; – Assessment of registration applications; and – Reports for IIO.	Day-to-day supervision involves, through a risk-based approach with a particular focus on data quality, IT and internal controls, governance and strategy and conflict of interests. ESMA assesses registration applications under EMIR and prepares any necessary reports for the IIO.

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c) Third-country CCP and CSD recognition ESMA will continue supervising Trade Repositories under the Securities Financing Transactions Regulation ("**SFTR**") ensuring lasting impact of supervisory activities at individual TR level.	– Assessment of registration applications; – Investigations, including on-site inspections; – Monitoring; and – Reports for IIO.	ESMA will begin registering and supervising Trade Repositories that will report under SFTR.
d) Securitisation ESMA will register Securitisation Repositories and set up their ongoing supervision.	– Registration decisions; – Securitisation sanctions register; and – Securitisation notifications register.	Upon Securitisation Regulation taking effect in January 2019, ESMA has supervision on the securitisation repositories. The first year's priority will be given to registering the securitisation repositories and setting up the framework for their ongoing supervision.

WHY WE'RE DIFFERENT

Cleveland & Co are specialists in financial services, investment management and commercial contracts and related courses. Our team's in-house experience means we understand client challenges and we work alongside you to create solutions. We can provide insight on real vs hypothetical risks and help your team evolve.

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