

01 March 2021

ESMA Consultation Paper on Draft Technical Standards under the European Crowdfunding Service Providers Regulation

1. Introduction

On 26 February 2021, the European Securities and Markets Authority (“ESMA”) issued a [Consultation Paper](#)¹, on draft technical standards on crowdfunding under the [European crowdfunding service providers Regulation](#)² (hereinafter referred to as the “Regulation”).

The Regulation on crowdfunding regulates for the first time at EU level lending-based and equity-based crowdfunding services. It introduces a single set of requirements applicable to crowdfunding service providers across the EU, including strict rules to protect investors.

The Regulation requires ESMA to develop 12 technical standards – 8 regulatory technical standards (“RTS”) and 4 implementing technical standards (“ITS”) – on a variety of important topics to complement the Regulation.

The intention is that ESMA consider the responses provided to the consultation as part of the process of the development of the aforementioned draft RTS/ITS for the European Commission.

2. Overview of the Consultation Paper

The Consultation Paper seeks input on the draft technical standards developed by ESMA, on the following issues:

- Complaint handling;
- Conflicts of interest;
- Business continuity plan;
- Application for authorisation;
- Information to client on default rate of projects;
- Entry knowledge test and simulation of the ability to bear loss;

¹ Consultation Paper – Draft technical standards under the ECSP Regulation, ESMA35-36-2201, dated 26 February 2021

² Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937

- Key investment information sheet;
- Reporting by crowdfunding service providers to NCAs (and NCAs to ESMA); and
- Publication of national provisions concerning marketing requirements.

3. ESMA Q&A on Crowdfunding

On 25 February 2021, ESMA also published a [Q&A](#)³ regarding the understanding of Special Purpose Vehicle (SPV) aspects under the Regulation.

The purpose of this Q&A document is to promote a convergent application of the provisions of the Regulation and to provide responses to possible questions posed by the general public, market participants and competent authorities.

The first set of Q&As addresses the following topics:

- The circumstances and conditions in which a SPV can be created for the provision of crowdfunding services;
- The types of instruments that can be offered to investors via a SPV;
- Whether a SPV can give exposure to more than one underlying asset;
- The type of underlying asset a SPV can give exposure to; and
- When an asset should be deemed to be illiquid or indivisible within the meaning of the Regulation.

4. Next Steps

ESMA will consider feedback received in relation to the Consultation Paper by 28 May 2021. The majority of the above-mentioned technical standards are to be submitted to the EC for adoption before 10 November 2021. The remaining ESMA technical standards are to be delivered by 10 May 2022.

We encourage interested parties to contribute to ESMA's Consultation Paper constructively and to respond to it in the fullest and most comprehensive manner.

For feedback and queries kindly contact any/all of the following persons: Tara Cann Navarro (Senior Manager) Securities and Markets Supervision on Tara.CannNavarro@mfsa.mt, Sara Antonia Magri (Deputy Head Investments) Conduct Supervision on Sara.AntoniaMagri@mfsa.mt; or/and fintech and innovation team, within the Strategy, Policy and Innovation function on fintech@mfsa.mt.

³ Questions and Answers – On the European crowdfunding service providers for business Regulation, ESMA35-42-1088., dated 25 February 2021