SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 27 September 2017
Time: 09h00 – 17h00
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda

Decision: The agenda was adopted.

2. Summary of conclusions

1) 5 July 2017

Decision: The summary of conclusions of the 5 July meeting was adopted.

3. Oral Report by Chair and Executive Director

Oral Information

The Chair reported on:
— His meetings with European Commission Vice-Presidents Valdis Dombrovskis and Jyrki Katainen, mainly to discuss the European Commission’s review of the operations of the European Supervisory Authorities (ESAs) and the review of the European Market Infrastructure Regulation (EMIR);
— His meeting with European Commissioner Jourova, mainly to discuss the implementation of the Data Protection Regulation, the impact of the United Kingdom’s withdrawal from the European Union (EU) and the prudential treatment of investment firms;
— His meetings with Members of the European Parliament;
— His participation in the informal meeting of the Economic and Financial Council (ECOFIN);
— The activities of the European Systemic Risk Board (ESRB) and in particular the research on EU derivatives markets and the ESRB's annual conference;
— The European Central Banks's announcement to provide a European overnight rate on unsecured interbank lending and the working group that will be created in that context;
— The September 2017 meeting of the Management Board;
— The activities of the Securities and Markets Stakeholder Group (SMSG);
— The activities of the Joint Committee, in particular the adoption of the 2018 Joint Committee Work Programme and the technical advice provided to the European Commission on targeting specific environment and social objectives; and
The upcoming election to appoint a Member of the Enforcement and Validation Panel.

The Executive Director reported on the:
- Discussions that took place at the September 2017 meeting of the Financial Services Committee (FSC), in particular on (i) leverage and liquidity in the area of asset management and (ii) the work conducted by the High Level Expert Group on Sustainable Finance;
- Conference ESMA is organising on 17 October 2017; and
- Appointment of Fabrizio Planta as Head of Markets Department.

3bis. Review of the operations of the European Supervisory Authorities

1) Cover Note
   Discussion

2) European Commission proposal
   Discussion

The European Commission representative presented the European Commission’s proposal following the review of the operations of the ESAs.

The Board discussed the European Commission’s proposal, in particular:
- The interaction with the Commission’s EMIR 2.2 proposals, in particular in relation to the governance framework;
- The independence of national competent authorities whilst continuing promoting supervisory convergence;
- ESMA’s potential role versus retail investors;
- Whether ESMA should be granted direct supervisory powers for certain market participants;
- The practical implementation of the proposed ESMA supervision of certain types of prospectuses; and
- The role ESMA could play in relation to data collection and consistency.

The Executive Director informed the Board that ESMA staff will discussed the budget impact of the Commission’s proposal with the Management Board.

Conclusion: The Board exchanged views on the European Commission’s proposal following the review of the operations of the ESAs. It was agreed that an explanatory note on the proposed supervision of certain prospectuses by ESMA will be prepared for the November 2017 Board of Supervisors meeting.

4. United Kingdom Leaving the European Union

1) UK withdrawal – potential cliff effects
   Discussion

The Executive Director presented the potential cliff effects associated with the UK’s withdrawal from the EU.

The Board discussed the cliff effects, in particular:
- The need for market participants to take the necessary mitigation measures and for national competent authorities to stimulate market participants doing so;
- The importance of ensuring consistency between national competent authorities in relation to, among others, reverse solicitation;
- The co-operation with the UK FCA following the UK’s withdrawal and how to prepare for that in line with the ongoing negotiations between the EU and the UK;
- To inform retail investors of the consequences of the UK’s withdrawal; and
- The potential impact on private contracts.
**Decision:** The Board agreed with the proposed work plan and will be informed on its execution by ESMA staff.

2) Update on the Supervision Coordination Network

**Conclusion:** The Board took note of the update on the activities of the Supervision Coordination Network.

5. **Impact of the Data Protection Regulation on Cooperation with third countries**

   1) Issues Note
   2) Draft Administrative arrangement

   The Head of Legal, Convergence and Enforcement presented the note and the draft administrative arrangement.

   The Board discussed the draft administrative arrangement, in particular the:
   — Assessment of equivalence with data protection regimes in place in third countries;
   — Interaction with the Multilateral Memorandum of Understanding put in place by the International Organization for Securities Commissions (IOSCO); and
   — Scope of information exchange.

   **Conclusion:** The Board took note of the draft administrative arrangement and further steps taken forward in cooperation with IOSCO.

6. **Waiver and Position Limit Opinions**

   1) Note on Contingency Planning
   2) Public statement

   Elisabeth Roegele presented the note on contingency planning and the proposed statement.

   The Board discussed the contingency planning on waivers and position limits, in particular the:
   — De-prioritisation of the opinions on non-equity pre-transparency waivers to 2018; and
   — Importance of good co-operation between national competent authorities and ESMA throughout the process.

   **Decision:** The Board endorsed the contingency planning and agreed with the statement informing market participants for publication on ESMA's website.

7. **Systematic Internalizers obligation on quotes availability**

   1) Note on Q&A on systematic internalizers on obligation on quotes availability

   Elisabeth Roegele presented the Q&A.

   The Board discussed the Q&A, in particular whether systematic internalizers may limit the transactions they undertake to enter into a transaction.

   **Decision:** The Board decided that systematic internalizers may limit the number of transactions they undertake to enter into with clients pursuant any given quote to one transaction.
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8. **Trading obligation derivatives**

1) Cover Note

2) Final Report on RTS on trading obligation derivatives

3) RTS on Trading obligation derivatives

Elisabeth Roegele presented the Final Report on regulatory technical standards on the trading obligation for derivatives.

The Board discussed the Final Report, in particular whether the trading obligation will apply from the start of the MIFID II framework.

The European Commission representative underlined the Commission’s commitment to apply the trading obligation from 3 January 2018.

**Decision:** The Board adopted the Final Report on the regulatory technical standards on the trading obligation.

9. **MAR Accepted Market Practices**

1) Cover Note

2) Opinion on the CMVM accepted market practice on liquidity contracts

**Decision:** The Board adopted the opinion on the CMVM accepted market practice on liquidity contracts.

10. **RegTech and Innovation Facilitators**

1) Presentation

2) Note on RegTech

3) Note on innovation facilitators

Jean-Paul Servais presented ongoing developments and ESMA’s related activities in relation to Regtech and innovation facilitators.

The Board discussed the work in relation to RegTech and innovation facilitators, in particular:
The need to exchange best practices among national competent authorities;  
— Whether certain focus areas should be identified;  
— The increasing number of Initial Coin Offerings; and  
— The use of so called sandboxes and the legal framework in which they operate.

**Conclusion:** The Board took note of the ongoing activities in relation to RegTech and innovation facilitators. It was agreed that ESMA should facilitate the exchange of (best) practices between national competent authorities. The Board instructed the Financial Innovation Standing Committee (FISC) to consider the increasing number of Initial Coin Offerings and whether further ESMA initiatives are needed in that context.

11. **AIFMD data collection**

1) Issues Note

The Head of Risk Analysis and Economics presented the note on the AIFMD data collection.

The Board discussed the note, in particular:
— The strong commitment to data quality by ESMA and all national competent authorities; and
— Whether ESMA should develop further guidance.

**Decision:** The Board underlined the importance and priority of collecting AIFMD data for ESMA and national competent authorities. The Board will be updated on progress in Q1 2018.

12. **AIFMD Q&A**

1) Cover Note

Martin Moloney presented the cover note and related Q&A.

The Board discussed the Q&A, in particular:
— Whether any disclosure requirements should also apply to the staff of the delegate of an AIFM to whom portfolio management or risk management activities have been delegated;  
— The instrument ESMA should use to provide guidance.

**Decision:** The Board adopted the Q&As. Claude Marx (LU) disagreed. Robert Ophele (FR) and Tomas Ambra (SK) abstained.

13. **2018 Annual Work Programme**

1) Cover Note

The Executive Director presented the 2018 Annual Work Programme and the position of the Management Board.

The Board discussed the Annual Work Programme, in particular:
— The continued strong commitment to promote supervisory convergence and in particular in relation to the implementation of MIFID II;  
— The exchange of data between home and host Member State supervisors in relation to investment firms; and  
— Whether, and if so, how ESMA’s objectives could be more outcome driven.
The Executive Director noted the ongoing work in relation (in the Operational Working Group of the Investor Protection and Intermediaries Standing Committee) to the exchange of data on investment firms between national competent authorities.

**Decision:** The Board adopted the 2018 Annual Work Programme subject to drafting changes. The final version will be shared with the Board for information.

14. **2019 priorities and budget**
   
   1) Orientation paper

   The Executive Director presented the orientation paper on the 2019 priorities and budget.

   The Board discussed the paper, in particular:
   — The impact of the European Commission’s proposals following the review of the operations of the European Supervisory Authorities on the 2019 budget;
   — Whether human resources should be re-allocated between ESMA’s activities; and
   — The impact of the Securities Financing Transactions Regulation (SFTR).

   **Conclusion:** The Board discussed the orientation paper. ESMA staff will develop a draft 2019 budget on that basis.

15. **Peer Review on ETF Guidelines**
   
   1) Mandate for the peer review on ETF Guidelines

   **Decision:** The Board adopted the mandate for the peer review on ETF Guidelines.

16. **Commodity Derivatives Task Force**
   
   1) CDTF report

   **Decision:** The Board took note of the report.

   2) MIFID Q&As

   **Decision:** The Board adopted the Q&As.

17. **Investor Protection and Intermediaries Standing Committee**
   
   1) IPISC report

   **Conclusion:** The Board took note of the report.

   2) MIFID II Q&As

   **Decision:** The Board adopted the Q&As.

18. **Investment Management Standing Committee**
   
   1) IMSC Report

   **Conclusion:** The Board took note of the report.

   2) AIFMD Q&A

   **Decision:** The Board adopted the Q&A.
3) UCITS Q&A

**Decision:** The Board adopted the Q&A.

19. **Market Data Standing Committee**

1) MDSC Report

**Conclusion:** The Board took note of the report.

2) MiFIR Q&As on reporting

**Decision:** The Board adopted the Q&As.

20. **Market Integrity Standing Committee**

1) MISC Report

**Decision:** The Board took note of the report.

2) Consultation paper on guidelines on Benchmarks

**Decision:** The Board adopted the consultation paper on guidelines on Benchmarks.

3) Benchmark Regulation Q&As

**Decision:** The Board adopted the Q&As.

4) MAR Q&A

**Decision:** The Board adopted the Q&A.

21. **Post-Trading Standing Committee**

1) PTSC Report

**Conclusion:** The Board took note of the report.

2) CSDR Q&As

**Decision:** The Board adopted the Q&As.

3) EMIR Q&As

**Decision:** The Board adopted the Q&As.

4) MiFIR Q&As

**Decision:** The Board adopted the Q&As.

22. **Secondary Markets Standing Committee**

1) SMSC Report

**Conclusion:** The Board took note of the report.
2) MIFID II Q&As

**Decision:** The Board adopted the Q&As.

23. **Supervisory Convergence Standing Committee**

1) SCSC report

**Conclusion:** The Board took note of the report.

24. **Memorandum of Understanding with FINMA (CH)**

1) Cover Note

2) ESMA-FINMA Memorandum of Understanding

**Decision:** The Board adopted the Memorandum of Understanding with FINMA.

25. **A.O.B.**
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<td>United Kingdom</td>
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Non-voting members

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ESMA

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<td>Executive Director</td>
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<td>Summary of Conclusions</td>
<td>Frederik Vermeulen</td>
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Done at Paris on 7 November 2017

Steven Maijoor
For the Board of Supervisors