

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 14 December 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

Decision: The agenda was adopted. The agenda item on IT governance was postponed to the January 2018 Board of Supervisors meeting.

2. Summary of conclusions

1) 7 November 2017 Decision

Decision: The summary of conclusions was adopted.

3. Oral Report by Chair and Executive Director Information

The Chair reported on the:

- Letter sent to the European Commission on the implementation of MIFID II in the Member States of the European Economic Area (EEA) and the incorporation of MIFID II in the EEA agreement;
- Activities of the European Systemic Risk Board (ESRB), in particular on the ESRB's recommendation on investment fund leverage and liquidity and on the fact that the March 2018 General Board meeting has been scheduled on the same day as the ESMA Board of Supervisors meeting;
- Activities of the Securities and Markets Stakeholder Group (SMSG);
- December 2017 meeting of the Management Board, in particular the discussions on the organisational risk assessment and the 2018 budget;
- Activities of the Joint Committee, in particular in relation to the risk mitigation techniques for OTC derivatives not cleared by a central counterparty and the fact that ESMA will take over the Joint Committee chairmanship in 2018; and
- Work conducted jointly with the European Banking Authority (EBA) on virtual currencies.

The Executive Director reported on:

- The November and December 2017 meetings of the Financial Services Committee (FSC), in particular the discussions on the implementation and transposition of MIFID II and the High Level Experts Group's recommendations on sustainable finance; and
- Her participation in the EU-Asia Pacific Regulatory Forum and her meetings with stakeholders.

4. Trends, Risks and Vulnerabilities Report

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| 1) Cover Note | Discussion |
| 2) Trends, Risks and Vulnerabilities Report | Discussion |
| 3) Risk Dashboard | Discussion |
| 4) Presentation | Discussion |

The Head of Risk Analysis and Economics presented the Trends, Risks and Vulnerabilities Report and the Risk Dashboard.

The Board discussed the report and the dashboard, in particular the:

- Impact of monetary policy on ESMA's credit risk assessment; and
- Need for further work in relation to virtual currencies.

Conclusion: The Board discussed the Trends, Risks and Vulnerabilities Report and the Risk Dashboard, which will be further developed and presented to the Board for approval by written procedure. ESMA staff will also continue its work in relation to virtual currencies and might come back to the Board before its January 2018 meeting.

5. MIFID II Contingency Plan

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| 1) Cover note | Decision |
| 2) MiFID II systems contingency plan | Decision |

The Executive Director presented the MIFID II systems contingency plan.

The board discussed the contingency plan, in particular:

- Whether there might be a budget impact on the delegated IT-projects; and
- Its interaction with ESMA's existing emergency planning.

Decision: The Board endorsed the MIFID II contingency plan subject to drafting changes.

6. Legal Entity Identifier for Issuers and Clients

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| 1) Issues Note | Discussion |
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The Head of Markets Department presented the note on the Legal Entity Identifier (LEI) for issuers and clients.

The Board discussed the note, in particular:

- The general adoption of the LEI by market participants and whether the LEI requirement should be delayed; and
- Whether in the absence of a LEI by issuers, an alternative LEI such as the one of the trading venue could be used.

Conclusion: The Board agreed that to support the smooth introduction of the LEI requirements, a temporary period of six months should allow that (i) investment firms may provide a service triggering the obligation to submit a transaction report to the client, from which it did not previously obtain an LEI code, under the condition that before providing such service the investment firm obtains the necessary documentation from this client to apply for an LEI code on his behalf; and (ii) trading venues report their own LEI codes instead of LEI codes of the non-EU issuers while reaching out to the non-EU issuers. The Board agreed that the decision should be published on ESMA's website and delegated the finalisation of the Statement to the ESMA Chair.

7. Agreement on the operation of the Double Volume Cap

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| 1) Issues Note | Discussion |
| 2) Agreement on the operation of the Double Volume Cap | Decision |

Decision: The Board adopted the agreement on the operation of the Double Volume Cap.

8. Q&A on late transposition of MIFID II in the EU

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| 1) Issues Note | Decision |
| 2) Q&As on late transposition of MiFID II after 3 January 2018 | Decision |

The Executive Director presented the Q&As on late transposition of MIFID II.

The Board discussed the Q&As, in particular:

- The transposition of MIFID II in EU Member States and whether MIFID II could in some cases be transposed *de facto* but not *de jure*;
- How national competent authorities should deal with notifications received from authorities based in EU Member States that have not (yet) transposed MIFID II; and
- Whether a link to the trading obligation should be included.

Decision: The Board adopted the Q&A. Sebastian Albella (ES) stated to disagree as he preferred an approach to consider compliance with MIFID II requirements rather than assessing whether the Home Member State has, or has not already, transposed the Directive.

9. Q&A on transaction reporting by non-EU branches of EU firms

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| 1) Issues Note | Decision |
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Decision: The Board adopted the Q&A on transaction reporting by non-EU branches of EU firms.

10. Q&A on the scope of the tick-size regime

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| 1) Issues Note | Decision |
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Decision: The Board adopted the Q&A on the scope of the tick-size regime by opting for an approach where mid-point large-in-scale orders are subject to the tick size regime.

11. Update on the opinions dealing with third-country trading venues

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| 1) Issues Note | Discussion |
| 2) Opinion on determining third-country trading venues for the purpose of transparency under MIFIR / MIFID II | Decision |

Decision: The Board adopted the opinion on determining third-country trading venues for the purpose of transparency under MIFID/MIFID II.

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| 3) Opinion on determining third-country trading venues for the purpose of position limits under MIFID II | Decision |
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Decision: The Board adopted the opinion on determining third-country venues for the purpose of position limits under MIFID II.

12. Data quality methodologies for FIRDS and TREM

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| 1) Cover Note | Discussion |
| 2) FIRDS Engagement Framework | Decision |

Decision: The Board adopted the FIRDS Engagement Framework.

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| 3) FIRDS Data Quality Methodology | Decision |
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Decision: The Board adopted the FIRDS Data Quality Methodology.

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| 4) TREM Data Quality Methodology | Decision |
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Decision: The Board adopted the TREM Data Quality Methodology.

13. Data Protection Regulation and Cooperation with third countries

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| 1) Cover Note | Discussion |
| 2) Revised draft administrative arrangement | Discussion |

The Head of Legal, Convergence and Enforcement presented the (interim) revised draft administrative arrangement and the accompanying note.

The Board discussed the revised draft administrative arrangement, in particular

- The impact on the regulatory technical standards ESMA needs to develop under the Market Abuse Regulation; and
- The interaction with the Multilateral Memorandum of Understanding developed by the International Organization of Securities Commissions (IOSCO).

Conclusion: The Board took note of the update provided. ESMA staff will continue the discussions with the Article 29 Working Group and within IOSCO.

14. Short-Selling Regulation Evaluation

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| 1) Cover Note | Discussion |
| 2) Technical advice on the evaluation of certain elements of the Short-Selling Regulation | Decision |

Nicoletta Giusto (IT) presented the technical advice on the evaluation of certain elements of the Short-Selling Regulation and the accompanying note.

The Board discussed the technical advice, in particular the thresholds for public disclosure of significant net short positions in shares and notification to national competent authorities.

Conclusion: The Board adopted the technical advice by opting for (i) in relation to the market making activity on-venue requiring the market maker to be a member of at least one of the trading venues where its market making activity effectively takes place, (ii) that market makers should not be obliged to enter into a binding arrangement with the trading venue or the issuer, and (iii) alignment of the calculation for spot and derivatives positions in sovereign debt by using the nominal method for both positions. It was clarified that the proposed revised short term ban, being a net short position ban instead of a short sale ban on a particular European trading venue, would be applicable to investors in- and outside the EU.

15. CCP Stress-testing

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| 1) Presentation | Discussion |
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The Head of Markets Department presented the approach for the ongoing CCP stress-testing work.

The Board discussed the approach to the CCP stress-testing exercise, in particular:

- The assumptions regarding central banks providing liquidity in the baseline scenario;
- The level of disclosure in the Final Report; and
- Whether due follow-up has been given by national competent authorities to past recommendations.

Conclusion: The Board took note of the suggested approach.

16. CCP Peer Review

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| 1) Cover Note | Discussion |
| 2) CCP Peer Review Report | Decision |

Robert Ophele presented the CCP Peer Review Report and accompanying documents.

The Board discussed the report, in particular the:

- Frequency by which the default management process should be reviewed and the interaction with a risk-based approach; and
- Existing opinion on the composition and functioning of colleges.

Decision: The Board adopted the CCP Peer Review Report subject to drafting changes.

17. Fees charged by TRs and CRAs

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| 1) Cover Note | Discussion |
| 2) Report on fees charged by TRs and CRAs | Decision |

The Head of Supervision Department presented the report on fees charged by TRs and CRAs.

The Board discussed the report, in particular what kind of supervisory action could be considered as regards follow-up to the report.

Decision: The Board adopted the report on fees charged by TRs and CRAs.

18. Translation of ESMA Guidelines

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| 1) Issues Note | Discussion |
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The Executive Director presented the note on the translation of ESMA Guidelines.

The Board discussed the note, in particular the:

- Need for high-quality and consistent translation at EU level of all Guidelines; and
- Importance of Guidelines in all EU languages to promote supervisory convergence.

Conclusion: The Board confirmed that all Guidelines (addressed to national competent authorities and to specific financial markets participants) should be translated in all official EU languages. Sufficient budget will need to be allocated to ensure such translation. The Board agreed with the suggested criteria in case a prioritisation of the Guidelines to be translated is needed due to budget shortages.

19. Q&A on reverse solicitation Decision

The Board discussed the Q&A on reverse solicitation, in particular whether the Q&A should be more explicit on the ability of an EU investment firm providing legitimate investment services to its clients or executing or transmitting order where this meets best execution obligations.

Decision: The Board adopted the Q&A on reverse solicitation. Edwin Schooling Latter (UK) abstained.

20. Commodity Derivatives Task Force

- 1) CDTF Report Information

Decision: The Board took note of the report.

- 2) MIFID II Q&As Decision

Decision: The Board adopted the Q&As.

21. Corporate Finance Standing Committee

- 1) CFSC Report Information

Decision: The Board took note of the report.

- 2) Consultation Paper on RTS under the Prospectus Regulation Decision

Decision: The Board adopted the consultation paper on RTS under the Prospectus Regulation.

22. Corporate Reporting Standing Committee

- 1) CRSC Report Information

Decision: The Board took note of the report.

- 2) Final Report on the RTS on the European Single Electronic Format (ESEF) Decision

Decision: The Board adopted the Final Report on the RTS on the European Single Electronic Format (ESEF).

- 3) ESEF Reporting Manual Decision

Decision: The Board adopted the ESEF Reporting Manual.

23. Credit Rating Agencies Technical Committee

- 1) CRA TC Report Information

Decision: The Board took note of the report.

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| 2) | Consultation Paper on disclosure templates and operational standards for data | Decision |
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Decision: The Board adopted the consultation paper on disclosure templates and operational standards for date.

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| 3) | Consultation Paper on the Simple, transparent and standard (STS) securitisation notification | Decision |
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Decision: The Board adopted the consultation paper on the simple, transparent and standards securitisation notification.

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| 4) | Consultation Paper on RTS on authorisation of third party firms for STS verification | Decision |
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Decision: The Board adopted the consultation paper on RTS on authorisation of third party firms for STS verification.

24. Investor Protection and Intermediaries Standing Committee

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| 1) | IPISC Report | Information |
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Decision: The Board took note of the report.

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| 2) | MIFID Q&As | Decision |
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Decision: The Board adopted the Q&As.

25. Market Data Standing Committee

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| 1) | MDSC Report | Information |
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Decision: The Board took note of the report.

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| 2) | EMIR Q&As | Decision |
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Decision: The Board adopted the Q&As.

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| 3) | MIFIR Q&As | Decision |
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Decision: The Board adopted the Q&As

26. Market Integrity Standing Committee

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| 1) | MISC Report | Information |
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Decision: The Board took note of the report.

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| 2) | BMR Q&A | Decision |
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Decision: The Board adopted the Q&As.

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| 3) | MAR Q&A | Decision |
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Decision: The Board adopted the Q&As.

27. Post-Trading Standing Committee

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| 1) PTSC Report | Information |
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Decision: The Board took note of the report.

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| 2) Consultation Paper on Guidelines on anti-procyclicality measures | Decision |
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Decision: The Board adopted the consultation paper on guidelines on anti-procyclicality measures.

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| 3) CSDR Q&As | Decision |
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Decision: The Board adopted the Q&As.

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| 4) EMIR and MIFIR Q&A | Decision |
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Decision: The Board adopted the Q&As.

28. Secondary Markets Standing Committee

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| 1) SMSC Report | Information |
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Decision: The Board took note of the report.

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| 2) MIFID II Q&As | Decision |
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Decision: The Board adopted the Q&As.

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| 3) Table of MIFIR supplementary deferral regimes | Decision |
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Decision: The Board adopted the table of MIFIR supplementary deferral regimes.

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| 4) Procedure for the reporting of trading halts | Decision |
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Decision: The Board adopted the procedure for the reporting of trading halts.

29. Supervisory Convergence Standing Committee

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| 1) SCSC Report | Information |
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The Board discussed the SCSC report, in particular:

- The follow-up to the peer review on suitability requirements under MIFID and in particular the criteria used to select national competent authorities for this follow-up; and
- Whether a broader reflection may be launched on potential improvements to the existing peer review methodology.

Conclusion: The Board took note of the Report.

30. IT governance

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| 1) Cover Note | Information |
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| 2) Presentation | Information |
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Decision: The Board will discuss the governance framework around IT-projects during the January 2018 Board of Supervisors meeting.

31. Securities and Markets Stakeholder Group (SMSG)

- 1) Appointment of two SMSG Members Decision

Decision: The Board appointed Blanaid Clarke and Andreas Gustafson as Members of the SMSG. The former in the category of academics from 1 January 2018 onwards, the latter in the category of financial market participants from 1 June 2018 onwards.

32. A.O.B.

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33. Future meetings

- 31 January 2018 (Paris)
- 22 and 23 March 2018 (Sofia)
- 23 and 24 May 2018 (Paris)
- 10 and 11 July 2018 (Paris)
- 26 September 2018 (Vienna)
- 7 and 8 November 2018 (Paris)
- 18 December 2018 (Paris)

Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Karina Karaivanova	
Czech Republic	Karel Juras (alternate)	
Denmark	Ove Feddersen (alternate)	Kåre Valgreen
Germany	Elisabeth Roegele	Hannelore Lausch Marcus Hein
Estonia	Andre Nomm (alternate)	
Ireland	Martin Moloney (alternate)	Cian Murphy
Greece	Charalampos Gotsis	Anastasia Maltoudi
Spain	Sebastian Albella	Antonio Mas
France	Robert Ophele	Benoit de Juvigny Françoise Buisson Laurène Duffa
Croatia	Silvana Bozic (alternate)	
Italy	Nicoletta Giusto (alternate)	
Cyprus	Andreas Andreou (alternate)	Christiana Vovidou

		Eftychia Georgiou
Latvia	Gunta Razane	
Lithuania	Vytautas Valvonas	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Krisztián Csáky (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	João Gião (alternate)	Rita Oliveira Pinto
Romania	Mircea Ursache (alternate)	Florentina Boboc
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Jarmo Parkkonen (alternate)	
Sweden	Erik Thedéen	Fredrik Elmberg
United Kingdom	Edwin Schooling-Latter (alternate)	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Ugo Bassi	Peter Ohrlander
EBA	Anne Tiedemann	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Sigurveig Guðmundsdóttir (alternate)	
Liechtenstein	Marcel Lötscher	
Norway	Geir Holen (alternate)	Marianne Elind Skaane
EFTA Surveillance Authority	Gunnar Thor Petursson (alternate)	Marco Uccelli

Observer

Coordinator of the Assessment Group for the Peer Review on the Compliance Function under MIFID	Sonia Martinez
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ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Legal, Convergence and Enforcement Department	Sophie Vuarlot-Dignac

Head of Investors and Issuers Department	Evert van Walsum
Head of Markets Department	Fabrizio Planta
Head of Risk Analysis and Economic	Steffen Kern

Done at Paris on 31 January 2018

Steven Maijor

For the Board of Supervisors