

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 11/12 July 2011
Time: 14:15 – 17:30h, 09.00 – 12.30h
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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No Items

11 July

1. Adoption of agenda BS/140 *decision*

The Chair noted that copies of the final agenda had been circulated.

Decision: The agenda was adopted with the addition of Item 12 on CRAs and the current market environment.

2. Summaries of conclusions of 12 April and 25 May meetings BS/141 *decision*
BS/142

Decision: The summaries were adopted with amendments to point 11 of the summary of the 25 May 2011 meeting to clarify that the Secondary Markets Standing Committee would review previous waivers and to note Karl-Burkhard Caspari's (DE) disagreement with the decision that the NL1 waiver does not comply with MiFID because he considered the wording of the relevant MiFID provision to be open to different interpretations. Following discussion it was agreed that SMSC would analyse the issue of previous waivers and return to the September meeting of the Board of Supervisors with a proposal for the review.

3. Roundtable discussion on the current market environment BS/159 *decision*

The Chair proposed a discussion on the current market environment, focusing on three issues:

exposure issues regarding Greek sovereign bonds;

an accounting issue; and



the role of credit rating agencies (discussed under Item 12).

Exposure issues regarding Greek sovereign bonds

The Chair noted the establishment of an urgent issues group to collect and analyse information on exposure to Greek sovereign debt and related CDS and CDS counterparties, looking primarily at systemic risk and secondarily at market abuse issues. The group would comprise representatives from the Austrian, Dutch, French, German, Greek, Italian, Spanish and UK authorities and be chaired by Anastassios Gabrielides as chair of ESMA-Pol with EBA observing. The Chair noted that ESMA staff had started some initial data gathering and analysis.

The Board discussed, in particular:

the scope and prioritisation of the work;

work carried out nationally in similar areas; and

availability of other data sources, including EBA, ECB and other central bank data.

Conclusion: It was agreed that the group would hold a conference call in the course of the week and the focus should be on making use of data that is already available with the group suggesting possible work on market abuse issues. Members of the Board were asked to ensure their authorities pass on any relevant data to the group. The group would report back by the Board's September meeting.

Accounting issue

Fernando Restoy presented the discussion paper on exposure to Greek Government bonds and the coordination of enforcement of IFRS accounting.

The Board discussed:

ESMA's role in ensuring consistent application of financial reporting issues;

the interaction with EBA's stress test disclosure requirements and any recommendations it makes;

the desirability of IFRS enforcers taking a common approach, or having a common understanding of each other's intentions;

the appropriate course of action taking account of IFRS requirements, the current market environment and the impact any action may have on that environment; and

the need for liaison with EBA, EIOPA and the ESRB.

Conclusion: The Board agreed that working towards consistent application of financial reporting issues in connection with relevant sectoral legislation, including the Transparency Directive, fall clearly within ESMA's remit. The EECS and Corporate Reporting Standing Committee had agreed a need for adequate disclosures within the framework of IFRS 7, an approach that had been taken by CESR on previous occasions. ESMA should work on preparing a statement concerning such adequate disclosures by issuers whose securities are admitted to trading on a regulated market in their (interim) financial statements. A conference call would be arranged to take account of any further market developments and discuss the

proposed statement by ESMA which, if agreed, should be issued before the end of the month. In any event, the EECS and the Corporate Reporting Standing Committee should continue to consider market developments with a view to advising the Board on any change in their analysis, in particular for the end of the year which is also the fiscal year-end for most issuers. Any statement would be based on the particular circumstances of the market. Work would be carried out in close cooperation with EBA and EIOPA, and consistent with EBA's stress test work.

4. Article 9 Implementation Task Force

Report by Jean-Paul Servais BS/143 *information*

Jean-Paul Servais presented his report, noting that responses to the questionnaire are requested by the end of July. The Chair welcomed progress on mapping national activity in relation to bans and product intervention.

Mandate for Financial Innovation Standing Committee Annex 1 *decision*

Jean-Paul Servais noted that the mandate had been revised to reflect that the Board of Supervisors could decide on the allocation of work when an issue has no owner.

The Board discussed:

whether the committee should be established as a standing committee; and

whether the mandate should limit what the committee can do which is a departure from other standing committees.

Decision: The Board approved the FISC mandate subject to amendments being made to focus on FISC's positive mandate in line with other standing committee mandates.

The Chair invited expressions of interest in chairing the FISC and noted that ideally the same person should also chair the Consumer Protection Sub-Committee of the Joint Committee.

5. Investment Management SC

Report by Giuseppe Vegas BS/144 *information*

Giuseppe Vegas presented his report.

Consultation paper on AIFMD Annex 1 *decision*

The Board discussed the proposed consultation, in particular:

whether a question should be raised on calculation of leverage in relation to private equity funds;

inclusion of examples on the issue of delegation in paragraph 21;

changes made to the calculation of leverage in Box 2; and



the proposal to consider strict liability on a case by case basis.

Nicoletta Giusto explained that recital 78 of AIFMD effectively prevents certain forms of leverage from being included in the calculations.

The Board welcomed the extensive work carried out.

Decision: The Board agreed to publish the consultation paper with the addition of a question on calculation of leverage in relation to third party financial or legal structures controlled by the AIF and on whether foreign exchange and interest rate hedging positions should be excluded when taking into account leverage for the purposes of calculating the total value of assets under management.

Discussion paper on ESMA's policy orientations on guidelines for UCITS
ETFs and structured UCITS

Annex 2 *Discussion*

The Board discussed the discussion paper, in particular:

concerns at the range of products that are being brought to the market for retail investors under the UCITS regime and the scope for measures beyond additional disclosure, such as structured ETFs ceasing to be treated as retail investments, noting that as MiFID stands, all packaged products are available for execution-only sales to retail investors and therefore innovative solutions have to be found pending any future legislative changes;

the wide range of ETFs available, and the need to ensure that not all become considered risky due to the complexity of some products;

the possibility of the issues being discussed further in ESRB ATC and ASC meetings; and

the need to consider structured products generally, including debt instruments, rather than focusing only on structured UCITS.

The Commission noted its concerns on non-implementation of UCITS IV in some Member States by 1 July 2011 and welcomed ESMA's attempts to find intermediate solutions.

Conclusion: The Chair noted clear signals that disclosure may not be the only answer and that there is scope for considering greater intervention, also taking into account potential financial stability issues. It was agreed that the scope of the paper should not be adjusted at this stage other than further strengthening of the investor protection and financial stability perspectives prior to publication. The discussion paper would be adjusted to make clear that the issues are considered relevant to financial products beyond UCITS and would be aimed for publication in the following two to three weeks.

6. Credit Rating Agencies SC

Report by Karl-Burkhard Caspari

BS/145 *information*

Karl-Burkhard Caspari presented his report.

Conclusion: Members were asked to provide any comments within one week.



US equivalence update

BS/146 *discussion*

Karl-Burkhard Caspari presented an update on whether the US can be considered to have equivalent regulation to the EU's requirements.

The Commission supported the flexibility proposed by the Standing Committee, noting that it will ultimately take the final decision on equivalence based on ESMA's advice, and it would therefore be important that ESMA provides conclusive advice in due course. It was noted that ESMA takes decisions on endorsement which raise similar issues.

The Board discussed progress on college conclusions regarding outstanding CRA registrations. Competent authorities were encouraged to speed up the process without sacrificing the quality of the registration decision.

US SEC Proposals table

BS/157 *information*

The Board noted the information in the table.

7. Credit Rating Agencies Technical Committee

Draft Terms of Reference for the Technical Committee

BS/147 *decision*

The Board discussed the draft terms of reference, in particular the role of the technical committee in relation to supervisory issues.

Decision: The Board approved the terms of reference, amended to reflect the ability to seek the committee's advice on cross-CRA supervisory issues that could have policy implications if requested by its chair, and to ensure paragraph 16 is aligned with other standing committees.

12 July

8. Report by Jean-Pierre Jouyet (PTSC)

Voting Members only

BS/152 *decision*

Thierry Francq presented the report by Jean-Pierre Jouyet, noting that the latest information is that there may be a final text on EMIR in October at the earliest and that it is already clear that there will not be sufficient time to prepare the technical standards required. While preparatory work has been carried out to the extent possible it is now difficult to continue due to the significant differences between the Parliament and Council texts. ESMA would need its deadlines for producing technical standards to be extended accordingly.

Decision: The Board approved proposals for the involvement of the ESCB in the drafting of technical standards for EMIR. It was agreed to send a letter to the Council, Parliament and Commission asking for a year to deliver technical standards after finalisation of the text of the Regulation.

9. Corporate Finance SC



Report by René Maatman (CFSC)

BS/148 *information*

René Maatman presented his report.

Response to Commission Green Paper on Corporate Governance Framework

Annex 1 *decision*

The Board discussed:

the degree to which the proposals should propose harmonising corporate governance requirements;

consistency with views previously communicated on the Transparency Directive proposing disclosures being treated as regulated information (response to consultation on TD);

in relation to question 22, the practicality of holding votes on 'larger transactions' and whether this should remain an issue for a company's supervisory board

Decision: The Board approved the response with objections from Carlos Tavares (PT) and Karl-Burkhard Caspari (DE) in relation to Question 22.

10. Secondary Markets SC

Report by Alexander Justham

BS/149 *information*

Alexander Justham presented his report.

Consultation paper on guidelines on systems and controls in a highly automated trading environment

Annex 1 *decision*

The Board discussed the consultation paper, in particular:

the concept of real-time monitoring and the availability of technical systems enabling this;

the possibility of cross-market circuit breakers which could assist in mitigating systemic risk; and

the need for action to be taken by issuing guidelines ahead of implementation of the results of the MiFID review.

Decision: The Board approved the consultation paper for publication, Karl-Burkhard Caspari (DE) objecting.

Letter to the Commission on legislative changes needed in relation to highly automated trading environment

Annex 2 *decision*

The Board discussed the draft letter, in particular:

supervisory access to algorithms;

the desirability of harmonising circuit breakers across markets in relation to particular instruments,

and of a framework to avoid cross-market contagion;

detecting market manipulation through order book surveillance and cooperation where platforms in different jurisdictions are trading an instrument, noting the automation, data quantity and cost issues involved in mandatory reporting of all order book data;

drafting points on Issues 5 and 9 concerning data flow through national authorities;

whether an authorisation of market members should distinguish between brokers executing client order flow, and true proprietary trading by high frequency traders; and

whether the social value of high frequency trading justified the cost of some of the proposals.

Decision: The Board approved the letter.

11. Corporate Reporting SC

Report by Fernando Restoy	BS/150	<i>information</i>
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Fernando Restoy presented his report.

Revision of Standard on Enforcement of Financial Information: Results of the fact finding exercise	Annex 1	<i>discussion</i>
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The Board noted the results of the fact finding exercise.

ESMA comment letter to IFRS Foundation consultation paper “IFRSs as the Global Standard: Setting a Strategy for the Foundation’s Second Decade”	Annex 2	<i>decision</i>
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Decision: The Board approved the letter.

ESMA public statement on retrospective adjustment to financial statements following rejection notes published by the IFRS Interpretations Committee	Annex 3	<i>decision</i>
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Decision: The Board approved the public statement.

Appointment of new SC Chair	Oral update	<i>decision</i>
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Decision: The Board appointed Julie Galbo as chair of the Corporate Reporting Standing Committee.

12. Credit rating agencies

The Executive Director (ED) noted that a number of competent authorities had started to look at the actions of CRAs in current market circumstances, noting that in relation to CRAs that have not yet been registered there is scope for colleges to take action if considered appropriate as part of the registration process, and that following registration ESMA would clearly be the relevant EU supervisory authority.



There were divergent views on ESMA's precise responsibilities during the transitional period.

The Commission noted that it is preparing further legislation regulating CRAs (CRA III), that it remains urgent that the registration process be completed as soon as possible and that future legislation should ensure that CRA opinions are relied on only as one source of information.

Conclusion: Completing registration remains a high priority. Registration covers overall procedures and governance and so where issues appear endemic it would be appropriate for colleges to consider them as part of that process. National competent authorities remain responsible for supervisory issues outside the scope of the CRA Regulation, such as market abuse. However, ESMA would contact the three CRAs concerned to carry out further fact-finding work and make them aware it would be taking a close look at the issues currently being raised.

13. IT Management Group

Report by Arja Voipio BS/151 *information*

The Board noted the report.

14. Progress reports

Report by Jean-Paul Servais (IPISC) BS/153 *information*

The Board noted the report.

15. Report by Chair and Executive Director

Oral *information*

The ED noted that the move to ESMA's new premises had been successfully concluded and was largely on budget. The outcome of the middle management recruitment process had been circulated to the Boards.

The Chair noted a combined effort by the EC and the Chair to ensure the correct level of representation in the Board of Supervisors to ensure compliance with the ESMA Regulation and that this has resulted in changes and will lead to further changes.

The Chair reported that Carlo Comporti had been appointed as adviser to the Chair and may have a temporary role in managing a division or unit pending the arrival of the permanent middle manager. The Chair updated the Board of Supervisors on the process of appointing the Board of Appeal members.

Possible work of ESMA on commodities markets Oral *discussion*

Conclusion: The Board agreed to discuss future commodities markets work at its next meeting, taking account of the work carried out by CEMA.

Future funding of ESMA BS/154 *information*

The ED presented the update on the future funding of ESMA, reporting that the Management Board discussed the issue and further work would be carried out to assess the implications and to make strong representations to the Parliament and Council to press for 100% Union funding and for a separate budget line. Olivier Salles confirmed DG MARKET's strong support for ESMA's proposals as regards 100% Union



funding.

16. AOB

ESMA's participation in the EU – US debate on the extraterritorial aspects of certain DFA provisions

BS/158

discussion

The ED presented the report, noting that the relevant Standing Committees would be kept up-to-date as regards progress. The letter discussed at the previous Board of Supervisors meeting would now not be sent.

The Board noted information concerning potential new risks for clearing systems arising from proposed extra-territorial application of US insolvency law.

17. Future meetings

information

20 September 2011 (Warsaw)

8 November 2011 (Paris)

20 December 2011 (Paris)

14 February 2012 (tbd)

17 April 2012 (tbd)

19 June 2012 (tbd)

11 September 2012 (tbd)

6 November 2012 (tbd)

18 December 2012 (tbd)

Steven Maijoor
Chair



PARTICIPATION LIST
Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Antoniya Gineva (alternate)	Dimitar Koichev
Czech Republic	Petr Stanek (alternate)	-
Denmark	Julie Galbo	Hanne R�ae Larsen
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Kilvar Kessler (alternate)	-
Ireland	Gareth Murphy	Patricia Dunne
Greece	Anastassios Gabrielides	Eleftheria Apostolidou
Spain	Fernando Restoy	Antonio Mas
France	Thierry Francq	Xavier Tessier
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	-
Latvia	Irena Krumane	-
Lithuania	Vilius Sapoka	-
Luxembourg	Jean Guill	-
Hungary	K�aroly Sz�asz	-
Malta	Christopher Buttigieg (observer)	-
Netherlands	Ren� Maatman (alternate)	Max Simonis
Austria	Kurt Pribil	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Adam Blasiak
Portugal	Carlos Tavares	Margarida Matos Rosa
Romania	Bogdan Chetreanu (observer)	Raluca Tariuc
Slovenia	Sabina Bester (alternate)	Damjan Zugelj



Slovakia	Ivan Barri	Slavomir Stastný
Finland	Anneli Tuominen	Arja Voipio
Sweden	Anna Jegnell (alternate)	Ulli Jakobsen
United Kingdom	Alexander Justham	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Jonathan Faull Olivier Salles	Emiliano Tornese
ESRB	Francesco Mazzaferro	
EIOPA	Carlos Montalvo	
EBA	Adam Farkas	

Observers

Iceland	Gudrun Jonsdottir	
Liechtenstein	Philipp Roeser	
Norway	Eirik Bunaes	

ESMA

Executive Director	Verena Ross
Minutes	Jonathan Overett Somnier