

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 20 September 2011
Time: 08:30 – 17:00h
Location: Sofitel Victoria Hotel, Krolewska 11, Warsaw 00-065, Poland
Contact: steven.maijoor@esma.europa.eu T: +33 1 58 36 51 12

No Items

1. Adoption of agenda *BS/178 decision*

Stanisław Kluza, Chairman of the KNF, welcomed members to the meeting, questioning how supervisors can increase confidence in the financial markets and suggesting that confidence comes from ensuring equality of treatment for all market participants. He hoped that the meeting could lead to a better world for the Union's citizens and wished members a fruitful meeting.

The Chair thanked Stanisław Kluza for his wise words on fairness in the market and fair treatment by supervisors. The Chair noted the current difficulties in the financial markets and that it was clear that securities markets regulators have an important role to play, together with finance ministries and prudential regulators.

Decision: The agenda was adopted unamended.

2. Summary of conclusions of July meeting and conference calls *BS/179 decision* *BS/180*

Decision: The summaries of conclusions of the July meeting of the Board of Supervisors and of the July conference calls were approved with corrections to the Bulgarian and Polish participants in the conference calls.

3. Report by Chair and Executive Director *Oral information*

Securities and Markets Stakeholder Group update *BS/181 information*

The Chair reported on the establishment of the Securities and Markets Stakeholder Group (SMSG) and its first meeting in July. The meeting had focused on the SMSG's procedures and on discussions on recently-issued ESMA consultations. The Chair also reported on complaints raised by unsuccessful applicants. The



Chair noted that discussions were being held with the SMSG regarding the points at which they could most effectively contribute to ESMA's work. The Chair noted the need for a joint meeting of the SMSG and of the Board of Supervisors and proposals for this are being considered.

Market events and actions over the summer, including confidentiality *BS/195 discussion*

The Board discussed ESMA's and national supervisors' professional secrecy obligations and the legal and operational risks that can arise from failures to maintain confidentiality, including a number of proposals to enhance the level of security around discussion of confidential issues.

Conclusion: The Chair agreed to return to this issue at the Board's next meeting, including considering how confidential information is discussed in the competition area.

Urgent issues group *Oral discussion*

Follow up of the written procedure on the Report on interim measures on *BS/168 discussion*
Market Microstructure and the Report on Settlement Discipline *BS/169*

Thierry Francq (FR) reported on discussions in the Post-Trading Standing Committee on the powers of competent authorities in relation to settlement, where no significant problems had been found and therefore no action was proposed in the short-term. However, it was noted that competent authority powers are very different and reporting can be difficult due to inconsistent data and restrictions in some Member States on sharing of settlement information. It was therefore proposed to carry out further work on data-sharing and on powers, taking account of the current legislative proposals under negotiation. Data was being collected on a weekly basis in the short-term.

Alexander Justham (UK) reported on discussions in the Secondary Markets Standing Committee where the experiences in the current volatile scenario were shared. Despite the significant increase in volatility and volumes, markets infrastructures had held up. A significant part of that resilience was due to the role of European trading halts. It was noted that given that it had not been possible to identify a problem, a public statement could be counter-productive. As a consequence, it was recommended that any external communication regarding the relationship between market infrastructure and the highly automated trading environment should be made in the context of the consultation published by ESMA in July, to remind market participants of the main messages that ESMA wished to give to the market. It was noted that inconsistent powers between Member States can lead to difficulties, but advice had previously been given to the Commission on this issue in the context of the MiFID Review.

Alexander Justham added that despite the work on the guidelines currently under consultation, there is a lot of further work to do. That work should be focussed on what addresses effectively the problems that have been identified without causing collateral damage such as reducing liquidity. In that sense, he noted that the most recent academic literature does not identify problems regarding high-frequency trading.

He also indicated that at the public hearing to be held at ESMA premises on 27 September messages would be delivered in line with the discussion held at the BoS.

Anastassios Gabrielides reported on ESMA-Pol's task force which had been established. The group found no significant net positions in the Greek sovereign debt CDS market and no apparent systemic issues in the market.



The Chair noted that ESMA staff had also regularly called key financial markets to gather additional information.

Members discussed, in particular:

- the extent of settlement fails, scope for market manipulation and systemic risks, in particular the potential for the rapid spread of problems between markets and countries, for example through stop-loss orders in derivative markets leading to a domino effect, and the need to carry out further analysis;
- the role of different types of circuit breakers, with a proposal that after a circuit breaker has operated an auction should be held before trading resumes. It was suggested such micro-auctions can make circuit breakers more effective through their impact on high-frequency trading.
- whether high-frequency trading poses a threat to the role of financial markets in supporting the real economy;
- methods for limiting the impact of failure to settle, in particular by Member States imposing mandatory buy-in the day after the settlement fail ahead of the implementation of the Commission proposals in this area, and publishing the identity of market participants who fail to settle;
- whether to continue with weekly collection of data on settlement fails;
- whether to extend the work on the Greek sovereign debt CDS market to further markets;
- concerns from some members that increased volatility in markets was linked with the significant volume of intra-day trading;
- the improvements in coordination of short-selling measures and whether it is desirable for short-selling measures to be adopted by all countries rather than a limited number, noting the delay in adoption of the proposed Short-Selling Regulation;
- the need to ensure that where actions taken could impact on over half the equity market such action is targeted carefully and accurately to ensure it does not make liquidity and volatility even worse, and contributes positively to orderly markets and financial stability;
- the ability to move rapidly to adopt the guidelines on highly-automated trading;
- the need for comprehensive and co-ordinated tools across European authorities;
- the relationship between CDS prices and bond prices; and
- the scope for ESMA to use its emergency powers if it became necessary.

Emil Paulis (EC) informed the Board that the short-selling proposal is close to agreement in trilogue, with progress being made on the main outstanding issue, that the MiFID proposal would also be issued soon which would assist in relation to highly-automated trading, while the Commission's market abuse proposal would further strengthen the rules in that area. Some strategies of high-frequency traders might be considered as betting rather than providing capital to real economy. Therefore, it is likely that the revised versions of those directives would impose additional limitations and controls. Further action relevant to



the areas under discussion include the Commission's proposed Securities Law Directive which is expected in 2012, and the CSD proposal which is expected to be adopted by the end of 2011. In the meantime it was important that regulators take whatever action they consider necessary using the tools currently available to them.

Carmelo Salleo (ESRB) noted that the ESRB will be discussing high-frequency trading at its next General Board meeting and was willing to work closely with ESMA and support its work with additional resources.

Conclusions:

- The Chair noted that there was an increased willingness among competent authorities to coordinate their actions. ESMA had sent messages to the Commission regarding the need to increase the speed of adopting the current legislative proposals. In relation to ESMA's emergency powers, ESMA's preliminary analysis is that once an emergency has been declared by the Council ESMA would, broadly, have the powers that competent authorities are able to exercise under sectoral legislation, it was therefore important to manage expectations on the scope for ESMA to take action in an emergency. Further analysis was being carried out and would be shared with the Board.
- The Chair noted broad support to increase the level of information and analysis in relation to the issues surrounding highly-automated trading, and to make ESMA's position more explicit. SMSC would revisit the draft guidelines in the light of recent developments as well as consultation responses, and see if changes are needed. The consultation process also provided opportunities for making a public statement setting out ESMA's position if necessary. The outcome of the consultation should be reported to the Board ahead of its November meeting.
- On settlement failures, the weekly exchange of data should continue unless there are solid and effective arrangements in place with particular organisations to provide data on an exceptions basis.
- Having provided useful information on the Greek sovereign bond debt market, it would be useful for the urgent issues group to look into issues on the relationship between pricing in the bond and CDS markets.

Short-selling measures

The Chair reported on the short-selling restrictions imposed by four countries on 11 August 2011. The Chair welcomed the close coordination on the scope of the measures, and coordination of communications facilitated by ESMA. The countries concerned also propose to coordinate the ending of the bans through ESMA when markets allow, taking account of national procedures.

The Board discussed the short-selling measures, in particular:

- the major step forward resulting from the increased coordination;
- the need for good communications to ensure the scope of short-selling measures is clear and communicated consistently to all market participants;
- the effectiveness of the measures taken, initially and over time, noting the difficulty additional market turmoil creates in making such assessments;



- the importance of learning from the experience of the current measures to further improve the process should additional measures be taken in future; and
- the need to allow time for full consideration of the need for measures, taking account of the need to take action rapidly when information begins to leak.

The Chair noted the importance of any short-selling measures being coordinated. The queries raised by market participants and the authorities' answers should be documented so that they are available for any future measures.

Other activities

The Chair noted his and the Executive Director's participation in FSC, EFC and Ecofin meetings and that on 4 October 2011 the ESA Chairs would appear before the European Parliament, principally concerning ESMA's budget. The Chair noted that he would state that ESMA is in principle in favour of full Union funding. Karl-Burkhard Caspari (DE) noted that BaFin does not support 100% Union funding. The Chair also noted a conference call with Gary Gensler (CFTC) and Mary Schapiro (SEC) regarding mutual recognition in order to minimise dual supervision, the ability of European banks to register with the CFTC as swap dealers, registration and supervision of CCPs and the requirement for indemnification by ESMA and national competent authorities in order to access information on trade repositories. Following a discussion regarding registration of CCPs that have DCO status, giving greater protection for US than for non-US investors, the Chair proposed that those involved in the discussions report to the Board of Supervisors so the issue can be discussed further, in particular by the relevant standing committees.

The Chair explained that the Management Board had discussed ESMA's international strategy in line with discussions previously held regarding ESMA's proposed participation in the IASB and in IOSCO.

Following the resignation of Alexander Justham (UK) from the FSA, the Chair noted that an election would be held at the next Board of Supervisors meeting to elect his successor. A further election would be held in April to elect replacements for the three Management Board members whose terms will have expired.

The Executive Director noted the arrival of Rodrigo Buenaventura and Laurent Degabriel as Heads of Division for the Markets Division and Investor Protection and Reporting Division respectively. Felix Flinterman and Stephan Karas would arrive on 1 October as Heads of Unit for the CRA Unit and Legal, Cooperation and Coordination respectively, building ESMA's capacity to deliver in the future.

4. Work programme for 2012

Oral discussion

The Executive Director explained that ESMA staff had been preparing the 2012 work programme over the summer, much of which is based on expected legislative proposals and ongoing legislative negotiations. The Management Board had also discussed the current draft. As the ESMA Regulation provides for submission of work programmes by the end of September each year a note setting out the key priorities would be circulated to the Board for written approval by the end of the month. More detailed discussion would take place in the November meetings on the specific proposals, having consulted standing committees in October. The final work programme would then be submitted to the EU institutions after the November Board meetings.

The Executive Director confirmed that the work programme proposed would have increased focus on



supervisory convergence, notably through ESMA's supervision of CRAs but also on use of other tools, such as peer reviews, where ESMA would want to start using its powers over the next year.

5. Corporate Reporting Standing Committee

- Report by Julie Galbo *BS/182 information*
- Update on sovereign debt exposure issues, including IASB letter *Annex 1 discussion*

Julie Galbo (DK) presented her report.

The Board discussed the report, in particular:

- welcoming the level of information provided which enables proper analysis to be carried out and encouraging further analysis of the data in more detail to understand the rationale behind the diversity in accounting practices;
- whether all banks can be considered to be in the same situation and therefore can be expected to apply the same treatment, also taking account of IFRS being principles-based and therefore requiring judgement to be applied;
- the need to focus on the year-end accounts and the opportunity for ESMA to address such issues for clarity;
- the desirability of liaison with EBA and EIOPA, and senior level discussions with auditors; and
- the relationship between transparency and financial stability in the context of a problem of market confidence, and the need for clarity, consistency and transparency to regain market confidence.

Conclusion: The Chair noted broad support in terms of the process to be followed as described in the paper and the need for reaching a common position in order to ensure consistency. In practice further technical debate on detail is needed, initially through EECS and CRSC. It was agreed that ESMA's focus should be on IFRS year-end accounts, while the EECS arrangements regarding sharing of information on interim reporting enforcement would also help increase knowledge. If possible, CRSC could provide an interim report or a conference call could be held to avoid all the issues having to be considered at the Board's November meeting. The Chair added that IFRS are principles-based, and require judgement in the application of criteria. The Chair emphasised that accounting in year-end reports is especially important as it affects the profits reported, which impacts on bonuses and dividends and hence the level of cash retained in financial institutions.

Regarding the letter received from IASB, a draft response to the IASB letter would be prepared by ESMA staff, making clear the roles of ESMA and IASB. The letter would be circulated to the Board for comments.

- Activity Report on IFRS Enforcement in 2010 *Annex 2 decision*

Decision: It was agreed to publish the activity report, subject to consideration of comments received from Board members in the next week.

6. Corporate Finance Standing Committee



- Report by René Maatman *BS/196 information*
- Final Prospectus Level 2 Advice to the Commission on delegated acts *Annex 1 decision*

René Maatman presented his report, noting that the remaining issues under the Commission mandate for advice would continue to be worked on with a view to presenting proposals in early 2012. It was noted that the proposals enjoyed unanimous support in the Standing Committee, subject to disagreement by BaFin with the issue of indices composed by the issuer as well as the possibility to reproduce in the final terms the same information than the one in the base prospectus.

The Board discussed, in particular:

- the high level of detail and potential complexity of the advice to be provided to the EC;
- whether a document more like a KID used in the UCITS field, and proposed in relation to PRIIPS, should be considered.

Decision: The advice was approved subject to final editorial review.

7. Commodities markets

- Discussion Paper on structure and scope of future ESMA work on commodities markets *BS/183 decision*

The Chair presented the proposed discussion paper, recalling previous agreement that ESMA staff would prepare a proposal for a commodities task force, taking account of heightened attention given to the commodities field. The discussion paper proposed a task force given the nature of the field which crosses a number of standing committees. The task force would report directly to the Board of Supervisors and maintain close links to relevant standing committees. The Chair noted that the Secondary Markets Standing Committee, ESMA-Pol, Investor Protection and Intermediaries Standing Committee and Post-Trading Standing Committee had provided background to the document.

The Board discussed the proposal, focusing on the establishment of the task force, its governance and deliverables. The types of markets on which the task force would gather information were also considered.

Decision: It was agreed to establish a task force on the basis proposed in the report, reporting directly to the Board and consulting relevant standing committees on its reports. The focus of the task force would be commodity derivatives markets and the relationship between this market and the physical market, but not the physical market itself. Members interested in participating in the task force should make themselves known within the week to the Executive Director. Draft terms of reference would be prepared setting out the task force's tasks more precisely, these and proposals for chairmanship of the task force would be brought back to the Board for decision.

8. Article 9 Task Force

- Report by Jean-Paul Servais *BS/184 discussion*



Consolidated responses from Member States

Annex 1 information

Jean-Paul Servais presented his report, noting that members of the Task Force had learnt a lot from each other's national practices.

The Board discussed:

- the role for investor warnings, noting the example of FINRA in the US;
- the existence of national powers, and the ability to use them in a more coordinated way despite divergences in their scope;
- preparation of good/bad practices or guidelines and recommendations to promote convergence in this area;
- difficulties experienced in some jurisdictions regarding offers concerning securities denominated in amounts of €100,000 or more which have more limited protections for retail investors.

Emil Paulis (EC) noted the strong demand in the European Parliament for investment in investor protection which is also the Commission's wish. To this end the Commission hopes that MiFID will provide by the end of 2012 the ability to use the prohibition and restriction powers in Article 9 of the ESMA Regulation.

Conclusion: The Chair noted that it is clear that investor protection is important and ESMA has been in contact with many investor representatives. ESMA would progress on the issues raised in the paper with FISC coordinating the work where relevant. Work would continue on establishing best practices in relation to national powers pending the availability of further powers through the MiFID Review. FISC would therefore consider the issues of national and ESMA powers in parallel.

The Chair thanked Jean-Paul Servais and the Task Force members for their work in positioning ESMA in this area.

9. Appointment of Chairs (restricted session)

Appointment of Financial Innovation Standing Committee Chair

Oral decision

Members discussed the candidates for Chair of the Financial Innovation Standing Committee and held a vote by secret ballot.

Decision: The Board elected Anneli Tuominen as Chair of the Financial Innovation Standing Committee.

Proposal for Joint Committee Consumer Protection Sub-Committee Chair

Oral discussion

Members discussed the candidates for Chair of the Joint Committee Consumer Protection Sub-Committee and held a vote by secret ballot.

Decision: The Board elected Anneli Tuominen as ESMA's candidate for Chair of the Joint Committee Consumer Protection Sub-Committee.



10. Investment Management Standing Committee

- Report by Giuseppe Vegas *BS/185 information*

Giuseppe Vegas presented his report.

- Opinion on practical arrangements for UCITS IV transposition *Annex decision*

The Board discussed the proposed opinion, in particular:

- whether the opinion provided a full solution to the issues caused by late transposition in some Member States;
- the ability of a host Member State to prevent marketing of UCITS funds in its territory where the home State has not implemented UCITS IV;
- whether to postpone a decision on the opinion pending further discussion within IMSC on some of its provisions, including the provisions relating to the management company passport (supported by, among others, Marek Szuszkiewicz (PL));
- the importance of ensuring that any opinion enhances market confidence;
- whether to go further than the draft opinion contemplates and allow the continued marketing of existing UCITS; and
- the need for transposition to be speeded up, and the ability of the Commission to reduce such problems by proposing regulations rather than directives.

Decision: The opinion would be revised to focus on new notifications and would be circulated for approval in written procedure.

11. Credit Rating Agencies

- Report by Verena Ross *BS/187 information*
- Update on CRA registration
 - Publication of CEREP data

The Executive Director presented her report, noting the publication of the consultation paper on technical standards on 19 September and thanking national authorities for the progress made so far in relation to CRA registrations. It was noted that work is ongoing regarding third country endorsement and the communications around that process.

- Guidelines on delegation and cooperation *BS/188 decision Annex 1*

Bogusław Budziński presented the proposed guidelines on delegation and cooperation relating to ESMA's role as supervisor of credit rating agencies.

One member raised a question concerning the ability to delegate to an authority that does not wish to accept the delegation. Emil Paulis (EC) noted that acceptance of a delegation is an obligation on national competent authorities which follows from the requirements in the CRA Regulation to cooperate, and the general duty of loyal cooperation under the Union treaties. It was noted that national competent authorities are in the unusual position of being entitled to reimbursement of costs from a Union body for their work. The Chair noted that in practice it would be difficult to carry out work effectively under delegation arrangements if it is being done with resistance from the relevant authority.

Decision: The guidelines were approved subject to amendments to paragraphs 42 and 51 to reflect Article 23d(5) of the CRA Regulation more closely, to extend the references to professional secrecy obligations and to reflect the need for ESMA's prior consent where third parties are used by national competent authorities. The Chair will approve the final guidelines following translation.

12. Report on EU/US group on OTC derivatives *BS/189 information*

This item was discussed under item 3.

13. Progress reports

- Report by Alexander Justham *BS/186 information*
- Report by Anastassios Gabrielides (ESMA-Pol) *BS/190 information*
- Report by Jean-Paul Servais (IPISC) *BS/191 information*
- Report by Jean-Pierre Jouyet (PTSC) *BS/192 information*
- Report by Jean Guill (Review Panel) *BS/193 information*
- Report by Arja Voipio (ITMG) *BS/194 information*

14. AOB

No additional business was raised.

15. Future meetings *information*

- 8 November 2011 (Paris) (includes meeting with Securities and Markets Stakeholder Group)
- 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)	-
Czech Republic	Pavel Hollman	-
Denmark	Julie Galbo	Hanne R�e Larsen
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Raul Malmstein	Gerle Reinumagi
Ireland	Gareth Murphy (alternate)	Bryan Friel
Greece	Anastassios Gabrielides	Eleftheria Apostolidou
Spain	Fernando Restoy	Antonio Mas
France	Thierry Francq	Fran�oise Buisson
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	-
Latvia	Sandis Andersmits	-
Lithuania	Vaidas Cibas (alternate)	-
Luxembourg	Jean Guill	-
Hungary	Laszlo Balogh (alternate)	-
Malta	Andr� Camilleri	-
Netherlands	Ronald Gerritse	Ren� Maatman
Austria	Kurt Pribil	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Adam Błasiak
Portugal	Carlos Tavares	Manuel Costa
Romania	Victoria Gabriela Anghelache	Bogdan Chetreanu



Slovenia	Sabina Bester (alternate)	
Slovakia	Slavomir Stastný (alternate)	Eva Svetlošáková
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Martin Andersson	Anna Jegnell
United Kingdom	Alexander Justham	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Emil Paulis	Olivier Salles
ESRB	Carmelo Salleo	Fabio Recine
EIOPA	Patrick Hoedges	
EBA	Adam Farkas	

Observers

Iceland	-	
Liechtenstein	Markus Wagner (alternate)	
Norway	Eirik Bunaes	Kristin Lund

ESMA

Executive Director	Verena Ross
Head of Markets Division	Rodrigo Buenaventura
Head of Investor Protection and Reporting Division	Laurent Degabriel
Minutes	Jonathan Overett Somnier