



SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 14 February 2012
Time: 09:00 – 19:00h
Location: ESMA, 103 rue de Grenelle, 75007 Paris
Contact: steven.maijoor@esma.europa.eu T: +33 1 58 36 51 12

No Items

1. Adoption of agenda *BS/3 decision*

The Chair proposed to discuss item 8 after the Report by the Chair and Executive Director and to move item 5 to the end of the agenda. The Chair noted that it might be necessary to have an additional meeting of the Board of Supervisors in March to discuss the short selling technical standards.

Decision: The agenda was adopted taking the amendments into account.

2. Summary of conclusions of December meeting and January conference call *BS/4 decision*
BS/5

Decision: The summaries of conclusions were approved.

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

The Chair reported on:

- meetings with the European Parliament, Commission and Council, noting in particular discussions on budgetary implications of new legislative proposals, moving to 100% Union funding, the involvement of ESMA in the negotiation process regarding legislative proposals and the need for reasonable timescales to be set in legislation for producing technical standards;
- the recent decision by IOSCO to approve ESMA as an affiliate member;
- the Management Board meeting of 13 February 2012;
- the application of the 12-hour rule in the CRA Regulation in relation to the Market Abuse Di-



rective;

- discussions between ESMA and auditing firms on possible liquidity and going concern risks in year end 2011 reporting; and
- media contacts of national competent authorities regarding ESMA and the need for cooperation between ESMA and the national competent authorities on this issue.

The Executive Director reported on:

- a visit from the European Court of Auditors to ESMA and its preliminary findings. The next visit will take place in early March. The internal audit service from the Commission will visit ESMA in June;
 - the on-going negotiations with the French government regarding a Headquarters Agreement;
 - ESMA's activities in the field of CRA supervision and cooperation with 3rd country regulators; and
 - her participation in European Parliament hearings and ESMA for the first time participating in the Council negotiations on the CRA III legislative proposal.
- Letter from Karl-Burkhard Caspari *discussion*

After the introduction of the letter by Karl-Burkhard Caspari, the Chair explained that the OTC derivatives meeting was initiated by the US SEC and they had invited ESMA as the responsible standard setting body in the EU. The Chair noted that it is important that the Board is involved in determining ESMA's position on the relevant subject. This is done through discussions within the relevant Standing Committee while key policy discussions take place in the Board of Supervisors. The agenda of the meeting had been circulated to the Post Trading Standing Committee in advance and comments had been invited. Also, the Chair of the Post-trading Standing Committee attended the meeting as a representative of ESMA. On request of its members, ESMA can always discuss an issue on the level of the Board. The Chair noted that ESMA will draft a policy paper in order to have a discussion on ESMA's international policy and strategy.

The Board discussed the letter and the clarification by the Chair, in particular;

- the need for a clear policy with regard to the international activities by ESMA and the involvement of the members of the Board of Supervisors;
- to find a balance between involving the Board while maintaining room for manoeuvre for ESMA acting on the international level;
- the formal role of the Chair in representing ESMA externally according to the Regulation;
- the possibility to invite members of the Board of Supervisors to attend a meeting on a case-by-case basis; and
- when members of the Board of Supervisors would attend meetings they are representing ESMA and not their national competent authority.



Conclusion: The Chair concluded that policy debates will continue to take place at the level of the Board of Supervisors while specific international activities will be discussed within the Standing Committees, with the possibility of raising it at the level of the Board. Members of the Board can be invited to attend international meetings on a case-by-case basis, although the size of the EU delegation needs to be considered. When they are attending in their capacity as Board of Supervisors member, they are representatives of ESMA and not of their national competent authority. ESMA staff will draft a policy paper on ESMA's international policy and strategy for discussion in the Board of Supervisors.

4. Credit Rating Agencies

- Third country issues *BS/6 Decision*

The Executive Director presented the proposals on endorsement decisions regarding the US, Canada, Hong Kong and Singapore.

- Endorsement decision for US *Annex 1 Decision*

The Board discussed the endorsement decision regarding the US, in particular:

- the assessment of the 'as stringent as' requirement in the absence of certain implementing rules by the US SEC and the need for an on-going review of the further implementation of the rules in the US;
- the structure of the draft MoU and the extent to which the draft MoU purports to extend beyond CRAs;
- the ability to carry out on-site inspections in each other's territories; and
- the need to finalize the negotiations on the draft MoU as soon as possible in order to avoid any potentially significant detriment to financial market participants.

Decision: The Board approved the proposal that the US regulatory framework could be regarded 'as stringent as' the EU regime, approved the MoU as agreed at the working level and authorised the Chair to sign the MoU as soon as practicable if no material change occurs. Thierry Francq (FR) did not approve the draft MoU. ESMA staff will continue to inform the Board on the state of play of the implementing rules in the US on a regular basis.

- Endorsement decision for Canada *Annex 2 decision*

Decision: The Board approved the proposal that the regulatory framework of Canada could be regarded 'as stringent as' the EU regime, approved the MoU as agreed at the working level and authorised the Chairman of ESMA to sign the MoU as soon as practicable if no material change occurs.

A decision to include a CRA in the list of Cross-Border CRAs in the annex to the MoU, upon registration of that CRA and in accordance with the procedure established in the MoU, will be subject to approval by the Chair and reported to the Board of Supervisors as soon as practicable thereafter.

- Endorsement decision for Singapore and letter on confidentiality *Annex 3 decision*



Decision: The Board approved the proposal that the regulatory framework of Singapore could be regarded ‘as stringent as’ the EU regime, approved the MoU as agreed at the working level and authorised the Chair to sign the MoU as soon as practicable if no material change occurs. Also, the Board agreed to send the letter on confidentiality.

A decision to include a CRA in the list of Cross-Border CRAs in the annex to the MoU, upon registration of that CRA and in accordance with the procedure established in the MoU, will be subject to the approval by the Chair and reported to the Board of Supervisors as soon as practicable thereafter.

– Endorsement decision for Hong Kong

Annex 4 decision

Decision: The Board approved the proposal that the regulatory framework of Hong Kong could be regarded ‘as stringent as’ the EU regime, approved the MoU as agreed at the working level and authorised the Chair to sign the MoU as soon as practicable if no material change occurs. Also, the Board agreed to send the letter on confidentiality and to receive a letter on non-interference in the content of a rating report and/or with the methodology.

– Draft Press Release

Annex 5 decision

The Board briefly discussed the draft press release, noting in particular the need for proper and timely communication to market participants.

Decision: A press release will be published when the negotiations have been finalised and the MoUs have been concluded. The Chair and Executive Director will continue to mention the current state of play at their external presentations and in interviews.

5. Secondary Markets Standing Committee

– Report by Martin Wheatley

BS/7 information

Martin Wheatley presented his report.

Decision: The report was approved.

– List of pre-existing functionalities where some SMSC members do not agree with the view of the notifying authority

Annex 1 decision

After presentations on waivers 1, 2 and 3, the Board discussed the list of pre-existing functionalities where some SMSC members do not agree with the view of the notifying authority, in particular:

- the need to limit exemptions from the pre-trade requirements to exceptional cases;
- whether in the case of waiver 1 the system effectively formalises negotiated transactions;
- whether in the case of waiver 2 the system complies with the requirements for hybrid systems; and
- whether in the case of waiver 3 the block trades may qualify as a negotiated transaction.

After exchanging views, the Board voted on whether waivers 1, 2, 3 and 5 are compliant with MiFID.

Decision: The Board considered waiver 2 to be compliant with MiFID while waivers 3 and 5 were considered not compliant with MiFID and to adopt opinions on this basis. There was no final decision on waiver 1; a new vote will take place at the next meeting of the Board of Supervisors. Waivers 4 and 6 will be further discussed in the Secondary Markets Standing Committee. In order to ensure confidentiality, it was agreed not to communicate the outcome of this decision until a decision on waiver 1 has been also reached.

- Additional functionality to be included in the list of pre-existing functionalities considered as MiFID compliant *Annex 2 decision*

Decision: The Board agreed that the additional functionality in Annex 2 should be added to the list of pre-existing functionalities considered as MiFID compliant.

6. ESMA-Pol

- Report by Konstantinos Botopoulos including discussion on general issues on short-selling *BS/8 discussion*

Konstantinos Botopoulos presented his report and asked for views from the Board on several issues regarding the consultation paper on short selling technical standards, in particular:

- the scope of the locate arrangement for liquid shares and intraday short selling;
- restrictions on uncovered short sales relating to sovereign debt;
- internal third party arrangements;
- the exemption where the principal trading venue is located outside the Union;
- record keeping on the agreements to borrow and locate arrangements; and
- IT solutions in order to have a sound and secure exchange of information and the involvement of the ESMA IT Management and Governance Group.

Conclusion: The ESMA-Pol Task Force will continue its work on short selling technical standards taking into account the views expressed by the members.

- Amended Terms of Reference of TRS sub-group *Annex 1 decision*

Decision: The Board approved the amended Terms of Reference.

- Consultation Paper on short selling: advice on delegated acts *Annex 2 decision*

Konstantinos Botopoulos presented the consultation paper. The Board discussed the consultation paper and asked the ESMA-Pol Task Force to work on drafting guidelines on market making in the future (after the delegated acts are finalized).

Decision: The Board approved the publication of the consultation paper.

7. Budget 2013

*BS/9 discussion
+ annex*

The Executive Director presented the draft 2013 budget and noted that it is partly based on certain assumptions regarding the length of negotiations on and impact of the current legislative proposals. After discussions within the Management Board the proposed budget was revised downwards by 10 % and had been approved by the Management Board. Also, the 2013 budget will be reviewed after the summer, when there should be more clarity on the implications of the current legislative proposals for ESMA.

The Board discussed the report, in particular:

- the assumptions underlying the report, including timely adoption of the sectoral legislation proposed and areas covered by future legislation where non-ESMA members are the competent authorities;
- the concern that many national competent authorities are facing budget cuts while at the same time ESMA's budget and national contributions will further increase;
- ESMA's ability to increase from 65 staff currently to 160 in two years while maintaining its effectiveness;
- the need to further prioritise the tasks and activities of ESMA and the flexibility in re-allocation of staff to work on supervisory convergence projects in the future;
- the timetable of the budgetary process of the Commission, Council and Parliament; and
- the impact of austerity plans in Member States resulting in budget cuts that may affect the capacity and independence of national competent authorities to meet the objective of stronger regulation of the financial markets at the national level and as part of the European System of Financial Supervision.

Decision: The Board approved the 2013 budget for transmission to the Commission. Petr Staněk (CZ) did not approve the budget. ESMA will provide the members with an overview of the expected contributions per country. The impact of budget cuts on national competent authorities will be raised by the Chair at the level of the Joint Committee. The Chair and Executive Director will reiterate the call for moving to 100% Union funding towards the EU institutions.

8. Management Board election

*BS/2 decision
+ annex*

Decision: Following a vote by secret ballot, Jean Guill (Luxembourg), Kurt Pribil (Austria) and Fernando Restoy (Spain) were re-elected as members of the Management Board for 30 months following the expiry of their current terms in April.

9. Crisis management

BS/10 discussion

The Chair and the Head of the Legal, Cooperation and Convergence Unit presented the updated crisis management report. The Board discussed the report, in particular:

- the level of information to be sent to ESMA in accordance with Article 18 (1) of the Regulation;



- the use of guidelines and recommendations in emergency situations; and
- the need to focus on practical arrangements in case of adverse developments and emergency situations.

Conclusion: ESMA will continue its work on examining the effectiveness of existing and future legislation dealing with emergency situations. It will also continue its work on a scenario-based approach of potential actions to be taken in specific types of adverse developments and emergency situations.

10. ESMA groups procedures

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|--|-------------------------|--------------------|
| – Cover note | <i>BS/11</i> | <i>information</i> |
| – ESMA groups procedures | <i>2011-
BS-236</i> | <i>decision</i> |
| – Comparison table CESR guidelines/ESMA procedures | <i>Annex 1</i> | <i>information</i> |

The Chair noted that a proposal will be brought to the Board before the summer concerning the process for reappointing the chairs of ESMA groups.

The Executive Director presented the revised procedures reflecting the discussion in the December meeting of the Board of Supervisors and highlighted the most important amendments. The Board recalled the comments sent to ESMA and discussed the proposal, in particular:

- the involvement of the Chair when deciding the composition of members of ESMA groups;
- the role of the Chair vis-à-vis the Board when proposing the establishment of an ESMA group;
- the respective roles of the chair of the group, group members and ESMA staff;
- the need for subgroups to properly inform and coordinate with the relevant standing committee in order to facilitate the consultation of smaller authorities that are unable to participate in all subgroups;
- external representation of ESMA by the chair of a group and ESMA staff;
- the possibility of organising meetings outside ESMA premises; and
- good practices regarding working methods such as the use of tracked changes, feedback on comments by members and finalising papers;

The Chair explained that while in practice the cooperation between ESMA and the national competent authorities continues to be very good, there had been changes moving from CESR to ESMA that need to be reflected in the group procedures. These changes include the formal roles of the Chair in preparing the work of the Board of Supervisors and the Executive Director being responsible for managing the authority and implementing the work programme.

Decision: The paper will be revised reflecting the discussion in the Board and sent out for approval by



written procedure.

11. Investment Management Standing Committee

- Report by Giuseppe Vegas *BS/12 discussion*

Giuseppe Vegas presented his report.

- Q&A on Money Market funds *Annex 1 decision*

The Board discussed the proposal, in particular:

- the concern that the guidelines put too much reliance on credit ratings;
- the need for money market funds to also rely on internal procedures to assess the quality of instruments; and
- the possibility to amend the guidelines in the near future in order to delete the reference to credit ratings.

Decision: The wording of Q15 will be revised reflecting the discussion in the Board followed by the publication of the updated Q&A. The Investment Management Standing Committee will as soon as possible assess the possibility to revise the Guidelines.

- Discussion paper on key concepts of the Alternative Investment Fund Managers Directive and types of AIFM *Annex 2 discussion*

The Board briefly discussed the paper, in particular:

- the option for an AIFM to delegate certain activities but to keep the final responsibility for these activities;
- the definition of collective investment;
- the extent to which an entity to which portfolio or risk management is delegated is required to seek authorisation as an AIFM under Art. 6; and
- the impact of restrictions in the fund rules on the number of investors.

Decision: The paper will be revised reflecting the discussion in the Board followed by publication for consultation.

12. Committee for Economic and Markets Analysis

- Report by Carlos Alves *BS/13 discussion*

Carlos Alves presented his report.



– CDS data collection report

Annex 1 decision

The Board discussed the report, in particular:

- the cooperation with the DTCC and the access of national competent authorities to CDS data;
- the publication of the full report or to disclose the information through ESMA’s report on trends, risks and vulnerabilities;
- the need to discuss the report within CEMA in order to further expand the report by the possible inclusion of additional data such as gross and net positions, corporate CDS etc.; and
- the possibility for CEMA to include work on the functioning of the CDS market.

Decision: CEMA will further expand the report reflecting the discussion in the Board. Publication of the conclusions will be disclosed through the report on trends, risks and vulnerabilities. CEMA will discuss the possibility to include work on the functioning of the CDS market.

– GEA view on short-selling bans

Annex 2 discussion

The Board discussed the report, in particular:

- the underlying principles of the research by the Group of Economic Advisors;
- the relation between the evidence provided and the policy conclusions; and
- the role of the Group of Economic Advisors and the governance of the process.

Conclusion: The Board agreed that GEA is the advisor of CEMA, while CEMA advises the Board. In exceptional cases, and after proper consultation of CEMA, advice can be passed on to the Board. Also, a GEA advice is not an ESMA position. The paper will need to be discussed within CEMA which will decide on the way forward.

13. Review Panel

– Report by Jean Guill

BS/14 information

– MAD actual use of sanctions report

Annex 1 decision

Jean Guill presented the report ‘Actual use of sanctioning powers under MAD’, raising the issue of publication of the full report or only the executive summary.

The Chair proposed to the Board to be more transparent by publishing the full report. The Board discussed the issue and agreed to full transparency.

Decision: The full report will be published. The Review Panel will discuss the confidentiality of certain parts.

14. Commodities Task Force

- Report by Martin Wheatley *BS/15 information*
- Work Plan *Annex 1 decision*

Decision: The Board approved the work plan. The Task Force will discuss including work on ‘financialisation of commodity derivatives trading.

15. Progress reports

- Report by René Maatman (CFSC) *BS/16 information*

The Head of the Investment and Reporting Division presented René Maatman’s report. Anneli Tuominen (FI), supported by Jean-Michel van Cottem (BE), raised the view that the requirement of keeping the auditor’s report on the profit forecasts and estimates in a prospectus should be abolished.

Conclusion: The Corporate Finance Standing Committee will further discuss the issue of the requirement of keeping the auditor’s report on the profit forecasts and estimates in a prospectus.

- Report by Julie Galbo (CRSC) *BS/17 discussion*

The Head of the Investment and Reporting Division presented Julie Galbo’s report. The Board discussed the need for technical standards regarding IFRS enforcement. While there was in principle support for additional coordination by ESMA, the Corporate Reporting Standing Committee should further analyse the issue.

Conclusion: The Corporate Reporting Standing Committee will further discuss the need for technical standards regarding IFRS enforcement.

- Report by Jean-Pierre Jouyet (PTSC) *BS/18 information*

Thierry Francq updated the Board on the forthcoming publication of the discussion paper on EMIR technical standards that ESMA is required to draft.

16. AOB

- The Executive Director noted that the Investment Management Standing Committee will start working on co-operation agreements with 3rd countries under the AIFMD as indicated in the report from Giuseppe Vegas and that ESMA staff will shortly begin contacting non-EU authorities in that context.
- The Executive Director indicated that the Review Panel needed coordinators for the work streams and asked members to nominate candidates.

17. Future meetings

information

- 20 March 2012 (Paris)



- 17 April 2012 (Paris)
- 19 June 2012 (Copenhagen, Denmark)
- 11 September 2012 (Paris)
- 12 September 2012 (Paris) – Joint meeting with SMSG, 09:30h – 13:00h
- 6 November 2012 (Nicosia, Cyprus)
- 18 December 2012 (Paris)

Steven Maijoor
Chair



Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Michel van Cottem (alternate)	Antoine van Cauwenberge
Bulgaria	Antoniya Gineva (alternate)	Nina Koltchakova
Czech Republic	Petr Staněk (alternate)	
Denmark	Hanne Råe Larsen (alternate)	
Germany	Karl-Burkhard Caspari	Philipp Sudeck Jürgen Oberfrank
Estonia	Raul Malmstein	Gerle Reinumägi
Ireland	Gareth Murphy (alternate)	Oliver Gilvarry
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Fernando Restoy	Antonio Mas
France	Thierry Franq	Françoise Buisson Thierry Courret
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou Antoniadou	
Latvia	Sandis Andersmits (alternate)	
Lithuania	Vytautas Valvonis	Vilius Šapoka
Luxembourg	Jean Guill	
Hungary	László Balogh (alternate)	
Malta	André Camilleri	
Netherlands	Ronald Gerritse	Mirèl ter Braak Pim de Wild
Austria	Kurt Pribil	Andrea Kuras-Goldmann
Poland	Ilona Pieczynska-Czerny (alternate)	Rafał Arasim
Portugal	Carlos Tavares	Carlos Alves



		Manuel Costa
Romania	Gabriela-Victoria Anghelache	Raluca Țariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	
Finland	Anneli Tuominen	Ville Kajala
Sweden	Anna Jegnell (alternate)	Ulle Jakobson
United Kingdom	Martin Wheatley	Cristina Frazer Dilwyn Griffiths

Non-voting members

European Commission	Emil Paulis	Emiliano Tornese
ESRB	Francesco Mazzaferro	Fabio Recine
EIOPA	Daniela Rode	
EBA	Adam Farkas	

Observers

Iceland	Gunnar Andersen	
Liechtenstein	Marcel Lötscher	
Norway	Anne Merethe Bellamy	Kristin Lund

ESMA

ESMA Chair	Steven Maijoor
Executive Director	Verena Ross
Head of Markets Division	Rodrigo Buenaventura
Head of Investment and Reporting Division	Laurent Degabriel
Head of Operations Division	Nicolas Vasse



Head of Credit Rating Agencies Unit	Felix Flinterman
Head of Legal, Cooperation and Convergence Unit	Stephan Karas
Minutes	Max Simonis

Steven Maijoor
Chair