

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 4 July
Time: 09:00 – 17:30h
Location: ESMA, Paris
Contact: max.simonis@esma.europa.eu T: +33 1 58 36 59 46

No Items

1. Election Vice-Chair & Management Board members *decision*

VOTING MEMBERS ONLY

In relation to the voting procedure for the Management Board election, Gareth Murphy (IE) noted that there were one fewer Management Board positions than there were candidates. He cautioned that while the voting procedure which was used was appropriate in these circumstances, it should not set a precedent for future elections.

Decision: Following a vote by secret ballot, Konstantinos Botopoulos (EL), Klaus Kumpfmüller (AT) and Martin Wheatley (UK) were elected as members of the Management Board. Carlos Tavares (PT) was re-elected as Vice-Chair.

2. EMIR implementation

VOTING MEMBERS & ADVISORS ONLY

- Update on the registration process of Trade Repositories and CCP colleges *BS/87 information constitution*

The Head of the Markets Division updated the Board on the activities related to Trade Repository supervision.

The Board discussed the update, in particular;

- the current status of the TR registration process and the main common issues of compliance with EMIR; and



- the indicative timeline for the reporting obligation.

Conclusion: The Board took note of the report.

3. Market Integrity Standing Committee

VOTING MEMBERS & ADVISORS ONLY

- Report on Urgent Issues Group *BS/88 information*

Konstantinos Botopoulos (EL) presented the report and accompanying documents.

Conclusion: The Board took note of the report.

- 4. **Adoption of agenda** *BS/85 decision*

Decision: The agenda was adopted.

- 5. **Summary of conclusions of May meeting** *BS/86 decision*

Decision: The summary of conclusions was approved with the inclusion of comments by Gérard Rameix (FR) and Karl-Burkhard Caspari (DE) on item 4.

- 6. **Report by Chair and Executive Director** *Oral information*

The Chair reported on;

- the meeting of the OTC Derivatives Regulators Group that took place on 20 June and the on-going negotiations with the US authorities in this area;
- the decision by the IOSCO Board to allow ESMA to participate as observer in the Board;
- the application of ESMA to become observer in the IASB Monitoring Board;
- the recent activities of the Joint Committee and joint activities by the ESAs, in particular the ESAs Consumer Day that took place on 25 June, the joint letter to the European Commission on guidelines and the first decision by the ESAs Board of Appeal;
- the recent activities of the Securities and Markets Stakeholder Group, and the renewal process for the group;
- the meeting with Mr. Giegold, member of the European Parliament, regarding his survey on dangerous financial products;
- the appointment of David Lawton as Chair of the Market Data Reporting Working Group;
- a meeting with representatives of the Turkish Capital Markets Board (CMBT) that took place on 28 June regarding the AIFMD MoUs. Following these discussions, the Chair concluded that the

MoU with the CMBT would not be submitted for approval to the Board of Supervisors as Article 16 guidelines but that NCAs that needed to have the MoU in place by 22 July could do so on a bilateral basis;

- the letter received from Elvira Rodriguez (ES) regarding the Guidelines on Market Making and the divergence in compliance of the guidelines by NCAs. The European Commission indicated that it might ask ESMA to take action. The Chair indicated that the topic will be further discussed at the Board of Supervisors meeting in September; and
- the Management Board meeting that took place on 26 June, mentioning in particular the discussions on the 2014 work programme and the proposal to send a letter to the European Commission regarding the possibility for ESMA to raise additional fees from market participants.

The Executive Director reported on;

- the development of a conflicts of interest policy by the ESAs that will also be applicable to members of the Management Board and the Board of Supervisors;
 - the developments regarding the ESMA 2014 budget, indicating that the proposal by the European Commission to the Budgetary Authority will have serious implications for ESMA's activities;
 - the ESMA 2012 final annual accounts and the preliminary findings by the European Court of Auditors;
 - the recent activities of the European Systemic Risk Board; and
 - the development of the proxy advisor code of conduct.
- Update on LEI *BS/89 information*

The Executive Director reported on the developments regarding the LEI Regulatory Oversight Committee and the status of LEI implementation in the EU, reminding the members of the Board of the need to support this initiative through the establishment of local operating units.

Conclusion: The Board took note of the report.

7. ESFS Review & follow-up Away Day

- Discussion note *BS/90 decision*
- Summary of discussions Away Day *Annex 1 information*

The Chair presented the documents asking the Board for its views on the identified areas and proposed next steps. Regarding the funding structure of ESMA, the Chair informed the Board on the first discussions in the Management Board and the proposal to send a letter to the European Commission regarding the possibility for ESMA to raise additional fees from market participants.



The Board discussed the documents, in particular;

- to broaden the current funding structure of ESMA by exploring the possibility to raise additional fees from market participants when there is a clear connection with ESMA’s responsibilities;
- to change the current practices in the area of supervisory convergence and in particular peer reviews;
- improving the level of participation by retail investors for example through the composition of the Securities and Markets Stakeholders Group;
- to ensure sufficient consultation of Standing Committee Chairs; and
- specific amendments to the Summary of Discussions.

Decision: Taking into account the discussions, the Board agreed to the identified areas and next steps and to provide input on the identified topics to the European Commission’s evaluation of the ESFS. A draft letter to the European Commission will be submitted to the Board at its September meeting. The Summary of Discussions will be amended taking into account the discussions and send to the Board for further comments.

8. Investment Management Standing Committee

- Report by Gareth Murphy *BS/91 information*

Gareth Murphy (IE) presented the report and the accompanying documents.

- Memoranda of Understanding under the AIFMD *Annexes 1-9 decision*

The Board discussed the Memoranda of Understanding under the AIFMD, in particular;

- the condition under the AIFMD that a third country should not be on the list of Non-Cooperative Countries and Territories of the Financial Action Task Force (FATF) in order to permit non-EU AIFMs to access the EU markets as from 22 July;
- the need for clarifying which countries are currently on the FATF-list and whether a NCA can conclude an MoU with a country on that list;
- the status of the agreement for the exchange of information based on the OECD model tax convention on income and capital; and
- the current discussions with the Chinese Securities Regulatory Commission (CSRC).

The Chair explained that the signing of the MoU is one of the requirements to permit non-EU AIFMs to access the EU markets and that the requirements in the third country chapter of the Directive are cumulative. In case of non-signature, it should be clear that the relevant cross-border activity must be prohibited from 22 July onwards. ESMA staff will shortly provide further clarity on the questions raised regarding the list of Non-Cooperative Countries and Territories of the Financial Action Task Force (FATF).

Decision: The Board approved the Memoranda of Understanding under the AIFMD. The MoU with the CMDA of the Maldives was not approved due to the lack of clarity on whether the Maldives is included in



the list of the FATF.

The Board agreed to continue the discussions with the CSRC but not accepting the position taken by the CSRC regarding on-site visits.

9. Investor Protection and Intermediaries Standing Committee

- Report by Jean-Paul Servais *BS/92 information*

Jean-Paul Servais (BE) presented the report and the accompanying documents.

- Consultation paper on draft RTS on information requirements for the assessment of acquisitions and increases in holding in investment firms *Annex 1 decision*

Decision: The Board approved the consultation paper.

- Investor warning on complex products *Annex 2 discussion*

The Board discussed the investor warning, in particular;

- broadening the scope of the warning to professional clients;
- shortening the list of specific complex products to be mentioned; and
- the need for consumer friendly 'plain language' wording.

Conclusion: The investor warning will be further developed taking into account the comments from the Board. The final warning will be submitted to the Board for approval by written procedure.

- ESMA Opinion on complex products *Annex 3 discussion*

The Board discussed the opinion, in particular;

- whether an opinion is the right instrument; and
- the need to also address market participants.

Conclusion: The opinion will be further developed taking into account the comments from the Board. The final opinion will be submitted to the Board for approval by written procedure.

10. Corporate Reporting Standing Committee

- Report by Julie Galbo *BS/93 information*

Julie Galbo (DK) presented the report and the accompanying document.

- Consultation paper on enforcement guidelines *Annex 1 decision*

The Board discussed the consultation paper, in particular;

- the legal basis for developing guidelines on enforcement of financial information;



- the timing of enforcement activities on financial information;
- the need for adequate independence of enforcers; and
- the timing of discussing cases in the European Enforcers Coordination Sessions.

Anna Jegnell (SE) indicated that Finansinspektionen will not be able to comply with Guideline 4 since the accounting supervision in Sweden is delegated by law to market operators.

Karl-Burkhard Caspari (DE) indicated he did not support the development of guidelines and contested the use of Article 16 of ESMA Regulation as a legal basis.

Decision: The Board approved the consultation paper with Karl-Burkhard Caspari (DE) objecting. A note on the legal basis for developing guidelines on enforcement of financial information will be provided at a future meeting of the Board of Supervisors.

11. Committee for Economic and Markets Analysis

- Report by Ronald Gerritse *BS/94 information*

Gerben Everts (NL) presented the report.

Conclusion: The Board took note of the report.

- Trends, Risks and Vulnerabilities presentation *Annex 1 discussion*

The Head of the Economic Research & Financial Stability Unit presented the Trends, Risks and Vulnerabilities report.

The Board discussed the report, in particular;

- to have a more cautious and forward looking approach in the assessment of market and systemic risks;
- to expand the analysis of risks for markets related to a low interest rate environment; and
- the increased volatilities and substantial portfolio adjustments in the fund industry.

Conclusion: The report will be further developed taking into account the comments from the Board. The final report will be submitted to the Board for approval by written procedure.

12. Post Trading Standing Committee

- Report by Giuseppe Vegas *BS/95 information*

Giuseppe Vegas (IT) presented the report and the accompanying documents.

- CP on draft RTS related to the application of EMIR to third country entities *Annex 1 decision*

The Board discussed the consultation paper, in particular;



- to give more clarity regarding the calculation of the thresholds for the scope of application; and
- the timing of the publication of the consultation paper.

Decision: The Board approved the consultation paper, with the inclusion of further clarifying the calculation of the thresholds for the scope of application. The consultation paper will be published after 12 July.

- Discussion Paper on the Clearing Obligation under EMIR *Annex 2 decision*

The Board discussed the consultation paper, in particular;

- to include a reference to international consultations; and
- to expand on the specificities of covered bond issuers and cover pools, though clarifying that no exemption is envisaged in EMIR.

Decision: The Board approved the discussion paper, with the inclusion of a mention to international consultations and the addition of questions on the specificities of covered bond issuers and cover pools.

- Equivalence of 3rd countries *Annex 3 decision*

Nicoletta Giusto (IT) presented the topic.

The Chair and the European Commission updated the Board on the status of the on-going negotiations with third country authorities.

The Board discussed the topic, in particular;

- the need to give clarity to interested stakeholders on ESMA's equivalence assessment of third countries; and
- the timing of the publication of the technical advice on the United States, Japan and other third countries for the assessment of rules for CCPs.

Decision: The Board agreed to publish the technical advice on the United States, Japan and other third countries at the same time as the submission of the advice to the European Commission.

13. Task Force on the Legal Framework for Cooperation Arrangements and Information Exchange

- Cover note *BS/96 decision*
- Draft Guidelines & multilateral Memorandum of Understanding *BS/97 information*

The Executive Director presented the note and the accompanying document.

The Board discussed the draft guidelines & multilateral Memorandum of Understanding, particularly on the need to develop guidelines to enhance cooperation and information exchange.



Decision: The Board endorsed the recommended option as reflected in the cover note. The guidelines and MMoU will be submitted for approval to the Board at its September meeting.

14. Credit Rating Agencies

- Cover note *BS/98* *discussion*
- Discussion papers on CRAIII Regulatory Technical Standards *Annex 1* *decision*
- 3

The Executive Director and the Head of the Credit Rating Agencies Unit presented the note and the accompanying documents, mentioning that the three discussion papers will be merged into one paper.

The Board discussed the discussion papers on CRAIII Regulatory Technical Standards, in particular the scope of Article 8b on the disclosure requirements regarding Structured Finance Instruments.

Decision: The Board approved the discussion papers, with the inclusion of the two options on the scope of Article 8b.

15. Review Panel

- Report by Jean Guill *BS/99* *information*

Jean Guill presented the report and the accompanying documents.

Decision: The Board approved the timeline to respond to the questionnaire on Best Execution under MiFID.

- Mandate for a Peer Review on Implementation and Supervisory practices of the Automated Trading Guidelines *Annex 1* *decision*

Decision: The Board approved the mandate.

- MiFID Conduct of Business Questionnaire *Annex 2* *decision*

Decision: The Board approved the questionnaire.

16. Secondary Markets Standing Committee

- Report by Martin Wheatley *BS/100* *information*
- Revised Protocol on the operation of notifications of MiFID Article 41 suspensions and removals of financial instruments from trading *Annex 1* *decision*

Cristina Frazer (UK) presented the report and the accompanying documents.

Decision: The Board approved the revised Protocol on the operation of notifications of MiFID Article 41 suspensions and removals of financial instruments from trading.

17. ESMA organisation



- Memorandum of Understanding between ACER and ESMA *BS/101 decision + Annex*

The Executive Director presented the note and the accompanying document.

The Board discussed the Memorandum of Understanding, in particular the need to clarify the parties involved under Article 8 of the MoU.

Decision: The Board approved the Memorandum of Understanding, with the inclusion of an amendment to Article 8 clarifying the parties involved.

- Terms of Reference IT Management and Governance Group *BS/102 decision + Annex*

Decision: The Board approved the terms of reference, with the inclusion of a reference to cooperate with EBA, EIOPA and ESRB.

- Terms of Reference Committee for Economic and Markets Analysis *BS/103 decision*

Decision: The Board approved the terms of reference.

18. Progress reports

- Report by Kostas Botopoulos (MISC) *BS/104 information*

Conclusion: The Board took note of the report.

- Report by Martin Wheatley (CDTF) *BS/105 information*

Conclusion: The Board took note of the report.

19. A.O.B.

20. Future meetings

information

- 24 September 2013 (Paris)
25 September 2013 - joint meeting with SMSG (Paris)
- 7 November 2013 (Vilnius)
- 17 December 2013 (Paris)



Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Stoyan Mavrodiev	Antoniya Gineva
Czech Republic	Petr Stanek (alternate)	
Denmark	Julie Galbo (for item 10 by conference call)	Hanne Rae Larsen (alternate)
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Gerle Reinumägi (alternate)	
Ireland	Gareth Murphy (alternate)	Oliver Gilvarry
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Lourdes Centeno (alternate)	Antonio Mas
Croatia	Petar-Pierre Matek	Silvana Bozic
France	G�rard Rameix	Fran�oise Buisson
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	
Latvia	Sandis Andersmits (alternate)	
Lithuania	Valvonis Vytautas	
Luxembourg	Jean Guill	

Hungary	Arpad Kiraly (alternate)	
Malta	Andre Camilleri	
Netherlands	Gerben Everts (alternate)	Pim de Wild
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Katarzyna Tomczyk
Portugal	Carlos Tavares	Gabriela Figueiredo Dias
Romania	Daniel Daianu (alternate)	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Slavomir Stastny (alternate)	Eva Svetlosakova
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Anna Jegnell (alternate)	Ulle Jakobson
United Kingdom	Martin Wheatley	Cristina Frazer



Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Emil Paulis	Peter Ohrlander
ESRB	Francesco Mazzaferro	
EIOPA	Patrick Hoedjes	
EBA	Adam Farkas	

Observers

Iceland	Unnur Gunnarsdottir	Pall Fridriksson
Liechtenstein	Marcel Lötscher	
Norway	Kristin Lund	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Max Simonis
Head of Markets Division	Rodrigo Buenaventura
Head of Investment and Reporting Division	Laurent Degabriel
Head of Credit Rating Agencies Unit	Felix Flinterman
Head of Economic Research & Financial Stability Unit	Steffen Kern



Head of Communications	David Cliffe
Head of Legal, Cooperation and Convergence Unit	Stephan Karas

Done at Paris on 24 September 2013

Steven Maijoor
Chair
For the Board of Supervisors