

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 6-7 November 2014
Time: 10:00 – 19:00 (6 November) and 8:30 – 11:30 (7 November)
Location: ESMA, 103, rue de Grenelle, 75007 Paris
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Thursday 6 November 2014

1. Confidential items

VOTING MEMBERS & ADVISORS ONLY

2. Adoption of agenda BS/160 decision

Decision: The agenda was adopted. Carlos Tavares (PT), vice-Chair, chaired the meeting until agenda item 11.

3. Summary of conclusions of the September 2014 meeting BS/159 decision

Decision: The summary of conclusions was approved, including a change to the item on the conflicts of interests policy for non-staff (item 11) where a sentence was added that “some members questioned whether the Management Board was the appropriate body to approve the policy”.

4. Report by Chair and Executive Director Oral information

The Executive Director reported on:

- The comprehensive assessment and stress-tests carried out respectively by the European Central Bank (ECB) and the European Banking Authority (EBA) and the need to continue the good co-operation between securities markets and prudential supervisors;
- The recent activities of the European Systemic Risk Board (ESRB);

- The recent activities of the OTC Derivatives Regulators Group (ODRG) and the publication of the report on Cross-Border Implementation Issues to G20 Leaders;
- The recent activities of the Securities and Markets Stakeholder Group (SMSG);
- The meeting of the Financial Services Committee that took place on 17 October 2014 in Brussels where the review of the European System of Financial Supervision (ESFS) was discussed;
- The meeting the Chair had with Jonathan Faull, Director-General of the European Commission Directorate Internal Market and Services;
- The meetings with members of the European Parliament on secondary markets legislation;
- The need to update the Rules of Procedures for the Board of Supervisors following the entry into force of the new rules for qualified majority voting as of 1 November 2014;
- The fact that the conciliation period during which the European Parliament and Council of the European Union have to reach an agreement on the 2015 budget will end on 17 November 2014;
- The working arrangements between the European Supervisory Authorities (ESAs) and the European Commission Services in relation to technical standards and requests for technical advice;
- The conclusions adopted by the EU and EEA-EFTA Ministers of Finance and Economy on the incorporation of the EU ESAs Regulation into the EEA Agreement;
- The European Court of Auditors' report that ESMA's 2013 financial accounts presented fairly in all material aspects the 31 December 2013 financial position; and
- The Investor Education Day ESMA organised.

5. Report by Jesper Lau Hansen, chair of the Securities and Markets Stakeholder Group (SMSG) on recent activities Oral information

Jesper Lau Hansen, Chair of the Securities and Markets Stakeholder Group (SMSG) and Judith Hardt, vice-Chair, provided the members of the Board of Supervisors with an update on the recent activities of the Stakeholder Group, in particular:

- on the SMSG's decision to update its report on helping small- and medium-sized companies access funding in the light of the European Commission's initiative to launch a Capital Markets Union (CMU); and
- the advice the group prepared on ESMA's work in relation to the revised Markets in Financial Instruments Directive and in particular on issues such as self-placement and inducements.

The Board emphasized the importance of SMSG's advice and discussed how the co-operation could further be strengthened, particularly as part of the regular joint meetings that take place between the Board of Supervisors and the SMSG.

6. Investment Management Standing Committee

- Report by Gareth Murphy BS/161 information

Gareth Murphy presented the report and the accompanying documents.

Jean Guill (LU) was of the opinion that, in relation to the decision taken during the September 2014 Board meeting to consult on guidelines on asset segregation under the Alternative Investment Fund Managers Directive (AIFMD) instead of publishing Q&As, the Board of Supervisors should approve the draft guidelines for consultation by written procedure. The Board agreed with the proposal.

- Call for Evidence on the AIFMD passport and third country AIFMs Annex 1 discussion

Conclusion: The Board took note of the draft call for evidence.

- Q&A on AIFMD Annex 2 decision

Decision: Jean Guill (LU) disagreed with the proposed answer that AIFMs have to take into account assets acquired through leverage for the calculation of the total value of assets under management. The Board approved the proposed Q&As.

- Q&A on EuVECA/EuSEF Annex 3 decision

Decision: The Board approved the proposed Q&As.

7. Credit Rating Agencies

- Report by Verena Ross BS/162 discussion

The Executive Director presented the report.

The Board discussed the report, in particular:

- The adoption of CRA 3 Regulatory Technical Standards and the website ESMA needs to set up for the publication of the information on structured finance instruments specified in the SFI RTS.
- How to fund the development and maintenance cost of the website; and
- The standardised disclosure templates and associated reporting obligations that will need to be developed.

Conclusion: The Board took note of the proposed implementation. ESMA staff will develop the approach further on the basis of the comments received.

8. Review Panel

- Report by Jean Guill BS/163 information

Jean Guill presented the report.

- Peer Review on MiFID Best Execution Annexes 1a-1f decision

The coordinator of the peer review, Nicoletta Giusto (IT), presented the peer review report.

The Board discussed the report, in particular:

- The lack of consolidated information on prices while prices act as the main proxy for applying the best execution requirement;
- The difficulty to assess whether best execution is adequately applied when markets face little competition; and
- The implementation of best-execution requirements in the Republic of Poland.

Decision: The Board approved the peer review report and its publication. Marek Szuszkiewicz (PL) voted against. Kostas Botopoulos (EL) stated that in his opinion the report did not portray a fair reflection of the practices of the Hellenic Capital Markets Commission. National competent authorities that have been subject to an on-site visit will be given the possibility to share their statements on the report.

9. Market Data Reporting Working Group

- Report by David Lawton BS/164 information

David Lawton presented the report and the accompanying document.

- Consultation Paper on the Review of EMIR Reporting Standards Annex 1 decision

Decision: The Board approved the consultation paper subject to some minor drafting suggestions.

10. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/165 information

Giuseppe Vegas presented the progress report and the accompanying documents.

- Final report on Clearing obligation for CDSs Annex 1 decision

The Board discussed the report, in particular

- The approach to frontloading ; and
- A potential regulatory conflict between EMIR and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive.

The European Commission representative informed the Board that the Commission would prefer to delay the adoption of the final report to allow further discussion on frontloading and that it will inform ESMA accordingly in writing.

Decision: The Board decided to postpone the formal adoption of the final report and invited the Post-Trading Standing Committee to explore further the potential regulatory conflict between EMIR and UTICS.

- CCP college framework for the identification of significant changes in models and parameters Annex 2 decision

The Board discussed the note, in particular the proposed criteria that could assist identifying significant changes.

Decision: The Board approved the framework. Karl-Burkhard Caspari (DE) voted against.

- Approach on EU-wide stress-tests Annex 3 discussion

The Board discussed the approach on EU-wide CCP stress tests and in particular the importance to measure the resilience of individual CCPs and the network.

Decision: The Board agreed with the approach identified in the note and instructed the PTSC to start the exercise within the shortest delay.

11. Secondary Markets Standing Committee and Commodity Derivatives Task Force

- Report by Martin Wheatley BS/166 information

David Lawton presented the report and the accompanying documents.

- MiFID II Technical Advice Annexes 1-6 decision

The Board discussed the report, and in particular:

- The technical advice concerning Growth Markets for Small- and Medium-sized Entities (SMEs) and whether introducing additional requirements on such markets would be appropriate; *and*
- The thresholds for classifying Exchange Traded Funds (ETFs) as liquid.

The Head of Markets Division informed the Board that the cost-benefit analysis related to ESMA's MiFID 2 work will have to be further developed and will be submitted to the Board only at short notice around the December 2014 meeting.

Decision: The Board approved the technical advice on the organisational requirements for trading venues and on transparency requirements as well on ESMA's position management powers. Karl-Burkhard Caspari (DE) disagreed with the advice establishing a proxy for a minimum free float to classify ETFs as liquid.

12. Investor Protection and Intermediaries Standing Committee

- Report by Jean-Paul Servais BS/167 information

Jean-Paul Servais presented the report and the accompanying documents.

- MiFID II Technical Advice Annex 1 decision

The Board discussed the proposed technical advice on parts of the topics on which ESMA will have to provide the European Commission with advice.

In addition, the Board discussed the suggestions put forward by Investor Protection and Intermediaries Standing Committee relating to inducements and reporting to clients, in particular:

- The provisions of research by third parties to investment firms, especially the possibility for portfolio managers to receive research from executing brokers out of dealing commissions;
- The quality enhancement criterion as a condition for the receipt of inducements, with the perspective to ensure high levels of investor protection;
- The potential impact of the implementing measures on investors' access to investment advice and the reduction of research coverage especially for SMEs; and
- The provision, in the context of reporting to clients, of an estimated value of financial instruments to clients on a 'best effort' basis.

Lourdes Centeno (ES) presented an additional proposal regarding quality enhancements of the relevant service to the clients more particularly on the tools for self-assessment. The EBA representative stated that the EBA believes that European Commission might need to clarify the attribution of tasks between the ESAs in relation to structured deposits.

Decision: The Board approved the draft technical advice subject to some minor drafting changes. In relation to inducements, after some members expressed their disagreement, the Board preferred the proposed approach on research (in appendix 1) allowing some flexibility to firms in the way they access research but, at the same time, breaking the link between payments for research and payments for execution of orders that could create situations of conflicts that are difficult to manage. Gerard Rameix (FR) stated that in his opinion the draft proposal on financial research goes beyond the wish of the co-legislators.

In relation to quality enhancement the Board preferred the approach set out in appendix 3 which takes into consideration the concerns expressed during the consultation and allows a balanced approach in the acceptance of inducements. The approach set out in appendix 2 was rejected. The Board also accepted the proposal on reporting to clients. The Investor Protection and Intermediaries Standing Committee will finalize the advice by considering the possibility to introduce minor modifications to appendix 3.

13. Corporate Reporting Standing Committee

- Report by Hannelore Lausch BS/168 information

Hannelore Lausch presented the report and the accompanying documents.

- Response to the Commission's public consultation on the IAS Regulation Annex 1 discussion

The Board discussed the draft response to the Commission's public consultation, in particular:

- The importance of consistent application of International Financial Reporting Standard (IFRS) within the EU Single Market and the coordination of IFRS enforcement in the EU;;
- Whether the guidelines on enforcement of financial information ESMA issued earlier that year to national competent authorities provide a sufficient basis for co-operation or whether additional provisions are needed in the so called IAS Regulation with respect to enforcement activities and their coordination.

Conclusion: It was noted that with the exception of some national regulators, the IAS Regulation should require additional provisions with respect to enforcement activities and their coordination across the EU. The response to the public consultation will be amended to reflect this.

14. ESMA organisation

- ESMA Strategy BS/169 discussion

The Chair and Executive Director introduced the topic indicating that following ESMA's first years of operation and the reports of the review of the European System of Financial Supervision (ESFS) by the European Commission, the European Parliament and the International Monetary Fund (IMF), ESMA should have a discussion on its strategy for the years ahead.

The Board discussed the report, in particular:

- Welcoming the opportunity to have a comprehensive discussion on the development of the Authority;
- The strategic direction for the main activities, in particular:
 - Stressing the importance of increasing the focus on supervisory convergence and further defining the concept of supervisory convergence;
 - To give a higher operational priority to investor protection and to work on better understanding investor behaviour;
 - To enhance ESMA's involvement at level 1; and
 - The need for data to assess the potential risks to investors, markets and the financial system;
- The potential impact of technology on financial markets and the Authority's subsequent priorities;
- The defining characteristics of securities markets regulators within the regulatory community and importance of cross-sectorial and international co-operation;
- The independence and funding of ESMA and the ESFS as a whole;
- The level and prioritisation of resources; and
- Potential new areas of responsibilities such as prospectus or CCP supervision;

Conclusion: The strategic orientation will be further developed taking into account the views from the Board of Supervisors and will be discussed with the Board at a future meeting.

- ESMA validation of significant changes to CCP risk models and parameters BS/170 decision

The Head of the Markets Division presented the note emphasising that the decision making process at ESMA is key for streamlining the decisions on validation.

The Board discussed the note, in particular

- The role of ESMA in the validation of significant changes to the models and parameters of CCPs; and
- Whether there is a need to delegate to the ESMA Chair or to a panel composed of members of the Board the decision to adopt a validation of significant changes to models and parameters of CCPs.

Decision: The Board agreed to set up a delegation to a panel consisting out of Board members on the decision to adopt a validation of significant changes to the models and parameters of CCPs. ESMA's legal team together with the Commission were invited to further analyse the legal issues around the validation process and report their findings to the PTSC. Following the finalisation of the legal analysis ESMA staff will prepare a delegation decision.

- Memorandum of Understanding between ESMA, ASIC and RBA BS/171 & decision regarding co-operation arrangements for the recognition of third-country CCPs under EMIR annex 1

Decision: The memorandum of understanding between ESMA, ASIC and RBA was approved.

- Memorandum of understanding between ESMA and ASIC regarding cooperation arrangements for the access to information on derivatives contracts held in EU trade repositories BS/172 & decision annex 1

Decision: The memorandum of understanding between ESMA and ASIC was approved.

- Conflict of Interest Policy BS/173 information

The Executive Director provided the Board with a history of the development of the Conflict of Interest Policy and presented a set of Q&As providing clarifications of the main characteristics of the policy developed after the discussion the Board of Supervisors had during its last meeting.

The Board discussed the Conflict of Interest Policy and the Q&As, in particular:

- The importance of having a high quality Conflict of Interest Policy for non-staff;
- The importance of moving to implementation, also considering the decisions taken regarding similar policies by EBA and EIOPA;
- Whether the Management Board is the appropriate body to decide on the policy and that the policy would have benefited from an early discussion in the Board; some members suggested that external legal advice should be sought on this issue;
- How the requirements regarding close family members should be applied;
- The requirements to publish the list of economic interest that create a conflict of interest; and
- The provision on prospective employment, in particular the notification to the national competent authority whether the prospective employment is seen as a conflict of interest from ESMA's perspective.

Conclusion: Further clarifications of the policy, including regarding close family members and prospective employment, will be provided by expanding the Q&As and will be discussed at a next Board meeting.

Friday 7 November 2014

- Election of Standing Committee Chairs BS/174 discussion

The Chair presented the report proposing to extend the current terms of all Standing Committee Chairs by six months and postponing the election of Chairs for the Standing Committee to take place at the 24/25 June 2015 Board of Supervisors meeting.

The Board discussed the report, in particular:

- The length of the mandate and whether it should be extended from 2 to 2,5 years; and
- Whether there is a need to reconsider the mandates of the different Standing Committees;

Conclusion: The Board agreed with the proposal to extend the current terms of all Standing Committee

Chairs by six months until end June 2015.

15. IT delegated projects

- Report on IT delegated projects BS/175 & decision annexes

The Executive Director presented the report and the accompanying documents proposing the centralisation of three IT projects.

The Board discussed the report, in particular:

- The potential economies of scale that could be achieved in the development of a pan-European IT system and the contribution to the EU Single Market by further decreasing fragmentation;
- The possibility and consequences of opting-in at a later stage and the co-operation with non-participating authorities;
- The importance of having clear commitments from participating authorities on their commitment;
- The voting arrangements and funding key between the participating authorities;
- The suggested rebalancing of costs between participating authorities; and
- The interaction with ESMA's budget and whether additional funding could be found;

In order to develop the project further the chair asked whether members of the Board could inform which national competent authorities would in principle be interested to participate in the project (without providing a definite and/or legal commitment at this stage).

M-S	National Authority	MiFIR Instruments Project	MiFIR Transaction Reporting Project	Trade Repositories Project
BE	FSMA	Yes	Yes	Yes
BG	FSC	Yes	Yes	Yes
CZ	CNB	No	No	(depending share in cost)
DK	Finanstilsynet	Yes	Yes	Yes
DE	BaFin	No	No	No
EE	FSA	No	No	Yes
IE	CBI	Yes	Yes	Yes
EL	HCMC	Yes	Yes	Yes
ES	CNMV	No	No	Yes
FR	AMF	Yes	Yes	Yes
HR	HANFA	Yes	Yes	Yes
IT	CONSOB	Yes	No	Yes
CY	CySEC	Yes	Yes	Yes
LV	FKTK	No	No	Yes
LT	LB	No	No	No
LU	CSSF	No	No	No
HU	NMB	abstention	abstention	abstention
MT	MFSA	Yes	Yes	Yes
NL	AFM	Yes	Yes	Yes
AT	FMA	Yes	No	No
PL	KNF	No	No	Yes

PT	CMVM	Yes	Yes	Yes
RO	ASF	Yes	Yes	Yes
SL	ATVP	No	No	Yes
SK	NBS	No	No	No
SU	FSA	Yes	Yes	Yes
SE	FI	Yes	Yes	Yes
UK	FCA	No	No	Yes
IS	FME	Yes	Yes	Yes
LI	FMA	Yes	Yes	Yes
NO	Finanstilsynet	Yes	Yes	Yes

Decision: It was decided to go ahead and implement the proposed project on trade repositories. Regarding the other two projects (the MiFIR Instruments Reference Data Project and Transaction Reporting) the Board asked ESMA staff to develop an amended project description on the basis of the indications expressed during the meeting and revise the cost implications and funding key. This will be presented together with further details on the potential governance framework and necessary legal agreements during an additional meeting of the Board of Supervisors on 21 November 2014.

16. A.O.B.

17. Future meetings

- **17 December 2014 (Paris)**
- **29 January 2015 (Paris)**
- **19 March 2015 (Paris)**
- **6-7 May 2015 (Riga) [incl. Away Day]**
- **24-25 June 2015 (Paris)**
- **24 September 2015 (Luxembourg)**
- **5 November 2015 (Paris)**
- **10 December 2015 (Paris)**

Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais (only 6/11) Jean-Michel van Cottem (only 7/11)	Antoine van Cauwenberge (only 6/11)
Bulgaria	Vladimir Savov (alternate)	
Czech Republic	Pavel Hollmann	Petr Gavlas (only 7/11)
Denmark	Hanne Rae Larsen (alternate)	
Germany	Karl-Burkhard Caspari	Hannelore Lausch (only 6/11) Philipp Sudeck
Estonia	Andre Nomm	
Ireland	Cyril Roux	Gareth Murphy Niamh Mulholland
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Lourdes Centeno	Antonio Mas
Croatia	Petar-Pierre Matek	
France	Gérard Rameix	Françoise Buisson Patrice Aguesse (only 6/11)
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Liana Ioannidou

Latvia	Artis Smits (alternate)	
Lithuania	Vytautas Valvonis (alternate)	
Luxembourg	Jean Guill	
Hungary	Richárd Végh (alternate)	
Malta	Marianne Scicluna	
Netherlands	Merel van Vroonhoven	Pim de Wild
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Anna Skrzypek
Portugal	Carlos Tavares	Maria Ruiz Velasco
Romania	Mircea Ursache (alternate)	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	
Finland	Anneli Tuominen (only 6/11)	Ville Kajala (only 6/11) Jarmo Parkkonen
Sweden	Aino Bunge (alternate)	Oskar Ode (only 6/11) Linus Nyman (only 7/11)
United Kingdom	David Lawton (alternate)	Marie-Noëlle Loewe

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Martin Merlin	Peter Ohrlander
ESRB	Francesco Mazzaferro (only 6/11)	
EIOPA	Patrick Hoedjes	
EBA	Corinne Kaufman	

Observers

Iceland	Sigurveig Guomundsdottir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Division	Rodrigo Buenaventura
Head of Operations Division	Nicolas Vasse
Head of Investment and Reporting Division	Laurent Degabriel
Head of Credit Rating Agencies Unit	Felix Flinterman
Head of Legal, Cooperation and Convergence Unit	Sophie Vuarlot-Dignac



Done at Paris on 17 December 2014

Steven Maijor

Chair

For the Board of Supervisors