

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 17 December 2014  
**Time:** 08h30 – 18h30  
**Location:** ESMA, 103, rue de Grenelle, 75007 Paris  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

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#### 1. Confidential Items

2. Adoption of agenda BS/200 decision

**Decision:** The Board approved the agenda.

#### 3. Summary of Conclusions

— 6-7 November 2014 meeting BS/201 decision

**Decision:** The Summary of Conclusions of the 6-7 November 2014 meeting was approved.

— 21 November 2014 meeting BS/202 decision

**Decision:** The Summary of Conclusions of the 21 November 2014 meeting was approved.

4. Report by Chair and Executive Director Oral information

The Chair reported on:

- The introductory meeting with Jonathan Hill, European Commissioner for Financial Stability, Financial Services and Capital Markets Union;
- The ongoing developments in relation to bilateral margins and the potential implementation delay and the need for a single EU model;
- The meetings of the Management Board and in particular its discussions on the development of a

2016-2020 strategy for ESMA;

- The European Commission's plan to establish a Capital Markets Union on which the Board will have a comprehensive discussion during its January 2015 meeting;
- The appointment of Marek Szuszkiewicz as member of the Mediation Panel for two-and-a-half years;
- The Decision by the Board of Appeal of the European Supervisory Authorities (ESAs) in an appeal brought by Investor Protection Europe (IPE) sprl against an ESMA decision not to investigate under Article 17 of the ESMA Regulation an alleged breach of Union law;
- The meeting of the Joint Committee that took place on 13 November 2014 and the fact that ESMA will take over the Joint Committee chairmanship from the European Banking Authority (EBA) in 2015; and
- The recent activities of the European Systemic Risk Board (ESRB).

The Executive Director reported on:

- The co-operation with the Single Supervisory Mechanism (SSM) and the European Central Bank (ECB) following the Comprehensive Assessment and how to further strengthen the existing co-operation;
- The meeting of the Financial Services Committee (FSC) that took place in Brussels on 10 December 2014 highlighting the discussions the Council of the European Union has on "Finance for Growth" and in particular the debate on securitisation which will be discussed with the Board of Supervisors in January 2015;
- The recent activities in the area of credit rating agencies and in particular the establishment of core supervisory colleges at international level for the big credit rating agencies; and
- The meeting of the International Relations Network bringing together national competent authorities of EU Member-States to align international activities that took place.

The Board took note of the reports and emphasized the importance of good co-operation between the ECB and both ESMA and national competent authorities.

## 5. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/203      information

Nicoletta Giusto presented the report and the accompanying documents.

- Consultation Paper on Technical Standards under CSDR Annex 1      decision

- Consultation Paper on Technical Advice under CSDR Annex 2      decision
- Consultation Paper on Guidelines on Access to a CCP or a trading venue by a CDS Annex 3      decision

The Board discussed the consultation papers related to the Central Securities Depositories Regulation (CSDR) and in particular:

- The phase-in period for the implementation of the settlement discipline measures; and
- The determination of relevant currencies for the consultation of relevant authorities for a CSD within the EU;

**Decision:** The Board opted for a 18 month phase-in period and preferred to determine a minimum percentage of 5% for a currency to be relevant. The Board approved the consultation papers on the Technical Standards, the Technical Advice and on the Guidelines.

- Consultation Paper on MiFIR Technical Standards Annex 4      decision
- MiFIR Technical Advice Annex 5      decision

The Board discussed the draft technical standards on indirect clearing and in particular the interaction with national insolvency laws and whether it can be allowed that in some Member-States insolvency laws may prevent portability of indirect clients' positions and immediate restitution of the proceeds of the liquidation of their positions.

**Decision:** The Board approve the consultation paper and the Technical Advice.

- Final report on ESMA review of CCP colleges Annex 6      decision

**Decision:** The Board approved the Final Report.

## 6. IT delegated projects

- Report on IT delegated projects BS/204      discussion

The Executive Director presented the report and the accompanying documents. She highlighted that the Bulgarian Financial Services Commission (FSC) had decided not to participate in the IT delegated projects and that the Romanian Financial Services Authority (FSA) had not taken a final decision on its participation in the projects.

The Executive Director specified that ESMA will contribute to the project and that, should the project not go ahead, ESMA would in any case have to incur costs to meet the obligations posed on it by MiFIR.

**Conclusion:** The Board took note of the report and confirmed its decision to go ahead with the trade repositories project. Regarding the instruments project it was decided to go ahead notwithstanding the position of the Romanian FSA.

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| <ul style="list-style-type: none"> <li>— Delegation Agreement</li> <li> <ul style="list-style-type: none"> <li>○ Cover Note</li> <li>○ Delegation Agreement</li> </ul> </li> </ul> | <div style="text-align: right;">decision</div> <div>BS/191 &amp;<br/>Annex</div> <div>BS/192 &amp;<br/>Annexes</div> |
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The Board discussed the delegation agreement and in particular:

- Whether decisions with significant budget impact should be taken on the basis of budget weighted voting key;
- The national experts that should be seconded to ESMA;
- The participation of the Member-States of the European Economic Area (EEA) as full members in the project; and
- The need to keep separate accurate and regular accounts;

The Executive Director noted that participating national competent authorities will be strongly encouraged to second national experts to ESMA.

**Decision:** The Board approved the delegation agreement and that ESMA should enter into the agreement including the separate budgeting and accounting for the project.

## 7. Secondary Markets Standing Committee, Commodity Derivatives Task Force and Market Data Reporting Working Group

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| <ul style="list-style-type: none"> <li>— Report by Martin Wheatley</li> </ul> | <div style="text-align: right;">information</div> <div>BS/205</div> |
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David Lawton presented the report and the accompanying documents.

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| <ul style="list-style-type: none"> <li>— MiFID II Technical Advice</li> </ul> | <div style="text-align: right;">decision</div> <div>Annex<br/>1(a-g)</div> |
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The Board discussed the Technical Advice, and in particular:

- The quantitative criteria for assessing whether an investment firm is a systematic internaliser, the input received from constituents in this respect and whether ESMA should work further on this topic;
- The definition of high-frequency trading determining the obligation for proprietary traders to

register as investment firms;

**Decision:** The Board approved the Technical Advice.

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| — | Consultation Paper on MiFID II Technical Standards | Annex 2<br>(a-f) decision |
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The Board discussed the Consultation Paper and in particular:

- The additional waiver (pre-trade) and deferral (post-trade) introduced by MiFIR for transactions in non-equity instruments above a size specific to an instrument that would expose liquidity providers to undue risk and whether further data-analysis is needed in that respect;
- The length of the delay for publication of real time post-trade transparency for non-equity instruments to be set at a maximum of 15 minutes for the first three years of the application of MiFIR; and
- The rules to establish the relevant competent authority for instruments traded on a regulated market and on a multilateral trading facility depending on the regulated market where the aggregated turnover for that instrument is highest;

**Decision:** The Board approved the Consultation Paper but decided that the competent authority should depend on the regulated market with the highest non-aggregate turnover for the instrument.

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| — | Final Report on CRR requirements | Annex 3<br>decision |
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**Decision:** The Board approved the Final Report on CRR Requirements.

## 8. Investor Protection and Intermediaries Standing Committee

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| — | Report by Jean-Paul Servais | BS/206<br>information |
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Jean-Paul Servais presented the report and the accompanying documents.

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| — | MiFID II Technical Advice | Annex 1(a-n)<br>decision |
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The Board discussed the Technical Advice and in particular the topic of inducements (the treatment of research and quality enhancement) and reporting to clients.

**Decision:** The Board approved the Technical Advice. Hannelore Lausch (DE) and Gérard Rameix (FR) voted against the Technical advice expressing their disagreement in relation to the proposed treatment

of inducements.

- Consultation Paper on MiFID II Technical Standards Annex 2 decision

**Decision:** The Board approved the Consultation Paper on MiFID II Technical Standards.

## 9. Investment Management Standing Committee

- Report by Gareth Murphy BS/207 information

Gareth Murphy presented the report.

- Discussion Paper on Share Classes of UCITS Annex 1 discussion

The Board discussed the discussion paper and in particular whether UCITS management companies seeking to offer different investment strategies to investors should create a separate UCITS for each strategy.

**Decision:** The Board approved the discussion paper.

## 10. PRIIPs

- Discussion Note on PRIIPs BS/208 discussion

Anneli Tuominen presented the discussion note, highlighting the establishment of an expert panel and the need for national competent authorities to make resources available for this work.

The European Commission representative emphasized the importance of the Key Information Document for (retail) investors and the need for a high level prescription in the methodologies to be developed by the ESAs.

**Decision:** The Board took note of the discussion note and the suggested way forward.

## 11. Financial Innovation Standing Committee

- Report by Anneli Tuominen BS/209 information

Anneli Tuominen presented the report and the accompanying documents.

- Opinion and Advice on Crowdfunding Annex 1 decision

The Board discussed the Opinion and Advice on Crowdfunding and in particular:

- In which cases the Alternative Investment Managers Fund Directive (AIFMD) could be applicable to crowdfunding initiatives;
- The work done by the European Banking Authority (EBA) on lending-based crowdfunding; and
- The role of crowdfunding in the context of a Capital Markets Union (CMU);

**Decision:** The Board approved the Opinion to National Competent Authorities and the Advice to EU Institutions on Crowdfunding.

## 12. Corporate Reporting Standing Committee

- Report by Hannelore Lausch BS/210      information

Hannelore Lausch presented the report and accompanying documents.

- Consultation Paper on European Electronic Access Point (EEAP) Annex 1      decision

The Executive Director mentioned the potential implementation delay of this project due to the budget restrictions.

**Decision:** The Board approved the consultation paper.

- IFRS 9 decision

**Decision:** The Board took note of the report and agreed that the endorsement of IFRS 9 should start as soon as possible in light of the finalisation of the three phases of IFRS 9 and that the macro-hedging proposal should be assessed separately once finalised by the IASB.

## 13. Committee for Economic and Markets Analysis

- Report by Carlos Alves BS/211      information

Carlos Alves presented the report.

- Trends, risks and vulnerabilities report & risk dashboard Annex 1-2      discussion

The Head of the Economic Research and Financial Stability Unit presented the report, in particular

- The new indicators for structured retail products, securitisation and shadow banking and stress-indicators for the hedge-fund industry;
- The decreasing market issuance and the fact that the aggregate net market financing continues to

outpace net bank lending;

- The geo-political risks, the weaker than expected economic recovery and the heightened risk perception, especially by retail investors; and
- The high market and liquidity risk and very high credit risk.

The Board welcomed the report and the further enhanced reporting compared to previous editions. It discussed the report and in particular:

- The developments in the EU banking sector following the Asset Quality Review and the level and outlook for credit risk; and
- The performance of commodity markets and the need to assess liquidity.

**Conclusion:** The Board took note of the Trends, Risks and Vulnerabilities Report and Risk Dashboard, which will be circulated by written procedure for final approval in February 2015.

- Economic Report – High-frequency trading activity in Equity markets      Annex 3      decision

Carlos Alves presented the report highlighting that none of the available approaches to identify high-frequency trading activity is able to exactly capture such activities leading to widely differing levels of activity which is a significant challenge for regulators who need to define what high-frequency trading activity is. As part of the second phase of this project the Committee intends to analyse the contribution of high-frequency trading to liquidity in EU markets.

The Board discussed the report, in particular how its findings could contribute to the ongoing policy work, for example in relation to MiFID II.

**Decision:** The Board approved the report

#### 14. ESMA organisation

- 2015 Budget      BS/212 & decision annexes 1-3

The Executive Director presented a revised 2015 budget following the tentative agreement reached by the Budget Authority (pending formal adoption by the European Parliament and the Council of the European Union) including a decrease of approximately 4.65 million EUR and 10 members of staff compared to ESMA's requested budget. She also highlighted that ESMA will continue to consider whether budgetary savings are possible in other areas.

The Board discussed the note, and in particular:

- The decrease in ESMA's overall budget due to the lower EU subsidy and the existing funding key arrangements between national competent authorities and the EU; and
- The budget needed to set up a website where issuers, originator and sponsors of a structured finance instrument will have to disclose information (SFI website).

**Decision:** The Board approved the revised 2015 budget noting that the EU subsidy needed to be formally approved by the Council of the European Union and the European Parliament. The Board also approved the 2015 expenditure and revenue budget for the delegated IT projects

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| <ul style="list-style-type: none"> <li>— Conflict of Interest – cover note</li> <li>— Conflict of Interest Policy</li> </ul> | <div style="text-align: right;">BS/213      discussion</div> <div style="text-align: right;">BS/173<br/>Rev      &amp;<br/>annex 1-2</div> |
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The Chair provided the Board with an overview of the development of the Conflict of Interest Policy and the importance of moving to implementation, also considering the decisions taken regarding similar policies at EIOPA and EBA. The Executive Director presented the amendments to the set of Q&As providing clarifications on the main characteristics of the policy.

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

- The importance of having a Conflict of Interest policy for non-staff;
- 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; and
- The interaction with similar policies to which Board members are bound by national competent authorities.

**Conclusion:** The Board endorsed the Conflict of Interest Policy adopted by the Management Board and decided to remove Question 9 from the Q&A. Karel Juras (CZ) believed that the Management Board was not the appropriate body to decide on the policy and did not endorse the decision. ESMA staff aims to collect Declarations of Interest, Declarations of Intention and CVs of Board members by the end of Q1 2015.

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| <ul style="list-style-type: none"> <li>— Supervisory aspects related to EU/US equivalence and substitute compliance</li> </ul> | <div style="text-align: right;">BS/214      discussion</div> |
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The Head of Markets Division presented the note.

The European Commission representative informed the Board that the European Commissioner for

Financial Stability, Financial Services and Capital Markets Union aims to conclude a sound agreement with the Commodity Futures Trading Commission (CFTC). The representative emphasized the need for good co-operation between the European Commission and supervisory authorities during the entire process.

The Board discussed the note and in particular

- The involvement of the Post-Trading Standing Committee (PTSC) to support the ESMA delegation in its discussions with the CFTC; and
- The interaction with Memoranda of Understanding between the CFTC and some national competent authorities.

**Conclusion:** The Board took note of the report and decided to establish a temporary network of national competent authorities to assist ESMA in the discussions with the CFTC. ESMA will consult and update the network on a regular basis.

- Memorandum of Understanding between ESMA and SFC regarding co-operation arrangements for the recognition of third-country CCPs under EMIR BS/216      Decision

**Decision:** The Board approved the Memorandum of Understanding.

## 15. Market Integrity Standing Committee

- ESMA staff note on Short Selling Regulation: period of restrictions under exceptional circumstances BS/217      discussion

Konstantinos Botopoulos presented the ESMA staff note.

The Board discussed the period of restrictions under exceptional circumstances highlighting that the Short Selling Regulation provides three months as a maximum period for which restriction applies.

The Board discussed the note, and in particular:

- Whether the maximum period should be applied by default; and
- The interaction between prudential supervisory measures and short selling restrictions;

**Conclusion:** The Board took note of the report and decided that both national competent authorities and ESMA should consider the length of the restriction in the light of facts and circumstances.

## 16. Review Panel

- Report by Jean Guill BS/218      information

Jean Guill presented the report and the accompanying documents.

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| — | Mandate for the peer review on Suitability Requirements | Annex 1 | decision |
| — | Mandate for the peer review on Prospectus               | Annex 2 | decision |

The Board discussed the mandates for the peer reviews and in particular the agreement of the competent authority subject to peer reviews to disclose the results of such reviews.

**Decision:** The Board approved the mandates for the peer review on suitability requirements and for the peer review on prospectuses in which a reference to the ESMA Review Panel Methodology will be included according to which Peer Review reports will , as a rule, be published on ESMA’s website in full on a named basis, subject to the agreement of the national competent authority concerned.

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| 17. ESMA action concerning restrictive measures on Russian access to capital markets | BS/219 & information Annex |
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**Conclusion:** The Board took note of the report.

## 18. Progress Reports

- Report by Verena Ross (CRA TC) BS/220 information

**Conclusion:** The Board took note of the report.

- Report by Verena Ross (Benchmarks TF) BS/221 information

**Conclusion:** The Board took note of the report.

- Report by Gérard Rameix (CFSC) BS/222 information

**Conclusion:** The Board took note of the report.

19. A.O.B.

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## 20. Future meetings

- 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	Antoine van Cauwenberge
Bulgaria	Vladimir Savov (alternate)	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Hanne Rae Larsen
Germany	Hannelore Lausch (alternate)	Philipp Sudeck
Estonia	Andre Nomm	
Ireland	Cyril Roux	Gareth Murphy Bryan Friel
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Lourdes Centeno	Antonio Mas
Croatia	Petar-Pierre Matek	
France	Gérard Rameix	Françoise Buisson Patrice Aguesse
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	
Latvia	Kristaps Zakulis	

Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Jean Guill	
Hungary	Andras Bethlendi	
Malta	Marianne Scicluna	
Netherlands	Merel van Vroonhoven	Pim de Wild
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Anna Skrzypek
Portugal	Carlos Alves	Maria Gabriela Fernandes
Romania	Miso Negritoiu	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Slavomir Statsny	Eva Svetlosakova
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Martin Noréus	Oskar Ode
United Kingdom	David Lawton (alternate)	Nick Miller

#### Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Martin Merlin	Peter Ohrlander
ESRB	Francesco Mazzaferro	

EIOPA	Patrick Hoedjes	
EBA	Adam Farkas	

### 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 29 January 2015

Steven Maijor



Chair

For the Board of Supervisors