

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 23 March 2016  
**Time:** 09h00 – 17h30  
**Location:** Europa Building, Kattenburgersstraat 7, 1018 JH AMSTERDAM, The Netherlands.  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

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**1. Adoption of agenda** BS/71 Decision

**Decision:** The agenda was adopted.

**2. Summary of Conclusions**

— 27 January 2016 meeting BS/61rev  
1 Decision

**Decision:** The summary of conclusions of the 27 January 2016 meeting was adopted.

— 7 March 2016 meeting BS/72rev  
1 Decision

**Decision:** The summary of conclusions of the 7 March 2016 meeting was adopted.

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

The Chair reported on the

- Scrutiny slot the Economic and Monetary Affairs Committee of the European Parliament organised on level 2 measures and the bilateral meetings he had with Members of the European Parliament;
- March 2016 meeting of the Management Board and in particular the discussions on the 2015 financial accounts, the composition of the Securities and Markets Stakeholder Group (SMSG) and some HR decisions;
- Meeting he had with the leadership of the Single Supervisory Mechanism (SSM) to discuss the co-operation between the SSM and securities regulators;
- February 2016 meeting of the Board of the International Organization of Securities Commissions (IOSCO) and in particular the discussions with the Financial Stability Board (FSB), and the discussions on fintech and on data protection;
- Activities carried out by the European Systemic Risk Board (ESRB); and
- March 2016 meeting of the Joint Committee in particular on the adoption of the PRIIPs RTS and

the ongoing discussions on the EEA/EFTA-agreement.

The Executive Director reported on

- ESMA's Supervisory activities;
- The March 2016 meeting of the Financial Services Committee and in particular the discussion that took place on the European Court of Auditors' special report on credit rating agencies supervision and the European Commission's initiative to establish a Capital Markets Union;
- The memorandum of understanding concluded with the European Central Bank (ECB); and
- The annual ethics declaration for Board Members.

**Conclusion:** The Board took note of the oral report and highlighted the importance of good co-operation between the Single Supervisory Mechanism and securities regulators.

#### 4. European Commission Green Paper on Retail Financial Services

- Note on ESMA's response to the European Commission BS/73 Discussion

The Team Leader Investor Protection presented the note on ESMA's response to the European Commission on the green paper on retail financial services.

The Board discussed the report, in particular the:

- Role of host and home regulators in relation to complaints received and the language in which such complaints should be dealt with;
- Importance of cross-sectoral consistency;
- Need for more harmonised sanctions and methodologies for adopting sanctions; and
- Development of UCITS on a pan-European basis.

**Conclusion:** The Board supported responding to the European Commission green paper and decided not to mention the role of host and home regulators in relation to complaints received and the language in which such complaints should be dealt with. The Board was provided with the opportunity to provide comments in writing after which the response will be revised and presented to the Board for approval by written procedure.

#### 5. Capital Markets Union

- Update Note BS/74 Discussion

The Executive Director presented the update note on the ongoing developments in relation to the European Commission's initiative to establish a capital markets union.

The Board discussed the report, in particular the work carried out by EU institutions and market participants in relation to covered bonds.

The European Commission representative provided the Board with a status update on the European Commission's ongoing initiatives in relation to capital markets union.

**Conclusion:** The Board took note of the report and will be updated on a regular basis.

#### 6. Investment Management Standing Committee

- Report by Gareth Murphy BS/75 Information

**Conclusion:** Gareth Murphy presented the report and accompanying documents.

- UCITS Remuneration guidelines + letter to EU Institutions Annex 1-2 Decision

The Board discussed the UCITS remuneration guidelines and the proposed letter to the European Institutions, in particular:

- Whether the guidelines should be supplemented with a letter to the EU institutions; and
- The co-operation between ESMA and EBA that took place and the interaction with EBA guidelines.

**Decision:** The Board adopted the UCITS remuneration guidelines and the accompanying letter to EU institutions with minor amendments.

- Opinion on loan origination Annex 3    Decision

The Board discussed the opinion on loan origination, in particular:

- Whether loan participation should be included;
- Whether a limit should be set on leverage for loan-originating alternative investment funds and, if so, the extent of that limit;
- The ongoing debate within the ESRB on the role of leverage.

**Decision:** ESMA is of the opinion that there should be a set limit on leverage for loan-originating alternative investment funds, while the opinion will not quantify the limit. Loan participation will not be the main focus of the opinion. The Board adopted the Opinion on loan origination. Klaus Kumpfmüller (AT), Elisabeth Roegele (DE), Lourdes Centeno (ES) and Silvana Bozic (HR) abstained.

- Discussion paper on share classes Annex 4    Discussion

**Decision:** The Board took note of the discussion paper on share classes.

- UCITS Q&A Annex 5    Decision

**Decision:** The Board adopted the UCITS Q&A.

- AIFMD Q&A Annex 6    Decision

**Decision:** The Board adopted the AIFMD Q&A.

## 7. Investor Protection and Intermediaries Standing Committee

- Report by David Lawton BS/76    Information

**Conclusion:** David Lawton presented the report and accompanying documents.

- Contracts for difference and other speculative products – Q&As Annex 1    Decision

**Decision:** The Board adopted the Q&As on contracts for difference and other speculative products.

- Statement on MiFID practices for firms selling liabilities subject to BRRD resolution regime Annex 2    Discussion

The Board discussed the statement on MiFID practices for firms selling liabilities subject to BRRD resolution regime, in particular:

- The focus on financial instruments covered under MiFID;
- Whether there is a need for further disclosure towards existing and clients; and
- Initiatives needed towards retail investors.

**Conclusion:** The Board had an exchange of views on the proposed Statement and instructed the Investor Protection and Intermediaries Standing Committee (IPISC) to finalise the statement for approval by the Board of Supervisors.

- MiFID II/MiFIR – Draft Q&As Annex 3    Information

**Conclusion:** The Board took note of the MiFID II/MiFIR proposed Q&As.

## 8. Financial Innovation Standing Committee

- Report by Jean-Paul Servais BS/77    Information

**Conclusion:** The Board took note of the report presented by Jean-Paul Servais. The product intervention document, which was initially scheduled for decision at the March 2016 Board of Supervisors, is planned to be submitted for decision at the May 2016 meeting.

## 9. Supervisory Convergence Standing Committee

- Report by Lourdes Centeno BS/78    Information

**Conclusion:** Lourdes Centeno presented the report and the accompanying documents.

- Peer review on suitability Annexes    Decision  
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The Board welcomed the peer review on suitability.

**Decision:** The Board adopted the peer review report subject to a drafting comment in relation to the powers of the Belgian Financial Services and Markets Authority (FSMA).

- Principles for stakeholder engagement Annex 2    Decision

The Board discussed the principles for stakeholder engagement, in particular whether national competent authorities should provide a reason to object to stakeholder engagement.

**Decision:** The Board adopted the principles for stakeholder engagement on the basis of a simple majority vote, including the principle that national competent authorities should provide a broad reason when objecting to stakeholder engagement. The principles for stakeholder engagement will be published on ESMA's website.

## 10. ESMA organisation

- Interim evaluation of the early legal review by the European Commission's Legal Services BS/79 & Discussion  
Annex 1

The Executive Director presented the interim evaluation of the early legal review by the European Commission's legal services.

The European Commission representative presented the European Commission's experience and emphasized the improvements in legal drafting of the RTSs and the need to develop common principles on how to carry out the legal review.

The Board discussed the evaluation, in particular the:

- Need to identify which RTSs should be subject to early legal review;
- Impact on the ESMA relationship with the European Parliament and the Council of the European Union;
- Timing of the early legal review and whether to do it during the consultation period; and
- Involvement of the European Commission in the drafting of the RTSs through its participation in the relevant ESMA groups.

**Conclusion:** The Board took note of the interim evaluation and endorsed the ongoing discussions the

Executive Director has with the European Commission (in liaison with the other European Supervisory Authorities) on how to further improve the experience of the early legal review by the European Commission's legal services and consider carefully for which technical standards such a review would be beneficial.

- Procedure and templates under Article 27 of the Short-Selling Regulation BS/80 & Decision Annex 1

The Head of Markets Department presented the procedure and templates under article 27 of the Short-Selling Regulation.

The Board discussed the procedure and templates, in particular the:

- Need to provide the information on previous measures in case of renewals of measures; and
- Need to further expand the rationale case-by-case included in the opinion.

**Decision:** The Board adopted the procedure and templates under article 27 of the Short-Selling Regulation.

#### 11. Corporate Finance Standing Committee

- Report by Gerard Rameix BS/81 Information

**Conclusion:** Gerard Rameix presented the report and accompanying documents.

- Supervisory briefing on prospectus scrutiny Annex 1 Decision

**Decision:** The Board adopted the supervisory briefing on prospectus scrutiny.

- Q&As on Prospectuses Annex 2 Decision

**Decision:** The Board adopted the Q&A on prospectuses.

- Letter to EU Institutions on Prospectus Regulation Annex 3 Decision

The Board discussed the proposed letter to EU institutions on the Prospectus Regulation proposal, in particular whether ESMA should send a letter whilst the discussions between the European Parliament and the Council of the European Union are ongoing. Gerard Rameix highlighted the importance for the co-legislators to set clear thresholds to ensure consistent application in practice.

**Decision:** The Board decided that ESMA should send a letter to the Parliament and Council highlighting the need for sufficient time to develop the (potential) technical advice and RTS required under the new Prospectus Regulation proposal.

- Mapping report on directors remuneration Annex 4 Decision

**Decision:** The Board adopted the mapping report on directors remuneration.

#### 12. Corporate Reporting Standing Committee

- Report by Hannelore Lausch BS/82 Discussion

**Conclusion:** Hannelore Lausch presented the report and accompanying documents.

- Methodological Framework Regarding NCA cooperation on certain elements of the Transparency Directive Annex 1 Decision

**Decision:** The Board adopted the methodological framework regarding NCA cooperation on certain elements of the Transparency Directive.

- Methodological Framework on the submission of emerging issues      Annex 2      Decision

**Decision:** The Board adopted the methodological framework on the submission of emerging issues.

- Annual report on IFRS enforcement      Annex 3      Decision

**Decision:** The Board adopted the annual report on IFRS enforcement.

- Terms of reference task force alternative performance measures      Annex 4      Decision

**Decision:** The Board adopted the terms of reference of the task force on alternative performance measures.

### 13. Market Data Standing Committee

- Report by David Lawton      BS/83      Information

**Conclusion:** David Lawton presented the report and accompanying documents.

- Impact of MiFID/MIFIR application date delay on reporting of reference data to competent authorities under MAR      Annex 1      Decision

The European Commission representative stated that, noting the delay increases from 6 months to 18 months, the requirements of article 4 remain in place and that national competent authorities will need to collect data on a best efforts basis.

**Decision:** The Board endorsed the communication proposed in the report. The Board took note of the fact that trading venues already subject to a requirement to provide data under the existing MiFID I regime are expected to continue to provide the information, noting that national competent authorities will still have the discretion under MiFID I to require additional information under their national regime if needed.

- Final Report on RTS defining the operational standards for data access, comparison and aggregation of trade repositories data under Article 81 EMIR      Annex 2      Decision

**Decision:** The Board adopted the final report on RTS.

- EMIR Q&A      Annex 3      Decision

**Decision:** The Board adopted the EMIR Q&A.

- Terms of reference securities financing transaction task force      Annex 4      Decision

**Decision:** The Board adopted the terms of reference of the securities financing transaction task force.

- Terms of reference MiFIR implementation task force      Annex 5      Decision

**Decision:** The Board adopted the terms of reference of the MiFID implementation task force.

- Terms of reference EMIR implementation task force      Annex 6      Decision

**Decision:** The Board adopted the terms of reference of the EMIR implementation task force.

#### 14. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/84 Information

**Conclusion:** Giuseppe Vegas presented the report and accompanying documents.

- Final Report amending CCPs RTS on MPOR clients' accounts Annex 1 Decision

**Decision:** The Board adopted the final report amending CCPs RTS on MPOR clients' accounts.

- Terms of Reference of the CSDR Task Force Annex 2 Decision

**Decision:** The Board adopted the terms of reference of the CSDR Task Force.

#### 15. Market Integrity Standing Committee

- Report by Giuseppe Vegas BS/85 Information

**Conclusion:** Giuseppe Vegas presented the report and accompanying documents.

- Consultation Paper on MAR guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets Annex 1 Decision

**Decision:** The Board adopted the consultation paper on MAR guidelines.

- Q&A on investment recommendation under MAD Annex 2 Decision

The Board discussed the Q&A on investment recommendation under MAD, in particular whether a Q&A is the best tool.

**Decision:** The Board adopted the Q&A on investment recommendation under MAD.

#### 16. Secondary Markets Standing Committee

- Report by Elisabeth Roegele BS/86 Information

**Conclusion:** Elisabeth Roegele presented the report and accompanying documents.

- Report on the exclusion of ETDs from the MiFID access regime Annex 1 Decision

**Decision:** The Board adopted the report on the exclusion of ETDs from the MiFID access regime.

- Market structures task force Annex 2 Decision

**Decision:** The Board adopted the terms of reference of the market structures task force.

- Pre-trade transparency waiver task force Annex 3 Decision

**Decision:** The Board adopted the terms of reference of the pre-trade transparency waiver task force.

- Transparency task force Annex 4 Decision

**Decision:** The Board adopted the terms of reference of the transparency task force.

#### 17. A.O.B.

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**Participants list**

**Voting members**

<b>Member State</b>	<b>Representative</b>	<b>Accompanying Person</b>
Belgium	Jean-Paul Servais	Antoine Van Cauwenberge
Bulgaria	Vladimir Savov (alternate)	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Thomas Brennoe
Germany	Elisabeth Roegele	Hannelore Lausch Philipp Sudeck
Estonia	Andre Nomm	
Ireland	Cyril Roux	Gareth Murphy Cian Murphy
Greece	Charlampos Gotsis	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas
France	Gerard Rameix	Francoise Buisson
Croatia	Silvana Bozic (alternate)	
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Calogerou	Liana Ioannidou

Latvia	Sandis Andersmits (alternate)	
Lithuania	Vytautas Valvonis	
Luxembourg	Claude Marx	
Hungary	Gergo Szeniczey (alternate)	
Malta	Christophe Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Gerben Everts Ellen Boelema
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Cristina Dias (alternate)	
Romania	Misu Negritoiu	Mirela Ciuvat
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Ivan Barri	Tomas Ambra
Finland	Anneli Tuominen	Jarmo Parkkonen Ville Kajala
Sweden	Sophie Degenne (alternate)	Oskar Ode
United Kingdom	Tracey McDermott	David Lawton Eleftheria Apostolidou

### Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Martin Merlin	
ESRB	Olaf Weeken	
EBA	Adam Farkas	
EIOPA	Manuela Zweimuller	

### Observers

Iceland	Unnur Gunnarsdottir	
Liechtenstein	Reto Detgen	
Norway	Anne Merethe Bellamy	

### ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Department	Rodrigo Buenaventura
Head of Resources	Nicolas Vasse

Team Leader Post-Trading	Fabrizio Planta
Team Leader Investor Protection	Salvatore Gnoni
Team Leader Asset Management	Richard Stobo

Done at Paris on 25 May 2016

Steven Maijor

For the Board of Supervisors