

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 28 September 2016
Time: 09h00 – 17h00
Location: Radisson Blu Carlton Hotel, Hviezdoslavovo námestie 185/3, 811 02
Bratislava, Slovakia
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1. Adoption of agenda BS/203 Decision

Decision: The agenda was adopted noting that the agenda item “Joint EBA-ESMA Guidelines on the assessment of suitability of members and management bodies and key function holders under CRD IV and MiFID II” would be discussed earlier.

2. Summary of Conclusions

— 12 July 2016 meeting BS/201rev1 Decision

Decision: The summary of conclusions of the 12 July 2016 meeting was adopted. Merel van Vroonhoven (NL) and Martin Noreus (SE) disagreed with the summary of conclusions in particular in relation to item 12 (Post-Trading Standing Committee) with regards to the functional versus territorial approach under the European Market Infrastructure Regulation (EMIR) and the Securities Financing Transactions Regulation (SFTR).

3. Report by Chair and Executive Director Oral Information

The Chair informed the meeting that, following the departure of Gareth Murphy (IE) and David Lawton (UK), the Board appointed during its confidential session the following standing committee chairs:

Investment Management Standing Committee	Cyril Roux (IE)
Investor Protection & Intermediaries Standing Committee	Merel van Vroonhoven (NL)
Market Data Standing Committee	Hannelore Lausch (DE)

The Chair reported on:

- The annual hearing of the ESAs' Chairs at the European Parliament ECON Committee that took place on 26 September;
- His meeting with Valdis Dombrovskis, European Commission Vice-President for the Euro and Social Dialogue, also in charge of Financial Stability, Financial Services and Capital Markets Union, and in particular the Commissioner's commitment to the Capital Markets Union initiative and the discussions in relation to the ESFS review and the outcome of the UK referendum;
- The first mediation case between two national competent authorities conducted by ESMA;
- The September 2016 meeting of the Management Board and in particular the discussions on the 2017 work programme and on the report from the external auditors on ESMA's single rulebook activities;
- The ongoing political discussions and ESMA activities in relation to the outcome of the UK referendum on EU Membership;
- The activities of the Securities and Markets Stakeholder Group (SMSG), in particular on the first meeting of the group in its revised composition and the appointment of Rudiger Veil as SMSG Chair;
- The activities of the Joint Committee and in particular on the work related to automated advice and the development of the 2017 Joint Committee Work Programme;
- The August 2016 meeting of the Financial Stability Roundtable of the Economic and Financial Committee (EFC-FST);
- The activities of the European Systemic Risk Board (ESRB) and in particular related to the European Commission's consultation paper on the macro-prudential framework and the ongoing risk assessment; and
- The rejection by the European Parliament of the Regulatory Technical Standards (RTSs) developed by the ESAs on the Packaged Retail Insurance-Based Investment Products (PRIIPs).

The European Commission representative informed the Board of the ongoing discussions between the European Commission, European Parliament and the Council of the European Union on how to progress on the adoption of the legal acts and the legal initiative which would be necessary if it was decided to delay the entry into force of PRIIPs.

The Executive Director reported on:

- The September 2016 meeting of the Financial Services Committee and in particular the Council's work in relation to non-performing loans;
- The discussions the Board of Supervisors will have during its November 2016 meeting on the progress towards establishing a Capital Markets Union;
- The template Memorandum of Understanding for national competent authorities and the European Central Bank developed together with ESMA which competent authorities were encouraged to enter into to; and
- The delay in the launch of European Rating Platform.

4. European Commission consultation on the Macro-Prudential Framework

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| — | Issues Note | BS/204 | Discussion |
| — | Draft Response to the Consultation Paper | BS/205 | Discussion |

The Head of Risk Analysis and Economic Department presented the draft response to the European Commission's consultation paper on the macro-prudential framework.

The Board discussed the response, in particular:

- The identification of upcoming potential risks in securities markets, the role of data in that respect and the tools needed to mitigate risks;
- The need for ESMA and national securities markets supervisors to further enhance their financial stability work at EU and international level noting that not all national authorities have such a mandate;
- The need for the governance of the European Systemic Risk Board (ESRB) to reflect the transition towards a more capital markets financed economy and less bank-centric model, especially the role for securities markets regulators within a Capital Markets Union; and
- The overlap between tools traditionally within the remit of micro-supervisors and those of macro-prudential authorities.

Conclusion: The Board discussed the draft response to the European Commission consultation, on the basis of which a revised response will be prepared by ESMA staff for adoption by the Board in written procedure.

5. Build-up of leverage, procyclicality and haircuts in the context of SFTs

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| — Cover Note | BS/206 | Discussion |
| — Securities Financing Transaction Report on the build-up of leverage, procyclicality and haircuts | BS/207 | Decision |
| — ESRB Opinion to ESMA on SFTs and Leverage | BS/027a | Information |

Giuseppe Vegas presented the Cover Note and accompanying documents.

The ESRB representative stated that the report is too cautious.

Decision: The Board adopted the report. The Board decided that ESMA will continue to monitor market developments while remaining flexible, should earlier implementation of the FSB numerical haircut floors be required.

6. Guidelines on MiFID II product governance requirements

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| — Cover Note | BS/208 | Discussion |
| — Consultation paper on Guidelines on MiFID II product governance requirements | BS/209 | Decision |

The Team Leader Investor Protection presented the Cover Note and accompanying documents.

The Board discussed the consultation paper and in particular:

- In which situations products could be sold within the negative target market and the responsibilities of distributors;
- Stakeholder queries leading to this being Guidelines instead of a Q&A

Decision: The Board adopted the consultation paper on Guidelines on MiFID II product governance requirements. A discussion on the use of Q&A and Guidelines as supervisory convergence tools will take place during a future Board meeting.

7. Joint EBA-ESMA Guidelines on the assessment of suitability of members of management bodies and key function holders under CRD IV and MiFID II

—	Cover Note	BS/234	Information
—	Consultation Paper Joint EBA-ESMA Guidelines on the assessment of suitability of members of management bodies and key function holders under CRD IV and MiFID II	BS/235	Decision
—	Template for the assessment of suitability	BS/235 Annex 1	Decision

The Team Leader Investor Protection presented the Cover Note and the accompanying document.

The Board discussed the consultation paper and in particular whether the suitability assessment of the individual subject to the guidelines should be carried out ex ante or could be done ex post.

Decision: The Board adopted the consultation paper on the Joint EBA-ESMA Guidelines on the assessment of suitability of members of management bodies and key function holders under CRD IV and MiFID II by opting for an ex ante suitability assessment on the basis of a vote.

8. MAR Accepted Market Practice

—	Note on the Accepted Market Practice on liquidity contracts	BS/210	Discussion
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The Head of Markets Department presented the note on the accepted market practice on liquidity contracts by highlighting whether convergence should be developed across practices, considering the different Opinions ESMA will need to deliver in the near future on nationally accepted market practices.

The Board discussed the proposed approach and in particular:

- The requirements set out in MiFID II and whether the assessment of national market practices should be further converged;
- Whether some principles might assist ESMA in assessing national practices; and
- The impact on ongoing requests ESMA has already received.

Decision: The Market Integrity Standing Committee (MISC) was invited to prepare an overview of the similarities and differences between the different nationally accepted market practices and possible assessment principles for discussion during the November 2016 meeting of the Board of Supervisors.

9. Benchmark Regulation

—	Cover Note	BS/211	Discussion
—	Consultation Paper on Technical Standards on Benchmark Regulation	BS/212	Decision

Giuseppe Vegas presented the Cover Note and accompanying document.

Decision: The Board adopted the consultation paper on Technical Standards on the Benchmark Regulation.

10. MAR Guidelines on information about commodity derivatives and commodities

—	Cover Note	BS/213	Discussion
—	Final Report on MAR Guidelines on information required or expected to be disclosed on commodities and commodities derivatives	BS/214	Decision

Giuseppe Vegas presented the Cover Note and accompanying document.

Decision: The Board adopted the Final Report on MAR Guidelines on information required or expected to be disclosed on commodities and commodities derivatives

11. Pillar 2 Capital Guidance and disclosure under MAR

—	Cover Note	BS/215	Discussion
—	Note on the approach towards disclosure of Pillar 2 capital guidance	BS/216	Decision
—	SSM request on the approach towards disclosure of Pillar 2 capital guidance	BS/217	Information

The Head of Markets Department presented the note on the approach towards the nature of inside information with regards to Pillar 2 capital guidance.

The Board discussed the note, in particular:

- The level of consistency between supervisory practices currently in place;
- Whether further concrete examples could be added;
- The need to provide the Single Supervisory Mechanism (SSM) with ESMA's response in a timely manner; and
- The potential interaction with the ongoing review of capital requirements legislation.

Decision: The Board adopted the proposed response to the ECB.

12. Application of Systematic Internalisers regime

—	Application of systematic internaliser regime under MiFID II	BS/218	Discussion
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Elisabeth Roegele presented the note on the application of systemic internaliser regime under MiFID II.

Decision: The Board endorsed the note.

13. Portfolio margining

—	Discussion note on portfolio margining requirements under EMIR	BS/219	Discussion
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Giuseppe Vegas presented the discussion note on portfolio margining requirements under EMIR.

The Board discussed the note, in particular:

- The process for amending regulatory technical standards which would be needed in case a different formula should be introduced;

- The interaction with the principles already defined by IOSCO-CPSS; and
- The need to achieve supervisory convergence in a timely manner;

Decision: The Board decided that the Post-Trading Standing Committee (PTSC) should work towards supervisory convergence, most likely through an Opinion, on (i) the definition of the instruments for the scope of portfolio margining and (ii) where the CCP can apply full reduction. In addition to that, supervisory convergence should be achieved within the CCP supervisory colleges on the maximal possible reduction arising from portfolio margining. A review of the Technical Standard was considered necessary but will be launched once sufficient convergence has been achieved.

14. SFTR reporting and data access and TR registration under SFTR and EMIR

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| — | Cover Note | BS/220 | Discussion |
| — | Consultation Paper on reporting and data access of SFTs and registration of TRs under SFTR, and amendments of the related EMIR Commission Delegated Regulations | BS/221 | Decision |

Giuseppe Vegas presented the part of the Cover Note dealing with registration of TRs and data access, as well as the accompanying documents. Rodrigo Buenaventura presented the section on reporting and data collection while placing particular emphasis on the need for a greater level of contribution by NCAs at MDSC level, which was considered limited so far.

The Board discussed the consultation paper and in particular the potential approaches on access under EMIR and SFTR and whether the approach adopted under the EMIR regulatory technical standards should be amended to obtain consistency between SFTR and EMIR.

Decision: The Board adopted the consultation paper applying a territorial approach for SFTR and keep a functional approach for EMIR on the basis of a vote.

15. 2017 Annual Work Programme

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| — | Cover Note | BS/222 | Discussion |
| — | 2017 Annual Work Programme | BS/223 | Decision |

The Executive Director presented the draft 2017, also summarising the comments received from the Management Board during its September 2016.

The Board discussed the 2017 work programme and in particular the:

- Continued importance of supervisory convergence;
- Need to further develop key performance indicators within ESMA's planning activities;
- Exchange of data in relation to investment firms to enhance investor protection; and
- Planned activity in relation to stress-tests for investment funds.

Decision: The Board adopted the 2017 work programme including the proposals from the Management Board and a reference to the continued work, in close cooperation with national competent authorities, to strengthen home/host supervisory cooperation to address consumer protection concerns. Concerning the latter, the Board will discuss at a future meeting data collection and exchange between regulatory bodies in Host and Home Member States. The Executive Director committed that key performance indicators will be further enhanced in the 2018 work programme.

16. Market Data Standing Committee

- MDSC Report BS/224 Information

Conclusion: The Board took note of the report.

- Final Report on Guidelines on Transaction Reporting, Order Record Keeping and Clock synchronisation BS/225a & Decision
BS/225b

Decision: The Board adopted the Final Report on Guidelines on Transaction Reporting, Order Record Keeping and Clock synchronisation.

17. Secondary Markets Standing Committee

- SMSC Report BS/226 Information

Conclusion: The Board took note of the report.

- Consultation Paper on RTS specifying the scope of the consolidated tape for Non-Equity instruments BS/227 Decision

Decision: The Board adopted the consultation paper on RTS specifying the scope of the consolidated tape for non-equity instruments.

- Consultation Paper on Guidelines on specific notions under MiFID II related to Management Body of Market Operators and data reporting services providers BS/228 Decision

Decision: The Board adopted the consultation paper on Guidelines on specific notions under MiFID II related to Management Body of Market Operators and data reporting services providers subject to a factual change which will be presented by written procedure.

- Consultation Paper on Guidelines on the calibration, publication and reporting of trading halts BS/229 Decision

Decision: The Board adopted the consultation paper on Guidelines on the calibration, publication and reporting of trading halts.

- Revised Procedure for waivers under MiFID I BS/230 Decision

Decision: The Board adopted the revised procedure for waivers under MiFID I.

- MiFID II Q&A BS/231 Decision

Decision: The Board adopted the Q&A.

18. ESMA organisation

- Summary of discussions and action points ESMA Away Day BS/232 Decision

Decision: The Board adopted the summary of discussions and action points of the ESMA Away Day.

- Revised 2016 Regulatory Work Programme BS/233 & Information
Annex 1

Decision: The Board took note of the revised 2016 Regulatory Work Programme.

19. Investor Protection and Intermediaries Standing Committee

- IPISC report BS/236 Information

Conclusion: The Board took note of the report.

- Q&As on CFDs and other speculative products BS/237 Decision

Decision: The Board adopted the Q&As.

- Q&As on MiFID II and MIFIR BS/238 Decision

Decision: The Board adopted the Q&As. Christopher Buttigieg (MT) voted against.

20. Investment Management Standing Committee

- IMSC report BS/239 Information

Conclusion: The Board took note of the report.

- Q&As on AIFMD BS/240 Decision

Decision: The Board adopted the Q&As.

- Q&As on UCITS BS/241 Decision

Decision: The Board adopted the Q&As.

21. Market Integrity Standing Committee

- MISC report BS/242 Information

Conclusion: The Board took note of the report.

- Q&As on MAR BS/243 Decision

Decision: The Board adopted the Q&As.

22. Supervisory Convergence Standing Committee

- SCSC Report BS/244 Information

Conclusion: The Board took note of the report.

- Mandate for a peer review on the compliance function guidelines BS/245 Decision

Decision: The Board adopted the mandate for a peer review on the compliance function guidelines.

23. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Antoine van Cauwenberge (alternate)	
Bulgaria	Karina Karaivanova	Vladimir Savov
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	
Germany	Elisabeth Roegele	Hannelore Lausch Nathalie Trapp
Estonia	Andre Nomm	
Ireland	Cyril Roux	Martin Moloney 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	Liana Ioannidou (alternate)	

Latvia	Sandis Andersmits (alternate)	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	Francoise Kauthen
Hungary	Gergo Szeniczey	
Malta	Christopher Buttigieg	
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus Kumpfmuller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Gabriela Figueiredo Dias (alternate)	
Romania	Mircea Ursache (alternate)	Florentina Boboc
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Ivan Barri	Tomas Ambra Adam Nadasky
Finland	Anneli Tuominen	Jarmo Parkkonen Ville Kajala
Sweden	Martin Noreus	Oskar Ode
United Kingdom	Andrew Bailey	Eleftheria Apostolidou

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Peter Ohrlander
ESRB	Francesco Mazzaferro	
EBA	Adam Farkas	
EIOPA	Kai Kosik	

Observers

Iceland	Pall Fridriksson	
Liechtenstein	Reto Degen	
Norway	Marte Voie Opland	Marianne Elind Skaanne

ESMA

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

Head of Risk Analysis and Economics	Steffen Kern
Team Leader Investor Protection	Salvatore Gnoni
Senior Policy Officer	Nikolay Arnaudov

Done at Paris on 9 November 2016

Steven Maijor

For the Board of Supervisors