

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 11 July 2018
Time: 09h00 – 17h00
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda Decision

Decision: The agenda was adopted.

2. Oral Report by Chair and Executive Director Information

The Chair reported on:

- His meetings with Members of the European Parliament, in particular on the ESA review and the implementation of MIFID II;
- The activities of the European Systemic Risk Board (ESRB), in particular the discussions on the United Kingdom's withdrawal from the European Union (EU) and the EU Shadow Banking Monitor;
- The July 2018 meeting of the Management Board, in particular the discussions on ESMA's 2020 premises and the implementation of the MIFID II IT-projects;
- The activities of the Joint Committee, in particular on the recently established Joint Working Group on Anti-Money-Laundering Supervision in the EU;
- The ongoing written procedure on the proposed letter to the European Commission requesting further clarity to market participants on the scope of the PRIIPS Regulation, notably in relation to corporate bonds or "non-structured entities";
- The letter received from the European Commission requesting the European Supervisory Authorities (ESAs) to provide advice regarding the fact that UCITS will have to prepare both a KID (as it falls in the scope of the PRIIPS Regulation) and a KIID as of January 2020; and
- The discussions he had with the European Commission and the chair of the European Data Protection Board (EDPB) on the administrative arrangement which will need to be concluded with third country authorities following the implementation of the General Data Protection Regulation (GDPR).

The Executive Director reported on:

- The meetings of the Financial Services Committee, in particular on the discussions relating to the exchange of data with third country securities regulators and on the complete or partial exemption of certain clearing members that are public bodies from initial margin requirements and default fund contributions; and
- The fact that the European Ombudsman concluded its investigation and agreed that ESMA's decision not to open a Breach of Union Law investigation in relation to the supervisory activity by CySEC in relation to IronFX did not result in maladministration.

The Board discussed the report, in particular the letter received by the European Commission on the fact that a UCITS will have to prepare both a KID and a KIID. The Board suggested that the Commission should consider changing EU Law to avoid UCITS having to do so.

3. Trends, Risks and Vulnerabilities Report

1) Cover Note	Discussion
2) Trends, Risks and Vulnerabilities Report	Discussion
3) Risk Dashboard	Discussion
4) Presentation	Discussion

The Head of Risk Analysis and Economics Department presented the Trends, risks and vulnerabilities report.

The Board discussed the report, in particular:

- ESMA's risk assessment compared to similar assessments conducted by other EU and international bodies;
- The inclusion of developments in the area of financial technology; and
- The overview of structured retail products in the EU.

Conclusions: The Board discussed the Trends, Risks and Vulnerabilities Report and the Risk Dashboard which will be presented to the Board for adoption by written procedure.

4. UK's withdrawal from the European Union

1) Update on ongoing work	Discussion
2) CCP access	Discussion

Benoit de Juvigny presented on EU27 firms' access to UK-CCPs post-Brexit.

The Board discussed EU27 firms' access to UK-CCPs post Brexit, in particular:

- The potential cliff-effects of UK-CCPs losing their authorisation under EMIR; and
- The ongoing negotiations following the European Commission's legislative proposal on the EMIR review.

Conclusion: The Board discussed the access by EU27 firms to UK-CCPs. It was decided that ESMA should continue, in close co-operation with other EU bodies, assessing potential cliff-effects and whether further action would be required.

3) Contract continuity for non-centrally cleared OTC derivatives Discussion

Benoit de Juvigny presented the work on contract continuity for non-centrally cleared OTC derivatives.

The Board discussed the item, in particular the:

- Potential cliff effects identified by ESMA staff; and
- Effects of EMIR obligations on the novation of OTC derivatives transactions.

Conclusion: The Board agreed with the analysis and instructed the Post-Trading Standing Committee to follow-up in close co-operation with other EU bodies.

4) Update on the activities of the MoU Project Group Discussion

The coordinator of the MoU Project Group, provided the Board with an update on the activities of the group.

The Board discussed the update, in particular the:

- Need to focus on the type of memorandum of understanding that would be needed when the United Kingdom becomes a third country and which are in place with many other third countries;
- Data currently being exchanged between the UK authorities, ESMA and national competent authorities.

Conclusion: The Board took note of the activities of the group and agreed to focus the activities only on the type of memorandum of understanding that would be needed when the United Kingdom becomes a third country.

5) Letter on MIFID third country regime Decision

The Head of Investors and Issuers Department presented the letter on the MIFID third country regime.

The Board discuss the letter, in particular:

- The supervisory and regulatory arbitrage risk within the Union for (i) third country firms providing services to retail and professional clients and (ii) outsourcing to third country providers of certain functions under the existing MIFID II third country regime; and
- Whether further initiatives by the European Commission are needed at this stage.

Decision: The Board instructed the Investor Protection and Intermediaries Standing Committee (IPISC) to revise the letter.

6) Public Statement Decision

The Executive Director presented the public statement.

The Board discussed the statement, in particular the need to raise the awareness of all market participants on the importance of preparing for the possibility of no agreement in the context of the United Kingdom withdrawing from the EU.

Decision: The Board adopted the statement subject to some drafting amendments.

5. MIFID II Implementation

1) Presentation Discussion

The Executive Director presented the update on the MIFID II implementation.

Conclusion: The Board took note of the presentation.

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| 2) | A. Report on the update to the Agreement on the operation of the Double Volume Cap | Discussion |
| | B. Update to the Agreement on the double volume cap agreement | Decision |

Elisabeth Roegele presented the update to the agreement on the double volume cap agreement and the accompanying documents.

Decision: The Board adopted the update to the agreement on the double volume cap.

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| 3) | Way forward on the ESMA systematic internaliser regime calculations | Decision |
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The Team Leader Secondary Markets presented the way forward on the ESMA systematic internaliser regime.

Decision: The Board adopted the way forward on the ESMA systematic internaliser regime.

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| 4) | A. Cover Note on Supervisory Briefing on LEIs | Discussion |
| | B. Supervisory Briefing on LEIs | Discussion |

Hannelore Lausch presented the supervisory briefing on LEIs and the accompanying documents.

Decision: The Board agreed with the general supervisory approach and key principles included in the supervisory briefing on LEIs and on the need for adequate resources for its fulfilment. The supervisory briefing will be presented to the Board for adoption.

6. Tick Size Regimes

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| 1) | Cover Note | Discussion |
| 2) | Consultation paper on amendments to the tick size regime | Decision |

Decision: The Board adopted the consultation paper on amendments to the tick size regime.

7. Product Intervention

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| 1) | Cover note | Decision |
| 2) | Procedure for consultation and notification of national product intervention measures relating to the ESMA product intervention measures on CFDs and binary options | Decision |

Decision: The Board adopted the cooperation arrangements for the purpose of national product intervention measures.

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| 3) | Letter to the European Commission on product intervention | Decision |
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The Head of Issuers and Investors Department presented the letter on product intervention to the European Commission.

The Board discussed the letter, in particular:

- ESMA's experience in relation to its first product intervention measures; and
- The legal framework around ESMA's product intervention powers.

Decision: The Board agreed sending a letter to the European Commission on some elements relating to its product intervention powers.

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| 4) Terms of Reference CFD Task Force | Decision |
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Decision: The Board adopted the Terms of Reference of the CFD Task Force.

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| 5) Q&A on product intervention | Decision |
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Decision: The Board adopted the Q&A on product intervention.

8. 2019 Supervisory Convergence Work Programme: Orientation Debate

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| 1) Issues Note | Discussion |
| 2) 2017 Annual Report for Supervisory Convergence | Information |

The Executive Director presented the note on the proposed 2019 supervisory convergence work programme.

The Board discussed the note, in particular:

- The importance of convergence in the supervision of financial innovation (incl. Fintech, ICOs) and sustainability related issues.
- Topics for peer reviews on Brexit related supervisory convergence and on the supervision of structured retail products in the EU.

Conclusion: A final 2019 annual supervisory convergence work programme will be presented to the Board for adoption in January 2020.

9. Peer Review on the Guidelines on ETFs and other UCITS issues

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| 1) Cover Note | Discussion |
| 2) Peer Review Report | Decision |
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| ○ Estonia | |
| ○ France | |
| ○ Ireland | |
| ○ Luxembourg | |
| ○ United Kingdom | |

Coordinator of the Assessment of the Peer Review on the Guidelines on ETFs and other UCITS issues presented the peer review report on the Guidelines on ETFs and other UCITS issues.

The Board discussed the peer review report, in particular the:

- Importance of providing the relevant national competent authorities with the possibility of commenting on the outcome of the peer review; and
- Need to ensure consistency between the country-specific report and the general report.

Decision: The Board adopted the Peer Review Report and the country-specific assessments. It was agreed that the Report should be aligned with the country-specific ones.

10. Share cancellation (reverse distribution mechanism) under the Money Markets Funds Regulation

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| 1) Issues Note | Discussion |
| 2) Commission Legal opinion Share Cancellation | Information |
| 3) Letter to the European Commission | Decision |

The Acting Investment Management Team Leader presented the letter to the European Commission on share cancellation (reverse distribution mechanism) under the Money Markets Funds Regulation.

The Board discussed the letter, in particular the need for the Commission to provide urgent and public clarity on the compatibility of the reverse distribution mechanism with the MMFR to ensure a proper and consistent application.

Decision: The Board adopted the letter to the European Commission emphasizing the importance of timely clarification.

11. ESMA 2020 premises

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| 1) Note | Decision |
| 2) Presentation RATP study | Information |
| 3) Note from the Staff Committee | Information |

The Executive Director presented the note and accompanying documents on ESMA's 2020 premises.

The Board discussed the note, in particular the meeting facilities.

Decision: The Board supported the suggested way forward for ESMA to move to iBox (5-9 rue Van Gogh, 75012 Paris).

12. Data Standing Committee

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| 1) Cover Note | Discussion |
| 2) Terms of Reference | Decision |

The Executive Director presented the terms of reference for the Data Standing Committee.

The Board discussed the Terms of Reference, in particular the:

- Scope of the proposed Data Standing Committee, in particular relating to the development of sector-specific reporting regimes;
- Interaction with ESMA's Standing Committees; and
- Work to be conducted by the task forces.

Decision: The Board discussed the Terms of Reference. It was decided that a revised version should be presented to the September 2018 Board of Supervisors.

13. TRACE and SFTP alignment

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| 1) Issues Note | Discussion |
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Conclusion: The Board took note of the update provided in the note.

14. Cross-border cooperation on issues with investor protection implications

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| 1) Issues Note | Discussion |
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Conclusion: The item will be discussed during the September 2018 Board of Supervisors meeting.

15. Corporate Finance Standing Committee

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| 1) CFSC Report | Decision |
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Conclusion: The Board took note of the Report.

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| 2) Final Report on draft RTS under the Prospectus Regulation | Decision |
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Decision: The Board adopted the Final Report on draft RTS under the Prospectus Regulation.

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| 3) Consultation Paper on draft Guidelines on Risk Factors | Decision |
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Decision: The Board adopted the consultation paper on draft Guidelines on Risk Factors.

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| 4) Consultation Paper on draft technical advice on the minimum content of exempted documents | Decision |
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Decision: The Board adopted the consultation paper on draft technical advice on the minimum content of exempted documents.

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| 5) Letter to the European Commission on Prospectus Directive | Decision |
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Decision: The Board adopted the letter to the European Commission on the Prospectus Directive.

16. Corporate Reporting Standing Committee

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| 1) CRSC Report | Information |
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Conclusion: The Board took note of the Report.

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| 2) Letter to European Commission | Decision |
| 3) ESMA's response to the Fitness check on corporate reporting | Decision |

The Board discussed ESMA's response to the fitness check on corporate reporting, in particular the enforcement of International Financial Reporting Standards (IFRS) in the EU.

Decision: The Board approved ESMA's response to the fitness check on corporate reporting and the accompanying letter. It was agreed to highlight in the letter that ESMA does not express a view on the institutional set-up of enforcement of financial information of individual Member-States. Jean-Paul Servais (BE) abstained and stated that ESMA's convergence achievements regarding IFRS implementation should be presented in a more balanced way.

17. Credit Rating Agencies Technical Committee

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| 1) CRA TC report | Information |
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Conclusion: The Board took note of the Report.

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| 2) Final Report on Supplementary Guidelines on the application of the Endorsement Regime under CRAR | Decision |
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Decision: The Board adopted the Final Report on Supplementary Guidelines on the application of the Endorsement Regime under CRAR.

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| 3) Consultation Paper on the revision of ESMA Guidelines on the submission of periodic information to ESMA by CRAs | Decision |
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Decision: The Board adopted the consultation paper on the revision of ESMA Guidelines on the submission of periodic information to ESMA by CRAs.

Securitisation

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| 1) Cover Note | Information |
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| 2) Final Report on draft technical standards on authorisation of firms providing STS verification services under the Securitisation Regulation | Decision |
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Decision: The Board adopt the Final Report on draft technical standards on authorisation of firms providing STS verification services under the Securitisation Regulation

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| 1) Final Report on draft technical standards on content and format of the STS notification under the Securitisation Regulation | Decision |
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Decision: The Board adopted the Final Report on draft technical standards on content and format of the STS notification under the Securitisations Regulation.

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| 2) Consultation Paper on cooperation between CAs and ESAs under the Securitisation Regulation | Decision |
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Decision: The Board adopted the consultation paper on cooperation between competent authorities and European Supervisory Authorities under the Securitisation Regulation.

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| 3) Final Report on draft technical standards on disclosure requirements under the Securitisation Regulation | Information |
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Decision: The Board adopted the Final Report on draft technical standards on disclosure requirements under the Securities Regulation.

18. Investment Management Standing Committee

- 1) IMSC Report Information

Conclusion: The Board took note of the Report.

- 2) UCITS Q&A Decision

The Board discussed the UCITS Q&A, in particular whether it should be possible to take into account hedging arrangements for the purpose of calculating the issuer concentration limits pursuant to the limits set out in the UCITS Directive.

Decision: The Board adopted the Q&A.

19. Investor Protection and Intermediaries Standing Committee

- 1) IPISC Report Information

Conclusion: The Board took note of the Report.

- 2) Terms of Reference IPISC Working Group Decision

Decision: The Board adopted the terms of reference for the IPISC Working Group.

- 3) MIFID II Q&As

The Board discussed the Q&A on reverse solicitation, in particular the type of examples that should be provided.

Decision: The Board adopted the Q&A.

20. Market Data Standing Committee

- 1) MDSC Report Information

Conclusion: The Board took note of the MDSC report.

- 2) EMIR Q&As Decision

Decision: The Board adopted the EMIR Q&As.

21. Market Integrity Standing Committee

- 1) MISC Report Information

Conclusion: The Board took note of the report.

- 2) BMR Q&A Decision

Decision: The Board adopted the Q&As.

22. Post-Trading Standing Committee

- 1) PTSC Report Decision

Conclusion; The Board took note of the report.

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| 2) CSDR Supervisory Briefing on the Consultation of Relevant Authorities | Decision |
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Decision: The Board adopted the CSDR Supervisory Briefing on the Consultation of the Relevant Authorities.

3) Consultation Paper on the Clearing Obligation

The Board discussed the consultation paper, in particular

- Whether ESMA should add CDX to the scope of the clearing; and
- The prolongation of the deferred date of application of the clearing obligation for certain intragroup exemptions with a third country group entity.

Decision: The Board adopted the consultation paper.

23. Secondary Markets Standing Committee

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| 1) SMSC Report | Information |
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Conclusion: The Board took note of the report.

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| 2) MIFID II Q&As | Decision |
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Decision: The Board adopted the MIFID II Q&As.

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| 3) Terms of Reference Transparency Task Force | Decision |
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Decision: The Board adopted the terms of reference for the Transparency Task Force.

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| 4) Terms of Reference Market Structure Task Force | Decision |
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Decision: The Board adopted the terms of reference for the Market Structure Task Force.

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| 5) Terms of Reference Pre-Trade Transparency Task Force | Decision |
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Decision: The Board adopted the terms of reference for the Pre-Trade Transparency Task Force.

24. Supervisory Convergence Standing Committee

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| 1) SCSC Report | Information |
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Conclusion: The Board took note of the report.

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| 2) Methodology for Peer Reviews | Decision |
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Decision: The Board adopted the methodology for peer reviews.

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| 3) Follow-up report to the Peer Review on Suitability | Decision |
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Decision: The Board adopted the follow-up report to the peer review on suitability subject to a drafting amendment.

25. Terms of reference

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| 1) FISC | Decision |
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Decision: The terms of reference for the Financial Innovation Standing Committee (FISC) was adopted.

2) ITMG Decision

Decision: The terms of reference for the Information Technology and Management Group was adopted.

3) Markets IT Task Force Decision

Decision: The terms of reference for the Markets IT Task Force.

4) Transparency IT Task Force Decision

Decision: The Board adopted the Transparency IT Task Force.

26. A.O.B.

The Chair announced that the dates for the 2019 Board of Supervisors meetings will be shared shortly with the Board.

Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Dimitar Koychev (alternate)	
Czech Republic	Vojtech Belling	Karel Juras
Denmark	Karen Dorte Abelskov	Anne Marie Vestergaard
Germany	Elisabeth Roegele	Hannelore Lausch Marcus Hein
Estonia	Andre Nomm	
Ireland	Derville Rowland	Martin Moloney Cian Murphy
Greece	Xenophon Avlonitis (alternate)	Anastasia Maltoudi
Spain	Sebastian Albella	Ana Martinez-Pina Antonio Mas Fatima Cerdan de la Cruz
France	Robert Ophele	Benoit de Juvigny Stephanie Cabossioras
Croatia	Ante Žigman	Jurica Jednačak
Italy	Mario Nava	Carmine di Noia

		Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou
Latvia	Gunta Razane	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Françoise Kauthen (alternate)	
Hungary	Gergo Szeniczey	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Gerben Everts (alternate)	Marit de Vrijer Pim de Wild
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marcin Pachucki	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Joao Sousa Giao Rita Oliveira Pinto
Romania	Leonardo Badea	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Vladimir Dvoracek	Adam Nadasky
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Erik Thedéen	Fredrik Elmberg

United Kingdom	Andrew Bailey	Cristina Frazer
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Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Ugo Bassi	Peter Ohrlander
EBA	Olaf Weeken	
EIOPA	Fausto Parente	
ESRB	Francesco Mazzaferro	
Iceland	Pall Fridriksson (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Geir Holen (alternate)	Marianne Elind Skaane
EFTA Surveillance Authority	Marco Uccelli (alternate)	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Investors and Issuers Department	Evert van Walsum

Head of Markets Department	Fabrizio Planta
Head of Resources Department	Nicolas Vasse
Team Leader Secondary Markets	Carsten Osterman
Acting Investment Management Team Leader	Antonio Baratelli
Coordinator of the Assessment of the Peer Review on the Guidelines on ETFs and other UCITS issues	James Leen

Done at Paris on 21 September 2018

Steven Maijor

For the Board of Supervisors