

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 7 November 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 [including adoption of B-points]** 22-106-1315 Decision

Decision: The agenda was adopted.

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

The Chair informed that the Board appointed during its confidential session the following Standing Committee Chairs:

Committee for Economic and Markets Analysis	Carmine Di Noia (IT, alternate)
Data Standing Committee	Christopher Butiggieg (MT, alternate)
Investment Management Standing Committee	Martin Moloney (IE, alternate)
Investor Protection and Intermediaries Standing Committee	Merel van Vroonhoven (NL)

The Chairs are appointed for a two year mandate (i.e. till 30 October 2020). Carmine di Noia will serve the remainder of the term as CEMA Chair (i.e. until 30 September 2019).

The Chair reported on:

- His meetings with Members of the European Parliament, in particular the hearing of the Chairs of the European Supervisory Authorities (ESAs);
- The activities of the European Systemic Risk Board (ESRB), in particular the reappointment of Mark Carney (Bank of England) as first Vice-Chair;
- The activities of the Securities and Markets Stakeholder Group (SMSG);
- The activities of the Joint Committee, in particular the targeted review of the PRIIPs Regulation and the ongoing discussions on the European Commission's legislative proposal in relation to Anti-Money Laundering;
- The activities of the International Organization for Securities Commissions (IOSCO), in particular on the October 2018 Board meeting and the draft administrative arrangement for the transfer of personal data between EU and non-EU authorities; and
- The November 2018 Management Board meeting, in particular on the 2019 IT work programme, the 2020 budget and a report on the survey ESMA carried out on ESMA Groups. The Chair also reported on a discussion the Management Board had on the feasibility of delegating the internal settlement reporting under CSDR to ESMA.

The Executive Director reported on the

- Ongoing discussions on the 2019 EU budget and the potential impact on ESMA's 2019 budget; and
- Temporary lack of data on short-selling positions due to technical issues preventing ESMA from assessing the level of short net positions in the EU.

The Board discussed the possibility of delegating the internal settlement reporting under CSDR to ESMA.

Conclusion: The Board took note of the report. The Board agreed that the possibility of a delegation project under CSDR should be discussed during its December 2018 meeting. This discussion will also include the possibility of delegation to a national competent authority; or collective forbearance on the reporting project and the possibility of a letter to the EU Institutions questioning the added value of developing such IT-systems.

3. UK's withdrawal from the European Union

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| 1) MIFID: Impact on equity and non-equity transparency – way forward | 70-154-933 | Discussion |
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Elisabeth Roegele presented the note on the impact on equity and non-equity transparency.

The Board discussed the note, in particular the need to continue considering the impact and the potential amendments to EU law after the United Kingdom's withdrawal from the Union.

Conclusion: The Board endorsed the suggested way forward.

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| 2) MIFID: Double volume cap impact – way forward | 70-154-953 | Discussion |
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Elisabeth Roegele presented the note on the impact on the double volume cap.

The Board discussed the note, in particular:

- The potential risk of regulatory arbitrage after the UK's withdrawal from the Union; and
- Whether further initiatives are needed at EU level to ensure a rapid response.

Conclusion: The Board endorsed the note and instructed the Secondary Markets Standing Committee (SMSC) and ESMA staff to consider potential regulatory and supervisory arbitrage risks between the EU and the UK after the UK's withdrawal from the Union and whether existing tools are sufficient to ensure

a rapid mitigation response. The topic will be further discussed during the December 2018 Board of Supervisors meeting.

- 3) MIFID: Commodity derivatives provision – way forward 70-154-908 Discussion

The Team Leader Secondary Markets presented the way forward on commodity derivatives provisions.

The Board discussed the note, in particular:

- The features of a qualitative and quantitative approach; and
- Whether the issue should be brought to the attention of the European Commission.

Conclusion: The Board endorsed the note and agreed that a comprehensive letter to the European Commission collecting different issues relating to the UK's withdrawal from the Union should be presented to the December 2018 Board of Supervisors for further consideration.

- 4) Contingency plans of branches of UK firms in EU27 35-36-1509 Discussion

The Board discussed the note on contingency plans of branches of UK firms in the EU27, in particular:

- The need for both EU national competent authorities and UK authorities to consider further work; and
- Whether and, if so, when further communication to clients should be considered.

Conclusion: The Board endorsed the suggested way forward and agreed that a Statement directed to clients of investment firms should be presented to the December 2018 Board of Supervisors.

- 5) Update on the activities of the Supervisory Coordination Network 42-110-1082 Discussion

The Executive Director presented the update on the activities of the Supervisory Coordination Network.

The Board discussed the update, in particular:

- The importance of continuing to promote supervisory convergence and liaising with prudential supervisors where relevant;
- Conducting a peer review after the UK's withdrawal from the Union on how national competent authorities have dealt with relocation requests from the UK;
- Setting up voluntary colleges between national competent authorities to mitigate the risk of prevent fragmentation;
- The need to develop further guidance on the use of back-branching to circumvent the rules; and
- The need for a broader update on ESMA's ongoing activities in light of the UK's withdrawal.

Conclusion: The Board took note of the update by highlighting the important work of the Supervisory Coordination Network. The Board agreed (i) that further guidance on the use of back-branching should be developed for the January 2019 Board and (ii) that ESMA should develop a framework for setting up voluntary colleges, for example in the area of investment firms or asset management, to be discussed further with the Board of Supervisors. Finally, the Board agreed that a peer review on how national competent authorities have dealt with relocation requests (in light of the UK's withdrawal) should be conducted post-withdrawal. The information already shared with the Supervisory Coordination Network and a survey directed to all national competent authorities after March 2019 were cited as helpful tools for that.

- 6) Update on negotiating memoranda of understanding with the UK authorities Oral Discussion

The Executive Director presented an update on the initial contacts that have been installed at staff level in light of preparing for the negotiations of memoranda of understanding with UK authorities.

The Board discussed the update, in particular:

- The declarations by European Commission Vice-President Valdis Dombrovskis on the access by EU companies to UK derivatives clearing houses on a temporary basis in the case the proposed Withdrawal Agreement would not be ratified by the EU and/or the UK;
- Whether there is a need for further guidance for market participants; and
- The co-operation with UK authorities post-withdrawal.

Conclusion: The Board welcomed the progress on setting up initial contacts at staff level to prepare the negotiation of memoranda of understanding with the UK authorities and will monitor whether further information on the access to UK derivatives clearing houses on a temporary basis could be provided.

7) CRA/TR Brexit contingency plans

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| ○ Cover Note | 80-187-150 | Information |
| ○ Public Statement | 80-187-149 | Discussion |

Conclusion: The Board endorsed the suggested way forward.

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| 8) Issues note on contract continuity for OTC derivatives | 70-151-1878 | Discussion |
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Conclusion: The Board discussed on the suggested way forward.

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| 9) Final Report on draft RTS on Clearing Obligation | 70-151-1854 | Decision |
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Decision: The Board adopted the Final Report on draft RTS on clearing obligation.

4. PRIIPs Review

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| 1) Cover Note | JC 2018 61 | Discussion |
| 2) Joint ESAs Consultation Paper on a targeted review of PRIIPs delegated Regulation | JC 2018 60 | Decision |

The Acting Team Leader Asset Management presented the note and the joint consultation paper.

The European Commission representative provided an update on the ongoing discussions in the EU Institutions.

The Board discussed the joint consultation paper, in particular:

- Whether the UCITS exemption should be extended;
- The scope of the consultation paper and the future broader PRIIPs review; and
- The impact on retail investors.

Decision: The Board adopted the consultation paper. It was agreed that its publication should be accompanied by a publication highlighting that (i) the consultation paper does not prejudge the scope and outcome of the future broader PRIIPs review and (ii) that the follow-up to the consultation is dependent on the positions taken by the EU Institutions in the context of the ongoing legislative negotiations. Elisabeth Roegele (DE) disagreed.

5. Cyber Security Survey

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| 1) Presentation | 80-196-2107 | Discussion |
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The Head of Risk Analysis and Economics Department provided an update on ESMA's cyber security related work and the outcome of the survey.

The Board discussed the presentation, in particular:

- The need to integrate cyber security in the ongoing supervision of regulated entities;
- The need to continue working together with and sharing knowledge and experience between national competent authorities, for example by establishing a network of technical experts and with the other ESAs; and
- Whether further legislative initiatives are needed at this stage.

Conclusion: The Board took note of the presentation and decided that ESMA's response to the European Commission's call for advice on potential regulatory improvements on cybersecurity should be presented for adoption during its December 2018 meeting.

5b. Product Intervention

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| 1) Cover Note | 35-36-1515 | Information |
| 2) Renewal Decision of measures on binary options | 35-43-1401 | Decision |

The Board discussed the renewal decision of measures on binary options, in particular the importance of developing national measures supplementing ESMA's decisions.

Decision: The Board adopted the renewal decision of measures on binary options. Karl Juras (CZ) abstained. Liana Ioannidou (CY) supported the renewal of the measures on binary options for an additional period of three months but expressed concerns on the banning of on-exchange traded standardised binary options. The Chair highlighted the need to supplement ESMA's decisions by national measures.

6. Enhanced Approach to Q&As

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| 1) Issues Note | 42-110-1199 | Discussion |
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The Executive Director and Head of Legal, Convergence and Enforcement presented the note on the enhanced approach to Q&As.

The Board discussed the note, in particular:

- The ongoing discussions in the EU Institutions on the European Commission's legislative proposal following the view of the operations of the European Supervisory Authorities (ESAs);
- The need for a consistent approach, also between the ESAs, on the status and development of Q&As and Guidelines;
- Whether ex-ante transparency on the Q&As ESMA is working on should be encouraged or to consult market participants on Q&As; and
- How Q&As should be treated in upcoming peer reviews.

Conclusion: The Board decided to re-discuss the topic during a future meeting and instructed ESMA staff to further develop the different options in the paper by setting out the advantages and disadvantages of the various options. In the meantime, the Supervisory Convergence Standing Committee (SCSC) was invited to further discuss how national competent authorities are dealing with Q&As.

7. High-level budget and priorities for 2020

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| 1) Cover Note | 63-43-1071 | Discussion |
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| 2) Presentation | 63-43-1062 | Discussion |
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The Executive Director presented the high-level budget and priorities for 2020.

The Board discussed the budget and priorities, in particular:

- The uncertainty surrounding the budget in light of the ongoing discussions on the different European Commission legislative initiatives such as the EMIR review and the review of the operations of the ESAs; and
- The potential impact of the United Kingdom's withdrawal from the European Union.

Conclusion: The Board took note of the suggested way forward. The Chair informed the Board that the draft 2020 budget will be presented to the January 2019 Board of Supervisors for adoption.

8. Composition Securities and Markets Stakeholder Group (SMSG)

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| 1) Cover Note | 22-106-1351 | Discussion |
| 2) Report | 22-106-1349 | Decision |

The Head of Corporate Affairs Department presented the note on the composition of the Securities and Markets Stakeholder Group (SMSG)

The Board discussed the note, in particular the relatively low number of women in the SMSG and the need for initiatives to attract more women to the SMSG.

Decision: The Board adopted the report including the proposed composition of the SMSG.

9. Application of pre-trade transparency to certain commodity derivatives

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| 1) Cover Note | 70-154-944 | Discussion |
| 2) Supervisory Briefing on the application of pre-trade transparency to certain commodity derivatives | 70-155-6140 | Decision |
| 3) Public statement | 70-156-836 | Decision |

Elisabeth Roegele presented the supervisory briefing on the application of pre-trade transparency to certain commodity derivatives.

The Board discussed the supervisory briefing, in particular the importance of a consistent application of pre-trade transparency to certain commodity derivatives across the Union.

Decision: The Board agreed that by mid-December 2018, non-compliant trading venues have to provide their competent authority with an implementation plan setting out how they intend to be MiFIR pre-trade transparency compliant by 28 February 2018. The Board will further discuss the topic during its January 2019 meeting.

10. ESMA data quality peer review

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| 1) Cover Note | 42-111-4731 | Discussion |
| 2) Mandate for EMIR data quality peer review | 42-111-4687 | Decision |

Decision: The Board adopted the mandate for EMIR data quality peer review.

11. Securitisation repositories

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| 1) Cover Note | 33-128-562 | Discussion |
| 2) Final Report on securitisation repository application requirements, operational standards and access conditions | 33-128-488 | Decision |

The Executive Director presented the cover note and the Final Report.

The Board discussed the Final Report, in particular

- Whether further initiatives are needed given the inability of reporting entities to apply the templates on 1 January 2019; and
- How to set the reference thresholds.

Decision: The Board adopted the Final Report on securitisation repository application requirements, operational standards and access conditions. It was agreed that ESMA should prepare a statement on the inability of reporting entities to apply the templates on 1 January 2019 and how this could be mitigated.

12. MIFID II / MIFIR: Data Quality Status and Action Plan

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| 1) Presentation | 50-164-1741 | Discussion |
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Conclusion: The Board took note of the presentation.

13. Investment Management Standing Committee

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| 1) IMSC Report | 34-39-744 | Information |
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Conclusion: The Board took note of the IMSC Report.

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| 2) Consultation Paper on Guidelines on MMF reporting | 34-39-144 | Decision |
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Decision: The Board adopted the consultation paper on Guidelines on MMF reporting.

14. Investor Protection and Intermediaries Standing Committee

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| 3) IPISC Report | 35-36-1500 | Information |
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Conclusion: The Board took note of the IPISC Report.

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| 4) MIFID II Supervisory Briefing on Suitability | 35-43-1206 | Decision |
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Decision: The Board adopted the MIFID II Supervisory Briefing on Suitability.

Product intervention

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| 5) Cover Note | 35-36-1515 | Information |
| 6) Product Intervention Q&As | 35-36-1514 | Decision |

Decision: The Board adopted the product intervention Q&As.

15. Market Integrity Standing Committee

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| 1) MISC Report | 70-145-1077 | Information |
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Conclusion: The Board took note of the MISC Report.

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| 2) Annual report on administrative and criminal sanctions and other administrative measures | 70-145-1081 | Decision |
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Decision: The Board adopted the annual report on administrative and criminal sanctions and other administrative measures.

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| 3) Opinion on KNF's assessment of WIBOR | 70-143-40 | Decision |
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Decision: The Board adopted the Opinion on KNF's assessment of WIBOR.

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| 4) SSR Q&A | 70-145-1048 | Decision |
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Decision: The Board adopted the Q&A.

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| 5) MAR Q&A | 70-145-1060 | Decision |
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Decision: The Board adopted the Q&A.

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| 6) BMR Q&A | 70-145-1083 | Decision |
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Decision: The Board adopted the Q&A.

16. Post-Trading Standing Committee

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| 1) PTSC Report | 70-151-1877 | Information |
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Conclusion: The Board took note of the report.

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| 2) CSDR Q&As | 70-151-1859 | Decision |
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Decision: The Board adopted the Q&As.

17. Secondary Markets Standing Committee

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| 1) SMSC Report | 70-154-950 | Information |
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Conclusion: The Board took note of the Report.

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| 2) Call for evidence – periodic auctions | 70-156-785 | Decision |
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Decision: The Board endorsed the call for evidence.

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| 3) MIFID II Q&As | 70-154-946 | Decision |
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Decision: The Board adopted the MIFID II Q&As. Nicoletta Giusto disagreed with the Q&A whether it is possible for investment firms to qualify as a systematic internaliser in instruments that are not traded on a trading venue.

18. Supervisory Convergence Standing Committee

1) SCSC Report

42-112-231

Information

Conclusion: The Board took note of the report.

19. Securitisation

1) Cover Note

33-128-581

Discussion

2) Final Technical Advice on Supervisory fees to be charged by ESMA to securitisation repositories

33-128-505

Decision

Decision: The Board adopted the Final Technical Advice on supervisory fees to be charged by ESMA to securitisation repositories.

20. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Dimitar Koychev (alternate)	
Czech Republic	Karel Juras (alternate)	
Denmark	Karen Dorte Abelskov	Anne Bruun
Germany	Elisabeth Roegele	Marcus Hein
Estonia	Andre Nomm	
Ireland	Martin Moloney (alternate)	Cormac Staunton
Greece	Charalampos Gotsis	Vasiliki Koularmani
Spain	Ana Martinez-Pina (alternate)	Fatima Cerdan de la Cruz
France	Robert Ophele	Benoit de Juvigny Viet-Linh Nguyen
Croatia	Jurica Jednačak	
Italy	Anna Genovese	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	
Latvia	Gunta Razane	

Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Krisztian Csaky (alternate)	
Malta	Mariane Scicluna	Christopher Buttigieg
Netherlands	Merel van Vroonhoven	Fleur de Roos
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Ilona Pieczyńska-Czerny (alternate)	Joanna Kott
Portugal	Joao Sousa Giao (alternate)	Susana Neto
Romania	Mircea Ursache (alternate)	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Vladimir Dvoracek	Adam Nadasky
Finland	Jarmo Parkkonen (alternate)	Ville Kajala
Sweden	Sophie Degenne (alternate)	Malin Omberg Fredrik Elmberg
United Kingdom	Andrew Bailey	Cristina Frazer Edwin Schooling Latter

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Ugo Bassi	Ellen Boelema
EBA	Anne Tiedemann	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Unnur Gunnarsdottir	
Liechtenstein	Marcel Lötcher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Frank Büchel	

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 Barattelli
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Done at Paris on 21 December 2018

Steven Maijor

For the Board of Supervisors