

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 22 and 23 September 2020  
**Time:** 16h30 – 18h00 (22 September 2020) and 09h00 – 15h00 (23 September 2020)  
**Location:** Conference call  
**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** Decision

**Decision:** The agenda was adopted.

**2. Confirmation of absence of conflict of interests** Decision

**Decision:** The Board took note of the conflict of interest declared by the ESMA Chair and the Executive Director when the Board will be discussing the implementation of the EU Ombudsman recommendations regarding conflict of interest rules applicable to leaving Staff Members. The session will be chaired by the vice-Chair and the ESMA Chair and Executive Director will abstain from taking part in the discussion and the decision on the item. Elisabeth Roegele (DE) abstained from participating in the discussion and decision on withholding tax reclaim schemes (agenda item 7).

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

The Chair reported on

- The nomination of Mairead McGuinness to succeed Valdis Dombrovskis as European Commissioner for financial stability, financial services and capital markets union;
- His interactions with the Members of the European Parliament, in particular in relation to the establishment of the CCP Supervisory Committee;
- Activities of the European Systemic Risk Board (ESRB), in particular the European Union (EU) non-bank financial intermediation risks monitor and the development of a recommendation on the Legal Entity Identifier (LEI);
- ESMA's activities within the International Organization for Securities Commissions (IOSCO) and the Financial Stability Board, in particular within the Financial Stability Engagement Group (FSEG) and IOSCO's sustainable finance task force;
- The outcome of the September 2020 Management Board; and
- The fact that Scope Ratings has appealed ESMA's enforcement decision before the joint Board of Appeal of the European Supervisory Authorities (ESAs).

The Executive Director reported on:

- The fact that since the revised Q&A process (following the ESMA review) no answers have been agreed and published by the European Commission following the questions submitted by ESMA. She highlighted the importance of the Q&A tool as an effective and timely contribution to promoting supervisory convergence and providing clarity to market participants;
- The September 2020 meeting of the Financial Services Committee, in particular the discussion on ESMA's CCP stress-testing exercise and ESMA's assessment of risks in financial markets;
- The fact that a discussion on the 2022-2024 Programming Document will take place during the November 2020 Board of Supervisors;
- The fact that ESMA staff will prepare a 2021 training programme for national competent authorities which will be held virtually; and
- The minor delay in the preparation of the targeted amendments to the technical standards in the context of the SME Growth Market and ESMA's contribution to the CSDR review

The Board discussed the report, in particular

- The importance of the Q&A tool to provide timely answers to market participants; and
- The publication of the European Commission's digital finance strategy and the need for further discussion.

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

#### 4. UK withdrawal from the European Union

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| 1) Update note | Discussion |
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The Head of Governance and External Affairs Department provided the Board with an update on the ongoing discussions in relation to the United Kingdom's withdrawal from the European Union and presented the revised statements.

The Board discussed the note, in particular the

- Ongoing discussions in relation to the share and derivatives trading obligation; and
- Exemption from the clearing obligation for UK pensions scheme arrangements (PSAs).

**Conclusion:** The Board took note of the update and instructed the Secondary Markets Standing Committee (SMSC) to continue its discussions on the trading obligation for derivatives and shares. The Board decided not to amend the Q&A on the PSAs as the question would have to be responded to by the European Commission, following the revised process in line with the ESA review.

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| 2) Revised Statement on the impact of Brexit on MiFID II/MiFIR | Decision |
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**Decision:** The Board adopted the revised statement on the impact of Brexit on MIFID II/MIFIR.

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| 3) Revised Statement on the impact of Brexit on the BMR | Decision |
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**Decision:** The Board adopted the revised statement on the impact of Brexit on the Benchmarks Regulation.

#### 5. MIFID review – Non-Equity Transparency

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| 1) Cover Note                           | Discussion |
| 2) Final report non-equity transparency | Decision   |

Robert Ophele presented the final report on non-equity transparency.

The Board discussed the report, in particular:

- The pre-trade transparency exemption for derivative hedging transactions executed by non-financial counterparties;
- The post-trade transparency regime, in particular volume masking for illiquid instruments.

**Decision:** The Board adopted the final report on non-equity transparency. The Board agreed to not propose a change to the current EU legal text as regards the hedging exemption and thus continue to limit the benefit of this exemption to non-financial counterparties, in order not to impair the level of pre-trade transparency currently available. Regarding post-trade transparency the Board agreed with the suggested approach with volume masking for transactions in illiquid instruments and for large transactions.

## 6. Final Report on MAR review

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| 1) Cover Note                 | Decision |
| 2) Final Report on MAR review | Decision |

Elisabeth Roegele presented the final report on the MAR review.

The Board discussed the report, in particular the:

- Market sounding regime; and
- Need for ESMA to continue promoting supervisory convergence in this area.

**Decision:** The Board adopted the final report on the MAR review including a request to clarify EU law to confirm the obligations for a disclosing market participant carrying out a sounding.

## 7. Withholding tax reclaim schemes

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| 1) Cover Note  | Discussion |
| 2) ESMA's response to the European Parliament Resolution 2018/2900 of 29 November 2018 on multiple WHT reclaim schemes | Decision   |

**Decision:** The Board adopted ESMA's response to the European Parliament Resolution. Elisabeth Roegele (DE) abstained.

## 8. EU Ombudsman Recommendations regarding conflict of interest rules applicable to leaving staff members

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| 1) Issues Note | Discussion |
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The session was chaired by the vice-Chair.

The Head of Legal and Enforcement presented the note on the EU Ombudsman recommendations.

The Board discussed the note, in particular:

- The rules applicable to ESMA senior management and those applicable to the Members of ESMA's governance bodies;
- The different approaches among national competent authorities in this area; and
- The definition of 'senior management'.

**Conclusion:** The Board discussed the note and provided input to the Management Board. The Management Board will decide on the final approach.

**9. ESMA review**

- 1) Presentation on data reporting services providers project Discussion

The Market Data Policy Team Leader presented the update on the data reporting services providers project.

The Board discussed the update, in particular the

- Different possible set-ups and whether all transaction report files including feedback files should be submitted to ESMA;
- Whether further impact analysis should be conducted; and
- Respective responsibility of NCAs and ESMA for performance of data validation.

**Conclusion:** The Board discussed the update, supported the proposed DRSP supervision model that envisages, among others, the use of rejected data. It was agreed that ESMA staff should further elaborate the two options for further discussion by the Board: (i) one where competent authorities would forward all transaction report files received to ESMA as well as feedback files and (ii) one where competent authorities forward accepted data only, plus relevant metadata about rejections.

- 2) Coordination of market abuse cases
  - o Cover Note Discussion
  - o Procedure on ESMA's coordination of market abuse cases Decision

**Decision:** The Board adopted the Procedure on ESMA's coordination of market abuse cases.

**10. Q&A – concept of an issuer when applied to funds for the reference data reporting purpose**

- 1) Issues Note Decision
- 2) Q&A Decision

Christopher Buttigieg presented the Q&A.

The Board discussed the Q&A, in particular the legal entity identifier to be reported.

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

	Agreed	Disagreed	Abstain
Jean-Paul Servais (BE)		X	
Dimitar Koychev (BG)	X		

Vojtech Belling (CZ)	X		
Karen Dorte Abelskov (DK)			X
Elisabeth Roegele (DE)	X		
Andre Nõmm (EE)	X		
Derville Rowland (IE)	X		
Vasiliki Lazarakou (EL)	X		
Sebastian Albella (ES)	X		
Robert Ophèle (FR)	X		
Ante Žigman (HR)	X		
Carmine Di Noia (IT)	X		
Liana Ioannidou (CY)	X		
Ieva Ose (LV)	X		
Mindaugas Šalčius (LT)	X		
Claude Marx (LU)	X		
Krisztian Csaky (HU)	X		
Christopher Buttigieg (MT)	X		
Jos Heuvelman (NL)			X
Eduard Mueller (AT)		X	
Magdalena Łapsa-Parczewska (PL)	X		
Gabriela Figueiredo Dias (PT)	X		
Gabriel Gradinescu (RO)	X		
Sabina Bester (SL)	X		
Tomas Ambra (SK)	X		
Anneli Tuominen (SU)	X		

Erik Thedeen (SE)	X		
Steven Maijoor (ESMA)	X		

## 11. 2021 Work Programme

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| 1) Cover note          | Discussion |
| 2) 2021 Work Programme | Decision   |

The Executive Director presented the 2021 Annual Work Programme.

The Board discussed the work programme, in particular the need to highlight the impact of the ongoing discussion on the United Kingdom's withdrawal from the Union on ESMA's work programme.

**Decision:** The Board adopted the 2021 work programme.

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| 3) 2021 Risk Assessment | Information |
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**Conclusion:** The Board took note of the 2021 risk assessment.

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| 4) European Commission Opinion on ESMA's 2021-2023 Programming Document | Information |
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**Conclusion:** The Board took note of the European Commission's opinion on ESMA's 2021-2023 programming document.

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| 5) SMSG advice on ESMA's draft 2021 annual work programme | Information |
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**Conclusion:** The Board took note of SMSG's advice on the draft annual work programme.

## 12. Impact of COVID-19 on budget 2020 and updates on budget 2021

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| 1) Cover Note | Decision |
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**Conclusion:** The Executive Director presented the impact of COVID19 on the budget.

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| 2) 2020 Budget amendment n3 – Revenue | Decision |
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**Decision:** The Board adopted the budget amendment.

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| 3) 2020 Budget amendment n3 – Expenditure | Decision |
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**Decision:** The Board adopted the budget amendment.

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| 4) 2020 Budget amendment n3 – NCAs contribution (including UK) | Decision |
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**Decision:** The Board adopted the budget amendment.

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| 5) Projected amount for the 2021 NCAs contributions (with UK reallocation) | Information |
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**Conclusion:** The Board took note of the projected amounts for the 2021 NCA contributions.

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| 6) Legislative Financial Statement of the regulation for European Crowdfunding Service Providers | Information |
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**Conclusion:** The Board took note of the Legislative Financial Statement for the regulation for European Crowd-funding service Providers.

### 13. ESMA Groups

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| 1) Cover Note  | Information |
| 2) Terms of Reference CCP Recovery and Resolution Task Force | Decision    |

**Decision:** The Board adopted the Terms of Reference of CCP Recovery and Resolution Task Force.

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| 3) Terms of Reference Data Standing Committee | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Data Standing Committee.

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

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| 5) Terms of Reference Markets and Issuers Task Force | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Markets and Issuers Task Force.

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| 6) Terms of Reference Repositories Task Force | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Repositories Task Force.

### 14. Benchmarks Network

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| 1) Cover Note  | Information |
| 2) Final Report on Regulatory Technical Standards on the Benchmarks Regulation | Decision    |

**Decision:** The Board adopted the final report on regulatory technical standards on the Benchmarks Regulation.

### 15. Coordination Network on Sustainability

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

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| 2) ESMA response to the European Commission's targeted consultation on the establishment of an EU Green Bond Standard | Decision |
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**Decision:** The Board adopted ESMA's response to the European Commission's targeted consultation on the establishment of an EU Green Bond Standard.

#### 16. Corporate Finance Standing Committee

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

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| 2) Statement on the applicability of Q&As published under the Prospectus Directive | Decision |
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**Decision:** The Board adopted the statement on the applicability of Q&As published under the Prospectus Directive.

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| 3) Report on EEA Prospectus Activity in 2019 | Decision |
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**Decision:** The Board adopted the report on EEA prospectus activity in 2019.

#### 17. CRA Network

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| 1) Cover Note   | Information |
| 2) Final Report Guidelines on Internal Control for CRAs | Decision    |

**Decision:** The Board adopted the final report on guidelines on internal control for CRAs.

#### 18. Data Standing Committee

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

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| 2) Consultation paper on the review of transaction/reference data reporting | Decision |
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**Decision:** The Board adopted the consultation paper on the review of transaction/reference data reporting.

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| 3) MIFIR Q&A | Decision |
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**Decision:** The Board adopted the Q&A.

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| 4) MiFIR Q&A | Decision |
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**Decision:** The Board adopted the Q&A.

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| 5) EMIR Q&A | Decision |
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**Decision:** The Board adopted the Q&A.

#### 19. Investor Protection and Intermediaries Standing Committee

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

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| 2) Final Report on Regulatory Technical Standards on MIFIR<br>Third Country Regime | Decision |
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The Board discussed the report, in particular the interaction with the European Commission's ongoing work in relation to co-operation with third countries.

**Decision:** The Board adopted the final report on regulatory technical standards on the MIFIR third country regime.

## 20. Secondary Markets Standing Committee

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

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| 2) Consultation paper MIFID II review OTF | Decision |
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**Decision:** The Board adopted the consultation paper on the MIFID II review on Organised Trading Facilities.

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| 3) Update of the Double Volume Cap Agreement | Decision |
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**Decision:** The Board adopted the updated double volume cap agreement.

## 21. Securitisation Network

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| 1) Cover Note | Information |
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| 2) Final Report on Guidelines on portability | Decision |
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**Decision:** The Board adopted the final report on guidelines on portability.

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| 3) Q&As on Securitisation Regulation | Decision |
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**Decision:** The Board adopted the Q&As.

## 22. Conflicts of interests and NCA independence

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| 1) Cover Note | Decision |
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| 2) Report on the survey of cooling-off periods | Information |
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**Conclusion:** The Board took note of the report on the survey of cooling-off periods.

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| 3) Updated policy for non-Staff | Information |
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**Conclusion:** The Board took note of the updated conflict of interest policy for non-staff.

## 23. Fees for Benchmark administrators

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| 1) Cover Note | Information |
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- 2) Consultation paper on ESMA's technical advice to the Commission on fees for benchmark administrators under BMR

Decision

**Conclusion:** The Board adopted the consultation paper on ESMA's technical advice to the Commission on fees for benchmark administrators under the Benchmarks Regulation.

#### **24. IT Implementation Report 2019**

- 1) Cover Note

Information

- 2) Report

Information

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

#### **25. 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	
Bulgaria	Dimitar Koychev (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Karen Dorte Abelskov	
Germany	Elisabeth Roegele	
Estonia	Andre Nomm	
Ireland	Derville Rowland	
Greece	Vassiliki Lazarakou	
Spain	Sebastian Albella	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Carmine Di Noia (alternate)	
Cyprus	Liana Ioannidou (alternate)	
Latvia	Ieva Ose (alternate)	
Lithuania	Mindaugas Šalčius	

Luxembourg	Claude Marx	
Hungary	Krisztián Csáky (alternate)	
Malta	Christopher Buttigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Müller	
Poland	Magdalena Łapsa-Parczewska	
Portugal	Gabriela Figueiredo Dias	
Romania	Gabriel Gradinescu	
Slovenia	Sabina Bester (alternate)	
Slovakia	Tomas Ambra (alternate)	
Finland	Anneli Tuominen	
Sweden	Erik Thedeen	
ESMA Chair	Steven Maijoor	

#### Non-voting members

European Commission	Ugo Bassi	
EBA	François-Louis Michaud	
EIOPA	Kai Kosik	

ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marco Uccelli (alternate)	

## ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Legal and Enforcement	Sophie Vuarlot-Dignac
Team Leader Market Data Policy	Olga Petrenko

Done at Paris on 5 November 2020

Steven Majoor

For the Board of Supervisors