

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: Thursday 28 January 2021
Time: 09h00 – 18h00
Location: Conference call
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda Decision

Decision: The agenda was adopted.

2. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed the Chair's statement not to have received any indication by a Board Member of any interest which might be considered prejudicial to her/his independence in relation to any items on the agenda.

3. Oral Report by Chair and Executive Director Information

The Chair reported on:

- ESMA's international activities, in particular the Financial Stability's Board work in relation to Money Market Funds and Open-ended Funds, IOSCO's Financial Stability Engagement Group (FSEG), and the Working Group on credit rating agencies' analysis on the impact of extraordinary COVID government measures on credit ratings;
- The activities of the Joint Committee of the European Supervisory Authorities (ESAs), in particular the notice published in the Official Journal of the European Union (EU) to become Member or Alternate to the Board of Appeal of the ESAs;
- The January 2021 Management Board, in particular the discussions on the 2022-2024 Programming Document and the set-up of a Joint Committee for ethics matters concerning senior managers;
- Requests received from both the industry and some national competent authorities (NCAs) to anticipate the disapplication of position limits to non-significant contracts as the existing framework continues to have a negative impact on the development of EU energy markets, an item which will be discussed during the upcoming Board of Supervisors meeting;
- The planned discussions by the Board of Supervisors of the European Insurance and Occupational Pensions Authority (EIOPA) on the amendments to the Regulatory Technical Standards on the Packaged Retail Investment and Insurance Products (PRIIPS) Regulation; and
- The impact of the United Kingdom's (UK) withdrawal from the European Union (EU), in particular the impact on EU financial markets and ESMA's directly supervised entities as well as on ESMA's IT systems.

The European Commission representative provided an update on the ongoing discussions between the EU and the UK regarding the end of the transition period.

The Executive Director reported on:

- Continued impact of the COVID19-pandemic on ESMA's activities, in particular that teleworking remains the rule for ESMA Staff and that all meetings continue to be held virtually;
- Launch of the Prospectus III Notification Portal and the transitional measures in place until the old IT systems will be decommissioned;
- The January 2021 Financial Services Committee (FSC), in particular the discussions on the establishment of a Capital Markets Union;
- Scope of the upcoming peer review on national competent authorities' handling of relocation to the EU27 in the context of the United Kingdom's (UK) withdrawal from the European Union, in particular that in addition to trading venues and asset managers being in scope of the review, the Peer Review Committee will be invited to define the scope of a subset of investment firms to be included in the peer review; and
- The upcoming launch of the call for participants for all the peer reviews to be initiated in 2021.

Conclusion: The Board took note of the report.

4. Financial Market Developments

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| 1) Presentation | Discussion |
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The Head of Risk Analysis and Economics Department presented the financial market developments.

The Board discussed the financial market developments, in particular the

- Impact of the United Kingdom's withdrawal from the European Union on EU securities markets, in particular in relation to (i) clearing, (ii) the impact of the derivative and share trading obligation and (iii) the potential risk of unauthorised activity by UK firms in the EU;
- Interconnectedness between financial markets and the real economy;
- Liquidity position of Money Market Funds; and
- Development of initial public offerings.

Conclusion: The Board discussed the update on financial market developments.

5. Framework on Supervisory Case Discussions

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| 1) Issues Note | Decision |
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The Team Leader Supervisory Convergence presented the framework on supervisory case discussions.

The Board discussed the note, in particular:

- The important contribution of supervisory case discussions both ex-ante and ex-post (to decisions being made by NCAs) to promote supervisory convergence and the need for all NCAs to contribute to that; and
- The dissemination and record-keeping of the cases that were submitted for discussion and the outcome of such discussions, including how to ensure confidentiality.

Decision: The Board adopted the framework on supervisory case discussions. It was agreed that the application of the framework should be assessed within one year.

6. Peer review on NCAs' supervision of cross-border activities of investment firms

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| 1) Cover Note | Discussion |
| 2) Mandate | Decision |

The Chair of the Peer Review Committee presented the mandate for the peer review on NCAs' supervision of cross-border activities of investment firms.

The Board discussed the mandate, in particular the:

- Scope of the peer review, in particular the legal framework against which NCAs' practices will be benchmarked and the importance of considering the scope of firms' cross-border activity;
- Composition of the Peer Review Committee and the importance of peer review committee members not being involved in reviewing the practices of the NCA by which they are employed; and
- Stakeholder contacts envisaged by the peer review committee.

Decision: The Board adopted the mandate noting that (i) peer review committee members cannot review the NCA by which they are employed and (ii) the peer review committee will discuss the envisaged stakeholder contacts with the relevant NCA. Claude Marx (LU) disagreed with the mandate.

7. Coordinating National Mystery Shopping Activities

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| 1) Issues Note | Decision |
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The Team Leader Investor Protection presented the note on coordinating national mystery shopping activities

The Board discussed the note, in particular the different legal frameworks in place within the EU Member States.

Decision: The Board decided to postpone (to 2022) the exercise to allow NCAs to have additional time to integrate the exercise within their national planning of supervisory activities.

8. MIFID II enforcement

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| 1) Issues Note | Discussion |
| 2) Letter from Robert Ophele | Discussion |

The Team Leader Investor Protection presented the note on MiFID II enforcement.

The Board discussed the note, in particular:

- The need to look at enforcement powers available to national authorities comprehensively;
- Whether financial incentives should be provided to whistle-blowers;
- Whether national authorities should be empowered with settlement powers; and
- The need to promote convergence in enforcement related activities.

The Board discussed the letter received by Robert Ophele (FR) on the Court of Justice of the European Union's ruling on data privacy and possible impact on investigatory powers under the Market Abuse Regulation.

Decision: The Board discussed the note on MIFID II enforcement, highlighting the need to look at powers transversally and supporting the suggestion of empowering national authorities with settlement powers. The Board invited the Enforcement Network to promote convergence on enforcement measures and tools available.

Regarding the letter received from Robert Ophele (FR), the Board invited the Market Integrity Standing Committee (MISC) to assess the impact of the ruling and ESMA staff to liaise with the European

Commission Services. The item will be discussed during the February 2021 Board of Supervisors meeting.

9. 2022-2024 Programming Document

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| 1) Cover Note | Discussion |
| 2) Programming Document 2022-2024 | Decision |
| 3) IT Work Programme 2021-2024 | Information |

The Executive Director presented the Programming Document 2022-2024 and the IT Work Programme 2021-2024, highlighting in particular the ongoing discussions between the European Commission Services and ESMA on the accounting treatment of the EU advance for ESMA’s direct supervisory mandates under the ESA review.

Decision: The Board adopted the Programming Document 2022-2024.

10. Sustainable Finance – Taxonomy-related product disclosures

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| 1) Presentation | Discussion |
| 2) Progress Note | Information |

The Head of Investors and Issuers Department presented the note on the taxonomy-related product disclosures.

The Board discussed the note, in particular the:

- Proposed disclosures and the self-certification process by in-scope firms; and
- Need for further discussion and for liaison with the different relevant authorities.

Conclusion: The Board took note of the update on taxonomy-related product disclosures. An update will be presented for discussion to the February 2021 Board of Supervisors meeting.

11. Sustainable Finance – ESG ratings

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| 1) Cover Note | Discussion |
| 2) Letter to the European Commission | Decision |

Decision: The Board adopted the letter to the European Commission on ESG ratings.

12. Corporate Finance Standing Committee

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

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| 2) Prospectus Q&As | Decision |
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Decision: The Board adopted Q&As

13. Commodity Derivatives Task Force

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

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| 2) Procedure for opinions on position limits | Decision |
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Decision: The Board adopted the procedure for opinions on position limits.

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| 3) Delegation to the ESMA Chair on the adoption of non-controversial opinions on position limits | Decision |
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Decision: The Board approved the delegation to the ESMA Chair on the adoption of non-controversial opinions on position limits.

14. Corporate Reporting Standing Committee

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

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| 2) ESMA comment letter to the EFRAG Draft Endorsement Advice on IFRS 17 – Insurance contracts | Decision |
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Decision: The Board adopted the comment letter to the EFRAG Draft Endorsement Advice on IFRS 17 – Insurance Contracts. Robert Ophele (FR) disagreed.

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| 3) Terms of Reference for the Financial Institutions Task Force | Decision |
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Decision: The Board adopted the Terms of Reference for the Financial Institutions Task Force.

15. Data Standing Committee

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

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| 2) TREM Data Quality Report | Decision |
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Decision: The Board adopted the TREM Data Quality Report.

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| 3) EMIR Data Quality Action plan annual update report | Decision |
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Decision: The Board adopted the EMIR Data Quality Action plan annual update report.

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| 4) SFTR Data Quality Engagement Framework | Decision |
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Decision: The Board adopted the SFTR Data Quality Engagement Framework.

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

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| 6) SFTR Q&As | Decision |
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Decision: The Board adopted the Q&As.

16. Investment Management Standing Committee

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

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| 2) ITS on cross-border distribution | Decision |
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Decision: The Board adopted the Implementing Technical Standard on cross-border distribution.

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| 3) ESMA letter on the review of the ELTIF Regulation | Decision |
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The Board discussed the letter, in particular the eligibility criteria for investors and consistency with the EuVECA and EuSEF Regulations.

Decision: The Board adopted the letter noting that a minor drafting change would be agreed among Robert Ophele (FR), the ESMA Chair and the Chair of the Investment Management Standing Committee (IMSC). The proposed amendment will be shared with the Board of Supervisors for information before submitting the letter to the European Commission.

17. 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 IPISC Report.

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| 2) Consultation paper on Guidelines on appropriateness and execution-only | Decision |
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Decision: The Board adopted the consultation paper on Guidelines on appropriateness and execution-only.

18. Post-Trade Standing Committee

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

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| 2) EMIR Q&A | Decision |
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Decision: The Board adopted the Q&As.

19. 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) Annual report on waivers and deferrals for equity instruments | Decision |
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Decision: The Board adopted the Annual Report on waivers and deferrals for equity instruments.

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| 3) MIFID Q&As | Decision |
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Decision: The Board adopted the Q&As.

20. Network on securitisation

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| 1) Q&As on Securitisation Regulation | Decision |
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Decision: The Board adopted the Q&As.

21. Fees

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| 1) Cover Note | Information |
| 2) Technical advice on benchmarks administrators' fees | Decision |

Decision: The Board adopted the technical advice on benchmark administrators' fees.

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| 3) Cover Note | Information |
| 4) Consultation Paper on Revision of Delegated Regulation on Fees Charged by ESMA to CRAs | Decision |

Decision: The Board adopted the Consultation Paper on Revision of Delegated Regulation on Fees Charged by ESMA to CRAs.

22. Automated daily reporting of net short position

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| 1) Note | Information |
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Conclusion: The Board took note of the progress made in automatising the process of the daily reporting of net short positions from NCAs to ESMA in shares admitted to trading on a regulated market.

23. Annual update on Breach of Union Law

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| 1) Note | Information |
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Conclusion: The Board took note of the annual update.

24. Update on delegation of adopting changes to technical instructions

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| 1) Annual update on the exercise of the delegation by the Chair of ESMA on the adoption of changes to technical instructions | Information |
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Conclusion: The Board took note of the annual update.

25. A.O.B.

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Participants list
Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	
Bulgaria	Mariyan Ivanov (altermate)	
Czech Republic	Vojtěch Belling	
Denmark	Karen Dorte Abelskov	
Germany	Elisabeth Roegele	
Estonia	Andre Nõmm	
Ireland	Derville Rowland	
Greece	Vasiliki Lazarakou	
Spain	Rodrigio Buenaventura	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Carmine Di Noia	
Cyprus	George Theocharides (alternate)	
Latvia	Santa Purgaile	

Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx	
Hungary	Krisztián Csáky (alternate)	
Malta	Cristopher Buttigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Mueller	
Poland	Magdalena Łapsa-Parczewska	
Portugal	Gabriela Figueiredo Dias	
Romania	Gabriel Gradinescu	
Slovenia	Sabina Bešter	
Slovakia	Peter Tkáč	
Finland	Anneli Tuominen	
Sweden	Erik Thedeen	
ESMA Chair	Steven Maijoor	

Non-voting members

European Commission	Tilman Lueder (alternate)	
ESRB	Francesco Mazzaferro	
EIOPA	Kai Kosik (alternate)	
EBA	Anne Tiedemann (alternate)	
EFTA Surveillance Authority	Jonina Larusdottir (alternate)	
Iceland	Páll Fríðriksson (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Investors and Issuers Department	Evert van Walsum
Team Leader Investor Protection	Salvatore Gnoni
Team Leader Supervisory Convergence	Dora Blanchet

Chair of the Peer Review Committee	Salvatore Gnoni
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Done at Paris on 18 March 2021

Steven Maijor

For the Board of Supervisors