

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 23 March 2021
Time: 09h00 – 13h00
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, Executive Director and Chair of the CCP Supervisory Committee Information

The Chair reported on:

- The upcoming senior management transition, in particular the status of the ESMA Chair and Executive Director selection and appointment process and the fact that Anneli Tuominen (ESMA vice-Chair) will act as Interim Chair;
- His recent meetings with European Commission Executive Vice-President Valdis Dombrovskis, and European Commissioner Mairead McGuinness, in particular in relation to the ongoing discussion on the United Kingdom's (UK) withdrawal from the European Union, sustainable finance, digital finance and the European Commission's upcoming ESAs' Review targeted consultation on supervisory convergence and the single rulebook;
- The European Parliament's Committee on Economic and Monetary Affairs' recent hearing on the GameStop share trading event, and the European Parliament's Subcommittee on Fiscal Matters' recent hearing on Cum/Ex, Cum/Cum and withholding tax reclaim schemes;
- The status of the legislative proposals for a Regulation of Markets in Crypto-Assets (MiCA) and for a Digital Operational Resilience Act (DORA);
- The activities of the European Systemic Risk Board (ESRB), in particular the ongoing discussions on systemic vulnerabilities in Money Market Funds and on the macroprudential implications arising from a low interest rate environment;
- The outcome of the March 2021 Management Board meeting, in particular its discussion of ESMA's 2020 Accounts, the change in the 2021 CCP Peer Review topic, the upcoming ESAs' Review and a recent Staff Engagement Survey;

- The fact that the Board of Appeal has declared inadmissible an appeal against the Chair's decision not to open a Breach of Union law investigation;
- The ongoing work in relation to a Joint Statement with the European Commission, European Banking Authority and European Central Bank/Single Supervisory Mechanism, clarifying that EU authorities expect that EU supervised entities stop using all USD LIBOR tenors in new contracts by the end of 2021;
- The reception of answers from the European Commission (EC) to Q&As that had been sent to the EC for interpretation of Union law; and
- Issues related to the United Kingdom's withdrawal from the European Union, in particular to the application of the clearing obligation exemption to non-EU pension schemes.

The European Commission representative provided an update on the ongoing discussions in relation to issues stemming from the UK's withdrawal, in particular on the scope of the derivatives trading obligation.

The Executive Director reported on the:

- March 2021 Financial Services Committee (FSC), in particular the work on the Disclosures RTS under the Sustainable Finance Disclosure Regulation (SFDR), the review of the Alternative Investment Fund Managers Directive (AIFMD) and the latest developments on the draft working arrangements between the EU and UK;
- Treatment of the €1m EU advance which had been paid to ESMA by the EC for the preparation of the direct supervision of Benchmarks and Data Reporting Services Provider, and which ESMA will be required to return to the EC following the decision that this contribution cannot be inscribed in ESMA's 2021 budget; and
- Continued impact of COVID-19 on ESMA's activities, in particular that teleworking remains the rule for ESMA staff and that all meetings continue to be held virtually.

Conclusion: The Board discussed the reports, in particular the ongoing discussions on topics stemming from the UK's withdrawal.

4. Inducements

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| 1) Cover note | Information |
| 2) Q&A on quality enhancements | Decision |

Decision: The Board adopted the Q&A on quality enhancements.

5. Money Market Funds Regulation Review

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| 1) Cover note | Discussion |
| 2) Consultation paper on MMFR Review | Decision |

Gabriela Figueiredo Dias presented the Consultation Paper on the Money Market Funds Regulation Review.

The Board discussed the consultation paper, in particular the:

- Important role of MMFs in capital markets and the lessons learned from the COVID-19 financial market crisis;
- Interaction with the ongoing work at international and EU level; and
- Various data sources that ESMA uses for market monitoring.

Decision: The Board adopted the consultation paper.

6. MIFID/MiFIR Review

1) Review Report on the obligations to report transactions and reference data

- o Cover note Discussion
- o Report Decision

Christopher Buttigieg presented the Review Report on the obligations to report transactions and reference data.

The Board discussed the Review Report, in particular whether to keep the current approach to transaction reporting of over-the-counter derivatives in place, or to change approaches in favour of the Systemic Internaliser approach for their reporting.

Decision: The Board approved the Review Report on the obligations to report transactions and reference data and adopt the Systemic Internaliser approach for the transaction reporting of OTC derivatives.

	Option A (SI approach)	Option 2 (Status quo)	Abstention
Jean-Paul Servais (BE)	X		
Mariyan Ivanov (BG)		X	
Vojtech Belling (CZ)	X		
Karen Dorte Abelskov (DK)		X	
Marcus Hein (DE)	X		
Andre Nõmm (EE)	X		
Derville Rowland (IE)	X		
Vassiliki Lazarakou (EL)	X		
Rodrigo Buenaventura (ES)	X		
Robert Ophèle (FR)	X		
Ante Žigman (HR)		X	
Carmine di Noia (IT)			
Demetra Kalogerou (CY)	X		
Santa Purgaile (LV)		X	

Ruta Merkeviciute (LT)		X	
Claude Marx (LU)		X	
Gergő Szeniczey (HU)	X		
Christopher Buttigieg (MT)	X		
Laura van Geest (NL)	X		
Eduard Mueller (AT)		X	
Magdalena Łapsa-Parczewska (PL)	X		
Gabriela Figueiredo Dias (PT)	X		
Oana Stefanoiu (RO)	X		
Sabina Bešter (SL)	X		
Peter Tkáč (SK)			X
Anneli Tuominen (SU)		X	
Erik Thedéen (SE)			X
Steven Maijoor (ESMA)	X		

2) Review Report on SME Growth Markets

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| ○ Cover note | Discussion |
| ○ Report | Decision |

Robert Ophèle presented the review report on SME Growth Markets.

The Board discussed the review report, in particular the:

- Appropriate market-capitalisation threshold for the definition of a Small and Medium-sized Enterprise (SME) in MiFID II; and
- Minimum ratio of SMEs listed/other issuers listed that should be respected on SME growth markets.

Decision: The Board approved the Review Report whilst advising to keep the current market-capitalisation based definition of SMEs for the purpose of access to SME Growth Markets in its recommendation (200 million euros).

	(current threshold)	(increase to 500m EUR)	Abstention
Jean-Paul Servais (BE)			X
Mariyan Ivanov (BG)	X		
Vojtech Belling (CZ)		X	
Karen Dorte Abelskov (DK)	X		
Marcus Hein (DE)		X	
Andre Nõmm (EE)	X		
Derville Rowland (IE)		X	
Vassiliki Lazarakou (EL)	X		
Rodrigo Buenaventura (ES)	X		
Robert Ophèle (FR)		X	
Ante Žigman (HR)	X		
Carmine di Noia (IT)		X	
Demetra Kalogerou (CY)	X		
Santa Purgaile (LV)	X		
Ruta Merkeviciute (LT)		X	
Claude Marx (LU)	X		
Gergő Szeniczey (HU)	X		
Christopher Buttigieg (MT)	X		
Laura van Geest (NL)	X		
Eduard Mueller (AT)		X	
Magdalena Łapsa-Parczewska (PL)		X	

Gabriela Figueiredo Dias (PT)		X	
Oana Stefanoiu (RO)		X	
Sabina Bešter (SL)	X		
Peter Tkáč (SK)	X		
Anneli Tuominen (SU)		X	
Erik Thedéen (SE)	X		
Steven Maijoor (ESMA)			X

3) Review Report on the functioning of Organised Trading Facility (OTF)

- o Cover note Discussion
- o Report Decision

Robert Ophèle presented the review report on the functioning of Organised Trading Facility (OTF).

The Board discussed the Review Report, in particular the:

- Relationship between multilateral trading systems and multilateral trading facilities; and
- Need for further research into conflict of interest risks and the internal crossing of fund managers.

Decision: The Board approved the Review Report whilst agreeing to conduct further research on systems of internal crossing of fund managers. Marcus Hein (DE) abstained, indicating that he did not approve of the recommendation in the OTF Review Report that every multilateral system must request authorisation as a trading venue.

7. CSDR Review

- 1) Note Discussion

Conclusion: Due to time constraints, Board Members were invited to provide comments in writing.

8. Follow-up to EMIR Peer Review

- 1) Cover note Information
- 2) Report on the Execution of the follow-up actions to the peer review on EMIR Data Quality supervision Decision
- 3) TRs data quality report 2020 Decision

Christopher Buttigieg presented the report on the execution of the follow-up actions to the peer review on EMIR Data Quality supervision and the trade repositories' data quality report 2020.

The Board discussed the Reports, in particular:

- The granularity of data to be provided in the report; and
- To slightly postpone the adoption of the data quality report 2020 in order to address potential inconsistencies identified.

Decision: The Board adopted the Report on the Execution of the follow-up actions to the peer review on EMIR Data Quality supervision. The Board also adopted the TRs data quality report 2020, subject to factual comments that Board Members were invited to provide.

9. Data Reporting Service Providers

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| 1) Cover Note | Information |
| 2) Presentation | Information |

Conclusion: The Board took note of the presentation on Data Reporting Service Providers.

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| 3) Technical Advice to the European Commission on DRSP criteria for derogation | Decision |
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Decision: The Board adopted the Technical Advice to the European Commission on DRSP criteria for derogation.

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| 4) Technical Advice to the European Commission on DRSP fees | Decision |
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Decision: The Board adopted the Technical Advice to the European Commission on DRSP fees.

10. ESAs' Review – process

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| 1) Presentation | Information |
| 2) ESMA response to the 2017 ESAs' Review (reminder) | Information |

Conclusion: The Board took note of ESMA's proposed approach to responding to the open consultation.

11. ESMA emergency actions

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| 1) Follow-up on ESMA's Emergency actions | Decision |
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Decision: The Board endorsed the suggested way forward on ESMA's Emergency actions.

12. Benchmarks Network

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| 1) Cover note | Information |
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Decision: The Board took note of the cover note.

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| 2) Benchmark Regulation Q&A | Decision |
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Decision: The Board adopted the Q&A under the Benchmark Regulation.

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| 3) Update of the Benchmark Regulation Brexit Statement | Decision |
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Decision: The Board adopted the update to the Benchmark Regulation Brexit Statement.

13. CCP Supervisory Committee

- 1) Plan for the review of TC-CCP recognitions Information

Conclusion: The Board took note of the plan for the review of TC-CCP recognitions.

- 2) Revised topic of the 2021 peer review Decision

Conclusion: The Board endorsed the revised topic of the 2021 peer review.

14. Corporate Finance Standing Committee

- 1) CFSC Report Information

Conclusion: The Board took note of the CFSC Report.

- 2) Prospectus Q&As Decision

Conclusion: The Board adopted the Prospectus Q&As.

15. Corporate Reporting Standing Committee

- 1) CRSC Report Information

Conclusion: The Board took note of the CRSC Report.

- 2) Annual Report on enforcement activities in 2020 Decision

Decision: The Board adopted the Annual Report on enforcement activities in 2020.

- 3) IASB Post Implementation Review of its consolidation standards:

- o ESMA Comment Letter Decision

- o Report on the application of IFRS 10 – *Consolidated Financial Statements*, IFRS 11 – *Joint Arrangements* and IFRS 12 – *Disclosure of Interests in Other Entities* Decision

Decision: The Board approved the ESMA Comment Letter and the Report on the application of IFRS 10 – *Consolidated Financial Statements*, IFRS 11 – *Joint Arrangements* and IFRS 12 – *Disclosure of Interests in Other Entities*.

16. Data Standing Committee

- 1) DSC Report Information

Conclusion: The Board took note of the DSC Report.

- 2) MMFR Data Quality Engagement Framework Decision

Decision: The Board approved the MMFR Data Quality Engagement Framework.

- 3) EMIR Q&A Decision

Decision: The Board approved the EMIR Q&A.

- 4) STFR Q&A Decision

Decision: The Board adopted the SFTR Q&A.

17. Financial Innovation Standing Committee

- 1) FISC Report Information

Conclusion: The Board took note of the FISC Report.

- 2) Annual Statistical Report on Performance and Costs of Retail Investment Products Decision

Decision: The Board approved the Annual Statistical Report on Performance and Costs of Retail Investment Products.

18. Investment Management Standing Committee

- 1) IMSC Report Information

Conclusion: The Board took note of the IMSC Report.

- 2) AIFMD Q&As Decision

Decision: The Board adopted the AIFMD Q&As.

- 3) UCITS Q&As Decision

Decision: The Board adopted the UCITS Q&As.

- 4) Report on 2020 CSA on UCITS liquidity management Decision

- 5) Public Statement on the 2020 CSA on UCITS liquidity management Decision

The Board discussed the report on the 2020 Common Supervisory Action (CSA) on liquidity management in Undertakings for the Collective Investment in Transferrable Securities (UCITS) and the corresponding Public Statement, in particular:

- Whether further policy work might be needed as a follow up to the CSA; and
- The further supervisory convergence work ESMA should conduct.

Decision: The Board approved the Report on the 2020 CSA on UCITS liquidity and the corresponding Public Statement subject to drafting amendments.

19. Investor Protection and Intermediaries Standing Committee

- 1) IPISC Report Information

Conclusion: The Board took note of the IPISC Report.

- 2) Technical Advice to the European Commission on MiFID II Reports on sanctions Decision

Decision: The Board adopted the Technical Advice to the European Commission on the MiFID II Report on sanctions.

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| 3) Update on financial education | Information |
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Conclusion: The Board took note of the update on financial education.

20. Network on Securitisation

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| 1) Cover Note | Information |
| 2) Templates for the interim period on STS synthetic securitisations | Decision |

Decision: The Board adopted the templates for the interim period on simple, transparent and standardised (STS) synthetic securitisations.

21. 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 the delegation agreements | Decision |
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Decision: The Board approved the annual report on the delegation agreements.

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

22. Senior Supervisors' Forum

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| 1) SSF Report | Information |
| 2) Terms of Reference of the Senior Supervisors Forum | Decision |

The Board discussed the Terms of Reference, by highlighting the importance of strong coordination between the Senior Supervisors' Forum and the other ESMA standing committees.

Decision: The Board adopted the Terms of Reference for the Senior Supervisors Forum. It was agreed to include a reference for strong coordination with other ESMA standing committees.

23. TR Network

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| 1) Cover note | Information |
| 2) Final report on Guidelines on periodic information and notification of material changes to be submitted to ESMA by Trade Repositories | Decision |

Decision: The Board adopted the Final report on Guidelines on periodic information and notification of material changes to be submitted to ESMA by trade repositories.

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| 3) Guidelines on periodic information and notification of material changes to be submitted to ESMA by Trade Repositories | Decision |
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Decision: The Board adopted the Guidelines on periodic information and notification of material changes to be submitted to ESMA by trade repositories.

- 4) Templates Decision

Decision: The Board adopted the templates on data, governance, internal control and IT.

24. TR Fees

- 1) Cover note Information
- 2) Consultation paper on Technical advice to EC on simplification and harmonisation of fees to TRs under EMIR and SFTR Decision

Decision: The Board adopted the Consultation paper on Technical advice to the European Commission on simplification and harmonisation of fees for trade repositories under the European Market Infrastructure Regulation (EMIR) and the Securities Financing Transaction Regulation (SFTR).

25. Penalties imposed on Benchmark Administrators and DRSPs under ESMA's direct supervision

- 1) Cover note Information
- 2) Final Report on Technical advice on the Rules of Procedure on Penalties imposed on Benchmark Administrators Decision

Decision: The Board adopted the Final Report on Technical advice on the Rules of Procedure on Penalties imposed on Benchmark Administrators.

- 3) Final Report on Technical advice on the Rules of Procedure on Penalties imposed on DRSPs Decision

Decision: The Board adopted the Final Report on Technical advice on the Rules of Procedure on Penalties imposed on DRSPs.

26. 2020 Accounts

- 1) Cover Note Information

Conclusion: The Board took note of the Cover Note on the 2020 Accounts.

- 2) Presentation Information

Conclusion: The Board took note of the presentation on the 2020 Accounts.

- 3) Provisional 2020 Accounts Information

Conclusion: The Board took note of the Provisional 2020 Accounts.

- 4) Report on budgetary and financial management Information

Conclusion: The Board took note of the Report on budgetary and financial management.

- 5) Representation Letter 2020 Provisional Accounts Information

Conclusion: The Board took note of the Representation Letter for the 2020 Provisional Accounts.

6) Report from Baker Tilly

Information

Conclusion: The Board took note of the Report from Baker Tilly.

27. **A.O.B.**

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Karen Dorte Abelskov	
Germany	Marcus Hein (alternate)	
Estonia	Andre Nõmm	
Ireland	Derville Rowland	
Greece	Vasiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Carmine di Noia (alternate)	
Cyprus	Demetra Kalogerou	
Latvia	Santa Purgaile	
Lithuania	Ruta Merkeviciute	

Luxembourg	Claude Marx	
Hungary	Gergő Szeniczey	
Malta	Christopher Butigieg	
Netherlands	Laura van Geest	
Austria	Eduard Mueller	
Poland	Magdalena Łapsa-Parczewska	
Portugal	Gabriela Figueiredo Dias	
Romania	Oana Stefanoiu (alternate)	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Peter Tkáč	
Finland	Anneli Tuominen	
Sweden	Erik Thedéen	
ESMA Chair	Steven Maijoor	

Non-voting members

European Commission	Ugo Bassi	
EBA	Anne Tiedeman (alternate)	

EIOPA	Kai Kosik (alternate)	
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
Chair of the CCP Supervisory Committee	Klaus Löber
Summary of Conclusions	Frederiek Vermeulen
Head of Risk Analysis and Economics Department	Steffen Kern

Done at Paris on 31 May 2021

Anneli Tuominen, Interim Chair

For the Board of Supervisors