

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 14 December 2016
Time: 08h30 – 17h00
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

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| 1. Adoption of agenda | BS/308 | Decision |
| Decision: The agenda was adopted. | | |
| 2. Summary of conclusions | | |
| — 9 November 2016 meeting | BS/309 | Decision |
| Decision: The summary of conclusions | | |
| 3. Report by Chair and Executive Director | Oral | Information |

The Chair reported on:

- His meetings with Members of the European Parliament during which he highlighted, among others, the need of providing ESMA with sufficient time to develop technical standards;
- The December 2016 meeting of the Management Board, in particular the discussions on the 2018 budget;
- The activities of the European Systemic Risk Board (ESRB) and in particular those related to the review of the European Market Infrastructure Regulation (EMIR) and of the Alternative Investment Fund Managers Directive (AIFMD);
- The activities of the Joint Committee and in particular the work related to the Packaged Retail and Insurance-Based Investment Products (PRIIPs);
- The activities of the Securities and Markets Stakeholder Group (SMSG);
- The invitation received from the French Autorité de Contrôle Prudentiel et de Résolution (ACPR) to participate in the LCH Crisis Management Group;
- The work ESMA is conducting in the light of the United Kingdom leaving the European Union (EU); and
- His meeting with Olivier Guersent, director-general of the Financial Stability, Financial Services and Capital Markets Union Directorate at the European Commission.

The Executive Director reported on the:

- December 2016 meeting of the Financial Services Committee and in particular on the discussions relating to the use of financial technology;
- Fact that the Delegated Projects Boards on Financial Instruments Reference Data (FIRDS) and Access to Trade Repository Data (TRACE) were invited to approve the participation of the Bulgarian FSC in the project; and
- Vacancies for Seconded National Experts (SNEs) which ESMA will launch, encouraging NCAs to actively consider these opportunities for their staff.

4. Trends, Risks and Vulnerabilities Report

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| — Cover Note | BS/310 | Discussion |
| — Trends, Risks and Vulnerabilities Report | BS/311 | Discussion |
| — Presentation | BS/312 | Discussion |

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

The Board discussed the report, in particular:

- Developments in the European banking sector and the potential impact on securities markets, especially on retail investors;
- The potential impact of the US presidential elections and the expected policy of a new administration; and
- The supervision of critical benchmarks and the participation of banks in the panels.

Conclusion: The Board discussed the draft Trends, Risks and Vulnerabilities report. The final report will be presented for approval by written procedure. ESMA staff will continue to monitor the developments in the banking sector and report appropriately.

5. Product Intervention

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| — Cover Note | BS/313 | Discussion |
| — Opinion on the impact of the Exclusion of Fund Management Companies from the scope of the product intervention powers under MiFIR | BS/314 | Decision |

Jean Paul Servais presented the opinion on the impact of the exclusion of fund management companies from the scope of the product intervention powers under MiFIR.

The Board discussed the opinion, in particular:

- The interaction with national legislation where fund management companies might not always be excluded from the scope and the role of passporting;
- Whether ESMA should invite the European Commission to consider the issue further as part of the upcoming UCITS review; and
- The relevance for other financial services legislation and whether there is a need for further impact assessment.

Decision: The Board adopted the opinion including an amendment that different product intervention powers might be in place due to national implementation measures. Karel Juras (CZ) abstained. Francoise Kauthen (LU) voted against.

6. Packaged Retail and Insurance-Based Investment Products

—	Cover Note	BS/315	Discussion
—	Opinion on Commission proposed amendments to PRIIPs RTS	BS/316	Discussion

The Investment Management Team Leader presented the draft Opinion developed by the three European Supervisory Authorities on the amendments to the PRIIPs regulatory technical standards proposed by the European Commission.

The Chair outlined the process towards the adoption of the Opinion by the three Boards by written procedure.

The Board discussed the Opinion, in particular:

- A preference for the original version of the standards regarding the moderate scenario and the impact of the amendments on retail investors; and
- The concerns expressed by the insurance industry, especially with respect to multi option products.

Conclusion: The Board discussed the Opinion. Elisabeth Roegele (DE), Cyril Roux (IE) and Nicoletta Giusto (IT) expressed concerns on the current proposal. The Opinion will be presented for decision to the Boards of Supervisors of the three Supervisory Authorities by written procedure.

7. 2017 Supervisory Convergence Work Programme

—	Cover Note	BS/317	Discussion
—	Draft Supervisory Convergence Work Programme	BS/318	Discussion

The Head of Legal, Convergence and Enforcement presented the draft supervisory convergence work programme and updated the meeting on the discussion the Management Board had on the work programme during its December 2016 meeting.

The Board discussed the draft work programme, in particular the:

- Use of peer reviews and the resource impact on national competent authorities;
- Role of risk-based supervision and priorities set by national competent authorities in the context of supervisory convergence;
- Need for a pro-active approach in ensuring adequate investor protection in the context of cross-border services; and
- Importance of EMIR and AIFMD data quality and the role of the delegated project on access to trade repository data in that context.

Conclusion: The Board discussed the supervisory convergence work programme which will be presented to the Board of Supervisors for approval during the January 2017 meeting.

8. 2018 Planning

—	Cover Note	BS/319	Discussion
—	Presentation	BS/320	Discussion
—	Draft 2018-2020 Single Programming Document	BS/321	Discussion

The Executive Director presented the 2018 planning and draft 2018-2020 single programming document.

The Board discussed the 2018 planning, in particular the:

- Origins of the overall increase and whether the contribution from supervised entities is sufficient;
- Development of the budget allocated to IT projects;
- Impact of carrying out certain activities by ESMA staff that are currently executed by consultants;
- Need to further develop key performance indicators; and
- Participation of ESMA staff in events organised by third parties.

Conclusion: The Board discussed the 2018-2020 draft single programming document. It was agreed to present a revised version to the January 2017 Board of Supervisors meeting for adoption, including the new tasks of the Prospectus Directive and the Money Market Funds Regulation in the planning, and considering de-prioritisation of the European Electronic Access Point (EEAP), to achieve an outcome that – despite the new tasks – lowers the NCA contributions. The contribution of supervised entities will also be looked at within the context set by EU law.

9. 2016 CCP Peer Review

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| — | Cover Note | BS/322 | Discussion |
| — | 2016 CCP Peer Review Report | BS/323 | Decision |

Nicoletta Giusto presented the 2016 CCP Peer Review Report.

The Board discussed the report, in particular:

- The supervisory actions taken since the drafting of the report;
- The need to consider the national context and powers attributed to competent authorities;
- Whether or not to publish the report on an anonymous basis; and
- The use of on-site visits.

Decision: The Board adopted the 2016 CCP Peer Review Report acknowledging that supervision is risk-based and that on-site visits are required under EMIR. Such visit might however vary in frequency and depth depending on the supervisory needs identified by the national competent authorities. The report will be anonymised.

10. Mandatory Peer Review Methodology

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| — | Cover Note | BS/324 | Discussion |
| — | Methodology for Mandatory Peer Reviews in relation to CCPs' authorisation and supervision under EMIR | BS/325 | Decision |

The Head of Legal, Convergence and Enforcement presented the methodology for mandatory peer reviews in relation to CCPs' authorisation and supervision under EMIR.

The Board discussed the methodology, in particular

- The involvement of the Post-Trading Standing Committee (PTSC); and
- Whether the peer review should focus on promoting convergence of supervisory practices or supervisory outcomes,

Decision: The Board approved the methodology for mandatory peer reviews in relation to CCPs' authorisation and supervision under EMIR. The focus on supervisory practices (based on the requirements under EMIR) was confirmed. The methodology will be made public.

11. Contracts for Difference and other speculative products

—	Cover Note	BS/326	Discussion
—	Q&As on passporting	BS/327	Decision

Merel van Vroonhoven presented the Q&A on passporting related to contacts for difference and other speculative products.

The Board discussed the Q&A on the treatment of third parties who are actively involved in the acquisition of clients and promotion of the services of investment firms from another jurisdiction, in particular the:

- Potential impact on other financial services legislation;
- Importance of this issue for the protection of investors when services are provided cross-border; and
- Need for further legal advice.

Decision: The Board instructed the Investor Protection and Intermediaries Standing Committee (IPISC) to reconsider the proposed Q&A 2, including on the basis of amongst others legal advice from ESMA staff. The Board adopted Q&A 1, 4, 5 and 6. Sophie Degenne (SE) disagreed.

12. MAR Accepted Market Practice

—	Note on the Accepted Market Practice on liquidity contracts	BS/328	Decision
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Nicoletta Giusto presented the note on the accepted markets practice on liquidity contracts.

The Board discussed the note, in particular:

- The threshold not to be exceeded for illiquid shares and to be specified in the alternative market practice; and
- Whether market consultation is needed.

Decision: The Board adopted the points for convergence in relation to accepted market practices under the Market Abuse Regulation (MAR) on liquidity contracts. It was decided to increase the threshold to be specified and not exceeded for illiquid shares from 0.5 to 1%.

—	Opinion on MAR Accepted Market Practice by CNMV	BS/329	Decision
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Decision: The Board adopted the Opinion including a recommendation to the CNMV to reconsider the points currently departing from the agreed points for convergence.

13. Follow-up on Best Execution Peer Review

—	Cover Note	BS/330	Discussion
—	Follow-up report to the peer review on best execution	BS/331	Decision

The Head of Legal, Convergence and Enforcement presented the follow-up on Best Execution Peer Review.

The Board discussed the report, in particular

- the action undertaken by the relevant national competent authorities; and
- Whether the report should be published.

Decision: The Board approved the follow-up report on the peer review on best execution subject to some drafting changes. The report will be made public.

14. Q&As and other own initiative supervisory convergence tools

- Issues note on ESMA's use of Q&As and other own initiative supervisory convergence tools BS/332 Discussion

The Executive Director presented the note on ESMA's use of Q&As and other own initiative supervisory convergence tools.

The Board discussed the note, in particular

- How to improve the presentation on ESMA's website of both the Q&As and the process leading to Q&As;
- The importance of stakeholder consultation on significant issues including through for example consultative working groups;
- Whether introducing national consultations should be considered;
- The non-binding nature of Q&As and their conformity with level 1;
- The interaction with other legal instruments and the need to maintain a flexible instrument to provide market participants with swift guidance; and
- Whether existing Q&As should be re-considered on a regular basis.

Conclusion: The Board endorsed the existing approach to Q&As noting that there should be sufficient need for guidance by stakeholders when deciding to issue a Q&A. ESMA should actively consider on a case-by-case basis whether there is a need for other legal instruments on which market participants are consulted (e.g. Guidelines) depending on the impact on market participants. ESMA will increase the presentation of both Q&As and the process leading to them on its website. ESMA will consult stakeholders on Q&As where relevant and needed through the existing Consultative Working Groups (CWGs) and the Securities and Markets Stakeholder Group (SMSG). The Board agreed not to introduce national consultations.

15. Impact of the Data Protection Regulation on Cooperation with third countries

- Issues Note BS/333 Discussion
BS/379
BS/380
BS/381
BS/382

The Head of Legal, Convergence and Enforcement presented the note on the impact of the data protection regulation on cooperation with third countries.

The Board discussed the note, in particular:

- The importance of sharing information between supervisory authorities whilst ensuring conformity with the data protection framework; and
- The need for a consistent approach within the European Union.

Conclusion: The Chair and ESMA staff will advocate at international and EU level for a workable solution based on the way forward set out in the note. The Chair will continue to inform the Board about any developments following further contacts with representatives of WP29 and/or the IOSCO high-level group.

16. Rules of Procedure on Professional Secrecy for non-Staff

- Cover Note BS/334 Discussion

- Draft Rules of Procedure on Professional Secrecy for non-Staff BS/335a- Discussion
b

The Head of Legal, Convergence and Enforcement presented the draft rules of procedure on professional secrecy for non-staff.

The Board discussed the draft rules of procedure, in particular:

- The potential support of internal control functions within national competent authorities;
- The legal basis for the rules of procedure; and
- Confirming that members of Consultative Working Groups (CWGs) are not in scope of the proposed rules of procedure.

Decision: The Board endorsed the draft rules of procedure on professional secrecy for non-staff subject to some drafting changes. Karel Juras (CZ) disagreed. A reference to the potential support of existing internal control functions within national competent authorities will be included.

17. Implementation Schedule for pre-trade transparency waivers in 2017 and assessment of substantial amendments to existing waivers

- Issues Note BS/336 Decision

Elisabeth Roegele presented the implementation schedule for pre-trade transparency waivers in 2017 and assessment of substantial amendments to existing waivers.

Conclusion: The Board approved the implementation schedule and the related Q&A. Regarding the Q&A on the substantial amendments to MiFID I waivers to make them MiFID II compliant, the Board opted for option 2. It was agreed to include a reference to the different table for trading venue applications in one Member State.

18. Functioning of CRR and EMIR obligations

- Cover Note BS/337 Discussion
- EBA/ESMA Report on the functioning of CRR with the related obligations under EMIR BS/338 Decision

Decision: The Board adopted the EBA/ESMA Report on the functioning of the Capital Requirements Regulation with the obligations under EMIR.

19. Trade Repository Public Data under EMIR

- Cover Note BS/339 Discussion
- Consultation Paper on Public Trade Repository Data under EMIR BS/340 Decision

Decision: The Board approved the consultation paper on Public Trade Repository Data under EMIR.

20. European Single Electronic Format

- Cover Note BS/341 Discussion
- Feedback Statement on the European Single Electronic Format BS/342 Decision
BS/342
Annex 1

Hannelore Lausch presented the feedback statement on the European Single Electronic Format (ESEF).

The Executive Director informed the Board that ESMA will only be able to deliver the absolute minimum to meet the legal obligation. Despite the fact that EIOPA will provide support in terms of technical knowledge on electronic reporting, ESMA faces significant resource constraints and thus will not be able to provide an optimal solution. In this context, the Executive Director made the link with the work in relation to the European Electronic Access Point (EEAP), a project which has already been delayed and may need to be completely deprioritized (in light of the 2018 budget constraints).

The Executive Director will explore budget and timing possibilities in the light of the wider budget discussion and come back to the Board in January 2017.

The European Commission representative emphasised the importance of respecting deadlines set out in EU law.

Conclusion: The report will be presented to the Board for approval by written procedure.

21. Post-Trading Standing Committee

— PTSC Report	BS/343	Information
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Conclusion: The Board took note of the report.

— Update on Portfolio Margining	BS/344	Discussion
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Conclusion: The Board took note of the update on portfolio margining.

22. TR fees under SFTR

— Cover Note	BS/345	Information
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— Consultation Paper on Fees for registration, recognition and supervision of trade repositories under SFTR	BS/346	Decision
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Decision: The Board adopted the consultation paper on fees for registration, recognition and supervision of trade repositories under SFTR.

23. Corporate Reporting Standing Committee

— CRSC Report	BS/347	Information
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Conclusion: The Board took note of the report.

— ESMA Input to EFRAG on endorsement on IFRS 9 / IFRS 4	BS/348	Decision
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Decision: The Board approved the ESMA input to EFRAG endorsement on IFRS 9 and IFRS 4.

— Terms of Reference ESEF Task Force	BS/349	Decision
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Decision: The Board adopted the terms of reference of the ESEF Task Force.

24. Secondary Markets Standing Committee

— SMSC Report BS/350 Information

Conclusion: The Board took note of the report.

— MiFID II Q&A BS/351 Decision

Decision: The Board adopted the Q&A.

25. Commodity Derivatives Task Force

— CDTF Report BS/352 Information

Conclusion: The Board took note of the report.

— Amendment to Implementing Technical Standard on Individual Position Reporting BS/353 Decision

Decision: The amendment to Implementing Technical Standards on Individual Position Reporting will be presented to the Board for adoption by written procedure.

— MiFID II Q&As BS/354 Decision

Decision: The Board adopted the MiFID II Q&As.

26. Market Data Standing Committee

— MDSC Report BS/355 Information

Conclusion: The Board took note of the report.

— MiFIR Q&A BS/356 Decision

Decision: The approved the Q&A.

27. Market Integrity Standing Committee

— MISC Report BS/357 Information

Conclusion: The Board took note of the report.

— MAR Q&A BS/358 Decision

Decision: The Board adopted the MAR Q&A.

28. Investor Protection and Intermediaries Standing Committee

— IPISC Report BS/359 Information

Conclusion: The Board took note of the report.

— Q&A on MiFID II on post-sale reporting BS/360 Decision

The Board discussed the Q&A on MiFID II post-sale reporting.

Decision: The Board adopted the Q&As. Gerard Rameix (FR) and Françoise Kauthen (LU) disagreed with the Q&A on post-sale reporting.

— IT-Register on Investment Firms and Sanctions – Practical Guidance on data notification procedure BS/361 Decision

Decision: The Board approved the guidance on data notification procedure.

— Guidelines on the Assessment of Knowledge and Competence for Firm's staff – corrigendum BS/362 Decision

Decision: The Board adopted the corrigendum to the Guidelines on the Assessment of Knowledge and Competence for Firm's staff.

29. Investment Management Standing Committee

— IMSC report BS/363 Information

Conclusion: The Board took note of the IMSC report.

— Q&As on AIFMD BS/364 Decision

Decision: The Board adopted the Q&As on AIFMD.

— Terms of Reference Asset Segregation Task Force BS/365 Decision

Decision: The Board adopted the terms of reference for the Asset Segregation Task Force.

30. Corporate Finance Standing Committee

— CFSC Report BS/366 Information

Conclusion: The Board took note of the report.

— Prospectus Q&A on Alternative Performance Measures BS/367 Decision

Decision: The Board adopted the Prospectus Directive Q&A on Alternative Performance Measures.

31. Financial Innovation Standing Committee

— FISC Report BS/368 Information

Conclusion: The Board took note of the report.

— Terms of Reference Product Intervention Task Force BS/369 Decision

Decision: The Board adopted the terms of reference for the Product Intervention Task Force.

32. Supervisory Convergence Standing Committee

— SCSC Report BS/370 Decision

Decision: The Board took note of the report and agreed on the proposed on-site visits to be conducted in the context of the peer review on enforcement of financial information.

33. Implementation agreement EU and EEA-EFTA Ministers of Finance

- Cover Note BS/371 Information

Conclusion: The Board took note of the report.

- Memorandum of Understanding with the EFTA Surveillance Authority BS/372 Decision

Decision: The Board adopted the Memorandum of Understanding with the EFTA Surveillance Authorities and the European Supervisory Authorities (ESAs) subject to no significant amendments from other parties for which the agreement of the Memorandum is sought.

- Rules of Procedures ESMA Board of Supervisors 2012/BS/
88rev3 Decision

Decision: The Board adopted the amendments to the Rules of Procedure of the Board of Supervisors.

34. A.O.B.

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35. Future meetings

- 26 January 2017 (Paris)
- 29 March 2017 (Paris)
- 23 May 2017 and 24 May 2017 (including Away Day – Malta)
- 5 and 6 July 2017 (including joint Board/SMSG – Paris)
- 27 September 2017 (Paris)
- 7 and 8 November 2017 (including joint Board/SMSG – Paris)
- 14 December 2017 (Paris)

Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Karina Karaivanova	
Czech Republic	Karel Juras (alternate)	
Denmark	Birgitte Sogaard Holm	
Germany	Elisabeth Roegele	Hannelore Lausch Marcus Hein
Estonia	Andre Nomm	
Ireland	Cyril Roux	Martin Moloney Cian Murphy
Greece	Charalampos Gotsis	Anastasia Maltoudi
Spain	Sebastian Albella	Antonio Mas
France	Gerard Rameix	Benoit de Juvigny Francoise Buisson Antonio Ocana Alvarez
Croatia	Pierre Matek	
Italy	Nicoletta Giusto (alternate)	

Cyprus	Demetra Kalogerou	
Latvia	Sandis Andersmits (alternate)	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Francoise Kauthen (alternate)	
Hungary	Gergo Szeniczey	
Malta	Marianne Scicluna	
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus Kumpfmuller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Cristina Dias
Romania	Misu Negritoiu	Raluca Tariuc
Slovenia	Milos Cos	Sabina Bešter
Slovakia	Ivan Barri	Tomas Ambra
Finland	Jarmo Parkkonen (alternate)	Ville Kajala
Sweden	Sophie Degenne (alternate)	
United Kingdom	Edwin Schooling Latter (alternate)	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Uwe Eiteljoerge
EBA	Adam Farkas	
EIOPA	Patrick Hoedjes	
ESRB	Francesco Mazzaferro	
Iceland	Unnur Gunnarsdottir	
Liechtenstein	Marcel Lötscher	
Norway	Marte Voie Opland (alternate)	Marianne Elind Skaane
EFTA Surveillance Authority	Frank Buchel	Per Christian Baeroe

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Supervision Department	Felix Flinterman
Head of Markets Department	Rodrigo Buenaventura



Done at Paris on 26 January 2017

Steven Majoor

For the Board of Supervisors