

## DECISION OF THE MANAGEMENT BOARD

### Rules of procedure

#### The Management Board

**Having regard** to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC<sup>1</sup> (the “Regulation” and “ESMA”) and in particular Articles 45 to 50 of the Regulation

**Whereas** in order for the Management Board to give guidance to the work of ESMA and fulfil the tasks given to it under Article 47 of the Regulation, and to fulfil the requirement of Article 47(7) of the Regulation, it is necessary for the Management Board to adopt rules of procedure.

#### Has adopted this decision:

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#### Article 1 – Composition

##### *Members*

- (1) In accordance with Article 45(1) and 45(2) of the Regulation, the Management Board shall be composed of the following (each a “Member”):
  - (a) the Chairperson; and
  - (b) six members of the Board of Supervisors elected by the Board of Supervisors.

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84.



### *Participants*

- (2) In accordance with Article 45(2) of the Regulation, the following shall participate in the work of the Management Board (each a “Participant”):
  - (a) the Executive Director (who shall be non-voting); and
  - (b) a representative of the Commission (who shall be non-voting except on matters referred to in Article 63 of the Regulation (Establishment of the budget)).

### *Observers*

- (3) The Management Board may decide to admit observers and invite experts.
- (4) The Vice-Chairperson shall be entitled to attend Management Board meetings as an observer.

### **Advisers**

- (5) Members and Participants may each be accompanied at meetings of the Management Board by one adviser. The Chairperson and Executive Director may be assisted by other ESMA staff.

### **Notification of documents**

- (6) The Chairperson shall maintain a list of the Members, Participants and observers and of alternates nominated in accordance with Article 5(8). Members, Participants and observers shall notify the Chairperson of the email addresses to which notifications required by these rules of procedure shall be sent and shall inform the Chairperson of any necessary change.

### **Article 2 – Tasks**

- (1) The Management Board’s tasks are those assigned to it in Article 47 of the Regulation (see the Annex).
- (2) In addition, the Management Board shall carry out other tasks delegated to it by the Board of Supervisors.
- (3) The Management Board may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, or to the Chairperson or Executive Director.

### **Article 3 – Chairmanship**

- (1) Meetings of the Management Board shall be chaired by the Chairperson, or by the Vice-Chairperson if the Chairperson is absent or unable to attend.
- (2) If both the Chairperson and the Vice-Chairperson are absent or unable to attend a meeting, those Members present shall elect a Member to chair the meeting.



## **Article 4 – Decision making procedures**

### *Quorum*

- (1) A quorum is constituted at every duly convened Meeting of the Management Board provided that five Members are represented. In the absence of a quorum the Chairperson shall decide whether to close the meeting and convene another as soon as is practicable, or to continue the meeting and take provisional decisions that shall be ratified by written procedure.

### *Voting*

- (2) Each Member has one vote.
- (3) The representative of the Commission has one vote on matters referred to in Article 63 of the Regulation (Establishment of the budget) and for those purposes shall be considered a Member.
- (4) Decisions of the Management Board shall be adopted on the basis of a majority of Members present.

### *Written procedure*

- (5) Where appropriate, decisions may be taken by written procedure, on a proposal from the Chairperson circulated to the Management Board:
  - (a) stating the time and date by which votes must be cast;
  - (b) where, exceptionally, the period for casting votes is less than 10 calendar days, giving the reason for the short period;
  - (c) describing the key issues and whether the decision proposed is consensual or controversial; and
  - (d) providing any other material considered necessary for making the decision that has not previously been forwarded to the Management Board.
- (6) Votes on decisions being taken by written procedure shall be in written form and a failure to vote shall be considered a vote for the proposal.
- (7) The result of a written procedure shall be notified without delay to the Management Board.
- (8) Members may ask the Chairperson to consider discussing at the next meeting of the Management Board aspects of an issue that has been the subject of written procedure. Such a request shall not affect the use or the result of a written procedure but shall be without prejudice to the ability of the Management Board to amend or reverse its decision in a subsequent vote.



## **Article 5 – Meetings**

### *Convening meetings*

- (1) Meetings of the Management Board shall be convened by the Chairperson at his or her own initiative or at the request of at least one third of its Members. Invitations shall be sent to email addresses notified by each Member, Participant and observer to the Chairperson for that purpose.
- (2) The date and place of future meetings shall normally be decided at meetings of the Management Board. Meeting dates and places that have not been decided in this way shall be notified by the Chairperson to the Management Board as soon as practicable.
- (3) Meetings shall normally be held at ESMA's premises, unless the Management Board decides otherwise. Meetings may be held by telephone or video conference call, or other technical means.
- (4) The Management Board shall meet preceding every meeting of the Board of Supervisors and as often as it deems necessary. It shall meet at least five times a year in session.
- (5) When circumstances require, and provided a majority of the Members and Participants does not object, the Chairperson may change the date or place of a meeting. Notification of such change shall be given to Members and Participants no later than three weeks before the original or revised date of the start of the meeting, whichever is the earlier.
- (6) When a meeting is requested by one third of the Members, the Chairperson shall convene a meeting to take place within six weeks of receipt of the request, or as soon as practicable in urgent cases.
- (7) An agenda, accompanied by the relevant material for decision making, shall be forwarded to the Members, Participants and observers at least 10 days prior to a meeting, or as soon as practicable in urgent cases.

### *Attendance*

- (8) Each Member shall be responsible for nominating an alternate who may replace the Member if that person is prevented from attending.
- (9) The Commission representative and any observers shall not attend any discussions within the Management Board relating to individual financial institutions, unless otherwise provided for in Article 75 of the Regulation or in the acts referred to in Article 1(2) of the Regulation.

### *Agenda*

- (10) The Chairperson shall decide the agenda for each meeting.

### *Minutes*

- (11) The Secretariat shall prepare minutes of each meeting of the Management Board setting out the decisions taken with figures for the votes cast at each vote. The draft minutes shall be forwarded to the Management Board within two weeks of the meeting. Once approved by the Members, the



minutes shall be signed by the Chairperson and forwarded to the Management Board and to the Board of Supervisors.

- (12) The Chairperson shall report to the Board of Supervisors on the activities and decisions of the Management Board since the previous meeting of the Board of Supervisors.

## **Article 6 – Code of conduct**

### *Independence*

- (1) When carrying out the tasks conferred upon it by the Regulation, the Chairperson and the Members shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.

### *Confidentiality*

- (2) All proceedings of the Management Board shall be confidential. Anyone attending shall respect their confidentiality and shall comply with ESMA's internal rules of procedure concerning professional secrecy.

### *Transparency*

- (3) The decisions and minutes of meetings of the Management Board shall be subject to the provisions on access to documents in Article 72 of the Regulation and measures taken for its implementation.

### *Conflicts of interest*

- (4) Members and their alternates shall disclose to the Management Board any conflict of interest which that individual may have and is aware of before the resolution of a matter to which that conflict relates. Such an individual shall not vote on a matter where that individual has a material conflict of interest.

## **Article 7 – Secretariat**

- (1) The Executive Director shall provide a secretariat and the appropriate administrative support to enable the Management Board to carry out its work.

## **Article 8 – Final provisions**

- (1) This decision shall be reviewed within one year of it entering into force.
- (2) This decision enters into force immediately and shall be made public.



Done at Paris on 11 January 2011

Carlos Tavares  
Vice-Chair  
For the Management Board



## **ANNEX**

### **Tasks of the Management Board**

The following tasks are assigned to the Management Board in Article 47 of the Regulation:

The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.

- (3) The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.
- (4) The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64.
- (5) The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities.
- (6) The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.
- (7) The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) to the Board of Supervisors for approval.
- (8) The Management Board shall adopt and make public its rules of procedure.
- (9) The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5).