

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 24 September
Time: 09:00 – 17:30h
Location: ESMA, Paris
Contact: max.simonis@esma.europa.eu T: +33 1 58 36 59 46

No Items

1. Confidential items

VOTING MEMBERS & ADVISORS ONLY

2. Adoption of agenda

BS/124 decision

Decision: The agenda was adopted.

3. Summary of conclusions of July meeting

BS/125 decision

Decision: The summary of conclusions was approved with the inclusion of a written comment from Anna Jegnell (SE) on item 10.

4. Report by Chair and Executive Director

Oral information

The Chair reported on;

- the recent activities of the European Systemic Risk Board;
- the recent activities of the Securities and Markets Stakeholder Group, the renewal process for the group and the upcoming joint meeting with the Board of Supervisors;
- the recent activities of the Joint Committee and joint activities by the ESAs, in particular in the area of benchmarks;
- the meeting with Commissioner Barnier, in particular the discussions on the 2014 ESMA budget,



ESFS review, benchmarks, the reporting requirements for exchange traded derivatives and ESMA's participation in the IFRS Monitoring Board;

- the meeting of the EFC-FST that took place on 29 August in Brussels;
- the meeting of OTC Derivatives Regulators Group that took place on 20 September in Paris;
- the advice from Advocate General Jaaskinen to the Court of Justice regarding the Short Selling Regulation;
- the decision by IOSCO to grant ESMA observership in the IOSCO Board;
- the composition of the Mediation Panel. The Board approved the proposal to continue with the mechanism that the Management Board members are automatically also the members of the Mediation Panel. Jean Guill (LU) and Kostas Botopoulos (EL) will serve as full members;
- the opening of an investigation under the Breach of Union Law procedure;
- the appointment of Carlos Alves (PT) as Chair of the Committee for Economic and Market Analysis; and
- the Management Board meeting that took place on 23 September, mentioning in particular the discussions on the ESMA 2014 Work Programme and the validation of the accounting systems.

The Executive Director reported on;

- the developments regarding ESMA's 2014 budget and the discussions with the European Commission on an alternative funding model for ESMA;
- the activities in the area of stress testing and the decision to put the stress testing of trading venues on-hold due to uncertainty over the availability of appropriate resources;
- recent developments on LEI; and
- the translation requirements for documents and the decision not to automatically translate memoranda of understanding contained in certain guidelines. In case of other agreements it will be decided on a case-by-case basis.

- Maystadt review on accounting

*BS/126 discussion
& Annex*

The Head of the Investment and Reporting Division presented the note.

The Board discussed the note, in particular;

- the current process of endorsement of IFRS in Europe;
- to ensure that the public interest is sufficiently considered as part of the endorsement advice; and



- the need for more involvement of ESMA and the other ESAs in the endorsement process.

Conclusion: The letter will be revised taking into account the guidance from the Board and sent for approval by written procedure.

5. Issues related to supervisory convergence

- Position Paper on the European Commission’s letters on instances of inconsistent application of the Short Selling Regulation and on the format of the base prospectus *BS/127 decision & annexes*

The Head of the Legal, Cooperation and Convergence Unit presented the report.

The Board discussed the report, in particular the interpretation of the market making exemption under Article 17 of the Short Selling Regulation (SSR) and the compliance with the ESMA Guidelines.

With regard to the format of prospectuses it was agreed that some form of grandfathering would have to be found concerning the tripartite prospectuses approved so far.

With regard to Article 17 of the SSR the European Commission indicated that it reserves the right to take action in case of inconsistent application of the SSR by Member States.

Decision: The Board approved the proposed actions included in the report.

6. ESFS Review & follow-up Away Day

- Cover note *BS/128 information*
- Letter to the European Commission on the ESFS review *Annex 1 decision*

The Chair presented the letter to the European Commission on the ESFS review.

The Board discussed the letter, in particular;

- to include a more general description of ESMA’s achievements and areas for improvement;
- to approach ESMA’s involvement in Level 1 negotiations in a careful manner;
- when identifying areas for possible additional fees from market participants, overlap with fees levied by NCAs for the same activities should be avoided;
- the conditions under which the tool of temporary relief could be applied;
- to further clarify the topic of collection of information; and
- not to include the topic on coordination of IFRS enforcement activities.

Conclusion: The letter will be revised taking into account the discussion in the Board and sent for approval by written procedure.



- Note on the functioning of the Board of Supervisors meetings *Annex 2 discussion*

Conclusion: The Board will discuss the paper at its next meeting.

7. Review Panel

- Report by Jean Guill *BS/129 information*

Jean Guill (LU) presented the report and accompanying documents.

- New Review Panel methodology *Annex 1 discussion*

The Board discussed the new methodology, in particular;

- the composition of the assessment team, in particular the fact that it should neither contain any member from the authority being visited nor any external experts;
- the number of participants in the assessment team;
- the need for a limited use of benchmarks in order to measure assessments of national competent authorities; and
- the reporting line of the assessment group and the involvement of the Review Panel.

Conclusion: The Chair concluded that the general direction of the new methodology received broad support from the Board. The assessment team reports to the BoS, after consultation of the NCAs visited and the Review Panel. Some kind of ‘benchmarks’ will continue to be used but should not lead to mere box ticking. The Review Panel will further develop the methodology taking into account the guidance from the Board.

- MiFID Conduct of Business: proposal for on-site visits *Annex 2 decision*

Decision: The Board approved the proposal for on-site visits.

8. Work programme 2014

- Cover note *BS/130 information*
- Draft work programme 2014 *Annex 1 decision*

The Executive Director presented the draft Work Programme 2014 and informed the Board on the earlier discussion in the Management Board that resulted in minor changes to the work programme that are not yet reflected in the document.

The Board discussed the draft work programme, in particular whether a further prioritisation of tasks is needed and the allocation of resources to consumer protection.

Decision: The Board approved the draft Work Programme 2014 subject to minor amendments.



9. Consultation paper on technical advice to the European Commission on procedural rules to impose fines and periodic penalty payments to trade repositories *BS/131 decision & annexes*

The Head of the Legal, Cooperation and Convergence Unit presented the report.

The Board discussed the report, in particular;

- the establishment of a panel to carry out particular steps of the procedure in order to achieve a more effective process while keeping the Board of Supervisors sufficiently informed to execute its tasks under the ESMA Regulation; and
- the possibility for the Board of Supervisors to hear the Independent Investigation Officer.

Decision: The Board approved the consultation paper with the inclusion of amendments taking into account the discussion in the Board.

10. Investment Management Standing Committee

- Report by Gareth Murphy *BS/132 discussion*

Gareth Murphy (IE) presented the report and the accompanying documents.

- Treatment of listed non-UCITS open-ended collective investment undertakings, whereby the approach was taken that even if a listed non-UCITS open-ended collective investment undertaking (CIU) complies with the definition of ‘transferable security’, it should be considered first and foremost as a fund. This means that, if such a listed non-UCITS open-ended CIU does not comply with the criteria of Article 50(1)(e), it should not be eligible for investment by UCITS.

Conclusion: The Board endorsed the above approach.

- Matrix of signed MoUs under the AIFMD

Conclusion: The Board took note of the proposal to publish the matrix. The heading of the matrix would be amended to clarify the date at which the information was accurate.

- Final report on guidelines on reporting under the AIFMD *Annex 1 decision*

Decision: The Board approved the guidelines.

- Opinion on the collection of information under the AIFMD *Annex 2 decision*

Decision: The Board approved the opinion.



- Consolidated reporting template based on Annex IV of AIFMD Level 2 Regulation and the ESMA guidelines and opinion on reporting under the AIFMD *Annex 3 information*

Conclusion: The Board took note of the template.

- IT guidance for XML filing *Annex 4 information*

Conclusion: The Board took note of the IT guidance.

11. Committee for Economic and Markets Analysis

- Report by CEMA *BS/133 information*
- Retailisation report: cover note *Annex 1 discussion*

Gerben Everts (NL) presented the report.

Conclusion: The note will be sent to the Financial Innovation Standing Committee and the Investor Protection and Intermediaries Standing Committee for further consideration.

12. Task Force on the Legal Framework for Cooperation Arrangements and Information Exchange

- Cover note *BS/134 information*
- Draft guidelines on cooperation arrangements and information exchange between NCAs and ESMA *Annex 1 decision*

The Executive Director presented the note and the accompanying document.

Decision: The Board approved the text of the guidelines and the MMoU, with the inclusion of minor drafting amendments. The final text will be submitted for approval by written procedure together with the Annexes to the MoU. The Board approved ESMA becoming a signatory to the MMoU.

13. Post Trading Standing Committee

- Report by Giuseppe Vegas (PTSC) *BS/138 decision*

Giuseppe Vegas (IT) presented the report.

Decision: The Board agreed that the notifications to ESMA by competent authorities for the intragroup exemption should be sent by a single point of contact per Member State (the authority represented in the ESMA Board).

14. Market Data Reporting Working Group



- Report by David Lawton

BS/135 decision

David Lawton (UK) presented the report.

The Board discussed the report, in particular the possibility to combine the two options in the report on the way forward regarding the Exchange Traded Derivatives reporting in case of non-endorsement of the draft ITS by the European Commission.

Decision: The Board agreed that, if the reporting delay for ETDs is not endorsed by the Commission, to combine the two options presented in the paper. This means first drafting Q&As followed by guidelines after the MiFIR technical standards will have been prepared, in order to ensure, to the extent possible, alignment between the EMIR and MiFIR reporting requirements.

15. Progress reports

- Report by Gérard Rameix (CFSC)

BS/136 information

Conclusion: The Board took note of the report.

- Report by Verena Ross (CRA TC)

BS/137 information

Conclusion: The Board took note of the report.

- Report by Martin Wheatley (joint report on SMSC & CDTF)

BS/139 information

Conclusion: The Board took note of the report.

16. A.O.B.

17. Future meetings

- 7 November 2013 (Vilnius)
- 17 December 2013 (Paris)
- 6 February 2014 (Paris)
- 19 March 2014 (Paris)
- 22 May 2014 (Athens)
- 9 July 2014 (Paris)
- 25 September 2014 (Rome)



- 6 November 2014 (Paris)
- 17 December 2014 (Paris)



Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Dimitar Koychev (observer)	
Czech Republic	Pavel Hollmann	Karel Juráš
Denmark	Julie Galbo	Anna Maria Frost-Jensen
Germany	Karl-Burkhard Caspari	Hannelore Lausch Philipp Sudeck
Estonia	Raul Malmstein	Gerle Reinumägi
Ireland	Gareth Murphy (alternate)	Niamh Mulholland
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Lourdes Centeno (alternate)	Antonio Mas Javier Ruiz
Croatia	Silvana Bozic (alternate)	
France	Gérard Rameix	Dora Blanchet
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	
Latvia	Kristine Batraga (alternate)	
Lithuania	Renata Babkauskaitė (alternate)	
Luxembourg	Jean Guill	

Hungary	Arpad Kiraly (alternate)	
Malta	Mike Duignan (alternate)	
Netherlands	Gerben Everts (alternate)	Pim de Wild
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Anna Skrzypek
Portugal	Carlos Tavares	Carlos Alves Gabriela Figueiredo Dias
Romania	Daniel Daianu	Cristina Dumitrescu
Slovenia	Damjan Zupelj	Sabina Bešter
Slovakia	Ivan Barri	Eva Svetlosakova
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Martin Andersson	Magnus Löfgren Oskar Ode
United Kingdom	David Lawton (alternate)	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Patrick Pearson	Valerie Ledure
ESRB	Francesco Mazzaferro	
EIOPA	Patrick Hoedjes	
EBA	Corinne Kaufman	



Observers

Iceland	Sigurveig Guomundsdottir	
Liechtenstein	Reto Degen	
Norway	Anne Merethe Bellamy	Kristin Lund

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Max Simonis
Head of Markets Division	Rodrigo Buenaventura
Head of Investment and Reporting Division	Laurent Degabriel
Head of Credit Rating Agencies Unit	Felix Flinterman
Head of Economic Research & Financial Stability Unit	Steffen Kern
Head of Legal, Cooperation and Convergence Unit	Stephan Karas
Head of Communications	David Cliffe

Done at Vilnius on 7 November 2013

Steven Maijoor
Chair
For the Board of Supervisors