



SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 18 December
Time: 08:30 – 18:00h
Location: Paris
Contact: steven.maijoor@esma.europa.eu T: +33 1 58 36 51 12

No Items

1. Credit Rating Agencies

- Work programme / Risk report 2013 → **VOTING MEMBERS ONLY** *BS/152 decision*
Indicative timing: 08.30 -09.00 *BS/153*

The Head of the Credit Rating Agencies Unit presented the 2013 work programme and risk report.

The Board discussed the documents, in particular;

- the need to notify a national competent authority at an early stage in case of delegation of tasks;
and
- the thematic review of different aspects of the rating process of sovereign rating methodologies.

Decision: The Board approved the 2013 work programme and risk report.

- Consultation paper on guidelines on scope *BS/154 decision*

The Head of the Credit Rating Agencies Unit presented the consultation paper on guidelines and recommendations on the scope of the CRA Regulation.

The Board discussed the consultation paper, in particular;

- the need to clarify the activity of credit scoring and whether it falls within the scope of the CRA Regulation;
- the enforceability of the guidelines and recommendations; and
- in what cases a national authority needs to immediately inform ESMA when receiving inquiries re-



garding the CRA Regulation.

The European Commission had some drafting comments regarding the proposed requirements of ESMA related to establishing branches in third countries.

Decision: The Board approved the consultation paper taking into account the comments by the European Commission.

2. Adoption of agenda

BS/142 decision

Decision: The agenda was adopted.

3. Summary of conclusions of November meeting

BS/143 decision

Decision: The Summary of Conclusions were approved with the inclusion of comments by Gérard Rameix (FR) on the item 'Investment Management Standing Committee', comments by Laszlo Balogh (HU) on the item 'Audit reform and the role of ESMA' and comments by Jean-Paul Servais (BE) on the item 'NCAs 'best practices' on SNE positions'.

4. Report by Chair and Executive Director

Oral information

The Chair reported on;

- the previous day's Management Board meeting, in particular the discussion on the 2014 budget;
- the recent activities of the Securities and Markets Stakeholder Group;
- the recent activities of the Joint Committee and joint work done by the ESAs, in particular the self-assessment of the ESAs regarding the ESFS 2013 review and the work by the subcommittee on consumer protection and financial innovation;
- developments regarding the IMF EU-wide Financial Sector Assessment Program;
- the review of the functioning of the European Systemic Risk Board;
- the ESMA Consumer Day that took place on 12 December;
- a recent visit to the US and Canada for the high-level meeting on OTC derivatives and meetings with the SEC, CFTC, US Treasury and other organisations; and
- a letter sent to the Greek Minister of Finance regarding the Greek austerity measures and its impact on the budget of the Hellenic Capital Market Commission.

The Executive Director reported on:

- the recent activities of the CRA Unit, in particular the preparations for the future work stemming from the CRA 3 Regulation and the negotiations on a Memorandum of Understanding with the Dubai Financial Services Authority;
- the review of the Terms of Reference for the Standing Committees;

- the recent discussions within the FSB on the creation of a Legal Entity Identifier and the proposed line to be taken by ESMA in the on-going discussions;
 - the meeting of the Financial Services Committee that took place on 14 November;
 - a visit to ESMA by the European Court of Auditors in order to verify the legality and regularity of transactions performed by ESMA during 2012 and their initial oral feedback at the end of the visit;
 - the procedure for translations of documents and the proposal to set up a Translation Network. The Board agreed to establishing a Translation Network;
 - the discussions in the Management Board on the 2013 budget and the contributions by National Competent Authorities;
 - the discussions in the Management Board on the Annual Activity Report for 2011 which will be sent for approval by written procedure to the Board of Supervisors shortly; and
 - the progress of the project to extend ESMA's premises.
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- Report on OTC Derivatives Regulators meeting and next steps *BS/144 discussion*

The Chair reported on the meeting of the OTC Derivatives Market Regulators Group that took place in New York on 28 November and the next steps to be taken.

The Head of the Markets Division updated the Board on the recent developments in the US on the requirements for registration of foreign swap dealers, in particular the definition and application of substituted compliance. The registration requirement could start as early as December 31st 2012.

The Chair, supported by the European Commission, reiterated the important activities undertaken by ESMA and the European Commission in this area, that have covered interaction with all relevant US counterparties, including regulators, Treasury, and legislators. The Chair also reminded the Board that the negotiations with the US authorities on regulations are a Community competence and members should refrain from individual bilateral contacts with the US.

5. Post Trading Standing Committee

- Report from the PTSC *BS/145 information*
- Consultation Paper on guidelines/recommendations on interoperability *Annex 1 decision*

The Head of the Markets Division presented the consultation paper.

Decision: The Board approved the consultation paper. It was agreed that due to the limited scope of the mandate, the issue of taking into account trading venues could be explored at a later stage.

6. ESMA-Pol

- Report by Konstantinos Botopoulos *BS/146 information*
- Guidelines on market making under Short Selling Regulation *Annex 1 decision & 2*

Konstantinos Botopoulos (EL) presented the Guidelines on market making under the Short Selling Regulation (SSR) explaining the changes made to the remaining issues of the membership requirement and the criteria of eligibility for the exemption, following the discussion in the November Board of Supervisors meeting.

The Board discussed the guidelines, in particular;

- the legal analysis by the European Commission of the definition and scope of market making activities in the context of the exemption;
- the level of detail for the qualifying criteria that need to be adhered to if the firm wished for its activities to qualify for the market making exemption; and
- the possibility of recognizing as trading venues those platforms operated by governments and central banks that are not Regulated Markets or MTFs under MIFID.

Conclusion: The Chair stressed the importance of agreeing on the guidelines in order to have a convergent application of the exemption for market making activities. Since there is not yet QMV support at this stage, ESMA will further revise the document taking into account the discussion in the Board. The revised guidelines will be circulated for approval by written procedure in the next few days.

The European Commission indicated that when the Board would adopt a text contrary to the European Commission's legal analysis, the guidelines would not be in conformity with the Level 1 Regulation and the European Commission shall issue an interpretative recommendation. In case ESMA would not adopt any guidelines, the European Commission intends also to issue an interpretive recommendation.

7. Investment Management Standing Committee

- Report by Giuseppe Vegas *BS/147 decision*

Giuseppe Vegas (IT) presented the report.

- MoU with Brazil under the AIFMD *Annex 1 decision*

Giuseppe Vegas (IT) presented the Memorandum of Understanding (MoU) with Brazil under the AIFMD.

Decision: The Board approved the text of the MoU that should be signed between EU competent authorities and the Brazilian CVM with Karl-Burkhard Caspari (DE) abstaining.

- Consultation paper on draft regulatory technical standards on Article 4(4) of the AIFMD *Annex 2 decision*
- Consultation paper on guidelines on key concepts of the AIFMD *Annex 3 decision*



Giuseppe Vegas (IT) presented the consultation papers.

Decision: The Board approved the consultation papers. With a view at the entry into force of the AIFMD on 1 July 2013, it was decided to shorten the consultation period to six weeks.

8. Joint EBA-ESMA work on reference rates and other benchmarks-setting processes

- Cover Note *BS/148 discussion*
- Draft Consultation Paper on Principles for Benchmarks-Setting Processes in Europe *Annex 1 discussion*
- Euribor-EBF Review: Recommendations related to the administration and management of Euribor *Annex 2 discussion*

The Executive Director and Adam Farkas (EBA) presented the joint work on reference rates and other benchmarks-setting processes in Europe. The Executive Director noted that EBA and ESMA also intend to send a letter to the European Commission to provide input on a possible future regulatory framework in this area.

Martin Wheatley (UK) expressed his concerns regarding the risk of banks pulling out of the rate setting process.

Conclusion: The documents will be finalised and circulated for approval by written procedure early January.

9. CEMA

- Cover note on the trends, risks and vulnerabilities report *BS/149 information*
- Trends, risks and vulnerabilities report *Annex 1 discussion*

Carlos Alves (PT) presented the trends, risks and vulnerabilities report.

The Chair noted that the report was for discussion and, after receiving the views of the Board, will be circulated for approval by written procedure. The final report will be submitted to the EU institutions late January.

The Board discussed the report, noting in particular;

- the need to further investigate the refinancing needs of corporates, in particular banks, and sovereigns;
- that although stress in markets seems to have declined, major risks are still eminent; and
- the need to further expand the vulnerabilities section.

Conclusion: The report will be amended taking into account the discussion in the Board of Supervisors and circulated for approval by written procedure. The final report will be submitted to the EU institutions

late January.

10. Review Panel

- Report by Jean Guill *BS/150 information*

Jean Guill (LU) presented the report.

- Mapping report & self-assessment of MAD supervisory practices *Annex 1 decision & 2*

Jean Guill (LU) presented the reports.

Decision: The Board approved the mapping report and self-assessment report subject to minor changes on the basis of comments received from members.

- Peer review report & self-assessment on MMF guidelines *Annex 3 decision & 4*

Jean Guill (LU) presented the reports.

Decision: The Board approved the peer review report and the self-assessment report subject to minor changes on the basis of comments received from members, including mentioning in the reports the reasons for non-compliance by certain members.

11. Corporate Finance Standing Committee

- Report by Ronald Gerritse *BS/151 information*

Ronald Gerritse (NL) presented the report.

- Final Report on proxy advisors *Annex 1 decision*

Decision: The Board approved the report on proxy advisors.

- Final Technical Advice on possible delegated acts for convertible bonds in the prospectus regime *Annex 2 decision*

Decision: The Board approved the Technical Advice on possible delegated acts for convertible bonds in the prospectus regime.

- Revised and updated Q&A document on prospectus related issues *Annex 3 decision*

Decision: The Board approved the Q&A document on prospectus related issues.

- New Q&A on the term 'type of underlying' in the Prospectus Regulation *Annex 4 decision*

Decision: The Board approved the Q&A on the term 'type of underlying' in the Prospectus Regulation.

12. Investor Protection and Intermediaries Standing Committee

- Report by Jean-Paul Servais *BS/156 decision*



Jean Paul-Servais (BE) presented the report.

- Supervisory briefing suitability *Annex 1 decision*

Decision: The Board approved the supervisory briefing on suitability.

- Supervisory briefing appropriateness *Annex 2 decision*

Decision: The Board approved the supervisory briefing on appropriateness.

- Joint ESMA/EBA warning on CFDs *Annex 3 information*
 - EBA note on prudential concerns re. CFDs *Annex 4 information*

Jean-Paul Servais (BE) presented the joint ESMA/EBA warning on CFDs, explaining the activities by the Investor Protection and Intermediaries Standing Committee on complex products. He expressed concerns that in this case the activities of EBA and ESMA were overlapping, with EBA undertaking work in the area of ESMA's competences on MiFID conduct of business rules.

EBA noted its tasks in relation to consumer protection and the importance of cooperation between the ESAs in this area, while fully respecting the competences of ESMA for MiFID conduct of business rules. ESMA and EBA staff will work together to ensure that for future activities there is clarity on respective responsibilities and good cooperation where necessary.

The Board discussed the joint warning, noting in particular the importance of good cooperation between the ESAs in the area of investor protection, while fully respecting each other's responsibilities.

Conclusion: The Board agreed to issue a joint ESMA/EBA warning on CFDs.

13. Corporate Reporting Standing Committee

- Report on Forbearance *157 decision
Annex 1
& 2*

The Head of the Investment and Reporting Division presented the report on Forbearance.

Decision: The Board approved the report on Forbearance.

14. ESMA organisation & Joint Committee

- ESFS 2013 – ESMA's self-assessment report *BS/159 discussion*

The Chair informed the Board on the review of the European System of Financial Supervision and the need to have a broader debate in the Board in the near future. The Executive Director presented the self-assessment by ESMA noting the factual nature of the data at this stage.

The Board discussed the self-assessment, noting in particular the need to have a broader, more strategic discussion in the near future.

Conclusion: The Board took note of the self-assessment. The section on the Single Rulebook will be expanded with other examples of convergence tools such as Q&As. The final self-assessment will be sent for information to the Board in January and submitted to the European Commission.

- ESMA 2013 annual training programme *BS/160 information*

The Executive Director presented the ESMA 2013 annual training programme, stressing the importance of support from NCAs in organising the trainings.

Conclusion: The Board took note of the training programme.

15. Progress reports

- Report by Martin Wheatley (Commodity Derivatives Task Force) *BS/161 information*

The Board of Supervisors took note of the report.

16. A.O.B.

- Letter from Karl-Burkhard Caspari (DE) and Pavel Hollmann (CZ) regarding the use of guidelines under art. 16 of the ESMA Regulation

The letter will be discussed at the Board of Supervisors meeting in January.

- EBA mentioned the current discussions within the Basel Committee on margining requirements that are of relevance to ESMA. IOSCO is also discussing the issue.

17. Future meetings

information

- 29 January 2013 (Paris)
- 14 March 2013 (Paris)
- 22 May 2013
- 4 July 2013
- 24 September 2013
- 7 November 2013
- 17 December 2013

Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Antoniya Gineva (alternate)	
Czech Republic	Pavel Hollmann	
Denmark	Hanne Rae Larsen (alternate)	
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Raul Malmstein	Gerle Reinumägi
Ireland	Matthew Elderfield	Gareth Murphy
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Maria Elvira Rodriguez	Pablo Gasos y Casao Antonio Mas
France	Gérard Rameix	Françoise Buisson Dora Blanchet
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	
Latvia	Kristaps Zakulis	Sandis Andersmits
Lithuania	Vilius Sapoka	
Luxembourg	Jean Guill	
Hungary	László Balogh (alternate)	

Malta	Andre Camilleri	
Netherlands	Ronald Gerritse	Pim De Wild Floor Rombach
Austria	Andrea Kuras-Goldmann (alternate)	Stefan Maier
Poland	Marek Szuszkiewicz	Anna Skrzypek
Portugal	Carlos Tavares	Carlos Alves Manuel Ribeiro da Costa
Romania	Carmen Negoita	Cristina Dumitrescu
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	Slavomir Stastny
Finland	Jarmo Parkkonen (alternate)	
Sweden	Anna Jegnell (alternate)	Oscar Ode
United Kingdom	Martin Wheatley	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Patrick Pearson	Valérie Ledure
ESRB	Francesco Mazzaferro	
EIOPA	Carlos Montalvo	
EBA	Adam Farkas	

Observers

Croatia	Silvana Bozic	
Iceland	Sigurveig Guomundsdottir	
Liechtenstein	Marcel Lötscher	
Norway	Anne Merethe Bellamy	Kristin Lund

ESMA

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

Done at Paris on 29 January 2013

Steven Maijor
Chair
For the Board of Supervisors