

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

**Date:** 24 and 25 June 2015  
**Time:** 09h00 – 19h15 (24/6) and 09h00 – 13h00 (25/6)  
**Location:** ESMA, 103, rue de Grenelle, 75007 Paris  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

Wednesday 24 June 2015

**1. Adoption of agenda** BS/91 Decision

**Decision:** The agenda was approved noting that a discussion on the macro-economic developments in Greece will take place as part of the Trends, Risks and Vulnerabilities Report.

The Chair started the meeting by highlighting that there was quite a significant amount of draft Technical Standards on the agenda which are now subject to the early legal review by the legal services from the European Commission. He stressed the importance for all Board members and involved staff members in the process to respect the confidentiality of the documents.

**2. Summary of Conclusions**

— 7 May 2015 meeting BS/90 Decision

**Decision:** The summary of conclusions of the 7 May 2015 meeting was approved.

**3. Report by Chair and Executive Director** Oral Information

The Chair informed the meeting that during its confidential meeting the Board appointed the chairs of the Standing Committees starting 1 October 2015.

Corporate Finance Standing Committee	G�rard Rameix (FR)
Corporate Reporting Standing Committee	Hannelore Lausch (DE)

Financial Innovation Standing Committee	Jean-Paul Servais (BE)
Investment Management Standing Committee	Gareth Murphy (IE)
Investor Protection & Intermediaries Standing Committee	Martin Wheatley (UK)
Market Data Standing Committee	David Lawton (UK)
Market Integrity Standing Committee	Konstantinos Botopoulos (EL)
Post Trading Standing Committee	Giuseppe Vegas (IT)
Review Panel	Lourdes Centeno (ES)
Secondary Markets Standing Committee	Elisabeth Roegele (DE)

The Chairs of the Committee for Economics and Markets Analysis (CEMA) and the Commodity Derivatives Task Force (CDTF) will be appointed during the September 2015 meeting of the Board of Supervisors.

The Chair reported on:

- The different events on the Capital Markets Union in which he participated, in particular the European Commission's conference and the meeting he had with Commissioner Hill to discuss the development of the project;
- The June 2015 meeting of the Management Board and in particular the approval of the 2014 financial accounts and the first discussion on the 2016 work programme that took place;
- The activities of the Joint Committee including the preparation of the autumn 2015 risk report and the questionnaire on the funding of national competent authorities and the ESAs that was launched;
- The June 2015 IOSCO Board meeting, in particular IOSCO's work on asset management and the Cross-Border Task Force;
- The increasing number of securities markets related issues on the ESRB agenda and the discussions on market liquidity taking place within the ESRB expert group; and
- The activities of the SMSG and in particular its contribution to the Capital Markets Union Green Paper.

The Executive Director reported on the:

- Finalization and Implementation of ESMA's 2016-2020 Strategic Orientation and in particular on the organisational implications and the communication thereof to ESMA staff;
- Draft 2016 European Union budget published by the European Commission which includes a reduced budget for ESMA compared to its request. ESMA staff will work on a list of possible negative priorities in addition to the work that had already been deprioritised following the 2015 budget restrictions and as part of the original 2016 ESMA budget proposal discussion earlier this year;
- development of the Structure Finance Instruments (SFI) website and the legal concerns expressed by the European Commission resulting in the decision to focus on discussing the legal mandate and funding structure of the SFI-website further with the European Commission Services;
- Multi-lateral confidentiality agreement under development between the members of the Core Supervisory Colleges for the 3 big credit rating agencies;
- Upcoming validation decisions of significant model changes of two CCPs and the pending

- registration decision for a trade repository;
- May 2015 meeting of the Financial Services Committee that took place in Brussels and in particular on the discussions it had on the Capital Markets Union and a FSC report on level 2 measures;
- Meeting with financial attaches that took place on 1 June 2015 to present ESMA's activities and discuss ongoing developments; and
- The progress being made on the implementation of the ethics declaration for non-ESMA-staff members.

The European Commission representative stated that the Commission Services were exploring alternative approaches regarding the development of the SFI-website. He also informed the Board that the Commission Services was looking at the report on level 2 measures prepared by the FSC and stressed the importance not to hamper the appropriate inter-institutional balance.

#### 4. Investor Protection and Intermediaries Standing Committee

- Report by Jean-Paul Servais BS/92      Information

**Conclusion:** Jean-Paul Servais presented the report and the accompanying documents.

- Establishment of IPISC Working Group Annex 1      Decision

The Board discussed the proposed mandate to establish a Working Group dealing with supervisory convergence issues. The Board highlighted that there is a need for a more comprehensive debate on how ESMA could promote supervisory convergence.

**Decision:** The Board agreed to establish the proposed Working Group and will have a more strategic discussion on supervisory convergence related issues during its September 2015 meeting.

- MiFID Technical Standards Annex 2      Decision

**Decision:** The Board approved the MiFID Technical Standards.

- MiFID Draft Regulatory Technical Standard on Best Execution Annex 3      Discussion

**Conclusion:** The Board endorsed the policy aspects of the Technical Standards and will approve the Technical Standards after the legal review by the European Commission.

- Letter from FSMA on bail-in tool Annex 4      Decision

The Board discussed the letter received from the FSMA (BE) on investor protection issues in relation to the framework for the recovery and resolution of credit institutions and investment firms and in particular:

- The interaction between existing prudential regulation and investor protection and whether there is a need for additional disclosure requirements;
- The work conducted by the European Banking Authority (EBA) and the Single Resolution Board

(SRB); and

- The Warning issued by ESMA on potential risks associated with investing in contingent convertible instruments.

**Decision:** The Board agreed that IPISC should give consideration to the issue focusing on consumer protection issues and building further on the work already carried out by the EBA.

## 5. Market Data Reporting Working Group, Commodities Derivatives Task Force and Secondary Markets Standing Committee

- Joint report BS/93      Information

**Conclusion:** David Lawton presented the report and accompanying documents.

- Final Report on MiFID Regulatory Technical Standards Annexes      Discussion  
1-5

The Board discussed the Final Report on MiFID Regulatory Technical Standards, in particular:

- The changes introduced to the RTS on position limits providing more granularity regarding how the baseline for different types of commodity derivatives should be calculated and setting a fixed position limit for contracts below a certain size;
- The two tests that have to be passed cumulatively in order for investment activities to be considered ancillary and therefore an exemption from MiFID to apply and the data obtained by market participants for the impact analysis as part of the market consultation;
- The implementation time needed by the industry to implement the Technical Standards, especially in the area of data reporting;
- The disaggregation of trading data by trading venues unless there is insufficient demand;
- The tick-size standards for Exchange Traded Funds (ETFs), where in all cases the tick size table of the most liquid band should apply;
- The determination of the standard market size for systematic internalisers in shares and equity-like instruments; and
- The pre- and post-trade transparency regime including (i) the requirements that request-for-quote and voice-trading systems have to comply with, (ii) the liquidity determination of structured finance products and (iii) the liquidity determination for bonds. On the latter, in particular the reliability of the data and the implementation cost.

The Chair informed the Board about the concerns raised by the Members of the European Parliament during the different MiFID 2 related hearings that took place. ESMA staff updated the Board on the discussion that took place during an ad hoc Working Party on Financial Services organised by the Council of the European Union. The Board discussed the input received from the Members of the European Parliament and the Council of the European Union.

**Conclusion:** The Board endorsed the suggested way forward by the Secondary Markets Standing Committee (SMSC) and favoured

- Regarding the determination of standard market-size for systematic internalisers in shares and equity like instruments the option where the two smallest classes will be grouped into a single class for financial instruments with an average value of trading between zero and 20 000 EUR and set a standard market-size of 10 000 EUR;
- Regarding the request-for-quote trading system, to require the publication of all submitted quotes

in response to a request for quote at the same time (i.e. once all quotes that have been provided become executable) while rejecting that request-for-quote systems shall publish only volume weighted averages instead of individual quotes; and

- Regarding the liquidity determination for structured finance products, the alternative option under which SFPs would be assessed as a ‘supperclass’ first and only if the class as a whole surpasses a set of thresholds, SFPs would be assessed at an ISIN level and classified as liquid or illiquid;

The Board asked ESMA staff and the SMSC to look further into the issue of liquidity determination for bonds.

The Board endorsed the policy aspects of the Technical Standards and will approve the Technical Standards after the legal review by the European Commission.

## 6. Committee for Economic and Markets Analysis

- Report by Carlos Alves BS/94 information

**Conclusion:** Carlos Alves presented the report highlighting the survey on the analytical activities and mandates at national competent authorities.

- Trends, Risks and Vulnerabilities report & risk dashboard Annexes Discussion  
1-2

The Head of the Economic Research and Financial Stability Unit, presented the Trends, Risks and Vulnerabilities Report. He particularly highlighted the increased issuance activity, with capital market financing exceeding loan-based financing, the low secondary markets liquidity and the high market risk due to the sustained valuations in equity and bond markets, low commodity prices and developments in emerging markets.

The Board discussed the Report, in particular:

- The macro-economic and political developments in the Hellenic Republic;
- The high-level and further increasing market risk and the interaction with macro-economic policy; and
- The need for a more precise definition of the commonly referred to concept of ‘shadow banking’ and its impact on financial stability.

**Conclusion:** The Board took note of the draft Trends, Risks and Vulnerabilities Report, which will be approved in written procedure. The Board emphasised the importance of up-to-date and working ESMA emergency procedures and contact lists within the EU securities markets regulatory community.

## 7. Financial Stability and ESRB related activities BS/95 Discussion

The Head of the Economic Research and Financial Stability Unit, presented an overview of the key ongoing ESRB activities and ESMA’s involvement therein.

The Board discussed the presentation, in particular:

- The ESRB work on systemic risks in asset management and CCP stress-testing;
- Data collection and exchange by and between ESMA and the ESRB; and

— The position of the securities markets regulators within the ESRB.

**Conclusion:** The Board welcomed the presentation and decided that ESMA should continue prioritising its involvement in and contributions to the ESRB with a particular focus on the systemic risk in asset management and CCPs.

## 8. Financial Innovation Standing Committee

— Report by Anneli Tuominen BS/96 Discussion

**Conclusion:** Anneli Tuominen presented the report and the accompanying documents.

— Investment-based crowdfunding

○ Q&A on money laundering and terrorist financing Annex 1 Decision

**Decision:** The Board approved the Q&A on money laundering and terrorist financing.

○ Update on Supervisory Forum Annex 2 Information

**Conclusion:** The Board took note of the update on the Supervisory Forum.

— MiFIR product intervention powers

○ Task Force Terms of Reference Annex 3 Decision

**Decision:** The Board approved the Terms of Reference of the Task Force and took note that a representative of the FSMA (BE) will also participate in the group.

○ Overview of Preparations for Implementation Annex 4 Discussion

**Conclusion:** The Board took note of the overview of preparations for implementation and emphasized the need for co-ordination.

## 9. Post-Trading Standing Committee

— Report by Giuseppe Vegas BS/97 Information

Giuseppe Vegas presented the report and accompanying documents. He particular highlighted the MiFID Technical Standards on indirect clearing.

The Board discussed the Technical Standards on indirect clearing, in particular:

- The interaction between EMIR and national insolvency procedures; and
- The wish to flag to the European Commission the need to address the problem of insolvency risk.

**Conclusion:** The Board endorsed the policy aspects of the Technical Standards and will approve the Technical Standards after the legal review by the European Commission. Elisabeth Roegele (DE) informed the Board that she will abstain. The Chair of the PTSC also confirmed that the Committee will look at the issue of bank guarantees as part of the EMIR review and provide feedback to the Board of Supervisors during the September 2015 meeting.

- Draft ITS on CSD Requirements Annex 1 Decision

**Decision:** The Board approved the draft ITS on CSD requirements subject to some minor drafting changes.

- Timeframe for the delivery of CSDR related work Annex 2 Decision

The Board discussed the Technical Advice on the level of penalties for settlement fails and on the substantial importance of a CSD.

The European Commission representative stated that the Commission would welcome cost-benefit analyses from ESMA not only on Technical Standards but also Technical Advice.

**Decision:** The Board approved the Technical advice. ESMA will provide the European Commission with further qualitative cost-benefit data.

- Report on Interoperability Annex 3 Decision

The Board discussed the Report on the extension of the scope of interoperability arrangements, in particular:

- The extension to Exchange Traded Derivatives (ETD); and
- Whether further analysis is needed to identify potential risks and unintended consequences.

**Decision:** The Board approved the report proposing to extend the EMIR provisions to Exchange Traded Derivatives. Lourdes Centeno (ES), Jean Guill (LU) and Elisabeth Roegele (DE) voted against. Sabina Bešter (SL) and Andre Nomm (EE) abstained.

- Approach on buy-in Annex 4 Discussion

The Board discussed the proposed public consultation on the buy-in process under the CSD Regulation.

**Conclusion:** The Board welcomed the proposed public consultation and favoured doing so on the proposal where the party at the origin of the transaction would be responsible for the buy-in (but where, in case where the trading party would not perform, the participant would not be responsible for paying the cash compensation).

## 10. Market Integrity Standing Committee

- Report by Konstantinos Botopoulos BS/98 Decision

Konstantinos Botopoulos presented the report, highlighting the proposal to establish within the Market Integrity Standing Committee (MISC) a Task Force focusing on the mandates ESMA will receive from the Benchmark Regulation.

**Decision:** The Board agreed with the establishment of a Task Force on Benchmark.



Thursday 25 June

### 13. Corporate Reporting Standing Committee

- Report by Hannelore Lausch BS/102 Information

**Conclusion:** Hannelore Lausch presented the report and accompanying reports.

- ESMA contribution to EFRAG on IFRS 9 Annex 1 Decision

**Decision:** The Board approved the ESMA contribution to EFRAG on IFRS 9.

- Guidelines on Alternative Performance Measures Annex 2-3 Decision

The Board discussed the Guidelines, in particular:

- The legal basis of the Guidelines;
- The need for national measures accompanying the Guidelines to ensure the enforceability of the Guidelines; and
- The interaction with the work carried out by the International Accounting Standards Board (IASB) in relation to non-Generally Agreed Accounting Principles (GAAP).

**Decision:** The Board approved the Guidelines on Alternative Performance Measures, with Martin Noreus (SE) objecting.

### 14. Investment Management Standing Committee

- Report by Gareth Murphy BS/103 Information

**Conclusion:** Gareth Murphy presented the report and the accompanying documents.

- ITS on administrative penalties under the UCITS Directive Annex 1 Decision

**Decision:** The Board took note of the ITS on administrative penalties under the UCITS Directive which was at that time subject to the early legal review by the European Commission Services. The ITS will be adopted by written procedure.

- Consultation Paper on Guidelines on Sound Remuneration Policies under the UCITS Directive Annex 2 Decision

The Board discussed the Guidelines on Sound Remuneration Policies under the UCITS Directive, in particular:

- Whether the proportionality principle allows for disapplication of certain requirements;
- The interaction with the Capital Requirements Directive (CRD) and the need for a level-playing

- field; and
- The need for further data and input from market participants in the context of establishing a Capital Markets Union (CMU).

The European Commission representative highlighted the importance of consistency between UCITS and CRD4 and that proportionality does not allow disapplication. He also suggested gathering further input from market participants on the potential implications in the context of establishing a Capital Markets Union (CMU).

**Decision:** The Board decided that the UCITS V Guidelines should allow disapplication of certain remuneration requirements but that market participants should be particularly consulted on the impact of the cross-reading between securities markets legislation and prudential requirements in the context of establishing a CMU. The paper will be approved by the Board in written procedure.

- Q&A on the application of AIFMD Annex 3    Decision

**Decision:** The Board approved the Q&A on the application of AIFMD.

- Advice under Article 67 AIFMD Annex 4    Discussion

The Board discussed the Advice, in particular the need for careful assessment of the identified jurisdictions on which a definitive assessment should be delivered.

**Conclusion:** The Board took note of the Advice which will be adopted in written procedure.

- Opinion under Article 67 AIFMD Annex 5    Discussion

**Conclusion:** The Board took note of the Opinion which will be adopted in written procedure.

## 15. Joint Committee

- Update Note PRIIPS BS/104    Discussion

Anneli Tuominen presented the note.

The Board discussed the Note, in particular:

- The need for robust data before adopting specific methodologies; and
- Coverage of biometric risk and premiums in the KID.

**Conclusion:** The Board took note of the Update and will continue to be informed on the development of PRIIPs related work.

- Discussion Note on Cross-Selling Practices BS/105    Discussion

Anneli Tuominen presented the Discussion Note highlighting the importance for consistency between the three European Supervisory Authorities.

The Board discussed the Note, in particular the legal basis of the proposed Guidelines and interaction with sectoral legislation, in particular MiFID, CRD and IMD.

**Conclusion:** The Board took note of the proposed Guidelines and confirmed that, from ESMA's perspective, those could be based on MiFID.

## 16. ESMA Organisation

- Passporting fees under the EuVECA Regulation BS/106 Discussion

The Board discussed the use of passporting fees by some NCAs under the EuVECA Regulation following a request from market participants to ESMA to start a Breach of Union Law case.

**Conclusion:** The Board invited ESMA staff to conduct a fact-finding exercise to better understand which NCAs are levying fees and for which tasks.

- Memorandum of Understanding with the European Central Bank (ECB) BS/107 & Discussion Annex 1-3

The Board discussed the proposed Memorandum of Understanding with the ECB, in particular:

- The importance of reciprocity between the ECB and ESMA; and
- The identification of areas of mutual interest and the principle of separation.

**Conclusion:** The Board took note of the MoU and was invited to share comments in writing with ESMA staff.

- T2S Delegation BS/108 Decision

**Decision:** The Board approved the co-operation agreement. Sabina Bešter (SL) abstained.

- Summary of discussions and action points Board Away Day BS/109 Discussion

**Conclusion:** The Board took note of the Summary of Discussions and the proposed action points. Karl Juras (CZ) disagreed with the outcome on ESMA's response to the Capital Markets Union.

## 17. Review Panel

- Report by Jean Guill BS/110 Decision

Jean Guill presented the report. He particularly invited the Board to provide suggestions for the Review Panel's 2016 work programme and related peer reviews.

He also informed the Board that within the Review Panel a project group has been established to make a general proposal on the involvement of stakeholders in peer reviews. Pending that proposal, on an ad hoc basis, stakeholders will only be involved after the explicit approval of the NCA, and the stakeholders to be interviewed will be proposed by the concerned NCAs. NCAs have the right to refuse the possibility to interview stakeholders, without the need for providing explanations.

The Board discussed the Review Panel's 2016 work programme, in particular:

- Whether there is a need for Review Panel work stemming from the implementation of MiFID 1;
- The importance of an approach that is not driven by formal compliance; and
- Further work possible in relation to sanctions and forex.

**Conclusion:** The Board took note of the Report.

- Interim Report for the European Commission on the Prospectus Annex 1 Decision Review

**Decision:** The Board approved the Interim Report for the European Commission on the Prospectus Review.

## 18. MiFIR IT projects

- Implementation of the Transparency Regime BS/111 Decision

The Executive Director presented the Note on the Implementation of the Transparency Regime highlighting the origins and history of the IT Delegated Project as well as the request received by some national competent authorities not participating in the IT delegated project to consider a central transparency calculation and publication project and a mechanism for decentralised collection of data. She proposed the participation of interested authorities in the project (with the possibility to maintain the collection of data from trading venues, APAs and CTPs within the national jurisdiction) with a similar funding key for all delegating NCAs whatever the level of delegation they wish to use.

The Board discussed the Note, in particular:

- The need for ESMA and all competent authorities, delegating and non-delegating, to meet the deadlines enshrined in MiFID;
- Whether the same funding key should apply for delegating NCAs whatever the level of delegation they wish to use;
- The impact on the scope, overall cost and the expected delivery time of the existing project;
- The potential impact on data quality if parts of the data will be collected at national level;
- Whether already delegating national competent authorities can opt out from data collection at EU level;
- The impact of the RTS on data reporting that ESMA needs to develop.

**Decision:** The Board decided that it would welcome the participation of more NCAs in the project and that ESMA staff should prepare budget forecasts and implications for the project accordingly. This should include the possibility of a reduced contribution from NCAs that will collect data at national level. The Board will convene by conference call to discuss this further.

## 19. A.O.B.

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## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine Van Cauwenberge
Czech Republic	Pavel Hollmann (only day 1)	Karel Juras
Denmark	Thomas Brenøe	Hanne Rae Larsen
Germany	Elisabeth Roegele	Hannelore Lausch Philipp Sudeck
Estonia	Andre Nomm (alternate)	
Ireland	Cyril Roux	Gareth Murphy Niamh Mulholland Bryan Friel
Greece	Konstantinos Botopoulos	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas
Croatia	Petar-Pierre Matek	
France	Gerard Rameix	Françoise Buisson Dora Blanchet
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Liana Ioannidou

Latvia	Vadims Kolomijecs (alternate)	
Lithuania	Vytautas Valvonis	
Luxembourg	Jean Guill	
Hungary	Richard Vegh (alternate)	
Malta	Marianne Scicluna	
Netherlands	Gerben Everts (alternate)	Ellen Boelema
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Ilona Pieczynska-Czerny	Anna Skrzypek
Portugal	Carlos Tavares (only day 1)	Carlos Alves Gabriela Figueiredo Dias
Romania	Misu Negritoiu	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri (only day 1)	Tomas Ambra
Finland	Anneli Tuominen	Jarmo Parkkonen Ville Kajala
Sweden	Martin Noreus	Oskar Ode
United Kingdom	David Lawton (alternate)	Eleftheria Apostolidou

### Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Martin Merlin	Lucia Marin
ESRB	Francesco Mazaferro (only day 1)	
EIOPA	Manuela Zweimüller	
EBA	Adam Farkas (only day 1)	

### Observers

Iceland	Sigurveig Guðmundsdóttir	Inga Dröfn Benediktsdóttir
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	

### ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
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 Economic Research and Financial Stability Unit	Steffen Kern
Head of Legal, Cooperation and Convergence	Sophie Vuarlot Dignac

Done at Paris on 24 September 2015

Steven Maijor

Chair

For the Board of Supervisors