



SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 24 September 2012
Time: 11:00 – 17:30h
Location: Paris
Contact: steven.maijoor@esma.europa.eu T: +33 1 58 36 51 12

No Items

1. Adoption of agenda *BS/113 decision*

Decision: The agenda was adopted.

2. Post Trading Standing Committee

- Report by Thierry Francq *BS/114 information*
- Draft implementing and regulatory technical standards under EMIR *BS/115 decision*

Thierry Francq presented his report.

The Chair indicated that since the technical standards are a compromise proposal, members should focus only on issues where major concerns exist.

The Board discussed the report, in particular;

On OTC derivatives

- the approach adopted on the non-financials exemption, in particular on the determination of the clearing thresholds, the triggering of the clearing thresholds and the value of the clearing thresholds;

On Central Counterparties (CCPs)

- the need for commercial bank guarantees used as collateral by non-financial clearing members to be fully collateralised;



- investment policy and the cases where derivatives could be admitted as eligible investments for a CCP liquidity management framework;
- the calculation of margin requirements and the calculation of the CCP amount of own resources to be used in the default waterfall;

On Trade Repositories

- the possibility to include a requirement for reporting transactions where one of the two counterparties is a central bank to be anonymised.

Several members asked to remove the requirement for commercial bank guarantees posted as collateral by non-financial clearing members to be fully collateralised. They considered that such requirement would severely disrupt the energy derivatives markets and determine a disincentive to use CCPs in these markets. The European Commission mentioned that the technical standards needed to include strict conditions for accepting bank guarantees as collateral, because such collateral should not put the CCP at risk. The ESRB recalled their advice in which they objected to the use of commercial bank guarantees as collateral. Some members supported a limited exemption for energy derivatives.

Karl-Burkhard Caspari (DE) did not agree with the approach taken on the triggering of the clearing thresholds, where he would favour a multiple trigger solution. On the determination of the additional margins to be calculated to cater for pro-cyclicality, he preferred the options not to be exclusive, but to leave to the CCP the choice of the best way to limit pro-cyclicality. In addition he opposed the reference to the separate indication of the 'skin in the game' in the balance sheet.

Pavel Hollmann (CZ) and László Balogh (HU) requested to include a requirement for reporting transactions where one of the two counterparties is a central bank to be anonymised. The European Commission indicated that this exemption would not be in line with the Level 1 text agreed by the European Parliament and Council.

Carlos Alves (PT) asked to reconsider the 2 days liquidation period for the margins calculation, because it would have introduced regulatory arbitrage. David Lawton (UK) supported the proposed draft technical standards, including the 2 days liquidation period, which was considered a prudent requirement and adding that there were other ways to prevent regulatory arbitrage.

On investment policy and the cases where derivatives could be admitted as eligible investments for a CCP, Thierry Francq (FR) requested a grandfathering clause for the use of interest rate swaps used for hedging purposes.

Lieven Hermans (ESRB) elaborated on the ESRB advices - and macro-prudential stances - that were prepared in response to ESMA's consultation of the ESRB on Articles 10 and 46. It is the ESRB's position that some of the underlying policy arguments (in the primary legislation, but also in the RTS) are flawed from a macro-prudential point of view. The ESRB indicated that it regrets that its advices on the specific issues that the ESRB was consulted on were not taken on board by ESMA. With reference to the ESRB's advice on non-financial counterparties, the European Commission indicated that such advice was incompatible with EMIR and could not be taken on board through technical standards.

The European Commission raised a concern from their Legal Services on the standards on fitness and properness of board members and senior management of trade repositories.



The Chair concluded that the set of draft technical standards was supported by a large majority of the Board and most amendments were only supported by one or two Board members. The only exception to this were the amendments regarding the possibility of using commercial bank guarantees as collateral for non-financial clearing members, in particular for energy derivatives markets.

Decision: The Board agreed with the proposed technical standards allowing for possible drafting amendments following comments from the Commission's Legal Services, as long as these did not have an impact on the substance of the standards. With regard to the collateralisation of commercial bank guarantees used as collateral by non-financial clearing members, the Board agreed to introduce a temporary exemption of 3 years for energy derivatives. This will allow for an appropriate transition from the current market practice without affecting unduly the market structure and liquidity. Also, an additional recital will be introduced in order to clarify the necessity to allow for such an exemption for a specific market. The European Commission indicated that the introduction of this specific transitional period was legally acceptable.

3. Report by Chair and Executive Director

Oral information

The Chair reported on:

- the informal ECOFIN meeting that took place on 15 September, where issues such as shadow banking and the proposals regarding the banking union were discussed;
- the hearing of the Chairs of the ESAs before the European Parliament ECON committee on 19 September;
- the Joint Committee meeting of 17 September, where recent market developments, the joint work programme and the work of the JC subcommittees were discussed; and
- the 20 September meeting of the ESRB.

The Executive Director reported on:

- the registration of Axesor as a credit rating agency following the approval by the Board of Supervisors in written procedure;
 - the meeting of the Financial Services Committee on 20 September, in particular the discussions with US representatives; and
 - current discussions with the European Commission, Parliament and Council on the extension of ESMA's premises.
- Procedure for emergency measures under the Short Selling Regulation as of *BS/116 Discussion 01/11/2012*

The Head of the Markets Division presented the discussion note, clarifying the need to have procedures in place as of 1 November. The Chair indicated that due to the very tight timelines in the Short Selling Regulation, it is important to pre-structure decisions and develop standardised procedures.

The Board discussed the note, in particular;

- the need for national competent authorities to inform ESMA on possible measures as soon as possi-



ble; and

- the possibility to extend certain deadlines when necessary.

Conclusion: ESMA staff will continue preparing procedures and templates for facilitating the implementation of the emergency powers and the ESMA coordination role, taking into account the discussion in the Board. The procedures and templates will be discussed at the next meeting of ESMA-Pol. The draft procedures will then be submitted to the Board of Supervisors for approval, through a written procedure with a shortened period, so that they could be in place in due time.

Jean-Paul Servais (BE) expressed his disappointment that the European Commission did not follow ESMA's technical advice on the approach for calculating the short and long positions in sovereign debt.

4. Corporate Finance Standing Committee

- Report by Ronald Gerritse *BS/117 information*

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

- Progress report on Proxy Advisors *Annex 1 Discussion*

The Head of the Investment and Reporting Division presented the report informing the Board on the main findings of the recent consultation and the next steps to be undertaken.

The Chair asked the Board for strategic views in order to decide the way forward on this issue.

The Board discussed the report, in particular;

- the reactions from market participants to the Consultation Paper, in particular the fact that many investors do not see a need for ESMA to take further action on this area;
- whether there is an indication of market failures; and
- whether ESMA should develop article 16 guidelines/recommendations or leave the initiative up to the industry to develop a code of conduct.

Conclusion: The Chair concluded that ESMA should be cautious in taking further action in this area when there is no clear indication of market failures. The Board did not support the development of article 16 guidelines/recommendations, but further work could include encouraging the industry to develop a code of conduct.

- Consultation Paper on the Recommendations for Mineral Companies *Annex 2 decision*

Decision: The Board approved the Consultation Paper.

- Update of the Q&As on prospectus related issues *Annex 3 decision*

Decision: The Board approved the update of the Q&As on prospectus related issues.



5. Work Programme 2013

*BS/118 decision
Annex 1
Annex 2*

The Executive Director presented the report, indicating that the work programme 2013 was approved by the Management Board at its meeting on 10 September. The regulatory work programme should normally be incorporated as an annex in ESMA's annual work programme but since most of the legislative proposals that will be implemented in 2013 are still under discussion within the EU institutions, the Management Board agreed to postpone the drafting of the regulatory work programme until the end of this year.

The Board discussed the Work Programme 2013 and the 2013-2015 multi-annual Work programme, in particular;

- including the revision of the Market Abuse Directive under the item 'Key Work Streams';
- the need to add additional information on financial innovation and shadow banking;
- whether further work on the Transparency and Prospectus Directive should be mentioned as a key work stream; and
- the need to look at updating CESR standards in the area of auditing.

The Executive Director indicated that a detailed work programme for CRA supervision would be submitted to the Board by the end of this year.

Decision: The work programme 2013 and the 2013-2015 multi-annual work programme will be revised taking into account the discussion in the Board. The final versions will be sent to the EU institutions by 30 September, published on ESMA's web site and sent to the Board for information. The Board agreed to postpone the drafting of the regulatory work programme until the end of 2012.

6. A.O.B.

7. Future meetings

information

- 6 November 2012 (Cyprus)
- 18 December 2012 (Paris)
- 29 January 2013
- 14 March 2013
- 22 May 2013
- 4 July 2013
- 24 September 2013
- 7 November 2013



— 17 December 2013

Steven Maijoor
Chair



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 R�e Larsen (alternate)	
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Raul Malmstein	Gerle Reinum�gi
Ireland	Gareth Murphy (alternate)	Giuseppe Insalaco
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Ana-Isabel Fernandez (alternate)	Antonio Mas
France	G�rard Rameix	Thierry Francq Fran�oise Buisson
Italy	Vittorio Conti (alternate)	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	
Latvia	Sandis Andersmits (alternate)	
Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Jean Guill	
Hungary	L�szl� Balogh (alternate)	



Malta	André Camilleri	
Netherlands	Gerben Everts (alternate)	Pim de Wild Sander van Leijenhorst
Austria	Kurt Pribil	Andrea Kuras-Goldmann
Poland	Ilona Pieczyńska-Czerny (alternate)	Adam Blasiak
Portugal	Carlos Alves (alternate)	Manuel Ribeiro da Costa
Romania	Raluca Țariuc (observer)	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	Slavomir Stastny
Finland	Jarmo Parkkonen (alternate)	
Sweden	Anna Jegnell (alternate)	
United Kingdom	David Lawton (alternate)	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Patrick Pearson	Nicolas Gauthier Muriel Jakubowicz
ESRB	Lieven Hermans	
EIOPA	Daniela Rode	
EBA	Ben Pott	



Observers

Croatia		
Iceland	Sigurveig Gudmundsdottir	
Liechtenstein		
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 Economic Research and Financial Stability Unit	Steffen Kern
Head of Legal, Cooperation and Convergence Unit	Stephan Karas