

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 23 May 2019
Time: 09h00 – 17h00
Location: Athenee Palace Hilton Bucharest, Strada Episcopiei 1-3, Bucharest, 010292 Romania
Contact: louise.waller@esma.europa.eu Tel: +33 1 58 36 42 74

1. Adoption of agenda Decision

Decision: The agenda was adopted, noting that the Q&A related to grandfathering and passporting issues in item 18.3 was withdrawn from the agenda.

2. Oral Report by Chair and Executive Director Information

The Chair reported on the:

- Postponement of the report to the European Commission foreseen under MIFID RTS 2 given the uncertainties regarding the timing and conditions of Brexit and the impact of including or excluding UK data in the analysis;
- Progress of work on ESMA's mandate to develop a report identifying potential undue short-termism in the context of the Action Plan on Financing Sustainable Growth;
- Discussion in the Joint Committee on proposed consumer testing options to be provided to the European Commission, as well as the Commission's response to the Joint Committee on the treatment of bonds, under the PRIIPs Regulation;
- The most recent meeting of the Securities and Markets Stakeholder Group (SMSG) and the process of replacing one member who has resigned;
- Informal ECOFin meeting, in particular the discussions that took place on the priorities for the next institutional cycle (2019-2024) and the way forward for the CMU;
- Activities of the Joint Committee, in particular the mandate for the new Sub-Group on ESG disclosures;
- Latest work of the ESRB's Non-Bank financial intermediation Expert Group and Task Force on CCPs;
- Last International Organization of Securities Commissions (IOSCO) Board meeting on 14 May 2019, in particular the approval of the final report on "Market Fragmentation and Cross-border Regulation";
- Election of Management Board Members at the July 2019 Board of Supervisors meeting; and
- May 2019 meeting of the Management Board, in particular the decisions to approve the 2018 annual accounts, and annual report, as well as several HR decisions.

The Executive Director reported on the:

- Financial Services Committee (FSC) meetings in particular ESMA’s presentations on MMF Stress tests, ESMA Product intervention measure, ESMA’s supervisory convergence work, and on the integration of ESG factors into requirements under UCITS/AIFMD and MIFID II and the Final Report on the CCP Stress test framework; and
- Progress on the various fit-out works and related activities to prepare ESMA’s new premises.

3. UK’s withdrawal from the European Union

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| 1) National contingency measures (MiFID and UCITS/AIFMD)
– update | Discussion |
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The Head of Corporate Affairs Department presented the update.

The Board discussed the update, in particular the issues around clients being unwilling to relocate and the need for ESMA to continue to advise firms to be prepared.

Conclusion: The Board took note of the update.

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| 2) Share Trading Obligation | |
| o Cover note | Discussion |
| o Public statement | Decision |

Elisabeth Roegele updated the Board on the latest discussion with the UK FCA regarding the application of the Share Trading Obligation in the UK and presented the draft public statement.

The Board discussed when to publish the Statement.

Decision: Following a vote the Board agreed to publish the Statement during the week commencing 27 May 2019.

4. Legislative files with an impact on ESMA

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| 1) Presentation | Discussion |
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The Executive Director presented the slides on the recently adopted new legislative files.

The Board discussed the impact of the new legislation on ESMA, in particular the

- Role of the Management Board;
- Utility of establishing a dedicated taskforce of NCAs; and
- The timing for the transition of FIRDS.

Conclusion: The Board took note of the presentation and noted that a first discussion about governance based on more detailed information would take place at the July 2019 Board of Supervisors.

5. Cum/Ex, Cum/Cum and multiple withholding tax reclaim schemes

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| 1) Cover note | Information |
| 2) Report on Preliminary Findings | Decision |

3) Proposal to launch a formal inquiry

Decision

Nicoletta Giusto presented the report on preliminary findings on multiple withholding tax schemes and the proposal to launch an inquiry further to a resolution of the European Parliament.

The Board discussed the note, in particular the

- Responsibilities of, and the information and legal tools available to, securities regulators in this area; and
- Desire to respond in a timely fashion to the European Parliament.

Decision: The Board adopted the report on preliminary findings in principle but decided to gather further drafting suggestions before approving it by written procedure. The Board approved the launch of the formal inquiry among national competent authorities on Cum/Ex, Cum/Cum and multiple WHT reclaim schemes.

6. Final report on frequent batch auctions

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| 1) Cover note | 73-154-1178 | Information |
| 2) Final report on frequent batch auctions | 70-156-1035 | Decision |

Elisabeth Roegele presented the Final Report.

The Board discussed the report, in particular

- Pre-trade transparency and the disclosure of information;
- Auction duration; and
- Price determination.

Andrew Bailey (UK) disagreed with the parts of the Final Report which stated that auction systems which only allow pegged orders to be submitted must operate under a reference price waiver, noting that the requirement to use a waiver depends only upon the level of transparency operated by the system. He also contested the view that price band limitations referring to prices determined by other systems must not be used, noting that the restrictions imposed on systems operating under a reference price waiver should not be extended to other systems.

Decision: The Board adopted the Report.

7. EMIR 2.2 Technical Advice

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| 1) Cover note | | Information |
| 2) Consultation paper with technical advice on tiering under EMIR 2.2 | | Discussion |
| 3) Consultation paper with technical advice on comparable compliance under EMIR 2.2 | | Decision |

Robert Ophele presented the consultation papers with technical advice on tiering and on comparable compliance under EMIR 2.2.

The Board discussed the consultation papers, in particular the

- Appropriateness of including quantitative thresholds; and
- Importance of good cooperation with third-country regulators.

Decision: The Board discarded the inclusion of quantitative thresholds and adopted the consultation paper on comparable compliance. The consultation paper on tiering was approved in principle subject to a fatal flaw review following wording adjustments.

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| 4) Consultation paper with technical advice on fees under EMIR 2.2 | Decision |
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The Head of Markets Department presented the consultation paper with technical advice on fees under EMIR 2.2.

The Board discussed the consultation paper in particular the need

- For adjusting some references; and
- To justify the level of fees charged.

Decision: The Board approved in principle the consultation paper on fees subject to a fatal flaw review following wording adjustments and the inclusion of the relevant justifications.

8. CSDR Q&A on the scope of internalised settlement reporting

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| 1) Note on a Q&A on the scope of internalised settlement reporting | Discussion |
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Robert Ophele presented the note on a potential Q&A on the scope of financial instruments subject to internalised settlement reporting under Article 9 of CSDR.

The Board discussed the note, in particular the practical implications of a broader versus a narrower scope.

Conclusion: The Board was in favour of a broad approach and noted that the Q&A would be sent for adoption via written procedure after further work at the Post-Trading Standing Committee (PTSC).

9. EMIR Q&A on the calculation of position for the clearing thresholds

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| 1) Note on a Q&A on the calculation of positions of FCs and NFCs within a group | Decision |
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Robert Ophele presented the note. The Board discussed the note, in particular the interpretation of EU law.

Decision: The Board provided its views on the issue and agreed to raise it with the European Commission in a letter. The Board also noted that the rest of the Q&A on the calculation of the clearing thresholds would be adopted by written procedure.

9.b. Timeline for the implementation of phase 5 of margin requirements

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| 1) Cover Note | Discussion |
| 2) Annex: WGMR note to IOSCO and BCBS – February 2019 | Information |
| 3) Annex: WGMR note to IOSCO and BCBS – March 2019 | Information |

The Chair presented the note. The Board discussed various options for the implementation timeline for phase 5 of the initial margin requirements for uncleared OTC derivatives.

Conclusion: The Board agreed to maintain the existing timeline. The Chair will reflect this point in his communication to IOSCO.

10. Guidelines on SFTR reporting requirements

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| 1) Cover note | Information |
| 2) Consultation paper on Guidelines on reporting requirements under Articles 4 and 12 of SFTR | Decision |
| 2a) Annex to the CP: consolidated SFTR validation rules | Decision |

Decision: The Board adopted the consultation paper.

11. Update on 2019 and 2020 budgets

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| 1) Issues Note | Discussion |
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The Head of Resources Department presented the note on budget. The Board discussed the note and requested that more detail be presented at the Board meeting in July 2019

Conclusion: The Board took note of the information in the update.

12. Commodity Derivatives Task Force

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| 1) CDTF Report | Information |
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Conclusion: The Board took note of the Report.

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| 2) Call for Evidence Position Limits and Position Management in Commodity Derivatives | Information |
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Conclusion: The Board took note of the Call for Evidence.

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| 3) Annual update of the ESMA ancillary activity opinion | Decision |
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Decision: The Board adopted the annual update

13. Corporate Reporting Standing Committee

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| 1) CRSC Report | Information |
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Conclusion: The Board took note of the CRSC Report.

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| 2) Revised draft RTS on European Single Electronic Format | Decision |
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Decision: The Board adopted the revised draft RTS on European Single Electronic Format.

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| 2a) Annex to draft RTS on ESEF: Taxonomy table 2019 | Decision |
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Decision: The Board adopted the annex to the draft RTS on European Single Electronic Format.

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| 3) Draft letter to IAASB on proposed strategy and work plan | Decision |
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Decision: The Board adopted the letter to the IAASB.

14. Data Standing Committee

1) DSC Report	Information
Conclusion: The Board took note of the DSC Report.	
2) Consultation paper on Guidelines on periodic information to be submitted by TRs	Decision
Decision: The Board adopted the consultation paper.	
2a) Annex to the CP: data templates TRs	Decision
Decision: The Board adopted the annex to the consultation paper.	
2b) Annex to the CP: governance templates	Decision
Decision: The Board adopted the annex to the consultation paper.	
2c) Annex to the CP: IC templates	Decision
Decision: The Board adopted the annex to the consultation paper.	
2d) Annex to the CP: IT templates	Decision
Decision: The Board adopted the annex to the consultation paper.	
3) EMIR Q&A	Decision
Decision: The Board adopted the Q&A.	
15. Investment Management Standing Committee	
1) IMSC Report	Information
Conclusion: The Board took note of the IMSC Report.	
2) UCITS Q&A	Decision
Decision: The Board adopted the UCITS Q&A.	
3) AIFMD Q&A	Decision
Decision: The Board adopted the AIFMD Q&A.	
16. Investor Protection and Intermediaries Standing Committee	
1) IPISC Report	Information
Conclusion: The Board took note of the IPISC Report.	
2) MiFID II Q&As Investor protection and Intermediaries	Decision
Decision: The Board adopted the MiFID II Q&As.	

- 3) Product Intervention Information

Conclusion: The Board took note of the Product Intervention Report.

- 3a) Opinion on national measures - Bank of Lithuania – CFDs Decision

Decision: The Board adopted the opinions on national measures subject to a drafting amendment.

- 3b) Opinion on national measures – Bank of Lithuania – BOs Decision

Decision: The Board adopted the opinions on national measures.

- 3c) Opinion on national measures – CNMV – BOs Decision

Decision: The Board adopted the opinions on national measures.

17. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the PTSC Report.

- 2) EMIR Q&As Decision

Decision: The Board adopted the EMIR Q&As.

- 3) CSDR Q&As Decision

Decision: The Board adopted the CSDR Q&As apart from the Q&A related to grandfathering and passporting.

18. Market Integrity Standing Committee

- 1) MISC Report Information

Conclusion: The Board took note of the MISC Report.

- 2) Template MoU under BMR equivalence Decision

Decision: The Board adopted the template MoU.

- 3) Q&As Decision

Decision: The Board adopted the Q&As.

19. Secondary Markets Standing Committee

- 1) SMSC Report Information

Conclusion: The Board took note of the SMSC Report.

- 2) Consultation Paper on a technical standard for the CRR Decision

3) Q&As

Decision

Decision: The Board adopted the consultation paper and the Q&As.

20. Supervisory Convergence Standing Committee

1) Update on the Senior Supervisors Forum (SSF) on risk-based supervision

Information

Conclusion: The Board took note of the update on the Senior Supervisors Forum.

21. CRA Technical Committee

1) CRA TC Report

Information

Conclusion: The Board took note of the CRA TC Report.

2) Updated Q&As on securitisation topics

Decision

Decision: The Board adopted the updated Q&As.

22. 2018 Annual Report

1) Cover Note

Information

2) 2018 Annual Report

Decision

Decision: The Board adopted the 2018 Annual Report.

23. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Jean-Michel Van Cottem
Bulgaria	Vladimir Savov	
Czech Republic	Vojtěch Belling	Karel Juras
Denmark	Anne Bruun (alternate)	Theodor J. Christensen
Germany	Elisabeth Roegele	Marcus Hein
Estonia	Andre Nomm	
Ireland	Derville Rowland	Colm Kincaid Cormac Staunton
Greece	Charalampos Gotsis	Vasiliki Koularmani
Spain	Sebastian Albella	Antonio Mas
France	Robert Ophele	Benoit de Juvigny Viet-Linh Nguyen
Croatia	Jurica Jednacak (alternate)	Anamarija Stanicicx
Italy	Carmine Di Noia (alternate)	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	
Latvia	Sandis Andersmits (alternate)	

Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Gabor Laki (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Fleur de Roos Marit de Vrijer
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Ilona Pieczyńska-Czerny (alternate)	Joanna Kott
Portugal	Joao Gao (alternate)	Susana Neto
Romania	Leonardo Badea	Gabriel Gradinescu Florentina Boboc Raluca Alina Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Vladimír Dvořáček	Tomas Ambra
Finland	Eeva Granskog (alternate)	Maria Rekola
Sweden	Erik Thedeén	Malin Omberg Fredrik Elmberg
United Kingdom	Andrew Bailey (not for items 3 and 7)	Cristina Frazer (not for items 3 and 7)

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Patrick Pearson	Ellen Boelema Jorge Revilla-Garcia
EBA	Anne Tiedemann	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Pall Fridriksson (alternate)	
Liechtenstein	/	
Norway	Geir Holen (alternate)	Marianne Elind Skaane
EFTA Surveillance Authority	Gunnar Thur Petursson (alternate)	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Louise Waller
Head of Corporate Affairs Department	Roxana De Carvalho
Head of Markets Department	Fabrizio Planta
Head of Resources Department	Nicolas Vasse



Done at Paris on 1 July 2019

Steven Maijor

For the Board of Supervisors