

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: Thursday 20 May 2021
Time: 09h00 – 18h00
Location: Conference call
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda Decision

Decision: The agenda was adopted.

2. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed the Interim Chair's statement to have received an indication of a conflict of interest by:

- Thorsten Pötzsch (DE) and Robert Ophèle (FR) for agenda item 6 on the exemption from the clearing obligation for pension scheme arrangements. They will abstain from participating in the discussion and the decision on the item; and
- Robert Ophèle (FR) for agenda item 10 on the Autorité des marchés financiers (AMF)'s accepted market practice on liquidity contracts. He will abstain from participating in the discussion and the decision on the item.

3. Report by ESMA Interim Chair, Executive Director and Chair of the CCP Supervisory Committee Oral Discussion

The Interim Chair reported on the:

- May 2021 Management Board meeting, in particular its discussion of ESMA's working arrangements after COVID-19 and its approval of ESMA's 2020 Annual Report and the 2021 CCP Peer Review mandate;
- Securities and Markets Stakeholder Group (SMSG)'s recent meetings, in particular its joint meeting with the Board of Supervisors, as well as the group's finalisation of two pieces of advice, respectively on appropriateness and execution-only, and on taxonomy-related disclosures;
- Activities of the European Systemic Risk Board (ESRB), in particular its discussions of systemic vulnerabilities in money market funds and of the macroprudential implications arising from low interest rate environments;
- Interactions with the European Parliament, in particular the receipt of ESMA's 2019 Discharge Report; and
- Activities of the Joint Committee, in particular the indication by the European Commission Services that it would not be able to adopt the draft regulatory technical standards on packaged retail investment and insurance-based products (PRIIPs) on time, proposing to delay the application of the

regulatory technical standards by six months to 1 July 2022 and to prolong the temporary arrangement for retail investment funds (UCITS and AIFs marketed to retail investors that produce a UCITS KII under national law) in the PRIIPs regulation by six months to 30 June 2022.

The Executive Director reported on the:

- April and May 2021 Financial Services Committee (FSC), in particular on the ongoing work on vulnerabilities in commercial real estate markets and on the European Commission's upcoming anti-money laundering (AML) legislative proposals and non-performing loans (NPL) Action Plans;
- Continued impact of COVID-19 on ESMA's activities, in particular the fact that teleworking remains the rule for ESMA staff and that all meetings continue to be held virtually;
- ESMA's international activities, in particular IOSCO's recent Board meeting, where the enhancement of Money Market Funds (MMF) resilience was discussed, as well as ongoing work on sustainable ratings and data providers;
- Recent approval by the Working Group on Euro Risk-Free Rates of final recommendations on the Euro Interbank Offered Rate (EURIBOR) fallback provisions, and the ongoing finalisation of the Joint Statement on the discontinuation of the London Interbank Offered Rate (LIBOR); and
- Ongoing work towards the replacement of the Euro Overnight Index Average (EONIA) and LIBOR by new risk-free rates and the upcoming launch of a consultation to amend technical standards to update the trading and clearing obligations accordingly.

4. Capital Markets Union – SMEs

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| 1) Presentation | Discussion |
| 2) European Commission Technical Expert Stakeholder Group on SMEs Report | Information |

The Head of the Governance and External Affairs Department presented ESMA staff's considerations in relation to the European Commission's Technical Expert Stakeholder Group on small-and-medium-sized-enterprises (SMEs) (TESG)'s Report on the facilitation of SME access to capital markets.

The Board discussed the presentation, in particular the:

- Upcoming finalisation of the report by the TESG and ESMA's potential response in light of its investor protection mandate; and
- Important role of prospectuses in accessing capital markets and how to strengthen corporate governance and sustainability requirements whilst limiting the size of prospectuses and not disproportionately burdening SMEs.

Conclusion: The Board discussed the presentation and agreed to re-consider the issue once the TESG Report is published.

5. ESA Review

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| 1) Presentation | Discussion |
| 2) Letter to the European Commission | Decision |

The Head of the Governance and External Affairs Department presented ESMA's letter to the European Commission in response to its European Supervisory Authorities (ESAs)' Review targeted consultation on the supervisory convergence and the single rulebook.

The Board discussed the presentation, in particular the:

- Importance of promoting supervisory convergence and the resources impact on both national competent authorities and ESMA in that respect; and

- Increasing importance of data for securities markets regulators, and the need to conduct analysis on the costs and benefits of data centralisation.

Decision: The Board discussed the letter and agreed to include a reference to the need for further cost-benefit analysis on data centralisation and to the national competent authorities' resource constraints when it comes to supervisory convergence efforts. The Board agreed to run a written procedure to agree on the final letter following these amendments.

6. Exemption from the clearing obligation for Pension Scheme Arrangements

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| 1) Presentation | Discussion |
| 2) Note | Decision |

The Head of the Markets and Data Reporting Department presented the issue relating to the exemption from the clearing obligation for pension scheme arrangements.

The Board discussed the issue, in particular the:

- Fact that ESMA may respond to questions that relate to the practical application or implementation of European Union law, while it must forward to the Commission those that require the interpretation of Union law; and
- Scope and application of ESMA's conflict of interest policy.

Conclusion: The Board took note of the issues around the exemption from the clearing obligation for pension scheme arrangements and agreed to decide on the next steps by written procedure.

7. Framework for the 2021 CCP Stress Test exercise

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| 1) Presentation | Discussion |
| 2) Cover Note | Discussion |
| 3) CCP Stress Test Framework | Decision |
| 4) Methodological Note – Instructions | Decision |
| 5) ESRB advice on adverse scenario for the European Securities and Market Authority's 2021 EU-wide Central Counterparty stress test | Information |
| 6) 2021 ESMA stress test exercise for Central Counterparties Data request validation | Decision |
| 7) Templates | Decision |

The Independent Member of the CCP Supervisory Committee presented the framework for the 2021 CCP stress test exercise.

The Board discussed the framework, in particular the:

- Importance of data quality and the responsibility of all actors involved;
- Exclusion of liquidity from the stress test's scope; and
- Inflation and interest rate variation scenarios to stress test for.

Decision: The Board took note of the ESRB advice on adverse scenarios. The Board adopted the framework for the 2021 CCP stress test exercise, the methodological note and templates.

8. Methodology for the review of Tier 2 systemic important CCPs

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| 1) Presentation | Discussion |
| 2) Issues note | Discussion |
| 3) Methodology for the review of Tier 2 systemic importance | Discussion |

The Independent Member of the CCP Supervisory Committee presented the issues note and the methodology for the review of Tier 2 systemic importance.

The Board discussed the methodology, in particular the:

- Scope of the methodology whilst emphasizing the need for a comprehensive approach within the broader framework;
- Broader co-operation with third countries; and
- Impact of non-recognition.

Conclusion: The Board discussed the methodology for the review of the Tier 2 systemic importance. A revised version of the methodology will be presented to the Board of Supervisors.

9. CCP recovery and resolution

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| 1) Presentation | Discussion |
| 2) Issues note | Discussion |

The Independent Member of the CCP Supervisory Committee presented the issues note on CCP recovery and resolution.

The Board discussed the issues note, in particular the:

- Timeframe for CCPs to develop resolution plans; and
- Need to prioritise deliverables, in particular in relation to resolution, in light of ESMA's resource constraints.

Conclusion: The Board discussed the issues note on ESMA's CCP recovery and resolution mandates.

10. Accepted Market Practice – AMF

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| 1) Presentation | Discussion |
| 2) Note | Discussion |

The Chair of the Market Integrity Standing Committee presented the note on the Accepted Market Practice (AMP).

Conclusion: The Board endorsed the suggested way forward. It was agreed to adopt the opinion by written procedure.

11. Report on NCAs' independence

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Report | Discussion |

The Chair of the Supervisory Convergence Standing Committee (SCSC) presented the report on NCAs' independence.

The Board discussed the report, in particular the:

- Conflicts of interest and the independence of senior management, including voting rights and appointment/dismissal processes, and cooling-off provisions; and
- Importance of mapping practices and the need to provide further details whilst promoting a consistent approach across the ESAs.

Conclusion: The Board discussed the report on national competent authorities' independence and expressed support in regards to the adequacy of the topics addressed. Board Members were invited to provide further comments in writing on which basis a revised version will be developed and presented to the Board of Supervisors for adoption in September.

12. Brexit Peer Review

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Mandate | Decision |

The Chair of the Peer Review Committee presented the peer review mandate.

The Board discussed the mandate, in particular the:

- Criteria used for the selection of national competent authorities to include in the peer review and to be on-site visited; and
- Composition of the peer review committee.

Decision: The Board approved the mandate as proposed.

13. ESMA's Data Strategy

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| 1) Cover note | Information |
| 2) Status Report | Information |

Conclusion: The Board took note of the status report on ESMA's data strategy.

14. Memorandum of Understanding with third-country authorities on CCP recognition

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| 1) Template Standard Memorandum of Understanding | |
| ○ Cover note | Information |
| ○ Template Memorandum of Understanding with third-country authorities | Decision |

Decision: The Board adopted the template memorandum of understanding with third-country authorities.

- 2) Delegation to the ESMA Chair and CCP Supervisory Committee
 - Cover note Information
 - Delegation Decision Decision

Decision: The Board adopted the delegation to the ESMA Chair and the CCP Supervisory Committee.

15. Benchmarks Network

- 1) Cover note Information

Conclusion: The Board took note of the cover note.

- 2) BMR Q&As Decision

Decision: The Board adopted the BMR Q&As.

- 3) Supervisory briefing on benchmark administrators' presence in their Member States of location and outsourcing Decision

Decision: The Board adopted the supervisory briefing on benchmark administrators' presence in their Member States of location and outsourcing

16. CCP Supervisory Committee

- 1) CCP Supervisory Committee Report Information

Conclusion: The Board took note of the CCP Supervisory Committee report.

- 2) CCP Peer Review mandate Decision

Decision: The Board approved the CCP peer review mandate.

17. Commodity Derivatives Task Force

- 1) CDTF Report Information

Conclusion: The Board took note of the CDTF Report.

- 2) Consultation Paper on regulatory technical standards for commodity derivatives (MIFID Recovery Package) Decision

Decision: The Board adopted the consultation paper on regulatory technical standards for commodity derivatives (MIFID Recovery Package).

18. Corporate Reporting Standing Committee

- 1) CRSC Report Information

Conclusion: The Board took note of the CRSC Report.

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| 2) | Final Report on the draft Regulatory Technical Standard on the 2021 update of the taxonomy laid down in the Regulatory Technical Standard on the European Single Electronic Format (ESEF) | Decision |
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Decision: The Board adopted the final report on the draft regulatory technical standard on the 2021 update of the taxonomy laid down in the regulatory technical standard on the European Single Electronic Format (ESEF).

19. CRA Network

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| 1) | Cover Note | Information |
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Conclusion: The Board took note of the cover note on the consultation paper on preliminary ratings.

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| 2) | Consultation paper on preliminary ratings | Decision |
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Decision: The Board adopted the consultation paper on preliminary ratings.

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| 3) | Final Report on Technical Advice on fees charged by ESMA to CRAs | Decision |
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Decision: The Board adopted the final report on the technical advice on fees charged by ESMA to CRAs.

20. Data Standing Committee

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

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| 2) | Final report on Guidelines on calculation of positions in Securities Financing Transactions by Trade Repositories | Decision |
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Decision: The Board adopted the final report on guidelines on calculation of positions in securities financing transactions by trade repositories.

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| 3) | Consultation paper on EMIR/SFTR portability Guidelines | Decision |
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Decision: The Board adopted the consultation paper on EMIR/SFTR portability guidelines subject to drafting amendments.

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| 4) | MiFIR Q&A | Decision |
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Decision: The Board adopted the MiFIR Q&A.

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| 5) | EMIR Q&A | Decision |
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Decision: The Board adopted the EMIR Q&A.

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| 6) | SFTR Q&A | Decision |
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Decision: The Board adopted the SFTR Q&A.

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| 7) | Q&As on the definition of risk metrics in AIFMD reporting | Decision |
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Decision: The Board adopted the Q&As on the definition of risk metrics in AIFMD reporting.

- 8) Opinion on the definition of risk metrics in AIFMD reporting Decision

Decision: The Board adopted the opinion on the definition of risk metrics in AIMFD.

21. Financial Innovation Standing Committee

- 1) Cover note Information

Conclusion: The Board took note of the cover note.

- 2) Call for evidence on Digital Finance Information

Conclusion: The Board took note of the call for evidence on digital finance.

22. Investment Management Standing Committee

- 1) IMSC Report Information

Conclusion: The Board took note of the IMSC report.

- 2) Final Report on Guidelines on marketing communications Decision

Decision: The Board adopted the final report on guidelines on market communications.

- 3) AIFMD Q&As Decision

Decision: The Board adopted the AIFMD Q&As.

- 4) UCITS Q&As Decision

Decision: The Board adopted the UCITS Q&As.

23. Investor Protection and Intermediaries Standing Committee

- 1) IPISC Report Information

Conclusion: The Board took note of the IPISC Report.

- 2) Q&A on information on costs and charges Decision

Decision: The Board adopted the Q&A on information on costs and charges.

- 3) Report on 2020 Common Supervisory action Information

Conclusion: The Board took note of the report on the 2020 common supervisory action.

24. Post Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the PTSC Report.

- 2) CSDR Q&A Decision

Decision: The Board adopted the CSDR Q&A.

25. Secondary Markets Standing Committee

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

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| 2) Final Report on Guidelines on the MiFID II/MiFIR obligations on market data | Decision |
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Decision: The Board approved the final report on guidelines on the MiFID II/MiFIR obligations on market data.

26. Securitisations Network

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| 1) Cover note | Information |
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Conclusion: The Board took note of the cover note.

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| 2) Consultation Paper on draft Regulatory Technical Standards on the content and format of the notifications for simple, transparent and standardised (STS) synthetic securitisations | Decision |
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Decision: The Board adopted the consultation paper on draft regulatory technical standards on the content and format of the notifications for simple, transparent and standardised (STS) synthetic securitisations.

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| 3) Securitisation Regulation Q&As | Decision |
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Decision: The Board adopted the Securitisation Regulation Q&As.

27. ESMA 2020 Annual Report

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| 1) Cover note | Information |
| 2) Annual Report | Decision |

Decision: The Board adopted the ESMA 2020 Annual Report.

28. European Parliament 2019 Discharge Report

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| 1) Opinion | Decision |
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Decision: The Board adopted the opinion on the European Parliament's 2019 discharge report.

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| 2) 2019 Discharge report by the European Parliament | Information |
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Conclusion: The Board took note of the European Parliament's 2019 discharge report.

29. ESMA Groups

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| 1) Cover note | Information |
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Conclusion: The Board took note of the cover note on the overview of ESMA Groups.

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| 2) Overview of ESMA Groups | Information |
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Conclusion: The Board took note of the overview of ESMA Groups.

- 3) Terms of Reference of the Coordination Network on Sustainability

Decision

Decision: The Board adopted the terms of reference of the Coordination Network on Sustainability.

- 4) Terms of Reference of the CCP Policy Committee

Decision

Decision: The Board adopted the terms of reference of the CCP Policy Committee.

30. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Karen Dorte Abelskov	
Germany	Thorsten Pötzsch (except for parts of item 6)	
Estonia	Andre Nõmm	
Ireland	Derville Rowland	
Greece	Vasiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Robert Ophèle (except for parts of item 6 and 10)	
Croatia	Ante Žigman	
Italy	Carmine di Noia (alternate)	
Cyprus	Demetra Kalogerou	
Latvia	Girts Ruda (alternate)	

Lithuania	Jekaterina Govina Ruta Merkeviciute (alternate)	
Luxembourg	Claude Marx	
Hungary	Gergő Szeniczey	
Malta	Christopher Butigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Mueller	
Poland	Magdalena Łapsa-Parczewska	
Portugal	Gabriela Figueiredo Dias	
Romania	Oana Stefanoiu (alternate)	
Slovenia	Anka Čadež	
Slovakia	Peter Tkáč	
Finland	Armi Taipale (alternate)	
Sweden	Malin Omberg (alternate)	
Interim Chair	Anneli Tuominen	

Non-voting members

European Commission	Ugo Bassi	
EBA	Anne Tiedeman (alternate)	
EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Unnur Gunnarsdottir	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marta Margret Runarsdottir (alternate)	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen Laura Weil
Chair of the CCP Supervisory Committee	Klaus Löber
Chair of the Market Integrity Standing Committee	Rodrigo Buenaventura
Chair of the Supervisory Convergence Standing Committee	Jos Heuvelman
Independent Member of the CCP Supervisory Committee	Nicoletta Giusto

Independent Member of the CCP Supervisory Committee	Froukelien Wendt
Head of the Governance and External Affairs Department	Roxana de Carvalho
Chair of the Brexit Peer Review Committee	Iliana Lani

Done at Paris on 12 July 2021

Anneli Tuominen

Interim Chair

For the Board of Supervisors