

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 15 December 2021
Time: 09h00 – 17h00
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 noting that the Final report on guidelines on disclosure requirements applicable to initial reviews and preliminary findings (item 11) was withdrawn from the agenda and will be presented for adoption by written procedure.

2. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed the ESMA Chair's statement not to have received any indication by a Board Member of any interest which might be considered prejudicial to her/his independence in relation to any items on the agenda.

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

The ESMA Chair reported on:

- Her recent meeting with European Commissioner for Financial Services, Financial Stability and Capital Markets Union Mairead McGuinness, in particular the discussion on how to promote retail investor protection;
- Her recent interactions with Members of the European Parliament (MEPs), in particular to discuss the Corporate Sustainability Reporting Directive (CSRD);
- The activities of the European Systemic Risk Board (ESRB), in particular its adoption of the Recommendation on systemic cyber risk and the Report on mitigating systemic cyber risk;
- ESMA's international activities, in particular her call with the Acting Chairman of the Commodity Futures Trading Commission (CFTC);
- The activities of the Joint Committee, in particular the upcoming appointment of a new Chair of the Joint Committee Subcommittee on Financial Conglomerates (JCFC);
- The activities of the Securities and Markets Stakeholders Group (SMSG), in particular the finalisation of its advice on the consultation paper on the Short Selling Regulation (SSR) review; and
- The December 2021 Management Board, in particular the discussion on the outcome of the peer review on the supervision of cross-border provision of services and on ESMA's 2023-2025 Programming Document.

The Executive Director reported on the:

- December 2021 Financial Services Committee (FSC) meeting, in particular the presentation of ESMA's preliminary report on EU carbon markets; and
- Continued impact of COVID-19 on ESMA's activities, in particular that from 7 December 2021 the obligation for staff to work from the office at least one day per week is suspended until 21 January 2022 included to further safeguard ESMA staff's health and safety.

4. PRIIPs – Update on the Joint Committee work

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| 1) Progress report | Discussion |
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The Head of the Investors and Issuers Department presented the update on the Joint Committee work on the European Commission's call for advice on areas to be covered during a review of the Packaged Retail Investment and Insurance-Based Products (PRIIPs) Regulation.

The Board discussed the update, in particular the:

- Mandate received from the European Commission;
- Experience gained applying the PRIIPs Regulation, namely on the implementation of the key information document (KID), its scope, the value of past performance, the risk associated with performance scenarios based on forward-looking modelling for investment funds in particular, and the reporting timeframe; and
- Importance of focusing on developing the KID as a tool targeting the investor.

Conclusion: The Board discussed the update on the Joint Committee's ongoing work on PRIIPs. The Board will continue to be kept informed on relevant developments.

5. Call for Advice on Digital Finance

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Report to the European Commission | Decision |
| 4) Annex 4 to survey | Information |
| 5) Annex 5 to survey | Information |

The Chair of the Financial Innovation Standing Committee (FISC) and the Head of the Financial Innovation Unit presented the report to the European Commission on the call for advice on digital finance.

The Board discussed the report, in particular the:

- Ongoing developments in crypto asset markets;
- Importance of considering both the opportunities and risks arising from digital finance; and
- New conduits for the transfer of information related to financial markets, including social media, and how to adapt communication accordingly.

Conclusion: The Board discussed the report to the European Commission on the call for advice on digital finance. The report will be presented for adoption by written procedure.

6. 2023-2025 Planning

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

3) Programming Document 2023-2025

Discussion

The Executive Director presented the Programming Document 2023-2025.

The Board discussed the Programming Document, in particular the,

- Need to be able to accommodate priorities in line with market developments;
- Budgets planned by the legislative proposals on the European Single Access Point (ESAP) and Digital Operational Resilience (DORA) proposals; and
- Importance of prioritising ESMA's supervisory convergence activities.

Conclusion: The Board discussed the 2023-2025 Programming Document. The Programming Document will be amended on the basis of the discussion and brought to the January 2022 Board of Supervisors for approval. The European Commission's legislative proposal on ESAP will also be discussed at the January 2022 Board of Supervisors.

7. 2021 Annual Statistical Reports

1) EMIR Annual Statistical Report

- o Presentation Discussion
- o Cover note Discussion
- o 2021 EMIR Annual Statistical Report Discussion

Conclusion: The Board adopted the European Market Infrastructure Regulation (EMIR) Annual Statistical Report.

2) MiFIR Annual Statistical Report

- o Presentation Discussion
- o Cover note Discussion
- o 2021 MiFIR Annual Statistical Report Discussion

The Head of the Risk Analysis and Economics Department presented the Markets in Financial Instruments Regulation (MiFIR) annual statistical report.

The Board discussed the report, in particular the impact of the withdrawal of the United Kingdom (UK) from the European Union and its transitory status in 2020.

Conclusion: The Board adopted the report subject to drafting amendments.

8. Annual report on transparency waivers and on the use of deferred publication arrangements

- 1) Presentation Discussion
- 2) Note Discussion
- 3) Report Decision

The Chair of the Secondary Markets Standing Committee (SMSC) presented the annual report on the transparency waivers and on the use of deferred publication arrangements.

The Board discussed the annual report, in particular:

- National data on turnover subject to large in scale (LIS) waiver deferral; and
- The effect of MiFIR on the landscape of corporate bond markets.

Decision: The Board adopted the annual report on the transparency waivers and on the use of deferred publication arrangements, subject to factual amendments to the data provided on turnover subject to LIS deferral provided.

9. Appointment of a SMSG member

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| 1) Note | Decision |
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Decision: The Board agreed to appoint Pieter Schuurs (NL) as Member of the Securities and Markets Stakeholder Group (SMSG).

10. 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) Report on expected credit loss disclosure for banks | Decision |
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Decision: The Board adopted the report on expected credit loss disclosure for banks.

11. CRA Network

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| 1) Cover note | Information |
| 2) Final report on guidelines on disclosure requirements applicable to initial reviews and preliminary findings | Decision |

Decision: The item was withdrawn from the agenda.

12. 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) Data quality reports | |
| ○ Financial Instruments Transparency System (FITRS) | Decision |
| ○ Double volume cap (DVC) | Decision |
| ○ AIFMD | Decision |
| ○ MMF | Decision |

Decision: The Board adopted the FITRS, DVC, AIFMD and MMF data quality reports.

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| 3) Prospectus III data quality engagement framework | |
| ○ Note | Decision |

- o Technical document Decision

Decision: The Board adopted the Prospectus III data quality engagement framework.

- 4) 2022 data quality calendar for Financial Instruments Reference Database System (FIRDS) engagement framework and Transaction Reporting Exchange Mechanism (TREM) Decision

Decision: The Board adopted the 2022 data quality calendar for the FIRDS engagement framework and TREM.

- 5) SFTR Q&As Decision

Decision: The Board adopted the SFTR Q&As.

13. Investment Management Standing Committee

- 1) IMSC Report Information

Conclusion: The Board took note of the IMSC report.

- 2) European Commission report on reverse solicitation
 - o ESMA response Decision
 - o European Commission request Information

Decision: The Board took note of the European Commission's request for advice in the context of its report on reverse solicitation and adopted ESMA's response.

- 3) UCITS Q&As Decision

Decision: The Board adopted the UCITS Q&As.

- 4) AIFMD Q&As Decision

Decision: The Board adopted the AIFMD Q&As.

14. Investor Protection and Intermediaries Standing Committee

- 1) IPISC Report Information

Conclusion: The Board took note of the IPISC report.

- 2) Final report on guidelines on appropriateness Decision

Decision: The Board adopted the final report on guidelines on appropriateness.

15. Market Integrity Standing Committee

- 1) MISC Report Information

Conclusion: The Board took note of the MISC report.

- 2) Final report on the amendment of MAR guidelines on delayed disclosure in relation to prudential supervision Decision

The Board discussed the final report on the amendment of Market Abuse Regulation (MAR) guidelines on delayed disclosure in relation to prudential supervision, in particular the:

- Price sensitivity of Pillar II Guidance (P2G);
- Market Abuse Regulation’s definition of insider information;
- Guidelines’ description of stress tests and of the distribution of tasks between authorities; and
- Scope of the guidelines in relation to Minimum Requirement for Eligible Liabilities (MREL) instruments.

Decision: The Board adopted the final report on the amendment of MAR guidelines on delayed disclosure in relation to prudential supervision, subject to minor amendments to the description of stress tests and of the distribution of tasks between prudential supervisors within and outside the Banking Union.

- 3) Annual report on accepted market practices (AMPs) Decision

Decision: The Board adopted the annual report on accepted market practices (AMPs).

16. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the PTSC report.

- 2) Statement on the implementation of the settlement discipline Decision

Decision: The Board adopted the statement on the implementation of the settlement regime.

- 3) CSDR Q&As Decision

Decision: The Board adopted the CSDR Q&As.

17. Post-Trading Standing Committee and Secondary Markets Standing Committee

- 1) Joint PTSC/SMSC Report Information

Conclusion: The Board took note of the joint PTSC/SMSC report.

- 2) Terms of Reference Distributed Ledger Technology (DLT) Pilot Task Force Decision

Decision: The Board adopted the terms of reference of the Distributed Ledger Technology Pilot Task Force.

- 3) Statement on the implementation of the clearing obligation and derivatives trading obligation regarding the benchmark transition Decision

Decision: The Board adopted the statement on the implementation of the clearing obligation and derivatives trading obligation regarding the benchmark transition.

18. Update on 2021 fee collection and 2022 opening budget

- 1) Note Information
- 2) 2021 budget amendment No. 1 – Revenue Decision

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| 3) 2021 budget amendment No. 1 – Expenditure | Decision |
| 4) 2022 budget – Revenue | Decision |
| 5) 2022 budget – Expenditure | Decision |
| 6) 2022 NCAs' contributions | Decision |

The Board discussed the update on 2021 fee collection and 2022 opening budget, and in particular the appropriate level of direct supervisory fees to be raised from supervised Data Reporting Service Providers (DRSPs).

Decision: The Board approved the update on 2021 fee collection. The Board also agreed with the 2022 budget, subject to the need to finalise the budget line on DRSP supervision and therefore to finalise the adoption of the 2022 budget via written procedure.

19. 2022-2025 IT Work Programme

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| 1) Cover note | Information |
| 2) IT Work Programme 2022-2025 | Decision |

Decision: The Board adopted the IT work programme 2022-2025.

20. Annual Report on Equivalence Monitoring

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| 1) Cover Note | Information |
| 2) Report | Decision |

Decision: The Board adopted the annual report on equivalence monitoring.

21. Delegations

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| 1) Cover note | Information |
| 2) Overview of delegations | Information |

Conclusion: The Board took note of the overview of delegations.

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| 3) Revocation of the decision delegating to the ESMA Chair the adoption of tiering and recognition decisions in respect of the CCPs established in the UK and the finalisation and adoption of a Memorandum of Understanding between ESMA and the Bank of England | |
| o Revocation decision | Decision |
| o Delegation | Information |

Decision: The Board adopted the decision revoking the delegation.

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| 4) Revocation of the decision delegating certain tasks to the ESMA Chair (Power to approve the update of the lists of Cross Border CRAs and of Cross Border TRs in the | |
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ESMA/UK FCA MoU in light of the fulfilment or not of the conditions laid down in the MoU)

- Revocation decision
- Delegation

Decision

Information

Decision: The Board adopted the decision revoking the delegation.

22. A.O.B.

Participants list

Voting members

| Member State | Representative | Accompanying Person |
|---------------------|---|----------------------------|
| Belgium | Jean-Paul Servais | |
| Bulgaria | Mariyan Ivanov (alternate) | |
| Czech Republic | Vojtěch Belling | |
| Denmark | Theodor Joachim Christensen (alternate) | |
| Germany | Thorsten Pöttsch | |
| Estonia | Andre Nõmm | |
| Ireland | Derville Rowland | |
| Greece | Vassiliki Lazarakou | |
| Spain | Rodrigo Buenaventura | |
| France | Robert Ophèle | |
| Croatia | Ante Žigman | |
| Italy | Carmine di Noia (alternate) | |
| Cyprus | George Theocharides | |
| Latvia | Girts Ruda (alternate) | |

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| Lithuania | Ruta Merkeviciute | |
| Luxembourg | Claude Marx | |
| Hungary | Gergő Szeniczey | |
| Malta | Lorraine Vella (alternate) | |
| Netherlands | Jos Heuvelman (alternate) | |
| Austria | Eduard Müller | |
| Poland | Magdalena Łapsa-Parczewska | |
| Portugal | Gabriel Bernardino | |
| Romania | Oana Ștefănoiu (alternate) | |
| Slovenia | Sabina Bešter (alternate) | |
| Slovakia | Peter Tkáč | |
| Finland | Anneli Tuominen | |
| Sweden | Erik Thedéen | |
| ESMA Chair | Verena Ross | |

Non-voting members

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| European Commission | Ugo Bassi | |
| EBA | Francois-Louis Michaud | |

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| EIOPA | Benedetta di Lupidio (alternate) | |
| ESRB | Francesco Mazzaferro | |
| Iceland | Páll Friðriksson (alternate) | |
| Liechtenstein | Marcel Lötcher | |
| Norway | Anne Merethe Bellamy | |
| EFTA Surveillance Authority | Marta Margret Runarsdottir (alternate) | |

ESMA

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| Executive Director | Natasha Cazenave |
| Summary of Conclusions | Frederiek Vermeulen Laura Weil |
| Chair of the CCP Supervisory Committee | Klaus Löber |
| Chair of the Committee on Economics and Markets Analysis | Carmine di Noia |
| Chair of the Financial Innovation Standing Committee | Birgit Puck |
| Chair of the Secondary Markets Standing Committee | Robert Ophèle |
| Head of the Investors and Issuers Department | Evert van Walsum |
| Head of the Governance and External Affairs Department | Roxana de Carvalho |

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| Head of the Risk Analysis and Economics Department | Steffen Kern |
| Head of the Financial Innovation Unit | Claudia Guagliano |

Done at Paris on 3 February 2022

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 17 November to 14 December 2021)

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| 1. Procedural Framework for Innovation Facilitator Cross-Border Testing | 2 December 2021 |
| 1) Framework | Decision |
| Decision: The Board adopted the Procedural Framework for Innovation Facilitator Cross-Border Testing. | |
| 2. Joint Committee Securitisation Sub-Committee Q&A on synthetic securitisations | 3 December 2021 |
| 1) Q&A | Decision |
| Decision: The Board adopted Joint Committee Securitisation Sub-Committee Q&A on synthetic securitisations. | |
| 3. Methodology for the Advisory Committee on Proportionality | 6 December 2021 |
| 1) Public Statement | Decision |
| Decision: The Board adopted the Methodology for the Advisory Committee on Proportionality. | |
| 4. Joint Committee Q&As on the Key Information Document (KID) for Packaged Retail and Insurance-Based Investment Products (PRIIPs) | 13 December 2021 |
| 1) Q&As | Decision |
| Decision: The Board adopted the Joint Committee Q&As on the Key Information Document (KID) for Packaged Retail and Insurance-Based Investment Products (PRIIPs) | |