

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 7 November 2017
Time: 09h00 – 17h30
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
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1. Adoption of agenda Decision

Decision: The agenda was adopted.

2. Summary of conclusions

1) 27 September 2017 Decision

Decision: The summary of conclusions of the 27 September 2017 meeting was adopted.

3. Oral Report by Chair and Executive Director Information

— Update on work conducted in the context of the UK's withdrawal

The Chair reported on

- The annual hearing by the Economic and Monetary Affairs Committee (ECON) of the European Parliament;
- The October 2017 Board meeting of the International Organization for Securities Commissions (IOSCO), in particular the draft administrative arrangements developed in the light of the implementation of the General Data Protection Regulation (GDPR) in the European Union (EU);
- Activities of the European Systemic Risk Board (ESRB), in particular the work on investment fund leverage and liquidity;
- The activities of the Securities and Markets Stakeholder Group (SMSG), in particular the joint meeting with the Board of Supervisors the following day;
- The letter sent by the Chairs of the European Supervisory Authorities (ESAs) to the Council of the European Union and the European Parliament to ensure the continuity of the position of the Executive Directors in light of the European Commission's legislative proposal following the review of the operations of the ESAs;
- The November 2017 Management Board meeting, in particular the discussions on the 2019 budget and priorities and IT governance; and

- The letter received from Finanstilsynet (Norway) on the revised Markets in Financial Instruments Directive (MIFID II) transposition and implementation timetable and the interaction between the European Economic Area (EEA) and the EU.

The Executive Director reported on the

- Upcoming launch of the IT systems following the implementation of MIFID II / MIFIR and the development of contingency plans;
- Ongoing activities in light of the United Kingdom’s withdrawal from the EU;
- European Commission’s intention to add the London Interbank Offered Rate (Libor) to the list of EU critical benchmarks;
- October 2017 meeting of the Financial Services Committee (FSC), in particular the discussions on financial innovation and the work of the Commission’s Expert Group on corporate bonds and private placements;
- EU Ombudsman’s onsite visit in relation to ESMA’s activities following the complaints received from investors on the activities of certain Cyprus-based investment firms;
- Successful first ESMA conference; and
- Survey ESMA will launch as part of a bigger exercise looking into the functioning of ESMA groups.

The Board discussed the transposition of MIFID II in the EU and EEA. The European Commission representative informed the Board about the ongoing discussions between the European Commission and the Kingdom of Norway on the implementation of MIFID II.

Conclusion: It was agreed that ESMA should write a letter to the European Commission Services requesting guidance on the consequences of the potential non-timely transposition of MIFID II in EEA Member States.

4. European Commission proposals following the review of the operations of the ESAs

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| 1) Presentation on the Supervision of the Prospectus Regulation | Discussion |
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The Head of Investors and Issuers Department presented the note providing information on the proposed amendment to the Prospectus Regulation in line with the European Commission’s legislative proposal following the review of the operations of the ESAs.

The Board discussed the note, in particular the:

- Ongoing discussions at the Council of the European Union and the European Parliament following the proposal put forward by the European Commission;
- Need (i) to differentiate between offerings for retail investors and professional investors and (ii) to clarify the definitions proposed in the Commission’s proposal;
- Interaction between the prospectus approval and other supervisory actions such as the (ongoing) supervision of financial reporting requirements; and
- The implementation of prospectus supervision, in particular the number of staff required, the proposed language regime and the volatility in the number of prospectuses that needs to be processed.

Conclusion: The Board exchanged views on the proposal put forward by the European Commission.

5. Data Strategy Implementation Plan

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

The Executive Director presented the data strategy implementation plan.

The Board discussed, the data strategy implementation plan, in particular the:

- Proposed coordination activities by ESMA in relation to the EU's participation in international fora;
- Need for further discussion with the Market Data Standing Committee (MDSC) and the Information technology Management and Governance (ITMG) Technical Committee; and
- Resources required for the execution of the implementation plan.

The European Commission representative informed the meeting about the ongoing initiatives of the European Commission promoting consistency of data reporting requirements across EU financial services legislation.

Conclusion: The Board endorsed the data strategy implementation plan. Karel Juras (CZ) disagreed with the plan.

6. 2018-2021 IT Work Programme Orientation

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| 1) Cover Note | Information |
| 2) Orientation Paper | Information |

The Board discussed the orientation paper, in particular:

- ESMA's limited resources and the need to focus on IT projects which ESMA is required to build by EU law; and
- The potential impact of the European Commission's legislative proposal following the review of the ESAs.

Conclusion: The Board took note of the 2018-2021 IT Work Programme orientation which will provide input to the 2018-2021 IT Work Programme (which will be presented to the Board of Supervisors in January 2018). Karel Juras (CZ) expressed his disagreement with the suggested 2018-2021 IT Work Programme orientation.

7. Statement on Initial Coin Offerings (ICO)

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| 1) Cover Note | Information |
| 2) Explanatory note | Information |
| 3) Statement on Initial Coin Offering (investors) | Decision |
| 4) Statement on Initial Coin Offerings (firms) | Decision |

The Senior Risk Analysis Officer presented the proposed statements on initial coin offerings directed to investors and firms.

The Board discussed the statements, in particular the:

- Need for further analysis on the legal status of initial coin offerings;
- Evidence of consumer detriment; and
- Interaction with national competent authorities' measures and the coordination role for the Financial Innovation Standing Committee (FISC).

Decision: The Board adopted the statements on initial coin offerings subject to drafting changes.

8. Peer Review on the Compliance Function under MIFID

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| 1) Cover Note | Discussion |
| 2) Report on the Peer Review on the Compliance Function under MIFID | Decision |
| 3) Annex 1 – Austria | Decision |
| 4) Annex 2 – Cyprus | Decision |
| 5) Annex 3 – Denmark | Decision |
| 6) Annex 4 – France | Decision |
| 7) Annex 5 – Slovakia | Decision |

The Coordinator of the Assessment Group for the Peer Review on the Compliance Function under MIFID presented the peer review.

The Board discussed the peer review, in particular the:

- Possibility for the relevant national competent authorities to provide a statement on the outcome of the Peer Review; and
- Need for further discussion on the concept of risk-based supervision.

Decision: The Board adopted the Peer Review on the compliance function under MIFID.

9. Application of the CRA Guidelines

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| 1) Cover Note | Discussion |
| 2) Final Report on the updated Guidelines of the CRA endorsement regime | Decision |

Decision: The Board adopted the final report on the updated Guidelines of the CRA endorsement regime. Edwin Schooling Latter (UK) abstained.

10. CRA Regulatory Equivalence

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| 1) Cover Note | Discussion |
| 2) Technical Advice on CRA Regulatory Equivalence – update for CRA 3 requirements | Decision |

Decision: The Board adopted the technical advice on CRA Regulatory Equivalence.

11. MIFID Third Country Regime

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| 1) Cover Note | Discussion |
| 2) Letter to the European Commission | Decision |

Elisabeth Roegele presented the letter to the European Commission on the MIFID Third Country Regime.

Decision: The Board adopted the proposed letter to the European Commission, noting that a copy will be sent to the Council of the European Union and the European Parliament.

12. Implementation of contingency plan

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| 1) | Issues note on non-equity waivers and position limits | Decision |
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Decision: With respect to negotiated trades in non-equity instruments, the Board considered pre-arranged trades in non-equity instruments as MIFID compliant, except if the trades are under the size specific to the instrument (SSTI) waiver. The Board adopted the list of non-eligible waivers.

13. Amendment to RTS 1 on prevailing market conditions for systematic internalizers

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| 1) | Cover Note | Discussion |
| 2) | Consultation Paper on amendments to RTS1 | Decision |
| 3) | Amended draft RTS1 | Decision |

Elisabeth Roegele presented the consultation paper on amendments to RTS 1 on prevailing market conditions for systematic internalizers.

The Board discussed the amendments, in particular the legal concerns expressed by the European Commission representative.

Decision: The Board adopted the consultation paper.

14. Trading Obligation for Shares

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| 1) | Issues note on MIFID II Q&A | Decision |
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Elisabeth Roegele presented the Q&A on the trading obligation for shares.

The Board discussed the Q&A, in particular:

- Whether it would be possible under EU law to exempt shares where the principal trading venue is in a third country from a trading obligation; and
- The need for equivalence decisions between the EU and third countries.

Decision: The Board adopted the Q&A clarifying that all EU investment firms that are part of a chain of transmission should ensure that the ultimate execution of the order complies with the trading obligation requirements under Article 23(1) of MiFIR. The Q&A will make clear that ESMA is in close co-operation with the European Commission regarding the potential impact of the Q&A and the need for equivalence decisions with third countries. Edwin Schooling Latter (UK) stated to disagree because of concern the Q&A would cause investor detriment.

15. MIFID II / MIFIR Q&As

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| 1) | Issues Note on Q&As on transparency and market structures | Decision |
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Elisabet Roegele presented the MIFID II / MIFIR Q&As.

Decision: The Board adopted the Q&A by deciding that Approved Publication Arrangements are required to publish transactions in an aggregated form covering all transactions reported by investment firms that are established in a jurisdiction where the relevant NCA requires and/or allows the publication of transactions in an aggregated form. Robert Ophele (FR) disagreed with that approach.

The Board adopted the Q&A on the treatment of transactions with a third country dimension. Edwin Schooling Latter (UK) disagreed.

The Board adopted the Q&A on the persons considered to have Direct Electronic Access (DEA) in case of sub-delegation.

The Board adopted the Q&A on Direct Electronic Access (DEA) providers. Edwin Schooling Latter (UK) disagreed.

16. MIFID II Q&As on Inducements

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| 1) Cover note | Discussion |
| 2) Q&As on Inducements | Information |

Merel van Vroonhoven presented the Q&A on inducements.

The Board discussed the Q&A, in particular the:

- Need for allowing a case-by-case assessment; and
- Development of the Q&A under MIFID II.

Decision: The Board welcomed the proposed Q&A and instructed the Investor Protection and Intermediaries Standing Committee (IPISC) to seek input from the Investment Management Standing Committee (IMSC) before presenting a final Q&A for adoption by written procedure as soon as possible.

17. Transitional provisions for third country benchmarks

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| 1) Issues note on BMR Q&A – third country transitional provisions | Decision |
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Decision: The Board adopted the Q&A on third country transitional provisions.

18. Regulatory application of variation margin to physically settled FX forwards

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| 1) Issues Note | Discussion |
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The Head of Markets Department presented the note on the regulatory application of variation margin to physically settled FX forward.

The Board discussed the note, in particular the interactions with the ongoing discussions on the review of the European Markets Infrastructure Regulation (EMIR).

Decision: The Board agreed with the suggested way forward. The Chair will liaise with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) before presenting an amendment to the relevant Regulatory Technical Standard (RTS) for adoption by written procedure.

19. Template for CCP data-reporting

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| 1) Issues Note | Discussion |
| 2) Template for common data reporting | Decision |

Nicoletta Giusto presented the template for common data reporting by CCPs.

The Board discussed the proposed template, in particular whether the reporting requirements should be reduced in certain areas.

Decision: The Board agreed with the development of a common reporting template but instructed the Post-Trading Standing Committee (PTSC) to re-consider the suggested reporting requirements on the basis of concrete amendments. A revised template will be presented to the December 2017 meeting of the Board of Supervisors for adoption.

20. ESRB Recommendation on liquidity and leverage

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| 1) Issues Note | Discussion |
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Martin Moloney presented the note on the ESRB recommendation on liquidity and leverage.

The Board discussed the note, in particular the recommendations in relation to:

- The availability of liquidity management tools across the EU, especially to address issues posed by redemption in stressed market conditions; and
- Reduction of the likelihood of excessive liquidity mismatches by increasing the supervisory focus on funds significantly investing in less liquid assets.

Conclusion: The Board took note of the ESRB recommendations which will be discussed during the meeting of the ESRB General Board.

21. ESRB Request for AIFMD Data

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| 1) Cover Note | Discussion |
| 2) ESRB draft decision | Discussion |
| 3) ESRB-ESMA Terms of Reference | Decision |

Decision: The Board assessed the ESRB request as justified and proportionate. The Board adopted the ESRB-ESMA Terms of Reference and delegated the finalisation of the agreement to the Chair.

22. Guidelines on Stress-tests carried out by MMF managers

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| 1) Cover Note | Discussion |
| 2) Technical Advice, Implementing Technical Standards on the establishment of a reporting template and guidelines on stress tests under the MMF Regulation | Decision |

Martin Moloney presented the technical advice, implementing technical standards on the establishment of a reporting template and guidelines on stress-tests under the Money Market Funds Regulation.

The Board discussed the advice and in particular the timing of the relevant European Commission delegated acts.

Decision: The Board adopted the technical advice, implementing technical standards on the establishment of a reporting template and guidelines on stress-tests under the Money Market Funds Regulation.

23. 2019 priorities and budget

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| 1) Cover Note | Discussion |
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2) Orientation paper

Discussion

The Executive Director presented the orientation paper on the 2019 priorities and budget.

The Board discussed the orientation paper, in particular:

- The uncertainties surrounding the 2019 budget following the European Commission’s legislative proposals following the review of the ESAs and EMIR and the UK’s withdrawal from the EU; and
- The proposed top-op scenarios.

Conclusion: The Board supported the baseline proposal in line with the EU Multi-annual Financial Framework (MFF) and including also staff for the implementation of the Securities Financing Transactions Regulation and the Securitisation Regulation. The Board also agreed on the EuVECA/EuSEF proposal provided that it fits within a slight budget increase (up to +7% of the NCAs contributions instead of the +6,5% of the baseline proposal). ESMA staff will develop a draft budget for 2019 for adoption by the Board of Supervisors during its January 2018 meeting.

24. Commodity Derivatives Task Force

1) CDTF Report

Information

Conclusion: The Board took note of the Report.

2) MIFID II Q&A

Decision

Decision: The Board adopted the MIFID II Q&A.

25. Credit Rating Agencies Technical Committee

1) CRA TC Report

Information

Conclusion: The Board took note of the Report.

2) CRAR Q&A

Decision

Decision: The Board adopted the Q&As under Credit Rating Agencies Regulation.

26. Investor Protection and Intermediaries Standing Committee

1) IPISC Report

Information

Conclusion: The Board took note of the Report.

2) MIFID II Q&A

Decision

Decision: The Board adopted the MIFID II Q&As.

27. Market Data Standing Committee

1) MDSC Report

Information

Conclusion: The Board took note of the Report.

2) EMIR Q&As

Decision

Decision: The Board adopted the EMIR Q&As.

3) MIFIR Q&As

Decision

Decision: The Board adopted the MIFID Q&As.

28. Market Integrity Standing Committee

- 1) MISC Report Information

Conclusion: The Board took note of the Report.

- 2) BMR Q&As Decision

Decision: The Board adopted the Q&As under the Benchmark Regulation.

- 3) MAR Q&A Decision

Decision: The Board adopted the MAR Q&As.

29. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the Report.

- 2) Consultation Paper on Guidelines on calculating positions Decision

Decision: The Board adopted the consultation paper on Guidelines on calculating positions.

- 3) CSDR Q&As Decision

Decision: The Board adopted the CSDR Q&As.

30. Secondary Markets Standing Committee

- 1) SMSC Report Information

Conclusion: The Board took note of the SMSC Report.

- 2) MIFID II Q&A Decision

Decision: The Board adopted the MIFID II Q&As.

31. ESMA's premises in 2020

- 1) Cover Note Information

Conclusion: The Board took note of the report on ESMA's premises in 2020.

32. AIFMD Memoranda of Understanding

- 1) Cover Note Information
- 2) Memorandum of Understanding with Abu Dhabi (FSRA) Decision

Decision: The Board adopted the memorandum of understanding with Abu Dhabi.

- 3) Memorandum of Understanding with Qatar (FCRA) Decision



Decision: The Board adopted the memorandum of understanding with Qatar.

33. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Antoine Van Cauwenberge (alternate)	
Bulgaria	Karina Karaivanova	Boyko Atanasov
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Anne Bruun
Germany	Elisabeth Roegele	Marcus Hein
Estonia	Stina Mander (alternate)	
Ireland	Martin Moloney (alternate)	Cian Murphy
Greece	Xenophon Avlonitis (alternate)	Anastasia Maltoudi
Spain	Sebastian Albella	Antonio Mas Fátima Cerdán De La Cruz
France	Robert Ophele	Benoit de Juvigny Françoise Buisson Laurène Duffa
Croatia	Silvana Bozic (alternate)	
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou

Latvia	Sandis Andersmits	
Lithuania		
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Gergo Szeniczey	
Malta	Marianne Scicluna	Christopher Buttigieg
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Joao Sousa Gao	Rita Oliveira Pinto
Romania	Leonardo Badea	Raluca Tariuc
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Jarmo Parkkonen (alternate)	Ville Kajala
Sweden	Sophie Degenne (alternate)	Aron Verständig Fredrik Elmberg
United Kingdom	Edwin Schooling-Latter (alternate)	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Tilman Lueder	Peter Ohrlander
EBA	Anne Tiedemann	
EIOPA		
ESRB	Francesco Mazzaferro	
Iceland	Unnur Gunnarsdottir	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Frank Buchel	Marianne Elind Skaane

Observer

Coordinator of the Assessment Group for the Peer Review on the Compliance Function under MIFID	Sonia Martinez
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ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Legal, Convergence and Enforcement Department	Sophie Vuarlot-Dignac

Head of Investors and Issuers Department	Evert van Walsum
Head of Markets Department	Fabrizio Planta
Head of Resources Department	Nicolas Vasse
Senior Risk Analysis Officer	Patrick Armstrong

Done at Paris on 14 December 2017

Steven Maijor

For the Board of Supervisors