

Summary of Conclusions

Board of Supervisors

Date:	Wednesday 22 and Thursday 23 March 2023
Time:	14h30 – 18h30 (Wednesday) and 9h00 – 12h45 (Thursday)
Location:	MS Teams
Contact:	ESMABoard@esma.europa.eu

- 1. Adoption of agenda** Decision

Decision: The agenda was adopted.

- 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** Discussion

The ESMA Chair reported on:

- ESMA's international activities, including her contributions to IOSCO workstreams and in particular its Sustainability Task Force (STF)'s workplan for 2023 and the ongoing ISSB standards endorsement process, and her call with the Securities and Exchange Board of India (SEBI), to whom she expressed ESMA's commitment to remain available for discussions on Indian CCPs should there be any changes at the Indian end;
- The activities of the Joint Committee, in particular the ongoing development of a consultation paper on the Sustainable Finance Disclosure Regulation (SFDR), the work being undertaken following the European Commission's request for input on greenwashing, its planned deliverables related to financial education in the context of rising interest rates, and the upcoming joint European Supervisory Authorities (ESAs) consumer protection day;
- The March 2023 Management Board, in particular the presentation by the European Commission's Internal Audit Service of their report on data management at ESMA, the discussion that took place on the implementation of ESMA's new strategy; the results of the exercise on the prioritisation of the 2023 annual work programme; and
- The scope and timeline of the climate-related stress testing mandates attributed to the ESAs by the European Commission.

The Executive Director reported on the:

- Temporary ban on financial transactions by ESMA staff adopted in the context of the current market developments; and

- February and March 2023 Council Financial Services Committee meetings, in particular the presentation of ESMA’s reports on the Market Correction Mechanism (MCM) and its equivalence monitoring report, as well as the discussion that took place on recent market developments.

3b. Update on market developments

The Head of the Economics, Financial Stability and Risk Department presented the update on market developments.

The Board discussed the market developments, in particular the:

- Existing exposures among market participants in the European Union/European Economic Area to the relevant entities;
- Accounting treatment of the value of bonds held to maturity and risks related to rising interest rates;
- Increased speed of market reactions in the context of social media and digitalisation, and the need for regulators to adapt;
- Divergences between regulatory models, including with regards to the implementation of Basel III in the United States and the European Union, and the differences in the legal characteristics of Additional Tier 1 (AT1) bonds in the European Union and Switzerland, and the need to ensure investor awareness of these characteristics;
- Distribution of Tier 1 instruments to retail clients including whether the MiFID or BRRD II rules are sufficient to limit the risks for retail clients;
- Need to identify areas where data is scarce, seek to ensure data availability and consider running crisis drills;
- Role for ESMA in exchanging information and coordinating efforts where necessary.

Conclusion: The Board discussed the market developments.

4. Product intervention

- | | |
|--|------------|
| 1) Presentation | Discussion |
| 2) Note on possible additional product intervention measures on CFDs and other instruments | Discussion |

The Acting Head of the Investor Protection and Sustainable Finance Department presented the note on possible additional product intervention measures on contracts for derivatives (CFDs) and other instruments.

The Board discussed the note, in particular the:

- Trends observed in various jurisdictions, including aggressive marketing and misselling of high-risk products to retail investors;
- Observed scams, cold calling and solicitation by unauthorised entities;
- Importance of the supervision and enforcement of product governance requirements;
- Lack of sufficient data notably in the context of the provision of services under freedom to provide services;
- Product-based and marketing-based restrictions considered at national level; and
- Potential use of coordinated action at EU level.

Conclusion: The Board discussed the possible additional product intervention measures on CFDs and other instruments and agreed to request the Investor Protection Standing Committee (IPSC) to hold further discussions on any further potential action needed at EU level, including possible data collection.

5. Dialogue with the UK Financial Conduct Authority

- | | |
|---------|------------|
| 1) Note | Discussion |
|---------|------------|

The Chair and Chief Executive Officer (CEO) of the United Kingdom's Financial Conduct Authority (FCA) provided an update on supervisory and market developments in the United Kingdom.

The Board discussed the update, in particular the:

- Recent market developments and their handling in the United Kingdom;
- Lessons learnt in the UK from the Liability Driven Investments (LDI) strategies;
- Implications of the FCA's new consumer duty;
- Regulatory framework on crypto assets, including the FCA's new powers with regards to the promotion of crypto-related products and the inclusion of lending in the scope of the regulatory framework;
- UK approach to sustainable finance and to tackling greenwashing;
- Follow-up to the nickel related issue on the London Metal Exchange; and
- Importance of supervisory cooperation.

Conclusion: The Board discussed the update on supervisory and market developments in the United Kingdom.

6. Statement on the derivatives trading obligation in the context of the ICEU credit default swap migration

- | | |
|-----------------|------------|
| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Statement | Decision |

The Chair of the Markets Standing Committee presented the statement on the derivatives trading obligation in the context of the ICEU credit default swap migration.

The Board discussed the statement on the derivatives trading obligation in the context of the ICEU credit default swap migration.

In addition, the Board discussed the difficulties ESMA faces when confronted with the expectations to issue this type of statement to resolve legal difficulties without a mandate to do so in Level 1.

Decision: The Board adopted the statement on the derivatives trading obligation in the context of the ICEU credit default swap migration. The Board also agreed to write to the co-legislators to restate the need for ESMA to be granted an option in MiFIR to request the temporary suspension of the derivatives trading obligation and, on a broader level, to review the existing provisions to introduce a true no-action relief power with proper accountability and possible override powers by the co-legislators as needed.

7. Crypto Assets

- | | |
|-----------------------------|------------|
| 1) Crypto Assets Task Force | |
| o Presentation | Discussion |

- Cover note Discussion
- Report on supervisory cases Discussion

The Chair of the Crypto Assets Task Force (CATF) presented the CATF report on supervisory cases.

The Board discussed the report on supervisory cases, in particular the:

- Conflicts of interests observed in trading;
- Importance of supervisory convergence and of having a forum to discuss supervisory cases; and
- Need for national competent authorities to invest in adequate training and the development of the necessary supervisory tools.

Conclusion: The Board discussed the report on supervisory cases and agreed on the importance of continuing to discuss supervisory cases related to crypto-assets.

2) Markets in Crypto Assets Regulation (MiCA)

- Presentation Discussion
- Note on the implementation of MiCA Discussion

The Chair of the Digital Finance Standing Committee presented the note on the implementation of the Markets in Crypto Assets Regulation (MiCA).

The Board discussed the implementation of MiCA, in particular the:

- Need to be prepared to provide early guidance regarding the legal qualification of crypto-assets, including when they qualify as financial instruments;
- Distribution by MiFID licensed firms of crypto-asset related products and some observed interest of crypto groups in acquiring MiFID investment firms;
- Risks of regulatory shopping and corresponding importance of supervisory convergence and exchanges on authorisation and supervisory cases;
- Need for EU wide monitoring of crypto markets for potential market abuse given the cross-border nature of crypto trading;
- Importance of using the tools available to ESMA to provide, where relevant, swift clarification on the new obligations stemming from MiCA;
- Impact of the transitional measures in MiCA and need for converged approaches;
- Importance of continuous reevaluation of the implementation plan; and
- Importance of having a clear communication with regards to MiCA, including to retail investors.

Conclusion: The Board endorsed the proposed implementation plan of MiCA and agreed that the DFSC should look further into the feasibility of potential workstreams related to supervisory convergence and joint market monitoring.

8. Digital Operational Resilience Act

- 1) Cover note Discussion
- 2) Presentation Discussion

The Acting Head of the Markets and Digital Innovation Department presented the update on the Digital Operational Resilience Act

The Board discussed the ESAs' work on the Digital Operational Resilience Act, in particular the:

- Need for proportionality in the development of the single rulebook in the area of digital operational resilience, and the relevant ongoing work at the Proportionality and Coordination Committee;
- Importance of coordination between the ESAs;
- Strong stakeholder interest and engagement in this area; and
- Feasibility study with regards to the centralised EU data hub.

Conclusion: The Board discussed the update on the ESAs' work on the Digital Operational Resilience Act.

9. CCP Policy Committee

- | | |
|------------------|-------------|
| 1) CCP PC Report | Information |
|------------------|-------------|

Conclusion: The Board took note of the CCP PC Report.

- | | |
|--|----------|
| 2) Final report on the regulatory technical standards on minimum elements that should be included in business reorganisation plan and the criteria that a business reorganisation plan is to fulfil for approval by the resolution authority | Decision |
|--|----------|

Decision: The Board adopted the final report on the regulatory technical standards on minimum elements that should be included in business reorganisation plan and the criteria that a business reorganisation plan is to fulfil for approval by the resolution authority.

10. Data Standing Committee

- | | |
|---------------|-------------|
| 1) DSC Report | Information |
|---------------|-------------|

Conclusion: The Board took note of the DSC Report.

- | | |
|--|----------|
| 2) Consultation paper on amendments to the guidelines on position calculation under EMIR | Decision |
|--|----------|

Decision: The Board adopted the consultation paper on amendments to the guidelines on position calculation under EMIR.

- | | |
|--------------|----------|
| 3) EMIR Q&As | Decision |
|--------------|----------|

Decision: The Board adopted the EMIR Q&As.

- | | |
|--------------|----------|
| 4) SFTR Q&As | Decision |
|--------------|----------|

Decision: The Board adopted the SFTR Q&As.

- | | |
|-----------------------------------|----------|
| 5) MiFIR Q&As (on data reporting) | Decision |
|-----------------------------------|----------|

Decision: The Board adopted the MiFIR Q&As (on data reporting).

- | | |
|---|----------|
| 6) 2022 Report on quality and use of transaction data | Decision |
|---|----------|

Decision: The Board adopted the 2022 Report on quality and use of transactional data, subject to a wording amendment in the labelling of chart 7.

- 7) MMFR Data Quality Engagement Framework Report Decision

Decision: The Board adopted the MMFR Data Quality Engagement Framework Report.

- 8) AIFMD Data Quality Engagement Framework Report Decision

Decision: The Board adopted the AIFMD Data Quality Engagement Framework Report.

11. Digital Finance Standing Committee

- 1) DFSC Report Information

Conclusion: The Board took note of the DFSC Report.

- 2) Procedure on the adoption of ESMA opinions on specific permissions to operate DLT market infrastructures Decision

Decision: The Board adopted the procedure on the adoption of ESMA opinions on specific permissions to operate DLT market infrastructures.

- 3) DLT Pilot Q&As Decision

Decision: The Board adopted the DLT Pilot Q&As.

12. Investor Protection Standing Committee

- 1) IPSC Report Information

Conclusion: The Board took note of the IPSC Report.

- 2) Final report on guidelines on product governance Decision

Decision: The Board adopted the final report on guidelines on product governance.

- 3) Public statement on fractional shares Decision

Decision: The Board adopted the public statement on fractional shares.

- 4) Supervisory briefing on copy trading Decision

Decision: The Board adopted the supervisory briefing on copy trading.

- 5) Final report on revised technical standards on cooperation Decision

Decision: The Board adopted the final report on revised technical standards on cooperation.

13. Issuers Standing Committee

- 1) ISC Report Information

Conclusion: The Board took note of the ISC Report.

- | | |
|---|----------|
| 2) 2022 corporate reporting enforcement and regulatory report | Decision |
|---|----------|

Decision: The Board adopted the 2022 corporate reporting enforcement and regulatory report, subject to an amendment relating to the number of issuers subject to supervision in one authority.

- | | |
|---|----------|
| 3) 27 th Extract from the EECS's Database of Enforcement | Decision |
|---|----------|

Decision: The Board adopted the 27th Extract from the EECS's Database of Enforcement.

14. Markets Standing Committee

- | | |
|---------------|-------------|
| 1) MSC Report | Information |
|---------------|-------------|

Conclusion: The Board took note of the MSC Report.

- | | |
|-------------------------------|----------|
| 2) Q&A on settlement location | Decision |
|-------------------------------|----------|

Decision: The Board adopted the Q&A on settlement location.

- | | |
|---|----------|
| 3) Amended delegation to the ESMA Chair of the adoption of opinions on pre-trade transparency waivers | Decision |
|---|----------|

Decision: The Board adopted the amended delegation to the ESMA Chair of the adoption of opinions on pre-trade transparency waivers.

- | | |
|--|----------|
| 4) Amended delegation to the ESMA Chair on the adoption of non-controversial opinions on position limits | Decision |
|--|----------|

Decision: The Board adopted the amended delegation to the ESMA Chair on the adoption of non-controversial opinions on position limits.

- | | |
|--|----------|
| 5) Amended delegation to the ESMA Chair of the assessment regarding third country trading venues for the purposes of Articles 20 and 21 of MiFIR | Decision |
|--|----------|

Decision: The Board adopted the amended delegation to the ESMA Chair of the assessment regarding third country trading venues for the purposes of Articles 20 and 21 of MiFIR.

- | | |
|--|----------|
| 6) Amended delegation to the ESMA Chair of the assessment regarding third country trading venues for the purposes of Articles 57(4) of MiFID | Decision |
|--|----------|

Decision: The Board adopted the amended delegation to the ESMA Chair of the assessment regarding third country trading venues for the purposes of Articles 57(4) of MiFID.

- | | |
|--|----------|
| 7) Procedure on the adoption of ESMA opinions on waivers from pre-trade transparency | Decision |
|--|----------|

Decision: The Board adopted the procedure on the adoption of ESMA opinions on waivers from pre-trade transparency.

- | | |
|--|----------|
| 8) Procedure on the exemption of MiFIR access provisions for trading venues as regards exchange-traded derivatives | Decision |
|--|----------|

Decision: The Board adopted the procedure on the exemption of MiFIR access provisions for trading venues as regards exchange-traded derivatives.

- | | |
|--|----------|
| 9) Procedure on position management powers of ESMA (Article 45 of MiFIR) | Decision |
|--|----------|

Decision: The Board adopted the procedure on position management powers of ESMA (Article 45 of MiFIR).

- | | |
|--|----------|
| 10) Procedure on the designation of significant commodity derivatives (Article 57(1) of MiFID II) and on the adoption of opinions on position limits (Article 57(5) of MiFID II) | Decision |
|--|----------|

Decision: The Board adopted the procedure on the designation of significant commodity derivatives (Article 57(1) of MiFID II) and on the adoption of opinions on position limits (Article 57(5) of MiFID II).

15. Risk Standing Committee

- | | |
|---------------|-------------|
| 1) RSC Report | Information |
|---------------|-------------|

Conclusion: The Board took note of the RSC Report.

- | | |
|---|----------|
| 2) ESMA market report on EU credit rating markets | Decision |
|---|----------|

Decision: The Board adopted the ESMA market report on EU credit rating markets.

16. Supervision Policy Committee

- | | |
|------------------------------|-------------|
| 1) ESPC (BMR Network) Report | Information |
|------------------------------|-------------|

Conclusion: The Board took note of the ESPC (BMR Network) Report.

- | | |
|--|----------|
| 2) Updated BMR Q&As (on the legal representative under the BMR recognition regime) | Decision |
|--|----------|

Decision: The Board adopted the updated BMR Q&As (on the legal representative under the BMR recognition regime).

17. ESMA Groups Terms of References

- | | |
|-----------------------------|-------------|
| 1) Cover note | Information |
| 2) Standing Committees | |
| o CCP Policy Committee | Decision |
| o CCP Supervisory Committee | Decision |
| o CCP Resolution Committee | Decision |

- Data Standing Committee Decision
- Digital Finance Standing Committee Decision
- ESMA Supervision Policy Committee Decision
- Investment Management Standing Committee Decision
- Investor Protection Standing Committee Decision
- Issuers Standing Committee Decision
- IT Standing Committee Decision
- Markets Standing Committee Decision
- Proportionality and Coordination Standing Committee Decision
- Risk Standing Committee Decision
- Senior Supervisors Forum Decision
- Sustainability Standing Committee Decision

Decision: The Board adopted the Terms of References of the Standing Committees.

3) Working Groups reporting to the Digital Finance Standing Committee:

- DLT Working Group Decision

Decision: The Board adopted the Terms of Reference of the DLT Working Group.

4) Reporting to the Issuers Standing Committee:

- Financial Reporting (EECS) Working Group Decision
- Sustainability Reporting Working Group Decision
- Prospectus Working Group Decision
- Shareholder Transactions Working Group Decision

Decision: The Board adopted the Terms of References of the Working Groups reporting to the Issuers Standing Committee.

5) Reporting to the Markets Standing Committee

- Commodity Derivatives Working Group Decision
- Market Integrity Working Group Decision

- Post Trading Working Group Decision
- Secondary Markets Working Group. Decision

Decision: The Board adopted the Terms of References of the Working Groups Reporting to the Markets Standing Committee.

- 6) Reporting to the Senior Supervisors Forum
 - Enforcement Working Group Decision

Decision: The Board adopted the Terms of Reference of the Enforcement Working Group.

- 7) Delegation to the ESMA Chair of the approval and sending of documents related to technical matters in relation to financial reporting and auditing to relevant external bodies Decision

Decision: The Board adopted the delegation to the ESMA Chair of the approval and sending of documents related to technical matters in relation to financial reporting and auditing to relevant external bodies.

- 8) Overview of ESMA Groups Information

Conclusion: The Board took note of the overview of the ESMA Groups.

18. Securities and Market Stakeholder Group – appointment of one member

- 1) Note Decision

Decision: The Board adopted the note on the appointment of one member of the Securities and Markets Stakeholder Group.

19. Update on delegations

- 1) Cover note Information
- 2) Annual update on the exercise of the delegations to the ESMA Chair in relation to secondary markets Information

Conclusion: The Board took note of the annual update on the exercise of the delegations to the ESMA Chair in relation to secondary markets.

- 3) Annual update on the exercise of the delegation to the ESMA Chair on the adoption of changes to technical instructions Information

Conclusion: The Board took note of the annual update on the exercise of the delegation to the ESMA Chair on the adoption of changes to technical instructions.

20. 2022 Accounts

- 1) Cover note Information

- | | |
|--|-------------|
| 2) Presentation | Information |
| 3) Provisional 2022 Accounts | Information |
| 4) Report on budgetary and financial management | Information |
| 5) Representation Letter 2022 Provisional Accounts | Information |
| 6) Report from Baker Tilly | Information |

Conclusion: The Board took note of the provisional 2022 accounts.

21. A.O.B.

/

Participants list
Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais Annemie Rombouts (alternate) Damien Sohet (alternate)	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtěch Belling	
Denmark	Karen Dorte Abelskov	
Germany	Thorsten Pöttsch	
Estonia	Andre Nõmm	
Ireland	Derville Rowland	
Greece	Vassiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Marie-Anne Barbat-Layani Benoit de Juvigny (alternate)	

Croatia	Ante Žigman	
Italy	Carlo Comporti	
Cyprus	George Theocharides	
Latvia	Kristaps Soms (alternate)	
Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx	
Hungary	Gábor Laki (alternate) (22/03) Krisztián Csáky (alternate) (23/03)	
Malta	Christopher Buttigieg	
Netherlands	Jos Heuvelman	
Austria	Eduard Müller	
Poland	Rafal Mikusiński	
Portugal	Luís Laginha de Sousa	
Romania	Gabriel Gradinescu	
Slovenia	Anka Čadež	
Slovakia	Peter Tkáč (22/03)	

	Tomas Ambra (alternate) (23/03)	
Finland	Armi Taipale	
Sweden	Susanna Grufman Fredrik Elmberg (alternate)	
Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	
EBA	Francois-Louis Michaud Anne Tiedemann (alternate)	
EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro (22/03) Olaf Weeken (alternate) (23/03)	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Reto Degen	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marianne Moen (alternate)	

Executive Director	Natasha Cazenave
Summary of Conclusions	Jakub Michalik / Tomas Borovsky Laura Weil
Chair of the Markets Standing Committee	Rodrigo Buenaventura
Chair of the Digital Finance Standing Committee	Carlo Comporti
Chair of the Crypto Assets Task Force	Birgit Puck
Head of Economics, Financial Stability and Risk Department	Steffen Kern
Acting Head of Investor Protection and Sustainable Finance Department	Salvatore Gnoni
Acting Head of Market and Digital Innovation Department	Carten Ostermann

UK Financial Conduct Authority (item 5)

Chair	Ashley Alder
CEO	Nikhil Rathi
Manager, EU Strategy and Engagement Team	Andrew Laidlaw

Done at Paris on 28 April 2023



Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 16 to 21 March 2023)

/