

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 9 November 2016
Time: 10h00 – 17h00
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda BS/265 Decision

Decision: The agenda was adopted noting that the discussion on the opinion on MAR accepted market practices proposed by CNMV (agenda item 14) was postponed to a later meeting.

2. Summary of conclusions

— 28 September 2016 meeting BS/259re Decision
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Decision: The summary of conclusions of the 28 September 2016 meeting was approved. Jean-Paul Servais (BE) invited ESMA staff to consider improvements to the written procedures process.

3. Report by Chair and Executive Director Oral Information

The Chair reported on

- His participation in the AIFMD third countries scrutiny slot of the European Parliament's Committee on Economic and Monetary Affairs;
- The activities of the International Organization of Securities Commissions (IOSCO) and in particular the October 2016 Board meeting;
- His meetings with US authorities and stakeholders;
- The activities of the Joint Committee and in particular the 2017 Joint Committee Work Programme and the note in response to the European Commission's public consultation on the evaluation of the Financial Conglomerates Directive;
- The November 2016 meeting of the Management Board and in particular the discussions on the 2018 budget;
- The activities of the Securities and Markets Stakeholder Group (SMSG) and in particular the upcoming joint meeting with the Board of Supervisors; and
- The activities of the European Systemic Risk Board (ESRB) and in particular its contribution to the EU macro-prudential policy framework.

The Executive Director reported on the

- October 2016 meeting of the Financial Services Committee, and in particular on the discussions on supervisory convergence and financial markets risks that took place; and
- Ongoing discussions in relation to the impact of EU data protection rules on exchange of information with third country supervisory authorities.

4. Update ESMA prioritisation Capital Markets Union

- Issues Note BS/267 Discussion

The Head of the Investors and Issuers Department presented the Issues note on the prioritisation of ESMA's Capital Markets Union related work.

The Board discussed the issues note, in particular:

- The importance of Small and Medium-Sized Entities (SMEs) and whether further work should be carried out by ESMA and/or the European Commission;
- ESMA's strong commitment to promoting supervisory convergence;
- The prioritisation of the different work streams in light of ESMA's budget restrictions and in particular those relating to the macro-prudential framework and retail financial services and investment products; and
- ESMA's data strategy and data quality action plan.

Conclusion: The Board confirmed its commitment to and support for the European Commission's initiative establishing a Capital Markets Union and decided that (i) further work should be carried out in relation to SMEs and (ii) ESMA's data strategy and data quality related work should also be carried out in light of CMU. ESMA and the European Commission should further align their strategic agendas on the establishment of a CMU. The Board will also discuss at a future meeting the potential impact of the United Kingdom (UK) leaving the Union on European financial market integration. The Board will continue to discuss on a regular basis the work related to and progress towards establishing a CMU.

5. European Commission consultation on personal pensions

- Cover Note BS/268 Discussion
- Draft response to the European Commission's consultation paper BS/269 Decision

The Investor Protection Team Leader presented the draft response to the European Commission's consultation paper.

The Board discussed the draft response, in particular:

- The potential source of inspiration from existing asset management legislation;
- The role of national tax systems;
- Whether there is a need for further impact analysis on the proposal to establish a European personal pension product; and
- ESMA's focus on technical comments.

Decision: The Board adopted the response to the European Commission's consultation paper adding a reference to the need for further impact analysis and subject to some drafting changes (removing political comments).

6. PRIIPs

- Issues Note Oral Discussion

The Chair introduced the session by highlighting the concerns expressed by the European Parliament when rejecting the adoption of the Packaged Retail and Insurance Based Investment Products (PRIIPs) regulatory technical standards.

The European Commission representative informed the Board that the European Commission intends to amend the draft technical standards developed by the ESAs. The ESAs will be invited to submit amended standards within six weeks.

Conclusion: The Board took note of the update.

7. Decision on the processes for position limits and pre-trade transparency waivers

—	Issues Note	BS/277	Discussion
—	Position Limits Framework	BS/278	Decision
—	Waivers Framework	BS/279	Decision

The Head of Markets Department presented the decision on the processes for position limits and pre-trade transparency waivers.

The Board discussed the proposed processes, in particular the interaction with national law and whether decisions can be taken as long as the relevant regulatory technical standards have not been adopted by the European Commission.

Decision: The Board endorsed the proposed process which will be formalised and presented to the Board for approval. ESMA will start developing the relevant Opinions based on the information made available to it. The communication aspects will be discussed at a future Board meeting.

8. Consultation paper on package orders for which there is a liquid market

—	Cover Note	BS/280	Information
—	Consultation Paper on Package orders for which there is a liquid market	BS/281 & Annex 1	Decision

The Team Leader Secondary Markets presented the consultation paper.

Decision: The Board adopted the consultation paper on package orders for which there is a liquid market

9. MiFID II Q&A – data disaggregation BS/291 Decision

The European Commission representative informed the Board about concerns whether the Q&A establishes new conditions for access to disaggregated trading data not provided for in EU law.

Decision: The Board adopted the Q&A removing the reference to the need for clients to ensure they have the appropriate capacity to receive the data.

10. MiFID Q&A BS/293 Decision

The Board discussed the Q&As and in particular whether trades on non-EEA venues should be considered over-the-counter (OTC) or not.

Decision: The Board asked the Commodity Derivatives Task Force (CDTF) to consider some more granular description of when a trade is considered to be OTC or not.

11. Marketing and administration functions under the AIFMD

- Cover Note BS/271 Discussion
- AIFMD Q&A on marketing and administration functions under the AIFMD BS/272 Decision

Cyril Roux introduced the Q&A on marketing and administration functions under the Alternative Investment Fund Managers Directive (AIFMD) by highlighting the discussions that had taken place at the Investment Management Standing Committee (IMSC).

The Board discussed the Q&A, in particular:

- Whether the administration and marketing functions can be performed by a third party outside the context of a delegation arrangement; and
- The upcoming AIFMD review.

The European Commission representative stated that in his view the proposed Q&A was in line with EU law

Decision: The Board adopted the Q&A.

	Approval	Objection	Abstain
Jean-Paul Servais (BE)	X		
Karel Juras (CZ)		X	
Birgitte Sogaard Holm (DK)	X		
Hannelore Luasch (DE)		X	
Andre Nomm (EE)		X	
Cyril Roux (IE)		X	
Xenofon Avlonitis (EL)	X		
Victor Rodriguez (ES)		X	
G�rard Rameix (FR)	X		
Silvana Bozic (HR)	X		
Gergo Szeniczey (HU)	X		

Nicoletta Giusto (IT)	X		
Demetra Kalogirou (CY)	X		
Sandis Andersmits (LV)	X		
Vytautas Valvonis (LT)	X		
Claude Marx (LU)		X	
Christopher Buttigieg (MT)		X	
Merel van Vroonhoven (NL)	X		
Klaus Kumpfmüller (AT)	X		
Marek Szuszkiewicz (PL)	X		
Gabriele Figuerido Dias (PT)	X		
Mircea Ursache (RO)	X		
Tomas Ambra (SK)	X		
Sabina Bester (SI)	X		
Jarmo Parkkonen (FI)	X		
Sophie Degenne (SE)		X	
Edwin Schooling Latter (UK)		X	

12. MAR Accepted Market Practice

— Note on the Accepted Market Practice on liquidity contracts BS/273 Discussion

Nicoletta Giusto presented the note by highlighting the need for further supervisory convergence.

The Board discussed the note, in particular the scope impact of the suggested definitions.

Conclusion: The Board endorsed the suggested approach.

— Opinion on MAR Accepted Market Practice by CNMV BS/274 Decision

Decision: The item will be discussed at a future meeting.

13. Benchmark Regulation

—	Cover Note	BS/275	Discussion
—	Final Report on ESMA Technical Advice on the Benchmarks Regulation	BS/276	Decision

Nicoletta Giusto presented the Final Report on ESMA Technical Advice on the Benchmarks Regulation.

The Board discussed the Final Report, in particular the:

- Set-up and first meeting of the Euribor college chaired by the Belgian Financial Services and Markets Authority (FSMA); and
- Importance of high quality data published by trade repositories.

Decision: The Board adopted the Final Report on ESMA Technical Advice on the Benchmark Regulation.

14. Significant changes to CCP new products or services or model changes

—	Cover Note	BS/282	Discussion
—	Opinion on the procedure how to define and communicate significant changes to CCP new products or services or model changes	BS/283	Decision

Nicoletta Giusto presented the Opinion on the procedure how to define and communicate significant changes to CCP new products or services or model changes.

The Board discussed the Opinion, in particular new risks, activities and services that would likely qualify as an extension of activity.

Decision: The Board adopted the Opinion on the procedure how to define and communicate significant changes to CCP new products or services or model changes. Hannelore Lausch (DE), Cyril Roux (IE) and Edwin Schooling Latter (UK) voted against.

15. Rules of Procedure on Professional secrecy and confidentiality for Non-ESA Staff

—	Cover Note	BS/284	Discussion
—	Draft Rules of Procedure on Professional Secrecy and Confidentiality for non-ESA staff	BS/285	Discussion

The Head of Legal, Convergence and Enforcement presented the draft Rules of Procedure on Professional Secrecy and Confidentiality for non-ESA staff.

The Board discussed the draft Rules of Procedure, in particular:

- The legal basis for the suggested Rules of Procedure;
- How the representatives of the Board Members in ESMA groups could be affected and the role of Board Members in that respect;
- The participation of other competent authorities within ESMA;
- The advisory role of the Management Board and the Board of Supervisors as decision-taker for individual cases; and
- What kind of information could be shared with other national authorities, especially when there is a legal obligation to do so;

Conclusion: The Board noted (i) that there will be no public naming and shaming and (ii) that similar Rules of Procedure were being discussed at the other two European Supervisory Authorities (ESAs). It was agreed that a Board Member is not responsible for leaks by other competent authorities in his/her jurisdiction. The Board endorsed the suggested Rules of Procedure subject to potential comments of the European Commission. Karel Juras (CZ), Marek Szuszkiewicz (PL) and Tomas Ambra (SK) disagreed with the Rules of Procedure.

16. Post-Trading Standing Committee

— PTSC Report	BS/286	Information
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Conclusion: The Board took note of the report.

— Final Report on the clearing obligation for financial counterparties with a lower volume of activity	BS/287	Decision
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Decision: The Board approved the Final Report and draft technical standards on the clearing obligation for financial counterparties with a lower volume of activity.

17. Credit Ratings Agencies Technical Committee

— CRA TC Report	BS/288	Information
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Conclusion: The Board took note of the report.

— Final Report on Guidelines on validation and review of CRAs' methodologies	BS/289	Decision
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Decision: The Board approved the Final Report on Guidelines on validation and review of CRAs' methodologies.

18. Secondary Markets Standing Committee

— SMSC Report	BS/290	Information
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Conclusion: The Board took note of the report.

— MiFID II Q&A	BS/291	Decision
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Decision: The Board approved the MiFID II Q&As.

19. Commodity Derivatives Task Force

— CDTF Report	BS/292	Information
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Conclusion: The Board took note of the report.

— MiFID II Q&As	BS/293	Decision
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Decision: The Board approved the MiFID II Q&As.

20. Investment Management Standing Committee

— IMSC report	BS/294	Information
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Conclusion: The Board took note of the report.

— Q&As on AIFMD BS/295 Decision

Decision: The Board approved the AIFMD Q&As.

— Q&As on UCITS BS/296 Decision

Decision: The Board approved the UCITS Q&A.

21. Corporate Finance Standing Committee

— CFSC Report BS/297 Information

Conclusion: The Board took note of the report.

— Terms of Reference Take Over Bids Network BS/298 Decision

Decision: The Board approved the Terms of Reference for the Take Over Bids Network.

— Thematic Study on major shareholding notifications under the Transparency Directive BS/299 Decision

Decision: The Board endorsed the Thematic Study on major shareholding notifications under the Transparency Directive.

22. Task Force on Benchmark Regulation

— Cover Note BS/300 Information

Conclusion: The Board took note of the Cover Note.

— Terms of Reference Task Force on Benchmarks Regulation BS/301 Decision

Decision: The Board adopted the Terms of Reference for the Task Force on the Benchmarks Regulation.

23. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Vladimir Savov (alternate)	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	
Germany	Elisabeth Roegele	Hannelore Lausch Marcus Hein
Estonia	Andre Nomm	
Ireland	Cyril Roux	Martin Moloney Cian Murphy
Greece	Xenophon Avlonitis	Anastasia Maltoudi
Spain	Victor Rodriguez-Quejido (alternate)	Antonio Mas
France	Gerard Rameix	Benoit de Juvigny Francoise Buisson Antonio Ocana Alvarez
Croatia	Silvana Bozic (alternate)	
Italy	Nicoletta Giusto (alternate)	

Cyprus	Demetra Kalogerou	
Latvia	Sandis Andersmits (alternate)	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	Francoise Kauthen
Hungary	Gergo Szeniczey	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus Kumpfmuller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Gabriela Figueiredo Dias (alternate)	
Romania	Mircea Ursache (alternate)	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Jarmo Parkkonen (alternate)	
Sweden	Sophie Degenne (alternate)	Oskar Ode
United Kingdom	Edwin Schooling Latter	Michael Deveney

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Peter Ohrlander
ESRB	Francesco Mazzaferro	
EBA	Philippe Allard	
EIOPA	Sandra Hack	
Iceland	Unnur Gunnarsdottir	
Liechtenstein	Marcel Lötscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaanne
EFTA Surveillance Authority	Frank Buchel	Per Christian Baeroe

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Department	Rodrigo Buenaventura
Head of Investors and Issuers Department	Evert van Walsum
Team Leader Investor Protection	Salvatore Gnoni

Team Leader Secondary Markets	Carsten Ostermann
Team Leader Asset Management	Richard Stobo

Done at Paris on 14 December 2016

Steven Majoor

For the Board of Supervisors