

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 23 and 24 May 2018
Time: 14h00 – 18h00 (23 May 2018) and 09h00 – 13h00 (24 May 2018)
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 Decision

Decision: The agenda was adopted.

2. Oral Report by Chair and Executive Director Information

The Chair reported on the:

- May 2018 Board meetings of the International Organization of Securities Commissions (IOSCO), in particular the discussions on the status of data transfer in light of the General Data Protection Regulation;
- Activities of the European Systemic Risk Board (ESRB) and in particular the upcoming discussion on Brexit, the EU shadow banking monitor and the occasional paper on the use of credit default swaps by investment funds;
- April 2018 meeting of the Economic Financial Committee – Financial Stability Round Table, in particular the discussions on financial stability and the European Commission’s Capital Markets Union initiative;
- Ongoing discussions in relation to the European Commission’s legislative proposal following the review of the operations of the European Supervisory Authorities;
- May 2018 meeting of the Management Board, and in particular on the approval of the 2017 financial accounts;
- Letter sent by the European Commission in January 2018 on the compatibility of the share cancellation mechanism with the Money Market Funds Regulation (MMF); and
- Upcoming EBA/ESMA Statement on the treatment of retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive.

The Executive Director reported on the:

- May 2018 meeting of the Financial Services Committee (FSC), in particular the Committee's interest in following the technical standards developed by the ESAs and the discussions on non-performing loans, the sustainable finance action plan and the European Commission's legislative proposal on promoting listings by Small- and Medium-sized Entities (SMEs); and
- International Monetary Fund's Ongoing Financial Sector Assessment Programme (FSAP) assessment of the euro area.

3. MIFID II Implementation

1) Presentation

Discussion

The Executive Director presented the MIFID II implementation update.

The Board discussed the notes, in particular:

- ESMA's IT-systems and the need to map implementation issues on which further work might be needed, including data quality;
- The bond market transparency
- The supervision of the systematic internalisers regime;
- The need to continue the strong co-operation between national competent authorities and ESMA in relation to the product intervention activities and whether ESMA should identify potential legislative improvements in a letter to the European Commission; and
- The transposition of the Market in Financial Instruments Directive by EU Member-States.

Conclusion: The Board discussed the implementation of MIFID/MIFIR. It was agreed that ESMA (together with national competent authorities) should continue working on further improving the functioning of IT-systems and data quality. The Investor Protection and Intermediaries Standing Committee (IPISC) was instructed to consider by the July 2018 Board of Supervisors meeting whether ESMA should propose amendments to the European Commission in relation to ESMA's product intervention powers.

2) Common approach to LEI under MIFIR

Discussion

The Executive Director presented the common approach to LEI under MIFIR.

The Board discussed the common approach, in particular:

- The need for a common supervisory approach and its resource implications;
- Whether a public statement is needed; and
- The use of a Legal Entity Identifier (LEI) by EU versus non-EU issuers.

Conclusion: The Board agreed with the proposed common approach and supported the statement. The Board highlighted the need for national competent authorities to prioritise EU-issuers in their supervision. The Statement will be presented to the Board for adoption by written procedure, the common supervisory approach to the July 2018 Board of Supervisors.

4. Update on the implementation of the PRIIPS Regulation

1) Presentation

Discussion

The Head of the Investors and Issuers Department presented the update on the implementation of the PRIIPS Regulation.

The Board discussed the update, in particular:

- Whether further work is needed on the delineation of the scope of products to which the Regulation is applicable and, if so, whether ESMA should suggest to the European Commission to take further action;
- The practical application of the PRIIPS methodologies;

- The European Commission’s planned post-implementation review; and
- The interaction with the European Commission’s initiative to establish a Capital Markets Union.

Conclusion: The Board decided that, in close co-operation with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), further consideration should be given by the July 2018 meeting of the Board of Supervisors on whether the scope of PRIIPs could be further clarified. The Head of Investors and Issuers Department emphasized the need to continue collecting data to allow an evidence-based assessment of the potential problems with the transaction costs methodology.

5. ESMA Cybersecurity activity

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| 1) Presentation | Discussion |
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The Head of Supervision Department presented ESMA’s cybersecurity activity.

The Board discussed ESMA’s activity, in particular:

- ESMA’s recent initiative bringing together senior supervisors from national competent authorities to discuss cyber security in the asset management sector;
- The need to focus on the supervisory impact and cross-border relevance; and
- The interaction with initiatives taken by national authorities and other EU bodies (including those on information and network security).

Conclusion: The Board discussed ESMA’s ongoing work in relation to cybersecurity. A preliminary analysis of the questionnaire on cybersecurity related activity among national competent authorities will be presented to the September 2018 Board of Supervisors.

6. UK’s decision to withdraw from the EU

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| 1) Update on ongoing work | Discussion |
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The Executive Director, the Head of Brexit Department, the Head of Investors and Issuers Department and the Head of Markets Department presented the update on ESMA’s activities in relation to the UK’s decision to withdraw from the EU.

The Board discussed the update, in particular:

- The need for supervised entities to prepare for a hard Brexit scenario and whether ESMA should go public highlighting potential risks for retail investors;
- The impact of a hard Brexit in the post-trading area, in particular in respect of access to central counterparties;
- What kind of co-operation ESMA should have with the UK authorities post-Brexit, including issues such as data exchange and data protection ;
- The activities of the Supervision Coordination Network and the types of decisions presented to the group and whether a peer review is needed in the future;

The Executive Director informed the Board of the adoption (by written procedure) of the terms of reference of the project group looking into what kind of memorandum of understanding might be needed with the UK authorities once the UK becomes a third country.

Conclusion: The Board discussed the update by highlighting the need to look into the financial stability implications of a hard Brexit and to prepare accordingly. The Board will continue to be informed during the upcoming Board meetings.

7. Crypto-assets

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| 1) Cover Note | Discussion |
| 2) Update on the activities of the ICO Task Force | Discussion |

Jean-Paul Servais presented the update on the activities of the ICO Task Force by highlighting that a survey to national competent authorities might follow.

The Board discussed the update, in particular:

- To focus on ESMA's investor protection mandate and to consider the use of crypto-assets comprehensively, including all EU securities markets legislation;
- The concept of a 'transferable security'; and
- The need for an EU-wide initiative and how ESMA could contribute to that.

Conclusion: The Board discussed the update and agreed that an initiative by the EU institutions is needed. The Board instructed the Task Force to continue its work by adopting a more strategic approach and to report as soon as possible to the Board.

8. Delineating the scope of the transparency / DVC regime based on Classification of Financial Instruments

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| 1) Issues Note | Discussion |
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Elisabeth Roegele presented the note on delineating the scope of the transparency / DVC regime based on classification of financial instruments.

The Board discussed the note, in particular

- Whether share-based REITs should be classified as shares and all others as "other similar financial instruments" meaning that they would also be in scope of the transparency regime;
- Whether only exchange traded funds in the more narrow sense or also other collective investment schemes should be deemed in scope of the transparency regime; and
- The IT-implications.

Conclusion: The Board decided that only share-based REITs and exchange funds in the more narrow sense should be in scope of the transparency regime.

9. Guidelines on CCP Anti-Procyclicality Measures

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| 1) Cover Note | Discussion |
| 2) Guidelines on Anti-Procyclicality Measures | Decision |

Decision: The Board adopted the Guidelines on anti-procyclicality measures. The Board highlighted the importance for clear communication on the fact that the Guidelines will replace the existing Q&A when becoming applicable and that the Q&A will be removed accordingly.

10. Timing gap issue of REFIT and Exemption of Pension Scheme Arrangements

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| 1) Issues Note | Discussion |
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Robert Ophele presented the note on the timing gap issue of REFIT and Exemption of Pension Scheme Arrangements.

Conclusion: The Board instructed the Post-Trading Standing Committee to prepare a Statement addressed to National Competent Authorities with the objective to avoid, to the extent possible, disruption as a result of the gap between EMIR and REFIT regarding the pension scheme exemption.

11. Supervision of branches

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| 1) Cover Note | Discussion |
| 2) Q&A on supervision of branches of UCITS Management Companies or Alternative Investment Fund Managers providing MiFID investment services | Decision |

Merel van Vroonhoven presented the Q&A on supervision of branches of UCITS Management Companies or Alternative Investment Fund Managers providing MiFID investment services.

The Board discussed the Q&A, in particular:

- The need to ensure the supervision of investment services provided by branches of UCITS management companies and AIFMs in the Host Member-State; and
- Whether a Q&A is the right tool.

Decision: The Board adopted the Q&A after a vote.

12. Administrative arrangement for the transfer of personal data with third countries

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| 1) Update Note | Decision |
| 2) Letter from Working Party 29 | Information |

The Head of Legal, Convergence and Enforcement presented the note on administrative arrangements for the transfer of personal data with third countries.

The Chair provided a summary of the discussions that took place during the May 2018 Board meeting of the International Organization for Securities Commissions (IOSCO).

Conclusion: The Board welcomed the progress and agreed with the Chair to continue its liaison with the relevant EU bodies with the aim to have the final draft administrative arrangement ready before the September BoS.

13. ESMA 2020 premises

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| 1) Issues Note | Information |
| 2) Presentation | Discussion |

The Head of Resources Department presented the note on the ESMA 2020 premises.

The Board discussed the note, in particular the:

- Need to consider the total cost of any relocation option and whether it is possible to stay at the current premises; and

- Decision of the European Banking Authority (EBA) to launch a procurement procedure separate from ESMA.

Conclusion: The Board took note of the update on ESMA 2020 premises.

14. Corporate Reporting Standing Committee

- 1) CRSC Report Information

Conclusion: The Board took note of the CRSC Report.

- 2) Comment Letter to EFRAG on EFRAG's DP Equity Impairment and Recycling Decision

Decision: The Board adopted the comment letter to EFRAG on EFRAG's DP Equity Impairment and Recycling.

15. Investment Management Standing Committee

- 1) IMSC Report Information

Conclusion: The Board took note of the IMSC Report.

- 2) UCITS Q&A Decision

Decision: The Board adopted the UCITS Q&A.

16. Investor Protection and Intermediaries Standing Committee

- 1) IPISC Report Information

Conclusion: The Board took note of the IPISC Report.

- 2) Final report on the Guidelines on certain aspects of the MIFID II requirements on suitability Decision

Decision: The Board adopted the Final Report on the Guidelines on certain aspects of the MIFID II requirements on suitability.

- 3) MIFID II Q&As Decision

The Board discussed the MIFID Q&As, in particular the Q&A on reverse solicitation (Q&A 13.2).

Decision: The Board adopted the MIFID II Q&As. In relation to Q&A 13.2 on reverse solicitation, which was adopted by the Board with the deletion of the sentence "[...] unless the client wishes at its own exclusive initiative to receive investment advice with respect to new products". The Board instructed the Investor Protection and Intermediaries Standing Committee (IPISC) to work on (a) concrete example(s) which could be added at a later point in time. Edwin Schooling Latter (UK) abstained on Q&A 13.2

- 4) Product intervention Q&As Decision

Decision: The Board adopted the Q&As on product intervention.

17. Market Data Standing Committee

- 1) MDSC Report Information

Decision: The Board took note of the MDSC Report.

- 2) MIFIR Q&As Decision

Decision: The Board adopted the MIFIR Q&As

- 3) EMIR Q&As Decision

Decision: The Board adopted the EMIR Q&As.

18. Market Integrity Standing Committee

- 1) MISC Report Information

Decision: The Board took note of the MISC Report.

- 2) Supervisory Briefing on delayed disclosure of inside information for credit and financial institutions Decision

Decision: The Board adopted the supervisory briefing on delayed disclosure of inside information for credit and financial institutions.

- 3) Q&A on Benchmark Regulation Decision

Decision: The Board adopted the Q&A on Benchmark Regulation.

- 4) Q&A on SSR Decision

Decision: The Board adopted the SSR Q&As.

19. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the PTSC Report.

- 2) Opinion on Liquidity exposure Decision

The Board discussed the opinion, in particular the need for a CCP to assess its liquidity position in each currency it clears under stress testing scenarios, including the unavailability of any of its liquidity providers or of any liquidity tools at its disposal.

Decision: The Board endorsed the opinion on liquidity exposure but instructed the Post-Trading Standing Committee (PTSC) to re-consider the role of the liquidity provider in the scenario. The revised opinion will then be submitted to the Board for approval by written procedure.

- 3) Report on penalties and supervisory measures under EMIR Decision

Decision: The Board adopted the Report on penalties and supervisory measures under EMIR.

- 4) Supervisory briefings on CSDR Authorisation Procedure Decision

Decision: The Board adopted the supervisory briefings on CSDR Authorisation Procedure.

5) CSDR Q&As

Decision

Decision: The Board adopted the CSDR Q&As.

6) EMIR Q&As

Decision

Decision: The Board adopted the EMIR Q&As.

7) Terms of Reference for the CSDR Guidelines Task Force

Decision

Decision: The Board adopted the terms of reference for the CSDR Guidelines Task Force.

20. Secondary Markets Standing Committee

1) SMSC Report

Information

Conclusion: The Board took note of the SMSC Report.

2) SARIS protocol

Decision

Decision: The Board adopted the SARIS protocol.

3) MIFID Q&As

Decision

Decision: The Board adopted the Q&As.

21. Overview ESMA groups

1) Cover Note

Information

2) Overview of ESMA groups

Information

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

22. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Dimitar Koychev (alternate)	
Czech Republic	Karel Juras (alternate)	
Denmark	Anne Bruun (alternate)	Anne Marie Vestergaard
Germany	Elisabeth Roegele	Hannelore Lausch Marcus Hein
Estonia	Andre Nomm	
Ireland	Derville Rowland	Martin Moloney Cian Murphy
Greece	Charalampos Gotsis	Anastasia Maltoudi
Spain	Sebastian Albella	Ana Martinez-Pina Antonio Mas
France	Robert Ophele	Benoit de Juvigny Françoise Buisson Stephanie Cabossioras
Croatia	Ante Zigman	
Italy	Mario Nava	Carmine di Noia

		Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	Panagiota Ziourti
Latvia	Gunta Razane	
Lithuania	Mindaugas Šalčius	
Luxembourg	Claude Marx	
Hungary	Krisztian Csaky (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Ellen Boelema Marit de Vrijer
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Martin Pachucki	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Joao Sousa Giao Rita Oliveira Pinto
Romania	Mircea Ursache	Raluca Tariuc
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Jarmo Parkkonen (alternate)	Ville Kajala

Sweden	Erik Thedéen	Fredrik Elmberg
United Kingdom	Edwin Schooling Latter (alternate)	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Peter Ohrlander
EBA	Olaf Weeken	
EIOPA	Tim Shakesby	
ESRB	Anne Tiedemann	
Iceland	Pall Fridriksson (alternate)	
Liechtenstein	Marcel Lötscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Marco Uccelli (alternate)	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen

Head of Investors and Issuers Department	Evert van Walsum
Head of Markets Department	Fabrizio Planta
Head of Resources Department	Nicolas Vasse
Head of Brexit Department	Mette Sicard Filtenborg

Done at Paris on 19 July 2018

Steven Maijor

For the Board of Supervisors