

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 1 and 2 October 2019
Time: 14 – 18h (1 October 2019) and 9 – 16h (2 October 2019)
Location: Scandic Park hotel (Mannerheimintie 46, 00260 Helsinki, Finland)
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 fact that Valdis Dombrovskis was proposed to continue as European Commission Vice-President including the Financial Stability, Financial Services and Capital Markets Union (CMU) portfolio;
- His interactions with Members of the European Parliament, in particular his meeting with the newly elected Chair of the Parliament's Economic and Monetary Affairs Committee (ECON), MEP Irene Tinagli, and the upcoming annual hearing of the Chairpersons of the European Supervisory Authorities (ESAs);
- The activities of the Joint Committee, in particular the discussions related to Packaged Retail Investment and Insurance-based Products (PRIIPs) and the contingency work at EU level in light of the United Kingdom's withdrawal;
- The activities of the European Systemic Risk Board (ESRB), in particular the publication of the interim report on the procyclicality of margins and haircuts, and the agreement to extend the mandate of the Expert Group on margins and haircuts;
- His participation in the informal meeting of the EU finance ministers and central bank governors and the discussions on cybersecurity and the development of the capital markets union; and
- ESMA's ongoing work in relation to crypto-assets and stable coins.

The Executive Director reported on the

- July and September 2019 meetings of the Financial Services Committee (FSC), in particular on the discussions on the post mortem report on Anti-Money Laundering related supervision, on the European Court of Auditors' (ECA) report on the EBA stress-tests and on the use of stable coins; and
- Progress on the preparations for the move to ESMA's new premises.

3. Strategic Orientation

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| 1) Cover note | Discussion |
| 2) Strategic orientation | Discussion |

The Chair presented the 2020-2022 strategic orientation.

The Board discussed the strategic orientation, in particular:

- Highlighting the focus on ESMA's risk-based supervisory convergence activity in all areas of securities markets but with a clear focus on investor protection and cross-border-activity, and how a principles-based Union Supervisory Handbook could contribute to that;
- ESMA's contribution to the establishment of a Capital Markets Union (CMU) and how to embed its focus on sustainable finance and proportionality within all ESMA' activities;
- The development of digital finance, in particular ESMA's role as a data-hub, the use of crypto-assets and stable coins in financial markets and the development of artificial intelligence; and
- The extend of ESMA's coordination role in relation to financial education .

Conclusion: The Board discussed the 2020-2022 strategic orientation. ESMA staff will prepare a revised version of the 2020-2022 strategic orientation for approval during the December 2019 Board of Supervisors.

4. Implementation of the revised ESMA Regulation

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| 1) Cover Note | Discussion |
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Conclusion: The Board took note of the update.

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| 2) Governance | Discussion |
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The Senior Cooperation Officer presented the governance impact of the revised ESMA Regulation.

The Board discussed the presentation, in particular:

- Whether the Management Board could play an enhanced role in promoting and prioritising ESMA's supervisory convergence activities and the involvement of national competent authorities in such activities;
- The task of the Supervisory Convergence Standing Committee (SCSC) and how ESMA's standing committees contribute to ESMA's supervisory convergence activities; and
- The future use of coordination groups.

Conclusion: The Board discussed the impact of the revised ESMA Regulation on governance. The Board noted particularly the role the Management Board will play in relation to peer reviews under the revised ESA Regulation. It was agreed that ESMA staff should develop two options further for discussion by the Board of Supervisors. The first one where the Management Board would play an enhanced role in relation to supervisory convergence and where the national competent authorities would be consulted primarily through the relevant standing committees. The Supervisory Convergence Standing Committee (SCSC) would cease to exist in that option. The other option is one where the SCSC (with the participation of all NCAs) plays a significant role in developing the direction on supervisory convergence for the Board of Supervisors. ESMA staff will also come back to the Board of Supervisors on the role of coordination groups and how the standing committees could further contribute to supervisory convergence.

3) Conflicts of interest policy

Discussion

The Senior Cooperation Officer presented the conflicts of interest related amendments in the revised ESMA Regulation.

The Board discussed the presentation, in particular:

- The scope of the definition of a conflict of interest which might be considered prejudicial to a Board Member's independence, in particular for decisions related to a Board Member's national competent authority;
- The interaction between abstaining from participating in a discussion and the right to express one's position;
- The need for a consistent implementation across the ESAs; and
- Whether ESMA's conflict of interest policy should be extended to the future CCP Supervisory Committee.

Conclusion: The Board discussed the conflict of interest related amendments and instructed ESMA staff to discuss the way forward together with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), for further discussion during the December 2019 Board of Supervisors. The Board believes that implementing the amendments should focus on extending the scope of the current definition under the conflict of interest policy to significant cases related to a Board Member's authority (such as Breach of Union Law cases and/or mediation). The Board of Supervisors agreed to extend the conflict of interest policy to the Members of the CCP Supervisory Committee.

4) Anti-Money Laundering

Discussion

Conclusion: The Board took note of the proposed implementation of the Anti-Money Laundering provisions in the revised ESMA and EBA Regulation.

5) Proportionality Advisory Committee

Discussion

The Head of Resources Department presented the suggested implementation of the proportionality committee.

The Board discussed the presentation, in particular:

- The scope of the proportionality committee's activities and its interaction with the existing standing committees;
- Whether the Committee's should include external members such as the Chair of the Securities and Stakeholder Markets Groups (SMSG);
- The role of national competent authorities; and
- The need for a consistent implementation across the ESAs.

Conclusion: The Board discussed the setup of the proportionality committee and instructed ESMA staff to discuss the way forward together with EBA and EIOPA. The Board noted that the Committee is an internal committee and that external experts can be invited on a case-by-case basis.

6) Committee on Consumer Protection and Financial Innovation - Setup

Discussion

The Head of Resource Department presented the suggested setup of the Committee on Consumer Protection and Financial Innovation.

The Board discussed the presentation, in particular whether the activities of the current Financial Innovation Standing Committee (FISC) and Investor Protection Standing Committee (IPISC) should be merged.

Conclusion: The Board decided to maintain the current FISC and IPISC. It was agreed that a Committee composed of the two Committees will meet 2-3 times a year with a strong mandate to discuss overlapping items. ESMA staff will prepare draft terms of reference which will be presented to the Board for approval.

5. EMIR 2.2

Governance

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| 1) Cover Note | Discussion |
| 2) Terms of Reference CCP Supervisory Committee | Discussion |

The Senior Cooperation Officer presented the terms of reference of the CCP Supervisory Committee.

The Board discussed the terms of reference, in particular the:

- Committee's interaction with ESMA's CCP-related single rulebook activity and the Board of Supervisors;
- Timing of the tiering decisions;
- Profile of the members of the Committee.

Conclusion: The Board was invited to share comments in writing. ESMA staff will prepare a revised version for adoption in written procedure.

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| 3) Selection process for Chair and Independent Members of the CCP Supervisory Committee | Discussion |
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The Senior Cooperation Officer presented the selection process for the Chair and Independent Members of the CCP Supervisory Committee.

The Chair updated the Board on the discussion he had with the Chair of the European Parliament's ECON Committee, in particular on the Committee's involvement in the recruitment process and the submission of ESMA's shortlisted candidates.

The Board discussed the selection process, in particular

- The need for the Board of Supervisors to identify its preferred candidate for these technical positions as set out in EMIR 2.2; and
- The shortlist to be shared with the European Parliament.

Conclusion: The Board was invited to share comments in writing. ESMA staff will prepare a revised version for adoption in written procedure.

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| 4) Waiver from the requirements set out for temporary agents 2f in relation to the recruitment of a Chair and Independent Members of the CCP Supervisory Committee | Discussion |
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Conclusion: The Board was invited to share comments in writing. ESMA staff will prepare a revised version for adoption in written procedure.

5) Vacancy Notices

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| ○ Chair of the CCP Supervisory Committee and Director for CCPs | Discussion |
| ○ Independent Member of the CCP Supervisory Committee and Director for CCPs | Discussion |

The Senior Cooperation Officer presented the vacancy notices for the Chair and Independent Members of the CCP Supervisory Committee.

The Board discussed the vacancy notices, in particular the:

- Years of experience required as eligible requirement for the Chair;
- Exact job titles; and
- Timing of the publication of the vacancy notices.

Conclusion: The Board was invited to share comments in writing. ESMA staff will prepare a revised version for adoption in written procedure.

Technical

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| 6) Cover Note | Discussion |
| 7) Final Report on Technical Advice on Tiering Criteria | Discussion |

Conclusion: The Board endorsed the suggested way forward in the Final Report on Technical Advice on Tiering Criteria. The Final Report will be presented to the Board for adoption in written procedure.

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| 8) Final Report on Technical Advice on Comparable Compliance | Discussion |
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Robert Ophele presented the Final Report on Technical Advice on Comparable Compliance.

The Board discussed the Final Report, in particular the interaction with the process declaring a third country jurisdiction equivalent.

Conclusion: The Board endorsed the suggested way forward in the Final Report on Technical Advice on Comparable Compliance. The Final Report will be presented to the Board for adoption in written procedure. The European Commission representative disagreed with ESMA's Technical Advice on tiering and on comparable compliance for reason of predictability and proportionality, and raising fundamental issues concerning existing legal acts and institutional prerogatives.

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| 9) Final Report on Technical Advice on Fees | Discussion |
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The Head of Markets Department presented the Final Report on Technical Advice on Fees.

The Board discussed the Final Report, in particular the cost related to the governance framework under EMIR 2.2.

Conclusion: The Board endorsed the suggested way forward in the Final Report on Technical Advice on Fees. The Final Report will be presented to the Board for adoption in written procedure.

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| 10) Consultation Paper on EMIR RTS on information from third country CCPs | Discussion |
| 11) Draft RTS | Discussion |

Conclusion: The Board endorsed the suggested way forward in the consultation paper on EMIR RTS on information from third country CCPs. The consultation paper will be presented to the Board for adoption following the European Commission's consultation on the delegated acts.

6. UK's withdrawal from the European Union

1) Update Note on Brexit related activities Discussion

The Head of Corporate Affairs Department presented the update note on Brexit activities.

The Board discussed the update note, in particular:

- Whether ESMA should provide further guidance on the trading obligation for shares; and
- Whether and, if so, when the European Commission's will extend the equivalence decision for UK CCPs.

Conclusion: The Board took note of the update and agreed that the Secondary Markets Standing Committee (SMSC) should consider whether further guidance on the trading obligation for shares is needed.

2) Trading obligation for derivatives

- Cover Note Discussion
- Statement Decision

Elisabeth Roegele presented the note and the statement on the trading obligation for derivatives.

The Board discussed the Statement, in particular:

- Whether there is a need for further guidance by ESMA in relation to the trading obligation for derivatives;
- The scope of products subject to the derivatives trading obligation and its application on a parent company basis; and
- The importance of market participants preparing for the UK's withdrawal from the Union.

Decision: The Board instructed the Secondary Markets Standing Committee (SMSC) to consider whether further guidance on the trading obligation for derivatives is needed and to report back to the Board of Supervisors, for which a conference call meeting will be scheduled as and when necessary. In the meantime, the ESMA position regarding the derivatives trading obligation as reflected in the Statement published in March 2019 continues to apply.

3) Cooperation with Bank of England and PRA

- Cover Note Discussion
- MMoU for the exchange of information related to Clearing Members and CSD participants Decision
- Invitation to participate as observer in colleges on UK CCPs Information

Decision: The Board agreed with the Multilateral Memorandum of Understanding (MMoU) for the exchange of information related to clearing members and CSD participants. Robert Ophele (FR) expressed a preference for establishing global colleges (instead of inviting UK authorities as observers in EMIR colleges).

7. Fall-backs and the clearing and bilateral margin requirements

- 1) Cover Note Discussion

2) Statement

Decision

Robert Ophele presented the note and the statement on the fall-backs and the clearing and bilateral margin requirements.

The European Commission representative updated the Board on the ongoing activities in this respect within the Council of the European Union.

Decision: The Board adopted the Statement on fall-backs and the clearing and bilateral margin requirements.

8. Peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR

1) Cover Note

Discussion

2) Peer Review

○ Peer review report

Decision

○ Germany

Decision

○ Ireland

Decision

○ France

Decision

○ Cyprus

Decision

○ The Netherlands

Decision

○ United Kingdom

Decision

○ ESMA

Decision

The Coordinator of the Assessment Group for the peer review on EMIR data quality presented the peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR.

The Board discussed the peer review reports, in particular:

- The importance of further improving EMIR data quality; and
- Whether further ESMA action is needed through general supervisory and policy initiatives and targeted actions by national competent authorities.

Decision: The Board adopted the peer review report and the country-specific reports. The Chair highlighted that the Data Standing Committee will continue to discuss the follow-up to these peer review reports.

9. Consultation Paper on MAR review

1) Cover Note

Discussion

2) Consultation paper on MAR review

Decision

Nicoletta Giusto presented the consultation on the review of the Market Abuse Regulation.

The Board discussed the consultation paper, in particular the:

- Role of ESMA and securities markets’ regulators in relation to cum/ex and multiple withholding tax reclaim schemes;
- Supervisory convergence in relation to the timely publication of insider information by financial institutions; and
- The work being done in relation to the definition of closely related persons in the context of manager’s transactions.

Decision: The Board adopted the consultation paper on the MAR review, including a reference to securities markets regulators’ role on cum/ex and multiple withholding tax reclaim schemes. The Board decided to have a debate at a future meeting on the timely publication of insider information by financial institutions.

10. PRIIPs review

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| 1) Cover Note | Discussion |
| 2) Consultation paper on amendments to the PRIIPs KID | Discussion |
| 3) Cover note | Discussion |
| 4) Supervisory statement on scope of PRIIPs (bonds) | Discussion |

The Head of Investors and Issuers Department presented the consultation paper on amendments to the PRIIPS KID and the supervisory statement on the scope of PRIIPs.

The Board discussed the consultation paper and the supervisory statement, in particular:

- Whether there is a need for amending the PRIIPs Regulation;
- The European Commission’s ongoing activities in relation to consumer testing; and
- The information allowing to compare different multi-option products.

Conclusion: The Board took note of the suggested way forward and asked ESMA staff to develop a common way forward together with EBA and EIOPA. The consultation paper on amendments to the PRIIPS KID and the supervisory statement on the PRIIPs scope will be presented to the Board for adoption by written procedure. [The European Commission representative stated to disagree with the Consultation Paper and Supervisory Statement. The representative questioned whether the options identified in the Consultation Paper are in line with PRIIPS, as the options must guarantee the L1 principle of comparability and therefore may not grant too much discretion to PRIIPs manufacturers. With regard to the Supervisory Statement, the Commission representative did not see how the supposed clarifications by means of the Supervisory Statement can help avoid legal uncertainty.](#)

11. 2020 budget and initial discussion on PD 2021-2023

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| 1) 2020 budget and initial discussion on PD 2021-2023 | Discussion |
| 2) Detailed revenue per source in 2020 | Discussion |
| 3) Planned contribution per NCA in 2020 – including UK | Discussion |
| 4) Planned contribution per NCA in 2020 – without UK | Discussion |

The Executive Director presented the note on the 2020 budget and the 2020-2023 Programming Document.

The Board discussed the 2020 budget and the 2020-2023 Programming Document, in particular the underlying Legal Financial Statement (LFS).

Conclusion: The Board took note of the draft 2020 budget and the initial proposal for the 2020-2023 Programming Document.

12. Technical IT Instructions and data matters

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| 1) Cover Note | Discussion |
| 2) Decision on delegation to the Chair of the European Securities and Markets Authority the adoption of technical instructions on IT and data matters | Decision |

The Head of Markets Department presented the Decision on delegating to the Chair the decision on the adoption of technical instructions on IT and data matters.

The Board discussed the decision, in particular the:

- Scope of the delegation; and
- The involvement of the IT Management and Governance Committee.

Decision: The Board adopted the Decision on delegating to the ESMA Chair the adoption of technical instructions on IT and data matters.

13. Data Standing Committee

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| 1) DSC Report | Information |
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Conclusion: The Board took note of the report.

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| 2) EMIR Q&A | Decision |
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Decision: The Board adopted the Q&As.

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| 3) MIFID Q&A | Decision |
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Decision: The Board adopted the Q&As.

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| 4) FIRDS Data Quality Report | Decision |
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Decision: The Board adopted the FIRDS Data Quality Report.

14. Financial Innovation Standing Committee

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| 1) FISC Report | Information |
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Conclusion: The Board took note of the report.

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| 2) Terms of Reference on Task Force on Cloud Guidelines | Decision |
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Decision: The Board adopted the Terms of Reference for the Task Force on Cloud Guidelines.

15. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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Conclusion: The Board took note of the report.

- 2) Supervisory Briefing on the scope of the MMF Regulation Decision

Decision: The Board adopted the supervisory briefing on the scope of the MMF Regulation.

- 3) AIFMD Q&As on reverse solicitation Decision/Decision

The Board discussed the Q&As on reverse solicitation, in particular the interaction with the Markets in Financial Instruments Directive (MIFID).

Decision: The Board instructed the Investment Management Standing Committee (IMSC) to re-consider the potential impact of the Q&A.

16. Investor Protection and Intermediaries Standing Committee

- 1) IPISC Report Information

Conclusion: The Board took note of the report.

- 2) Product Intervention: progress report Information

Conclusion: The Board took note of the progress report.

- 3) MIFID II Q&As Decision

Decision: The Board adopted the Q&As.

17. Market Integrity Standing Committee

- 1) MISC Report Information

Conclusion: The Board took note of the report.

- 2) Memorandum of Understanding on Benchmarks with ASIC (Australia) Decision

Decision: The Board adopted the Memorandum of Understanding on Benchmarks with ASIC (Australia).

- 3) Final report Regulatory Technical Standards on cooperation arrangements on market abuse Decision

Decision: The Board adopted the Final Report on Regulatory Technical Standards on cooperation arrangements on market abuse.

18. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the report.

- 2) Consultation Paper on Technical Advice on commercial terms for providing clearing services Decision

Decision: The Board adopted the consultation paper on Technical Advice on commercial terms for providing clearing services.

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| 3) | CSDR Guidelines on standardised procedures and messaging protocols | Decision |
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Decision: The Board adopted the CSDR Guidelines on standardised procedures and messaging protocols.

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| 4) | CSDR Q&As | Decision |
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Decision: The Board adopted the Q&As.

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| 5) | EMIR Q&As | Decision |
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Decision: The Board adopted the Q&As.

19. Secondary Markets Standing Committee

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| 1) | SMSC Report | Information |
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Conclusion: The Board took note of the report.

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| 2) | Consultation Paper on Refit trading obligation derivatives | Decision |
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Decision: The Board adopted the consultation paper on Refit trading obligation derivatives.

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| 3) | Opinion on frequent batch auctions | Decision |
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Decision: The Board adopted the opinion on frequent batch auctions. Edwin Schooling Latter (UK) disagreed by stating that in his view the opinion does not take proper account of the transparency rules for periodic auctions.

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| 4) | Annual report on waivers and deferrals | Decision |
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Decision: The Board adopted the annual report on waivers and deferrals.

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| 5) | Speedbumps project – way forward | Decision |
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Decision: The Board agreed with the suggested way forward on the speedbumps project.

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| 6) | MIFID Q&As | Decision |
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Decision: The Board adopted the Q&As.

20. Supervisory Convergence Standing Committee

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| 1) | SCSC Report | Information |
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Conclusion: The Board took note of the report.

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| 2) | Enforcement practices shared regarding individual accountability and fitness and probity | Information |
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Conclusion: The Board took note of the enforcement practices shared regarding individual accountability and fitness and probity.

21. 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	Vojtěch Belling	Karel Juras
Denmark	Karen Dorte Abelskov	
Germany	Elisabeth Roegele	Macus Hein
Estonia	Andre Nõmm	
Ireland	Derville Rowland	Colm Kincaid Cormac Staunton
Greece	Vasiliki Lazarakov	Vasiliki Koularmani
Spain	Sebastian Albella	Antonio Mas
France	Robert Ophèle	Benoit de Juvigny Viet-Linh Nguyen
Croatia	Ante Žigman	
Italy	Carmine Di Noia	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou
Latvia	Ieva Ose (alternate)	

Lithuania	Mindaugas Salcius	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Gábor Laki (alternate)	
Malta	Christopher Buttigieg	Jonathan Sammut
Netherlands	Gerben Everts	Fleur de Roos Michel van den Akker
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Magdalena Łapsa-Parczewska	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Rita Oliveira Pinto
Romania	Florentina Boboc (alternate)	Raluca Alina Tariuc
Slovenia	Sabina Bešter (alternate)	Sabina Bešter
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Anneli Tuominen	Armi Taipale Maria Rekola
Sweden	Erik Thedeen	Malin Omberg Federik Elmberg
United Kingdom	Edwin Schooling Latter (alternate) – not for items 5.6-11 and 6	Max Lyssewski – not for items 5.6- 11 and 6

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Ellen Boelema Jorge Revilla-Garcia
EBA	Anne Tiedemann	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Pall Fridriksson (alternate)	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Frank J. Büchel	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Corporate Affairs Department	Roxana De Carvalho
Head of Markets Department	Fabrizio Planta
Head of Resources Department	Nicolas Vasse

Head of Issuers and Investors	Evert van Walsum
Head of Legal, Cooperation and Enforcement	Sophie Vuarlot-Dignac
Senior Cooperation Officer	Frederiek Vermeulen

Coordinator of the Assessment Group for the Peer review on EMIR data quality	Carmelia Borsino
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Done at Paris on 4 December 2019

Steven Maijor

For the Board of Supervisors