

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 23 February 2021
Time: 09h00 – 13h00
Location: Conference call
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda Decision

Decision: The agenda was adopted.

2. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed the 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. Oral Report by Chair, Executive Director and Chair of the CCP Supervisory Committee Information

The Chair reported on:

- His recent Hearing in the European Parliament's Economic and Monetary Affairs Committee on the topic of GameStop;
- The activities of the European Systemic Risk Board (ESRB), in particular the response to the European Commission on the AIFMD Review consultation and the ongoing discussions on the Money Market Funds Review;
- The activities of the Securities and Markets Stakeholder Group (MSG), in particular the advice on Wirecard on which the group is working and the upcoming meeting with the Board of Supervisors;
- The activities of the Joint Committee, in particular the upcoming risk report for the Financial Stability Table of the Economic and Financial Committee (EFC-FST), the exchange of information on fitness and propriety between the European Supervisory Authorities (ESAs) and the Joint Committee annual report;
- The upcoming event to celebrate ESMA's 10th anniversary taking place on 23 March 2021; and
- The fact that the Decision lowering the thresholds for the notification of net short positions is due to expire in March 2021.

The Executive Director reported on:

- The February 2021 meetings of the Financial Services Committee (FSC), in particular the discussions on the Union Strategic Supervisory Priorities defined by ESMA and the working arrangement between the European Union (EU) and the United Kingdom (UK); and
- A complaint to the Court of Justice of the European Union by a Member of the European Parliament.

The Chair of the CCP Supervisory Committee reported on the workshop held by ESMA on CCP margins and procyclicality in times of crisis.

4. Derivative Trading Obligation

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| 1) Cover Note | Discussion |
| 2) Way forward on the scope of the derivative trading obligation | Decision |

Robert Ophèle presented the note on the way forward on the scope of the derivative trading obligation.

The Board discussed the note, in particular whether the scope of the derivative trading obligation should be reconsidered.

Decision: The meeting chose not to decide on the scope of the derivative trading obligation at this stage. It was also agreed that the ESMA Chair will discuss the item with the European Commissioner for Financial Stability, Financial Services and Capital Markets Union. The Chair will report back on the discussions with the Commission during the March 2021 Board of Supervisors meeting.

5. Supervisory approach position limits

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| 1) Cover Note | Discussion |
| 2) Statement on supervisory approach to position limits (2021) | Decision |

Robert Ophèle presented the Statement on the supervisory approach to position limits ahead of the entry into application of the MiFID II Recovery Package for commodity derivatives.

The Board discussed the approach, in particular:

- Whether to adopt an approach not to prioritise the supervision of position limits just for transactions undertaken to fulfil mandatory liquidity provisions and new and less liquid commodity derivatives other than agricultural contracts below 20 000 lots (option A), or an approach to not prioritise the supervision of position limits for transactions undertaken for the provision of liquidity, as well as for commodity derivatives other than agricultural contracts below 300 000 lots (option B); and
- The interaction with EU law, in particular with the MIFID recovery package.

Decision: The Board asked ESMA staff to reach out to the European Parliament and Council of the European Union on the basis of a supervisory approach preferring liquidity provision and commodity derivatives other than agricultural contracts below 300 000 lot.

	Option A	Option B	Abstain
Jean-Paul Servais (BE)	X		
Mariyan Ivanov (BG)		X	

Ante Žigman (HR)	X		
Vojtech Belling (CZ)		X	
Karen Dorteab Abelskov (DK)		X	
Marcus Hein (DE)		X	
Andre Nõmm (EE)		X	
Colm Kincaid (IE)			X
Vasiliki Lazarakou (EL)	X		
Rodrigo Buenaventura (ES)	X		
Robert Ophèle (FR)		X	
Martina Tambucci (IT)			X
Demetra Kalogirou (CY)		X	
Santa Purgaile (LV)		X	
Vaidas Cibas (LT)		X	
Claude Marx (LU)		X	
Krisztian Csaky (HU)		X	
Christopher Buttigieg (MT)		X	
Jos Heuvelman (NL)		X	
Eduard Mueller (AT)		X	
Magdalena Łapsa-Parczewska (PL)		X	
Gabriela Figueiredo Dias (PT)		X	
Oana Stefanoiu (RO)		X	
Sabina Bester (SL)		X	
Peter Tkáč (SK)		X	
Anneli Tuominen (SU)		X	

Erik Thedeen (SE)	X		
Steven Maijoor (ESMA)		X	

6. Co-operation with UK Financial Conduct Authority – Meeting with Nikhil Rathi

- 1) Note Discussion

The Board welcomed Nikhil Rathi, Chief Executive Officer (CEO) of the United Kingdom's Financial Conduct Authority (UK FCA).

The CEO of the UK FCA presented the ongoing regulatory developments in the UK and the FCA's priorities by highlighting the need for strong co-operation with ESMA and EU national competent authorities.

The Board had an exchange of views with the CEO of the UK FCA, in particular:

- The Importance of international standards and their consistent application;
- The EU and the UK's commitment to promoting sustainable finance, in particular the concept of materiality;
- The status of the amendments to the Packaged Retail and Insurance-based Investment Products Regulation and its implementing acts; and
- The Swiss franc London Inter-Bank Offered Rate (LIBOR).

Conclusion: The Board had an exchange of views with the CEO of the UK FCA. It was agreed to have a similar dialogue twice a year.

7. Enhancing enforcement of financial information under the Transparency Directive

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

The Head of the Investors and Issuers Department presented the letter suggesting possible changes to the Transparency Directive.

The Board discussed the letter, in particular:

- Whether ESMA should be empowered to develop regulatory technical standards on (i) the enforcement of financial information, (ii) alternative performance measures (APMs) and (iii) non-financial information; and
- The need to bring the IAS Regulation into ESMA's scope of action to allow Breach of Union law cases.

Decision: The Board agreed with the draft letter noting that while further enhancement of supervisory convergence is needed in relation to the enforcement of financial and non-financial information, no reference to the need to transform the existing Guidelines into regulatory technical standards should be included in the letter. Regarding APMs, the Board highlighted the need for a clarification that the APM Guidelines are part of the reporting framework and the need for a mandate to ESMA to ensure supervisory convergence. The Board also agreed that the letter should suggest including the IAS Regulation in the scope of Article 1(2) of the ESMA Regulation (and thus allow Breach of Union Law cases). Markus Hein (DE) abstained from participating in the discussion.

8. Taxonomy related product disclosures

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| 1) Cover Note | Discussion |
| 2) Consultation paper on taxonomy related product disclosures | Discussion |

The Senior Policy Officer presented the consultation paper on the taxonomy related product disclosures.

The Board discussed the consultation paper, in particular the:

- Proposed key performance indicator and the self-certification process by in-scope firms; and
- Tight timeline for the development and the entry into force of the regulatory technical standards.

Conclusion: The Board discussed the consultation paper and will be invited to provide further comments in writing.

9. Trends, Risks and Vulnerabilities

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| 1) Cover Note | Discussion |
| 2) Report | Decision |
| 3) Statistical Annex | Decision |
| 4) Presentation | Decision |

Decision: The meeting running short of time, the item will be presented for adoption by written procedure.

10. Emergency Actions

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| 1) Issues Note | Discussion |
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Decision: The item was postponed for discussion to the March 2021 Board of Supervisors.

11. CJEU rulings on data privacy and possible impact on investigatory powers under the Market Abuse Regulation

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| 1) Note | Discussion |
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The Head of Markets and Data Reporting Department presented the note on the rulings of the Court of Justice of the European Union (CJEU).

The Board discussed the note, in particular:

- The importance of access to data traffic by national competent authorities for their market surveillance activities and subsequent enforcement; and
- How to share information on the potential impact of pending Court cases on securities regulators.

Conclusion: The Board endorsed the note and invited ESMA Staff to discuss the input to the rulings further with the European Commission.

12. European Single Access Point (ESAP)

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

- 3) Response to the targeted consultation (questionnaire) Decision

The Head of Investors and Issuers Department presented the letter.

The Board discussed the letter, in particular the:

- Fact that only limited information is currently produced in a machine-readable format across the relevant EU acts; and
- Potential scope, size and complexity of the related IT project.

Decision: The Board adopted the letter to the European Commission.

13. Mandates under the CCP Recovery and Resolution Regulation

- 1) Note Discussion

Decision: The meeting running short of time, Board Members were invited to provide comments in writing.

14. CCP Policy Committee

- 1) CCP PC Report Information

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

- 2) Final report on Guidelines on common procedures and methodologies for the supervisory annual review and evaluation Decision

Decision: The Board adopted the Final report on Guidelines on common procedures and methodologies for the supervisory annual review and evaluation.

15. CCP Supervisory Committee

- 1) CCP SC Report Information

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

- 2) Update on CCP Stress Testing Information

Conclusion: The Board took note of the update on CCP Stress Testing.

- 3) Terms of reference group of Experts on CCP-Stress Testing Decision

Decision: The Board approved the Terms of reference group of Experts on CCP-Stress Testing.

16. Committee for Economic and Markets' Analysis

- 1) CEMA Report Information

Conclusion: The Board took note of the CEMA Report.

- 2) AIFMD Annual Statistical Report Decision

Decision: The Board approved the AIFMD Annual Statistical Report.

17. Corporate Reporting Standing Committee

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

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| 2) Advice to the European Commission on KPIs according to article 8 of the Taxonomy Regulation | Decision |
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Decision: The Board adopted the Advice to the European Commission on KPIs according to Article 8 of the Taxonomy Regulation.

18. Data Standing Committee

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

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| 2) Report on the execution of AIFMD Data Quality Engagement Framework | Decision |
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Decision: The Board approved the execution of AIFMD Data Quality Engagement Framework.

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| 3) Updated AIFMD Data Quality Engagement Framework | |
| o Technical Document | Decision |
| o Non-technical document | Decision |

Decision: The Board adopted the Technical and Non-technical documents part of the Updated AIFMD Data Quality Engagement Framework.

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| 4) SFTR Data Quality Methodology | Decision |
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Decision: The Board adopted the SFTR Data Quality Methodology.

19. Network on Benchmarks

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| 1) Cover Note | Information |
| 2) Consultation paper on Guidelines on the methodology used in exceptional circumstances and amendment of guidelines on non-significant benchmarks | Decision |

Decision: The Board adopted the Consultation paper on the Guidelines on the methodology used in exceptional circumstances and amendment of guidelines on non-significant benchmarks.

20. Investor Protection and Intermediaries Standing Committee

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

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| 2) Crowdfunding – Consultation paper on technical standards | Decision |
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Decision: The Board adopted the Consultation paper on technical standards.

- 3) Crowdfunding – Q&As

Decision

Decision: The Board adopted the Q&As.

21. Secondary Markets Standing Committee

- 1) SMSC Report

Information

Conclusion: The Board took note of the SMSC Report.

- 2) Annual report waivers and deferrals non-equity

Decision

Decision: The Board adopted the Annual report on non-equity waivers and deferrals.

- 3) Update of the pre-trade waiver procedure

Decision

Decision: The Board adopted the update of the pre-trade waiver procedure.

22. Supervisory Convergence

- 1) Coordination Groups

Decision

Decision: The Board approved the way forward for the implementation of Coordination Groups.

23. Enhanced disclosure on revised calculation of fines

- 1) Note

Decision

Decision: The Board approved the approach specified in section 2 of the note.

24. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Karen Dorte Abelskov	
Germany	Marcus Hein (alternate)	
Estonia	Andre Nõmm	
Ireland	Colm Kincaid (alternate)	
Greece	Vasiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Martina Tambucci (alternate)	
Cyprus	Demetra Kalogirou	
Latvia	Santa Purgaile	
Lithuania	Vaidas Cibas (alternate)	

Luxembourg	Claude Marx	
Hungary	Krisztián Csáky (alternate)	
Malta	Christopher Butigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Mueller	
Poland	Magdalena Łapsa-Parczewska	
Portugal	Gabriela Figueiredo Dias	
Romania	Oana Stefanoiu (alternate)	
Slovenia	Sabina Bester (alternate)	
Slovakia	Peter Tkáč	
Finland	Anneli Tuominen	
Sweden	Erik Thedeen	
ESMA Chair	Steven Maijoor	

Non-voting members

European Commission	Ugo Bassi	
EBA	Anne Tiedeman (alternate)	

EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marco Uccelli (alternate)	

ESMA

Executive Director	Verena Ross
Chair of the CCP Supervisory Committee	Klaus Löber
Summary of Conclusions	Frederiek Vermeulen
Head of Investors and Issuers Department	Evert Van Walsum
Heads of Markets and Data Reporting Department	Fabrizio Planta
Senior Policy Officer	Patrik Karlsson

External participants

CEO UK FCA	Nikhil Rathi
Director Markets and Wholesale Policy, UK FCA	Edwin Schooling Latter



Head of International Department, UK FCA	Zertasha Malik
UK FCA	Wayne Laramée

Done at Paris on 26 March 2021

Steven Maijor

For the Board of Supervisors