

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: Thursday 7 July 2022
Time: 09h00 – 18h00 CET
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 to have received an indication of a potential conflict of interest by Thorsten Pötzsch (DE), Robert Ophèle (FR), Inga Dröfn Benediktsdóttir (IC), Carlo Comporti (IT), Claude Marx (LU), Erik Thedéen (SE) for agenda item 12.4 on the country report on their respective Member States in the context of the peer review of competent authorities in relation to the scrutiny and approval procedures of prospectuses. They will abstain from participating in the discussion on their respective country reports.

3. Report by ESMA Chair, Executive Director and Chair of the CCP Supervisory Committee Discussion

The ESMA Chair reported on:

- Her recent interactions with Members of the European Parliament, in particular to discuss sustainable finance and the implementation of the Markets in Crypto-Assets Regulation (MiCA);
- The activities of the European Systemic Risk Board (ESRB), in particular the creation of a new Crypto Assets Task Force and the publication of a report on the macroprudential challenge of climate change;
- ESMA's international activities, in particular her introductory meeting with the new CEO of the Swiss FINMA and the Executive Director and Chair of the CCP Supervisory Committee's introductory meetings with the new Commissioners of the US CTFC, as well as the ongoing IOSCO work on the assessment of the state and development of global carbon markets;
- The activities of the Joint Committee, in particular the submission of a letter to the co-legislators with regards to the role of the ESAs in the proposed governance set up of the new AML Authority (AMLA), the creation of a Joint Committee sub-Committee on Digital Operational Resilience, and the upcoming Joint Consumer Protection Day which will take place on 23 September 2022;

- The June and July 2022 Management Board meetings, in particular discussions on ESMA’s Strategy for 2023 to 2028, the prioritisation exercise recently conducted by ESMA staff and the impact of inflation on ESMA’s budget; and
- The work being undertaken by the European Supervisory Authorities (ESAs) to provide to the European Commission the input requested on greenwashing risks and the supervision of sustainable finance policies.

The Executive Director reported on:

- Her recent interactions with the European Commission, in particular her meeting with representatives of the European Commission’s Directorate General on Budget (DG BUDG);
- The June 2022 Financial Services Committee meetings, in particular the updates provided by ESMA on the new supervisory responsibilities in relation to benchmark administrators, securitisation repositories and data reporting service providers (DRSPs) and the quarterly risk update, on technical advice on retail investor protection and on the report on performance and costs of retail investment products; and
- Operational constraints and the corresponding decision not to publish the systematic internaliser (SI) regime data for non-equity instruments other than bonds until November 2022.

4. Supervision of the cross-border provision of services (follow-up to the Away Day)

1) Presentation	Discussion
2) Note	Discussion
3) Report on data collection exercise 2021	Information

The Chair of the Investor Protection and Intermediaries Standing Committee presented the slides on the supervision of cross-border provision of services.

The Board discussed the supervision of cross-border provision of services, in particular the:

- Importance of ensuring that supervisors have an accurate view of activities conducted by passported entities;
- Broad support for continued data collection on the provision of cross-border services to retail clients, and discussion on whether such data should be anonymised;
- Possibility of reviewing technical standards on the information provided in passport notifications to allow national competent authorities (NCAs) to collect more information on firms’ actual plans for cross-border provision of services;
- Technical standards on cooperation, and whether they should specify general deadlines and/or an emergency cooperation procedure; and
- Possible changes to the MiFID II precautionary measures regimes.

Conclusion: The Board discussed the supervision of the cross-border provision of services. It was agreed that ESMA should continue the collection of data on the provision of cross-border services to retail clients and that this data should not be anonymised. The Board agreed that both the technical standards on passporting and on cooperation should be reviewed, the latter in order to include both specific deadlines applying generally and an “emergency cooperation procedure”. It was also agreed to write to the European Commission to restate ESMA’s March 2021 technical advice on sanctions under MiFID II/MiFIR which suggested amending the MiFID II precautionary measures regime, and to note that the parallel provision of services should be deemed to be provided through a branch where such a branch has been established in the host country.

5. Trends, risks and vulnerabilities report

1) Cover note	Discussion
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| 2) Presentation | Discussion |
| 3) Trends, Risks and Vulnerabilities Report | Discussion |
| 4) Statistical Annex | Discussion |

The Head of the Risk Analysis and Economics Department presented the trends, risks and vulnerabilities report.

The Board discussed the trends, risks and vulnerabilities report, in particular the:

- Varying levels of inflation and geopolitical risks across the European Union;
- Ongoing development in financial markets, including the performance of ESG products, the evolution of the situation on energy markets, the fall in value on crypto markets, and the developments in primary bond markets and their impact on the ability of non-financials to get financing; and
- Source and usability of MMF data.

Conclusion: The Board discussed the trends, risks and vulnerabilities report. It will be amended accordingly and presented to the Board of Supervisors for adoption by written procedure.

6. Impact of inflation on financial markets and investor protection

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| 1) Presentation | Discussion |
| 2) SMSG report | Discussion |

The Head of the Investor Protection and Intermediaries Unit presented slides on the impact of inflation on financial markets and investor protection.

The Board discussed the impact of inflation on financial markets and investor protection, in particular the:

- Regulatory changes proposed by ESMA's Securities and Markets Stakeholders Group; and
- Whether ESMA should publish a statement to raise investor awareness on the possible application of some MiFID II investor protection requirements in an inflationary scenario.

Conclusion: The Board discussed the slides. It agreed not to recommend legislative changes to the European Commission and agreed with the possibility of publishing a statement on the application of investor protection requirements in an inflationary scenario.

7. Update on the Task Force on crypto assets' activities

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| 1) Cover note | Discussion |
| 2) Presentation | Discussion |

The Chair of the Task Force on crypto-assets presented the update on the task force's activities.

The Board discussed the task force's activities, in particular the:

- Possibility of identifying topics requiring discussion on the basis of a top-down approach where no NCA volunteers to present a case on a given topic;
- Importance of understanding the applicable national regimes where relevant, and of promoting common practices for each type of product;
- Identification and treatment of prospectuses with crypto-assets as underlying;

- Need to explore the boundaries of securities regulators' role, for example with regards to tokenized currencies
- Action plan with regards to the implementation of the future Markets in Crypto Assets Regulation (MiCA).

Conclusion: The Board discussed the task force's activities. The Board agreed that any topics for discussion would be brought to the Chair of the task force. The analysis and implementation action plan of the future Markets in Crypto Assets Regulation will be brought to the Board of Supervisors.

8. Report on the operation of the European Supervisory Authorities

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| 1) Presentation | Discussion |
| 2) European Commission Report | Discussion |

The representative of the European Commission presented the European Commission's report on the operation of the ESAs.

The Board discussed the report, in particular the:

- Functioning of the Joint Committee of the ESAs, including how to ensure the ESAs' respective national competent authorities are consulted on the Joint Committee's cross-sectoral proposals at an early enough stage in order to be able to provide substantial input;
- Use of ad-hoc peer reviews;
- Importance of assigning supervisory responsibilities at the national or EU level on a case-by-case basis based on the principle of subsidiarity; and
- Pros and cons of publishing Board agendas ahead of meetings.

Conclusion: The Board discussed the report on the operation of the European Supervisory Authorities. Board Members were invited to provide any additional comments in writing.

9. Cooperation opportunities with DG Reform

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| 1) Presentation | Discussion |
| 2) Note | Discussion |

The representative of the European Commission's Directorate-General for Structural Reform Support (DG Reform) presented the cooperation opportunities with DG Reform.

The Board discussed cooperation opportunities with DG Reform, in particular:

- The flagship project for 2023 - ESG risk management framework for the financial sector; and
- How ESMA might help coordinate projects for national competent authorities.

Conclusion: The Board took note of the cooperation opportunities with DG Reform. It was agreed to explore the possibility of undertaking a project on the use of artificial intelligence in market surveillance.

10. Sustainable Finance

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| 1) Thresholds for funds' names | |
| o Presentation | Discussion |
| o Note | Discussion |

The Head of the Investment Management Unit presented the note on thresholds for funds' names.

The Board discussed the note, in particular the:

- Broad support to subject sustainability-related aspects of funds' names to thresholds in order to prevent greenwashing;
- Criteria on which to base such thresholds, including how to take into account both activities in transition as well as the remaining uncertainties regarding the definition of sustainable assets;
- Appropriate limits to be imposed by such thresholds; and
- Importance of conducting a public consultation on this matter.

Conclusion: The Board discussed the note on thresholds for funds' names and agreed to mandate the Investment Management Standing Committee to conduct further work on the topic with a view of making more concrete proposals.

2) ISSB consultation on sustainability reporting standards

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| ○ Presentation | Discussion |
| ○ Cover note | Discussion |
| ○ Response | Decision |

The Chair of the Corporate Reporting Standing Committee presented the response to the ISSB consultation on sustainability reporting standards.

The Board discussed the response, in particular the importance of the interoperability of sustainability reporting standards on the global scale.

Decision: The Board adopted the ESMA response to the ISSB consultation on sustainability reporting standards.

3) European Sustainability Reporting Standards

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| ○ Presentation | Discussion |
| ○ Note | Discussion |

The Chair of the Corporate Reporting Standing Committee presented the note on the European Sustainability Reporting Standards.

The Board discussed the proposed main lines of an ESMA response to the consultation on the European Sustainability Reporting Standards, in particular the:

- Importance of the interoperability of standards on the global scale; and
- Concept of rebuttable materiality presumption.

Conclusion: The Board supported the proposed lines for ESMA's response to the European Financial Reporting Advisory Group's (EFRAG)'s consultation and the broad lines of the criteria to be used in ESMA's opinion to the European Commission on EFRAG's draft European Sustainability Reporting Standards.

11. ESMA conflict of interest policy for non-staff

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| 1) Presentation | Discussion |
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| 2) Cover note | Discussion |
| 3) Amended conflict of interest policy | Decision |
| 4) Questions and Answers (Q&A) on the conflict of interest policy for non-staff | Information |

The Head of the Legal and Enforcement Department presented the amended conflict of interest policy for non-staff and the corresponding updated Q&A.

Decision: The Board adopted the amended conflict of interest policy for non-staff and took note of the corresponding updated Q&A.

12. Peer review of the scrutiny and approval procedures of prospectuses

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Report | Discussion |
| 4) Country Reports | |
| o Germany | Discussion |
| o France | Discussion |
| o Iceland | Discussion |
| o Italy | Discussion |
| o Luxembourg | Discussion |
| o Sweden | Discussion |

The Chair of the Peer Review Committee on the scrutiny and approval procedures of prospectuses by competent authorities presented the peer review report.

The Board discussed the peer review report, in particular the:

- Role of cooling off periods in the context of NCAs' independence, their implications with regards to NCAs' attractiveness and potential alternative measures;
- NCAs' varying prospectus approval processes and the key performance indicators of an appropriate process; and
- Objective and length of prospectuses and their summaries.

Conclusion: The Board discussed the peer review on the scrutiny and approval procedures of prospectuses by competent authorities. The peer review report and the country reports will be presented to the Board of Supervisors for approval by written procedure.

13. ESMA Strategy

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| 1) Presentation | Discussion |
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2) ESMA Strategy 2023-2028

Discussion

The Board discussed the ESMA Strategy for 2023-2028, in particular the:

- Foreseeable market risks on the long-term and corresponding necessary strategic choices; and
- Importance of focusing on retail investor protection.

Conclusion: The Board discussed the ESMA Strategy 2023-2028. It will be refined and submitted to the September 2022 Board of Supervisors for approval.

14. Strategy on the secondment of national experts to ESMA

1) Presentation

Discussion

2) Note

Discussion

The Head of the Human Resources Unit presented the note on the strategy on the secondment of national experts to ESMA.

The Board discussed the strategy, in particular the importance of identifying the appropriate incentives to encourage national competent authorities and their staff to partake in secondments.

Conclusion: The Board discussed the strategy. Board Members were encouraged to participate in seconding staff to ESMA.

~~**15. Establishment of a CCP Resolution Committee**~~

~~1) Presentation~~

~~Information~~

~~2) Note~~

~~Information~~

~~3) CCP Resolution Committee Terms of Reference~~

~~Decision~~

Conclusion: The item was removed from the agenda.

16. Benchmarks Network

1) Benchmarks Network Report

Information

Conclusion: The Board took note of the Benchmarks Network report.

2) Consultation Paper on the review of the regulatory technical standards on the form and content of an application for recognition under the Benchmarks Regulation

Decision

Decision: The Board adopted the consultation paper on the review of the regulatory technical standards on the form and content of an application for recognition under the Benchmarks Regulation.

17. Commodity Derivatives Task Force

1) CDTF Report

Information

Conclusion: The Board took note of the CDTF report.

2) Opinion on the classification of third-country counterparties

Decision

Decision: The Board adopted the opinion on the classification of third-country counterparties.

18. Corporate Finance Standing Committee

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

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| 2) Statement on prospectus supervision in the context of EU sanctions connected to Russia's invasion of Ukraine | Decision |
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Decision: The Board adopted the Statement on prospectus supervision in the context of EU sanctions connected to Russia's invasion of Ukraine.

19. CRA Network

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

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| 2) Final Report for guidelines on the scope of the CRA Regulation | Decision |
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Decision: The Board adopted the Final Report for guidelines on the scope of the CRA Regulation. Thorsten Pötzsch (DE) abstained.

20. 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) SFTR data sharing framework | Decision |
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Decision: The Board adopted the SFTR data sharing framework.

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| 3) Updated statement on the implementation of Legal Entity Identifiers (LEI) requirements for third-country issuers under the SFTR reporting regime | Decision |
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Decision: The Board adopted the updated statement on the implementation of Legal Entity Identifiers (LEI) requirements for third-country issuers under the SFTR reporting regime.

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| 4) SFTR Q&A | Decision |
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Decision: The Board adopted the SFTR Q&A.

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| 5) MiFID Q&A | Decision |
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Decision: The Board adopted the MiFID Q&A.

21. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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| 2) UCITS sanctions report | Decision |
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Decision: The Board adopted UCITS sanctions report.

- 3) AIFMD sanctions report Decision

Decision: The Board adopted AIFMD sanctions report.

22. Investor Protection and Intermediaries Standing Committee

- 1) IPISC Report Information

Conclusion: The Board took note of the IPISC report.

- 2) Consultation paper on guidelines on product governance Decision

Decision: The Board adopted the consultation paper on guidelines on product governance.

- 3) Statement on 2021 CSA on product governance Decision

Decision: The Board adopted the Statement on 2021 CSA on product governance.

- 4) Annual report on MiFID II sanctions Decision

Decision: The Board adopted the annual report on MiFID II sanctions.

23. Market Integrity Standing Committee

- 1) MISC Report Information

Conclusion: The Board took note of the MISC report.

- 2) Report on suspicious transaction and order reports (STORs) Decision

Decision: The Board adopted the report on suspicious transaction and order reports (STORs).

24. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the PTSC report.

- 2) Consultation paper for regulatory technical standards on the cash penalty processes for cleared transactions Decision

Decision: The Board adopted the consultation paper for regulatory technical standards on the cash penalty processes for cleared transactions.

- 3) Note on the CSDR Refit proposal Information

Conclusion: The Board took note of the document on the CSDR Refit proposal.

25. Post-Trading Standing Committee and Secondary Markets Standing Committee

- 1) Joint PTSC/SMSC Report Information

Conclusion: The Board took note of the joint PTSC/SMSC report.

- 2) Consultation paper on the clearing obligation and derivatives trading obligation regarding the benchmark transition Decision

Decision: The Board adopted the consultation paper on the clearing obligation and derivatives trading obligation regarding the benchmark transition.

- 3) Distributed Ledger Technology (DLT) Pilot
 - o ESMA procedure on opinions on DLT market infrastructures Decision
 - o Consultation paper for guidelines on forms, formats and templates Decision

Decision: The Board adopted the ESMA procedure on opinions on DLT market infrastructures and the consultation paper for guidelines on forms, formats and templates.

26. Secondary Markets Standing Committee

- 1) SMSC Report Information

Conclusion: The Board took note of the SMSC report.

- 2) MIFID Q&As Decision

Decision: The Board adopted the MIFID Q&As.

27. Risk articles

- 1) Cover note Information
- 2) Article on “*Key Retail Risk Indicators for the EU Single Market*” Decision

Decision: The Board adopted the article on “Key Retail Risk Indicators for the EU Single Market”.

28. ESMA application to join IOSCO MMOU

- 1) Cover note Information
- 2) ESMA application Decision

Decision: The Board approved the ESMA application to join the IOSCO Multilateral Memorandum of Understanding (MMoU).

29. 2023 Annual Work Programme

- 1) Presentation Information
- 2) Cover note Information
- 3) 2023 Annual Work Programme Information

Conclusion: The Board took note of the 2023 annual work programme and the invitation to provide written comments.

30. ~~2020 European Parliament Discharge~~

- ~~1) Cover note Information~~

~~2) ESMA Opinion on 2020 European Parliament Discharge~~

Decision

~~3) 2020 European Parliament Discharge Report~~

Information

Decision: The item was removed from the agenda.

31. ESMA's IT Implementation Report 2021

1) Cover note

Information

2) Report

Information

Conclusion: The Board took note of the 2021 IT implementation report.

32. Activity-based costing and fee management – 2021 results

1) Cover note

Information

2) Report

Information

Conclusion: The Board took note of the activity-based costing and fee management results for 2021.

33. 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	Vojtěch Belling	
Denmark	Karen Dorte Abelskov	
Germany	Thorsten Pöttsch	
Estonia	Andre Nomm	
Ireland	Patricia Dunne (alternate)	
Greece	Vasiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Carlo Comporti (alternate)	
Cyprus	George Theocharides	
Latvia	Girts Ruda (alternate)	

Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx	
Hungary	Gergő Szeniczey	
Malta	Christopher Butigieg	
Netherlands	Hanzo van Beuzekom (alternate)	
Austria	Birgit Puck (alternate)	
Poland	Rafał Mikusiński	
Portugal	Tiago dos Santos Matias (alternate)	
Romania	Gabriel Gradinescu	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Peter Tkáč	
Finland	Armi Taipale	
Sweden	Erik Thedéen	
ESMA Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	
EBA	Adrien Rorive (alternate)	

EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Inga Dröfn Benediktsdottir (alternate)	
Liechtenstein	Reto Degen	
Norway	Geir Holen (alternate)	
EFTA Surveillance Authority	Marianne Arvei Moen (alternate)	

ESMA

Executive Director	Natasha Cazenave
Summary of Conclusions	Frederiek Vermeulen Laura Weil
Chair of the CCP Supervisory Committee	Klaus Löber
Chair of the Corporate Reporting Standing Committee	Annemie Rombouts
Chair of the Task Force on Crypto Assets	Birgit Puck
Chair of the Peer Review Committee on the peer review of the scrutiny and approval procedures of prospectuses	Isabelle Grauer-Gaynor
Head of the Risk Analysis and Economics Department	Steffen Kern
Head of Unit, Investment Management	Antonio Barattelli



Head of Unit, Investor Protection and Intermediaries	Salvatore Gnoni
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European Commission Directorate-General for Structural Reform Support (DG REFORM)

Director-General	Mario Nava
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Done at Paris on 11 November 2022

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 11 May to 6 July 2022)

1. **Joint Clarifications on the European Supervisory Authorities' (ESAs') draft Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation (SFDR)** 20 May 2022

1) Decision Decision

Decision: The Board adopted the joint clarifications on the European Supervisory Authorities' (ESAs') draft Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation (SFDR).

2. **Joint ESAs Report on withdrawal of authorisation for serious breaches of anti-money laundering rules** 23 May 2022

1) Report

Decision: The Board adopted the Joint ESAs Report on withdrawal of authorisation for serious breaches of anti-money laundering rules.

3. **Proposal for composition of the Peer Review Committee - Peer review on the supervision of depositary obligations under the UCITS Directive and AIFMD** 30 May 2022

1) Decision

Decision: The Board adopted the proposal for composition of the Peer Review Committee for the peer review on the supervision of depositary obligations under the UCITS Directive and AIFMD.

4. **Final Report on the draft amending RTS under EMIR on the increase of the clearing threshold for commodity derivatives** 2 June 2022

1) Report

Decision: The Board adopted the final report on the draft amending RTS under EMIR on the increase of the clearing threshold for commodity derivatives. Erik Thedéen (SE) abstained.

5. **ESMA Annual Report 2021** 2 June 2022

1) Annual report

Decision: The Board adopted the ESMA annual report 2021.

6. **Final Report on the draft RTS amending the RTS on the European Single Electronic Format (ESEF)** 6 June 2022

- 1) Final report

Decision: The Board adopted the final report on the draft regulatory technical standards (RTS) amending the RTS on the European Single Electronic Format (ESEF).

7. Trends, Risks and Vulnerabilities (TRV) June 2022 Risk Update

- 1) TRV update Decision

Decision: The Board adopted the TRV June 2022 risk update.

8. RTS on EMIR intragroup contracts package 7 June 2022

- 1) Joint final report on RTS on bilateral margining Decision
- 2) Final report on draft amending RTS on the clearing obligation Decision
- 3) Joint statement Decision

Decision: The Board adopted the joint final report on regulatory technical standards bilateral margining, the final report on regulatory technical standards on the clearing obligation and the joint statement.

9. EMIR Pension Scheme Arrangements (PSAs) exemption from the clearing obligation 7 June 2022

- 1) Statement Decision

Decision: The Board adopted the risk-based supervision statement on the implementation of the clearing obligation for pension scheme arrangements.

10. Summary of conclusions – 22-23 March 2022 Board of Supervisors 20 June 2022

- 1) Summary of conclusions Decision

Decision: The Board adopted the summary of conclusions of the Board of Supervisors meeting that took place on 22-23 March 2022.

11. Agreement between ESMA and CSDR Relevant Authorities (central banks) on the access to the ESMA CSDR7 IT system on settlement fails 20 June 2022

- 1) Agreement

Decision: The Board adopted the agreement between ESMA and CSDR Relevant Authorities (central banks) on the access to the ESMA CSDR7 IT system on settlement fails.

12. ESMA Final Accounts 2021 24 June 2022

- 1) Opinion Decision
- 2) Final accounts Information

Decision: The Board adopted its opinion on ESMA's final accounts for 2021.

13. 2022 CCP Peer Review Mandate

27 June 2022

1) Mandate

Decision

Decision: The Board adopted the 2022 CCP Peer Review mandate.

14. Mandate of the JC Sub-Committee on Digital Operational Resilience

1 July 2022

1) Mandate

Decision

Decision: The Board adopted the mandate of the European Supervisory Authorities' (ESAs) Joint Committee Sub-Committee on Digital Operational Resilience (JC SC DOR).

15. Final Report on joint ESMA and EBA guidelines on common procedures and methodologies for SREP

1 July 2022

1) Final report

Decision

Decision: The Board adopted the final report on joint ESMA and EBA guidelines on common procedures and methodologies for SREP. Paolo Savona (IT) and Robert Ophèle (FR) abstained.