

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 22 and 23 March 2018
Time: 14h00 – 18h00 (22 March 2018) and 09h00 – 13h00 (23 March 2018)
Location: National Culture Palace, Boulevard Bulgaria, 1463 Ndk, Sofia, Bulgaria
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda [including adoption of B-points] Decision

Decision: The agenda was adopted.

2. Summary of conclusions

1) 31 January 2018 Decision

Decision: The summary of conclusions of the 31 January 2018 meeting was adopted.

2) 1 March 2018 Decision

Decision: The summary of conclusions of the 1 March 2018 conference call was adopted.

3. Oral Report by Chair and Executive Director Information

The Chair reported on:

- His meeting with Michel Barnier, European Chief Negotiator for the United Kingdom Exiting the European Union, to discuss the ongoing negotiations;
- His meeting with European Commission Vice-President Jyrki Katainen to discuss the ongoing review of the European Supervisory Authorities (ESAs);
- His meetings with Members of the European Parliament, mainly to discuss the implementation of MIFID II and the Benchmarks Regulation and the ongoing ESA review;
- The activities of the Joint Committee, in particular on the implementation of the Packaged Retail Investment and Issuers Products Regulation (PRIIPS) and the publication of a joint report on big data;

- The upcoming work by the European Banking Authority (EBA) on amendments to the joint Guidelines on complaints handling for the securities and banking sectors;
- The activities of the European Systemic Risk Board (ESRB), in particular on the March 2018 meeting and on the work the Board is conducting in setting up a daily monitor of derivatives markets;
- The February 2018 meeting of the Board of the International Organization for Securities Commissions (IOSCO), in particular on the outcome of the discussion on the administrative arrangements developed in the light of the implementation of the General Data Protection Regulation (GDPR);
- The March 2018 meeting of the Management Board, in particular the discussions on the 2017 financial accounts and on ESMA's 2020 premises; and
- The concerns expressed by the European Parliament on the summary of conclusions of ESMA's Board of Supervisors meetings, in particular its request to speed up the timing of their publication.

The Executive Director reported on the:

- February and March 2018 meetings of the Financial Services Committee (FSC), in particular the discussions on sustainable finance, virtual currencies and ESMA's CCP stress-testing; and
- Launch of the interactive single rulebook on ESMA's website.

Conclusion:

4. MiFID II Implementation

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| 1) Presentation | Discussion |
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The Executive Director presented the update on MIFID II implementation.

The Board discussed the presentation, in particular the:

- Data published by ESMA on the double volume cap and market reactions;
- Need to continue promoting supervisory convergence and to look into consumer protection issues related to PRIIPS implementation and MIFID II target market and product governance;
- Use of Legal Entity Identifiers (LEIs) for issuers and clients; and
- Quality of the data collected by ESMA.

Conclusion: The Board took note of the presentation. The Market Data Standing Committee (MDSC) was instructed to discuss the use of LEIs and to prepare a note for discussion at the May 2018 Board of Supervisors.

5. UK's decision to withdraw from the EU

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| 1) Presentation | Discussion |
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Conclusion: The Board took note of the report.

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| 2) Mapping cooperation needs with third country authorities under EU law | Discussion |
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The Executive Director presented the note.

The Board discussed the note, in particular the:

- Progress achieved in the negotiations between the Chief Negotiator for the UK exiting the European Union and the United Kingdom's State Secretary for Exiting the EU;
- Need for firms to prepare for a 'hard Brexit' and whether further action informing retail investors is needed;
- Importance of starting to consider if and what kind of working relationship with the UK Financial Conduct Authority is needed and in which areas; and
- IOSCO Multilateral Memorandum of Understanding.

Conclusion: The Board highlighted the need to start reflecting within the framework provided by the general negotiations between the EU and the UK on the type of relationship that would be needed with the UK authorities. Further attention will be given to the role of data exchange and day-to-day co-operation. The Board agreed with ESMA coordinating the development and negotiation of the memoranda with the UK authorities on behalf of the national competent authorities. A reference group composed of representatives appointed by Board Members will be set up.

3) Contract continuity Discussion

The Executive Director presented the note.

The Board discussed the note, in particular the:

- Continuity of contracts, especially in the area of derivatives; and
- Activities already conducted by market participants and public authorities, especially EU Institutions.

Conclusion: The Board took note. It was concluded that ESMA and national competent authorities should continue to require firms to take the necessary contingency actions and that further reflection should be given to contract continuity in light of the UK's withdrawal.

5b. Commission consultation “fitness check on supervisory reporting”

- 1) Cover Note Information
- 2) ESMA response to the European Commission consultation Decision

Decision: The item was not discussed by the Board of Supervisors and will be presented for approval by written procedure following the consultation of the Investment Management Standing Committee (IMSC).

5c. MiFID II Q&A – definition of ongoing relationship Decision

Decision: The Board adopted the MiFID II Q&A. Robert Ophele (FR) disagreed with the Q&A.

6. European Commission mandate on the cost and past performance of the main categories of retail investment, insurance and pension products

- 1) Presentation Discussion

The Head of the Investors and Issuers Department presented the mandate and the ongoing work.

The Board discussed the presentation, in particular:

- The analysis prepared by ESMA on the basis of commercial data and whether data should be gathered from national authorities;
- The scope of the analysis; and
- The co-operation with the other ESAs.

Conclusion: The Board took note of the presentation. It was agreed that the further work should be discussed with the Committee for Economics and Markets Analysis (CEMA) and come back to the Board of Supervisors.

7. Cross-border issues with investor protection implications

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| 1) Issues Note | Discussion |
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The Head of Investors and Issuers Department presented the note.

The Board discussed the note, in particular:

- The exchange of information between Home and Host Member State supervisors;
- The need to exchange best practices between national authorities and whether there is a need to set-up a new group; and
- How to stimulate bilateral co-operation between national authorities.

Conclusion: The Board will be invited to provide further comments in writing. A revised version of the note will be discussed with the Board during the July 2018 meeting.

8. Amendment to RTS 1

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| 1) Cover Note | Discussion |
| 2) Final Report on Amendment to RTS 1 | Decision |

Decision: The Board adopted the Final Report on Amendment to RTS 1.

9. Approval process for pre-trade transparency waivers

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| 1) Cover Note | Discussion |
| 2) Decision on the delegation of opinions on pre-trade transparency waivers | Decision |

Decision: The Board adopted the decision.

10. Ancillary activity – group basis

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| 1) Issues note | Decision |
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Edwin Schooling Latter presented the note on the ancillary activity.

The Board discussed the note, in particular the

- Requirements set out in EU law; and
- Need for a consistent application in practice.

The Chair informed the Board about a letter received from Members of the European Parliament expressing concerns on the interpretation of the ancillary activity exemption.

Decision: The Board decided to send a letter to the European Commission asking its view on the requirements set out in EU law.

11. Accepted Market Practice on liquidity contracts

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| 1) Cover Note | Discussion |
| 2) Opinion on AMF Accepted Market Practice | Decision |

Nicoletta Giusto presented the note on the accepted market practice and the accompanying documents.

The Board discussed the opinion, in particular:

- The waiver to be non-compliant with the Market Abuse Regulation and the deviation with other Member States; and
- Drafting of the opinion.

Decision: The Board agreed with the suggested opinion considering the application of the waiver non-compliant with the Market Abuse Regulation. Robert Ophéle (FR) disagreed. It was decided that ESMA staff will look at the drafting of the opinion and present it to the Board for adoption by written procedure. In the meantime the AMF (France) will be invited to share further information on potential changes to the Accepted Market Practice.

12. Commodity Derivatives Task Force

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| 1) CDTF Report & Q&As | Decision |
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Decision: The Board adopted the Q&As.

13. Corporate Finance Standing Committee

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

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| 2) Technical Advice under the Prospectus Regulation | Decisions |
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Decision: The Board adopted the Technical Advice with the exception of Annex 27 (setting out the combinations of schedules and building blocks that can be used by an issuer when drawing up a prospectus). The Annex will be presented to the Board for adoption by written procedure after consultation of the Corporate Finance Standing Committee (CFSC).

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| 3) Q&A on profit forecasts | Decision |
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Decision: The Board adopted the Q&A.

14. Credit Rating Agencies Technical Committee

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

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| 1) Consultation Paper on draft Guidelines on “as stringent as” notion from the CRA Regulation | Decision |
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Decision: The Board adopted the Consultation Paper.

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| 1) Endorsement assessment on the legal and supervisory framework for CRAs in Canada and South Africa | Decision |
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Decision: The Board adopted the endorsement assessment on the legal and supervisory framework for CRAs in Canada and South Africa.

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| 2) Consultation paper on draft RTS and ITS on securitisation repositories registration | Decision |
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Decision: The Board adopted the consultation paper.

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| 3) Consultation paper on fees to be charged to securitisation repositories | Decision |
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Decision: The Board adopted the consultation paper.

15. 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 report.

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| 2) MiFID II Q&As | Decision |
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Decision: The Board adopted the Q&As. Edwin Schooling Latter (UK) disagreed with the Q&A on the application of inducement rules to financial instruments in which the firm has invested on behalf of clients before 3 January 2018.

16. Market Integrity Standing Committee

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

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| 2) Supervisory Briefing on managing and exchanging STORs under MAR | Decision |
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Decision: The Board adopted the Supervisory Briefing.

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

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| 4) MAR Q&A on Pillar II updated with MREL targets | Decision |
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Decision: The Board adopted Q&A.

17. Post-Trading Standing Committee

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

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| 2) Final Report on Guidelines on internalised settlement reporting under CSDR | Decision |
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Decision: The Board adopted the Final Report on Guidelines on internalised settlement reporting under CSDR.

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| 3) Final Report on Guidelines on position calculation under EMIR | Decision |
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Decision: The Board adopted the Final Report on Guidelines on position calculation under EMIR.

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| 4) Supervisory Briefing on the assessment of the requirements applicable to links between CSDs in T2S | Decision |
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Decision: The Board adopted the briefing.

- 5) CSDR Q&A Decision

Decision: The Board adopted the Q&A.

18. Secondary Markets Standing Committee

- 1) SMSC Report Information

Conclusion: The Board took note of the report.

- 2) Agreement on temporary suspensions of transparency obligations Decision

Decision: The Board adopted the agreement.

- 3) Procedure for Tick-Size amendments Decision

Decision: The Board adopted the Procedure for Tick-Size amendments.

- 4) MiFID Q&As Decision

Decision: The Board adopted the Q&A.

19. Supervisory Convergence Standing Committee

- 1) SCSC Report Information

Conclusion: The Board took note of the report.

20. Data Protection Regulation and Cooperation with third countries

- 1) Cover Note Information
- 2) Response to the WP29 consultation on Guidelines on derogation Decision

Decision: The Board adopted the Response to the WP29 consultation on Guidelines on derogation.

21. Terms of Reference ESMA Standing Committees

- 1) Cover Note Discussion
- 2) Terms of Reference Decision
 - a. CDTF
 - b. CEMA
 - c. CFSC
 - o Prospectus Operational Working Group

- Transparency Directive Operational Working Group
- Corporate Governance Advisory Group
- Takeover Bids Network

- d. CRA TC
 - Securitisation task force
- e. CRSC
 - EECS
 - IFRS PG
 - Audit working group
- f. IMSC
- g. IPISC
- h. MISC
- i. PTSC
- j. SCSC
- k. SMSC

Decision: The Board adopted the Terms of References.

22. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Antoine van Cauwenberge (alternate)	
Bulgaria	Karina Karaivanova	
Czech Republic	Pavel Hollman	Karel Juras
Denmark	Karen Dorte Abelskov	Nina Bæk Sønderris
Germany	Elisabeth Roegele	Hannelore Lausch Marcus Hein
Estonia	Kristjan-Erik Suurväli (alternate)	
Ireland	Martin Moloney (alternate)	Cian Murphy Cormac Staunton
Greece	Charalampos Gotsis	Anastasia Maltoudi
Spain	Sebastian Albella	Antonio Mas
France	Robert Ophele	Benoit de Juvigny (22/3 only) Stephanie Cabossioras
Croatia	Ante Zigman	
Italy	Anna Genovese (alternate)	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou

Latvia	Andreas Andersmits (alternate)	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Françoise Kauthen (alternate)	
Hungary	Gábor Laki (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Ellen Boelema Marit de Vrijer
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marcin Pachucki	Joanna Kott
Portugal	João de Sousa Gíão (alternate)	Susana Neto
Romania	Mircea Ursache (alternate)	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Tomas Ambra (alternate)	
Finland	Jarmo Parkkonen (Alternate)	Ville Kajala
Sweden		
United Kingdom	Edwin Schooling Latter (alternate) – not for item 5.2	Cristina Frazer – not for item 5.2

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Ugo Bassi	Peter Ohrlander
EBA	Philippe Allard	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Jon Por Sturluson (alternate)	
Liechtenstein	Marcel Lötscher	
Norway	Geir Holen (alternate)	Marianne Elind Skaane
EFTA Surveillance Authority	Frank Buchel	

ESMA

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



Done at Paris on 14 May 2018

Steven Maijor

For the Board of Supervisors