

Date: 3 February 2017

STATEMENT

Joint Statement of the SMSG and the BSG on the Draft Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders

The ESMA Securities and Markets Stakeholders Group (the SMSG) and the EBA Banking Stakeholders Group (the BSG) both welcome the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (the Guidelines).

Both Groups feel the new requirements in regards to the assessment of suitability will contribute to the improvement of governance at financial institutions and will help addressing the weaknesses that were exposed in the financial crisis.

As the views of both Groups in regards with the Guidelines are largely similar, the possibility of submitting a joint response has been considered. However, since merging the two responses may have undermined the relevant differences in emphasis, the Rapporteurs of both Groups, who have met in London on 5 January 2017, have decided to submit separate responses despite their common views.

The differences in emphasis stem largely from the different orientation both Groups have. While BSG naturally focuses on the implications of the Guidelines for the banking industry, the SMSG tends to focus on its implications for investment firms and other market participants.

In this joint statement, the SMSG and the BSG would like to highlight several high-level views that the Groups share and wish to bring to the attention of the ESMA and the EBA jointly. These views are elaborated on in the responses of both Groups, each with their own emphasis.

Joint high-level views of the SMSG and the BSG

The SMSG and the BSG wish to stress the need for the ESMA and the EBA:

- i. to address potential conflicts between the Guidelines and the national laws that apply to listed companies, including financial institutions;
- ii. to recognise, throughout the Guidelines, the relevant differences between unitary and dual board structures and to ensure the Guidelines are applicable to both board structures;
- iii. to ensure, with regards to the assessment of good repute, that the ‘presumption of innocence’ principle is adequately safeguarded;
- iv. to ensure the Guidelines are not overly strenuous, particularly in relation to the skills individual members of the Management Body need to possess. Rather, the Groups feel emphasis should be placed on collective suitability, and that accordingly individual evaluations should assess each participant’s contribution to the collective suitability of skills;
- v. to not extend the Guidelines beyond the scope of CRD IV and MiFID II and to respect the mandates given therein to the ESMA and the EBA with regards to the assessment of suitability;
- vi. to elaborate on the principle of proportionality and the manner in which it needs to be applied by (smaller and/or less complex) institutions as well as competent authorities.

The SMSG and the BSG urge the ESMA and the EBA to give due consideration to the high-level views expressed in this joint statement when finalising the Guidelines.

This statement will be published on the Securities and Markets Stakeholders Group section of ESMA’s website.

Adopted on 3 February 2017

[Signed]

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