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FSMA\_2018\_02 of 21/02/2018

## Guidelines on the management body of market operators and data reporting services providers

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### **Scope:**

The guidelines discussed in this document apply to operators of regulated markets and providers of data reporting services, namely, approved publication arrangements (APA), consolidated tape providers (CTP) or approved reporting mechanisms (ARM).

### **Summary/Objectives:**

This document addresses the guidelines drawn up by the European Securities and Markets Authority (hereafter "ESMA") to clarify the requirements to be taken into consideration by market operators and data reporting services providers when appointing new and assessing current members of the management body. The guidelines also provide guidance on how information should be recorded by market operators and data reporting services providers in order to make it available to the FSMA for the exercise of its supervisory duties.

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Dear Sir or Madam,

Pursuant to Article 16 of the ESMA Regulation<sup>1</sup>, ESMA can issue guidelines and recommendations addressed to competent authorities or financial market participants with a view to establishing consistent, efficient and effective supervisory practices within the European System for Financial Supervision and to ensuring the common, uniform and consistent application of Union law.

The third paragraph of Article 16 of the aforementioned Regulation specifies the following: "*The competent authorities and financial market participants shall make every effort to comply with those guidelines and recommendations. Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.*"

It is in this context that, on 19 December 2017, ESMA drew up the Guidelines on the management body of market operators and data reporting services providers (DRSPs).

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<sup>1</sup> Regulation (EC) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority.

As regards market operators, the guidelines are based on Article 45, paragraph 9, and as regards data reporting services providers on Article 63, paragraph 2, of MiFID II<sup>2</sup>.

Article 45, paragraphs 1 through 8 of MiFID II were transposed into Belgian law in Articles 10 through 14 of the Law of 21 November 2017<sup>3</sup>. With respect to the concept of “management body” used in MiFID II, it should be noted that in Belgian law it corresponds, as the case may be, to the “statutory governing body” (“*wettelijk bestuursorgaan*”/“*organe légale d’administration*”) (in its supervisory function in cases where a management committee has been established) and/or to the “senior management” (“*effectieve leiding/direction effective*”). Therefore it is the latter two terms that appear in the Belgian Law of 21 November 2017. The Explanatory Memorandum<sup>4</sup> accompanying that Law clarifies that where a management committee has been established, Belgian law requires that the management and the supervisory functions be exercised respectively by the management committee and the senior management on the one hand, and by the board of directors on the other. In particular, it should be noted that the Law of 21 November 2017 provides that some of the requirements referred to in the above-mentioned articles also apply to the group to which the market operator belongs.

Article 63 of MiFID II was in turn transposed into Belgian law in Articles 61 through 64 of the Law of 21 November 2017. The Explanatory Memorandum to the Law mentions that, just as for market operators, the concept of “management body” refers to the statutory governing body and/or to senior management, as the case may be.

The purpose of the ESMA guidelines is, in particular, to clarify the requirements applicable to members of the statutory governing bodies and/or of the senior management of market operators or data reporting services providers. They also clarify the way in which information is to be recorded by market operators in order to make it available to the FSMA for the exercise of its supervisory duties.

The guidelines clarify the following elements, amongst others:

- the fitness and propriety requirements applicable to the members of the statutory governing body and to the persons entrusted with day-to-day management;
- the requirement that the members of the statutory governing body devote sufficient time to performing their tasks;
- the calculation method used to determine the limited number of directorships that one person may hold;
- the assessment of a person’s honesty, integrity and independence of mind in performing his/her supervisory duties;

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<sup>2</sup> Directive 2014/65/EC of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

<sup>3</sup> Law of 21 November 2017 on the market infrastructures for financial instruments and transposing Directive 2014/65/EU.

<sup>4</sup> <http://www.lachambre.be/FLWB/PDF/54/2658/54K2658001.pdf>

- the requirement that market operators devote sufficient personal and financial resources to the initiation and training of members of the statutory governing body and the persons entrusted with day-to-day management;
- the pursuit of a policy promoting diversity in the appointment of members of the statutory governing body.

The FSMA incorporates the supervision of compliance with these ESMA guidelines into its supervisory practices in respect of the market operators and data reporting services providers that fall within its competence.

Sincerely yours,

Jean-Paul SERVAIS  
Chairman

[Annex: FSMA\\_2018\\_02-1 / ESMA Guidelines on the management body of market operators and data reporting services providers](#)