

## Summary of Conclusions

### Joint meeting of the Board of Supervisors and the Securities and Markets Stakeholder Group

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**Date:** 8 November 2017  
**Time:** 09:00 – 12:30  
**Location:** ESMA, CS60747 – 103, rue de Grenelle, 74345 Paris  
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#### 1. Opening remarks

The ESMA Chair welcomed all to the meeting noting the high number of persons attending remarking that the agenda of the meeting dealt with topics of great importance to ESMA and its future.

The SMSG Chair thanked on behalf of the SMSG the Board of Supervisors for the important possibility to meet and discuss directly with the Board members. He also congratulated ESMA for the “ESMA Conference 2017” which gathered prominent speakers and allowed exchange of views about fundamental questions for European markets.

#### 2. MiFID implementation

SMSG member Kerstin Hermansson presented a note to the attendees which high-lighted a few issues of particular importance for market participants in light of the upcoming MiFID II implementation. On the matter of implementation she noted that a number of member states according to information available at the European Commission’s web-site seem to be delayed in the implementation.

She noted a problem in getting access to LEIs, mentioning e.g. German and Spanish markets.

As regards post-trade deferrals, it would appear that there are divergent approaches among NCAs. Many NCAs use the standard deferral of T+2 while others have a stricter regime, and yet others have not taken a decision on their approach.

Regarding product governance solutions and costs and charges the SMSG would wish for an appropriate time for testing as there is not enough time in advance of the entry into force and there might very well be different solutions being developed by market participants.

Elisabeth Roegele, Chair of the SMSC, commented saying that a Q&A on third country issues soon will be published and that for systematic internalisers there is a consultation out regarding amendments of the RTS on tick sizes. She mentioned that LEIs are compulsory for investment firms' clients. She mentioned post-trade deferrals which are governed according to level 1 by NCAs' approaches. There would be a list of what different NCAs are doing. ESMA will soon decide on further Q&As in order to assist market participants in their implementation efforts.

Merel van Vroonhoven commented that MiFID II will not be a done deal in January. ESMA will issue numerous further Q&As and Guidelines, of which one on suitability. The period after the implementation will be a time to digest and for ESMA to make a transition from regulator to supervisor. On costs and charges and on product governance she stated we should think of new and creative ways for supervision.

Tilman Lueder of the European Commission commented that fourteen member states have not yet implemented MiFID II whereas four have done so. A passport will be possible from those that have fully implemented and those that have partially implemented if the subject matter concerns the area where implementation has been done. Otherwise member states will have to find practical solutions as has happened in the past.

The ESMA Chair commented regarding the development on LEIs noting good progress recently and that it is quite possible for all issuers to receive a LEI. ESMA staff gave a careful account of the legal requirements regarding LEIs saying i.a. that for issuers not having an LEI listing can continue whereas there would be an issue from a data-reporting point of view. ESMA is undertaking several activities including weekly webinars and other information efforts in order to educate market participants of how to obtain a LEI.

SMSG members mentioned the difficulties some non-EU entities have had in obtaining LEIs.

The ESMA Chair mentioned the issuers obligation to have a LEI and that the trading venue should stand ready to assist issuers in obtaining LEIs so that correct data submission can be given to FIRDS. On the client side, without a LEI there should not be any trade.

SMSG members were cognisant of ESMA's efforts but also noted there is still a lot to do in area of suitability and product governance.

### **3. ESAs review**

European Commission Head of Unit Tilman Lueder presented the Commission proposal regarding the ESA review, consisting of the three pillars of supervision, funding and financial innovation including sustainable finance. After ESMA's seven years of existence the proposal includes suggestions for giving some additional supervisory competences to ESMA such as critical benchmarks, data service providers and certain types of prospectuses and funds. There are no major changes to the ESRB and macro prudential issues are largely untouched in the proposals.

The proposal is using wholesale/retail as a dividing line to see what areas can be suited for ESMA addressing European wholesale markets, while retail market topics are seen to be better suited for a local supervisor.

SMSG member Jennifer Payne presented the SMSG's comments to the Commission's legislative proposal including a question on ESMA's use of guidelines and opinions, the weak role of consumer protection in the Commission's proposal, the set-up of the ESAs as separate entities, and the usefulness for ESMA to have exemption letters. She also discussed the proposed role for the SMSG in case ESMA should overstep its mandate in the development of guidelines and recommendations.

The SMSG and the ESMA Board of Supervisors discussed the Commission's proposal including matters of funding, the strategic supervisory plan, the role of the executive board and the speed with which major changes to the role of ESMA under sectoral legislation are proposed vis-à-vis retaining nationally based supervision.

Mr Lueder emphasised the practical aspects behind the European Commission's proposal rather than ideological ones.

The ESMA Chair reflected upon the differences between the wholesale and retail markets and that especially regarding the first there are opportunities for centralisation of supervision. Additionally he noted that market participants in an integrated market have the right to provide services cross-border, while at the same time most supervision remains national. This creates the need for a mechanism ensuring that the EU perspective is taken into account by supervision at national level.

### **4. SME**

SMSG Member Giovanni Petrella presented the SMSG own initiative report on Small- and Medium-sized enterprises. He described how equity funding is more long-term and provides more benefit for the SME compared to bank funding.

CFSC Chair Benoît de Juvigny accounted for the EU Growth prospectuses regime where the goal of access to finance for SMEs is a key priority under Capital Markets Union Action Plan.

The new Prospectus Regulation establishes a proportionate disclosure regime for 'EU Growth prospectus', available to entities for offers to the public on condition that they have no securities admitted to a regulated market. He also noted a lack of conclusive evidence in support for one type of funding preferable to another.

MISC Chair Nicoletta Giusto noted the difficulty of finding the right balance between market integrity and alleviating excessive burdens for SMEs.

One ESMA Board member noted periodic disclosures as one possible alleviating model that could work for SMEs.

The ESMA Chair thanked all meeting participants for a very fruitful meeting.