

SUMMARY OF CONCLUSIONS

Securities and Markets Stakeholder Group

Date: 11 October 2011
Time: 11:00 – 17:00h
Location: ESMA, 103 rue de Grenelle, 75007 Paris
Contact: jonathan.overettsomnier@esma.europa.eu T: +33 1 58 36 59 05

No Items

1. Adoption of agenda

Decision: The agenda was adopted without amendment. It was agreed that the ESMA Chair would chair the meeting until the Group's chair had been elected.

2. Summary of conclusions of July meeting – *SMSG/3 – decision*

Decision: The summary of conclusions was adopted with a minor correction to reflect high-frequency trading being a subset of algorithmic trading.

3. Rules of procedure – *SMSG/1 – decision*

The Executive Director presented the proposed rules of procedure. The Group discussed the rules of procedure, noting the importance of the commitments made by ESMA to facilitating early consultation by the Group.

In response to questions, the ESMA Chair confirmed ESMA's support for the rules of procedure as proposed and that it would be accountable through publication of feedback statements on policy proposals which would indicate how the Group's input has been taken into account, as well as through its meetings with the Group. The Executive Director confirmed that the Group's advice to ESMA would be published and that ESMA was fully committed to supporting the Group within the resources available to the Authority and would work with the Chair and Vice-Chair to ensure adequate support.

Decision: The rules of procedure were adopted subject to changes to reflect the ability to invite experts to working group meetings. Following item 4 it was agreed that provision for two vice-chairs should be made in the event of a tie in a vote between two candidates.

4. Election of Chair and Vice-Chair – *decision*



Judith Hardt, Carmine di Noia, Jean-Pierre Pinatton and Peter de Proft stood as candidates for the position of Chair or Vice-Chair of the Group. Guillaume Prache stood as a candidate for the position of Chair of the Group. The candidates each provided five minute presentations and answered questions from the Group.

Decision: The Group elected the following candidates by secret ballot:

- Chair: Guillaume Prache
- Vice Chairs: Judith Hardt and Peter de Proft

5. Working group reports

- Prospectus working group – *oral – information*

Niamh Moloney reported on the Prospectus working group's activities, and in particular on the report adopted by the working group which had previously been circulated to the Group and, due to time constraints, presented to ESMA as a working group report.

The ESMA Chair confirmed that the views of the working group had been considered fully by ESMA and taken into account, but that this did not mean that all the views would be adopted in ESMA's final advice. The ESMA Chair noted that the issue of the extent to which information may be included in final terms had been the subject of discussion in the Board of Supervisors.

The Group discussed the issue of SME finance, noting that it extends beyond regulation, although there was a question of whether the current regulatory regime is appropriately balanced. Concerns were also expressed as to whether SMEs, their needs and appropriate financing tools are fully understood.

Conclusion: The Group should consider how it should organise itself to respond to the Commission's wider work on the issue of SME finance.

- MiFID – high frequency trading working group – *SMSG/4 – decision*

Roland Bellgarde (RB) and Adriana Tanasoiu (AT) presented on the high frequency trading working group's activities, noting that the working group had considered a wide range of studies on algorithmic trading, including those relating to the US 'flash crash'.

The Group discussed the draft position paper and consultation paper responses, noting in particular the importance of trading venues maintaining records of all orders and a more general need for robust controls around algorithmic trading.

Rodrigo Buenaventura noted that many of the points raised by the working group appeared to be in line with the direction of ESMA's consultation paper, although some issues may need to await the MiFID Review as they fell outside the scope of what ESMA guidelines and recommendations could achieve. There had been similar general support for the draft guidelines and recommendations in the recent public hearing.



The ESMA Chair confirmed that ESMA staff were currently looking at consultation responses, with a discussion to be held in the November Board of Supervisors meeting with final guidelines and recommendations expected to be adopted by the end of the year.

Decision: The position paper and consultation response were adopted subject to finalisation by RB and AT in the light of written comments submitted by Group members within 48 hours of the meeting.

AIFMD working group – *SMSG/5 – decision*

Peter de Proft reported on the working group's activities and the draft opinion it proposed for adoption by the Group.

The ESMA Chair explained that adoption of the final advice was on the agenda of the November Board of Supervisors following a meeting of the Investment Management Standing Committee on 17 to 19 October.

The Group discussed the draft opinion. The Group Chair noted the need to ensure balance in the working groups, as reflected in the Group's rules of procedure. This required at least one person who represents a retail investor viewpoint in the working group. Working groups should also ensure that there is a clear summary, that papers indicate the potential impact on end investors and that they indicate where any remaining unresolved issues lie.

Decision: Group members were asked to provide written comments to Peter de Proft by the end of the week, with the working group to circulate a new version by 20 October with a view to the Group voting on the proposal by the end of the week.

6. Exchange-traded funds – *discussion*

Richard Stobo and Clément Boidard presented to the Group on exchange-traded funds (ETFs), setting out the work that has been carried out by ESMA to date including a discussion paper that had been issued earlier in the year, and the intention to develop a consultation paper on guidelines and recommendations relating to ETFs and structured UCITS towards the end of 2011.

The Group discussed ETFs, in particular:

- the availability of statistics on the scale of retail investment in ETFs and the differences between synthetic and physical ETFs;
- the extent to which retail investors can use redemption rights;
- the need to take account of investments which have similar features to ETFs;
- the extent of competition in the industry, the need to understand the reasons for concentration, impact of failure of an ETF;
- ESMA's perceived focus on disclosure and the need also to look at other ways of improving investor protection such as collateral and stock lending;



Conclusion: The Group agreed to establish a working group on ETFs which would develop a report for circulation by 7 November for discussion at the Group's meeting on 22 November. Roland Bellegarde would act as rapporteur, with Dorothea Mohn, Peter de Proft, Jesper Lau Hansen, Xavier Rolet, Tjalling Wiersma, Jean-Pierre Pinatton, Gabriele Zgubic, Judith Hardt, Jarsolaw Dominiak and Sari Lounasmeri participating.

7. ESMA presentation on the regulation on OTC derivatives, central counterparties and trade repositories (EMIR) – *SMSG/6 – discussion*

Due to lack of time, the Group agreed to postpone the discussion on EMIR to its next meeting.

8. ESMA presentation on credit rating agencies regulatory technical standards – *SMSG/7 – discussion*

Due to lack of time, the Group agreed not to discuss the draft technical standards on CRAs issued for consultation by ESMA, and not to respond to ESMA's request for an opinion.

Following the meeting, Pedro Braga da Cruz raised a number of concerns regarding CRA regulation, in particular:

- lack of competition in the rating market;
- the need to ensure regulation does not increase fixed costs that disproportionately affect smaller agencies;
- the mechanical use of ratings and the desirability of broader disclosure obligations on qualitative information;
- the need for regulation to reflect different business models, not just those predominant in the larger, US firms; and
- the difficulties in properly implementing back-testing.

Conclusion: It was agreed to include CRA issues in the Group's work plan.

9. ESMA 2012 work programme and Board of Supervisors forward agenda – *ESMA/2011/330 & SMSG/8 – discussion*

The ESMA Chair presented ESMA's draft work plan that had been submitted to the EU institutions. The ESMA Chair invited the Group to provide input on the issue of regulatory arbitrage, and in particular suggestions for areas that ESMA's Review Panel could incorporate into its work plan.

In response to questions, the ESMA Chair confirmed that financial reporting features as part of ESMA's work on transparency and supervisory convergence, as well as on regulatory arbitrage. ESMA had written to the European Parliament and the Council regarding the need for dynamic dates to determine deadlines for delivering technical standards.

Conclusion: ESMA would put forward a proposal for a joint meeting with the Board of Supervisors ahead of the Group's next meeting. The Group Chair and Vice-Chairs would also consider the most effec-



tive way of holding such a meeting. The Group Chair would include items for the Group's work programme for 2012 to address ESMA's work programme as well as any own-initiative proposals.

10. Future meeting dates

The Group discussed the possibility of rearranging the November meeting for a different weekday to ensure Members with commitments on Tuesdays are able to attend.

Conclusion: The meeting on 22 November would be retained as it would be difficult to find a new date that would work for all members. The secretariat would propose dates for four meetings for the first half of 2012, arranged for a variety of days of the week.

11. AOB

There was no additional business.

Guillaume Prache
Chair



Attendees

| Representing Financial Markets Participants |
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| Mr Jean-Pierre Pinatton |
| Mr Xavier Rolet |
| Ms Katerina-Christina Papageorgiou |
| Dr Thomas Book - attended by conference call |
| Ms Sally Dewar |
| Ms Adriana Tanasoiu |
| Ms Anne Holm Rannaleet |
| Ms Judith Hardt |
| Mr Roland Gaston-Bellegarde |

| Representing Users of Financial Services |
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| Mr Carmine Di Noia |
| Mr Pedro Quintans Ferreira Braga da Cruz Vístulo de Abreu |
| Mr Carlos Arenillas |
| Mr Hans van Damme |
| Mr Peter De Proft |
| Mr Lars Hille |
| Mr Tjalling Wiersma |

| Representing Financial Services Employees |
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| Ms Sofia Argirova |
| Ms Gabriele Zgubic |

| Representing consumers |
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| Ms Dorothea Mohn |
| Mr Guillaume Prache |
| Dr Zita Ceponyte |
| Ms Sari Eeva Johanna Lounasmeri - attended by conference call |
| Mr Jarosław Dominiak |

| Representing SME's |
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| Mr Salvatore Bragantini |

| Representing academics |
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| Prof. Angel Berges-Lobera |
| Prof. Niamh Moloney |
| Prof. Pierre-Henri Conac |
| Prof. Aleksander Chlopecki |
| Prof. Jesper Lau Hansen |

Apologies

Mr Ludo Bammens

Mr Lars Hille



ESMA Staff

Steven Maijoor

Verena Ross

Carlo Comporti

Stephan Karas

Rodrigo Buenaventura

Jonathan Overett Somnier

Clément Boidard

Richard Stobo

Alberto Garcia

Thierry Sessin-Caracci