

SUMMARY OF CONCLUSIONS

Meeting of the Stakeholder Group

Date: 21 July 2011
Time: 10:00 – 17:00h
Location: ESMA, 103 Rue de Grenelle, 75007 Paris, France
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No Items

1. Welcome

As this was the first meeting of the newly constituted ESMA Stakeholder Group a tour de table took place providing the opportunity for each member to introduce themselves.

As the Group is still to appoint its chair and to finalise its rules of procedure Steven Maijoor, Chair of ESMA, acted as the Group's interim chair. The Chair outlined the five main priorities of ESMA (which are of equal importance). These are: successfully implementing supervision of credit rating agencies, as a key component of ESMA's new role; ensuring effective investor protection and that it remains high on the ESMA agenda; contributing to financial stability through its contribution to the work of the European Risk Board, along with EBA and EIOPA; ensuring the development and convergent implementation of a single rule book, to avoid both regulatory arbitrage and to ensure the creation of a level playing field in Europe.

The Chair outlined the resources of ESMA and how this would grow over the coming two years. He noted that the leadership team had recently been completed with the arrival of Verena Ross as Executive Director at the end of May, and his arrival at ESMA in April. It was noted that a new middle management was also being recruited.

The Group discussed briefly the work of ESMA noting the critical, horizontal priority of ensuring that SME interests are carefully considered, as this will have a significant impact on Europe's ability to recover after the financial crisis.

2. Draft rules of procedure

The dates of the future meeting were indicated as: 11 October and 22 November from 11am – 4:30 pm. It was requested that meetings begin at 11am for those who can travel to arrive the same day.

Procedure for the selection of a Chair and Vice-Chair



It was agreed to elect both the Chair and Vice-Chair at the next meeting. The Group decided that given the important nature of the decision and how it could impact the effectiveness of the group, nominees would be asked before the next meeting (two weeks in advance), to send a paper explaining how they would envisage their role and provide proposals on how the Stakeholder Group should work (beyond the rules of procedure). The nominees should also indicate if they are willing to be considered as Vice-Chair.

Initial discussion of the rules of procedure

The Group discussed a draft set of rules of procedure. The Group noted the need to establish at what stage in the process they wanted to be involved. Many expressed a desire to be involved before consultations were published. In particular, there was some support for the idea of establishing a yearly work programme and it was noted that ESMA would provide at its next meeting some indication of future planning. Additional points discussed included, amongst others:

where meetings might take place (it was agreed that sub group meetings of the stakeholder group could take place elsewhere other than Paris);

voting practices by the group: a member noted that the need for minority opinions may be less exceptional; further members asked whether the 2/3rds majority would apply to only those present or to the group as a whole. One member asked if it could be clarified whether a member could vote, even if not present;

attendance requirements and the extent this applied to additional meetings and sub group meetings was raised by a number of members. It was confirmed it did not apply to sub group meetings. It was requested that the rules of procedure be amended to allow for members to attend some meetings by conference call if absolutely necessary;

confidentiality of papers and drafting assistance: a member asked whether, despite confidentiality of papers, whether they could receive external assistance with drafting of papers. Steven Maijoor noted that this was not possible as the members were appointed in their individual capacity and had signed confidentiality agreements which would not apply to these individuals.

sub groups: it was noted that there should be fair access to the sub group and that they should in their composition reflect minority opinions; the role of the chair of subgroups may need to be defined;

conflicts of interest was also raised by a number of members. It was noted that it would be helpful to include in the rules of procedure a clear reference to the fact that the members should individually consider that they must act in the interest of Europe;

minutes of the meetings: it was noted that these will be published, but a member asked for the minutes not to refer specifically to individuals but to provide an overview of the discussion in summarised form.

As this was a first discussion of the rules of procedures, and there were a large number of points which were raised for further consideration, it was proposed that a small sub group should be formed which would be chaired by ESMA to discuss and prepare a new draft for approval at the next meeting. A request for comments in writing would be made by the secretariat subsequently. Whilst some members indicated their willingness to participate in the sub group at the meeting, the secretariat would provide a further opportunity for further individuals in the Group to join and would then reconfirm the list.



3. ESMA's Consultation Paper on the AIFMD (ESMA/2011/209)

Richard Stobo and Clement Boidard from ESMA, provided an overview of the consultation paper.

Following the presentation, an initial exchange of views took place.

A number of the members of the Group complimented ESMA on the quality of the paper. A member noted that it will ensure a much better grasp on the extent of leverage in the market and that the introduction of a common definition of leverage across Europe will be an important contribution. Other members of the Group added to this noting that by addressing leverage the paper could also contribute to greater financial stability. Members of the Group asked for clarification regarding whether the objective of the proposals was to protect investors or to contribute to financial stability. The Chair noted that the proposal hoped to improve transparency for investors and to contribute to financial stability.

A number of technical points were raised. In the context of the requirements on investment in securitisation positions, a member highlighted the need to avoid fire sales of assets when the relevant threshold is not adhered to by putting in place appropriate limits on the amount of assets that can be sold with a view to avoiding instability. The same member asked for clarification regarding the responsibilities of a depositary to communicate risks to the manager of the fund; the example was given of funds specialising in high yield debt, where the risk of a country defaulting increases. Richard Stobo noted that the depositary's duties are to ensure that the investment policy remains in line with what had been identified for the fund, without interfering with the portfolio management per se.

A member asked whether a mapping had been done to assess how many funds would be covered by the proposals and whether external valuation was compulsory in all cases. Richard Stobo noted that ESMA was currently in the process of carrying out a mapping, but that this was made more challenging by some uncertainty on the precise scope of entities covered by the Directive.

Members expressed concern regarding the very short consultation period of two months during the summer. The Chair noted that ESMA is greatly affected by delays in the development of legislative proposals and that the fact that legislators wish to meet the overall timetable initially indicated despite these delays was resulting in very compressed timetables for ESMA to develop technical advice and technical standards. This consequently impacts on consultation periods.

Members of the Group decided to respond to this consultation and to form a sub group to prepare the response. As this consultation closes on 13 September and ESMA will need to submit its recommendations by 16 November, the Group's final submission will need to be completed by written procedure.

4. ESMA's Consultation Paper on ESMA guidelines and systems and controls of trading venues and investment firms (ESMA/2011/224)

Eva-Christina Smeets from ESMA provided an overview of the consultation paper.

Following the presentation, an initial exchange of views took place.

A number of members welcomed the high quality of the paper and noted that its timing was particularly important given the review of MiFID and MAD, whilst another member noted that they would prefer for there to be a legal framework in place before such guidelines are proposed.

A member expressed his view that high frequency trading is a danger to the transparency of the market and at a minimum, supervisors should reduce the extent of its use. He also particularly recommended for background reading the speech by Andrew Haldane, entitled the 'Race to Zero' which sets out the risks of High Frequency Trading¹. Whilst this member was supportive of the paper and recognised it would be revisited in the context of the MiFID and MAD review, he wondered if these guidelines sent a message that ESMA accepts in principle, the practice of high frequency trading, and whether this was appropriate. Two members also noted that the scope should not be limited to regulated markets but also to OTC venues and one member indicated it should also consider the clearing and settlement issues.

A further member noted that whilst all high frequency trading is algorithmic trading, not all algorithmic trading was high frequency trading and this should be borne in mind. He added that the fragmentation of the markets was leading to the use of differing trading venues and the inevitable use of high frequency trading as a means to manage risk and arbitrage on price, which some parts of the buy-side complain about. Nevertheless, others expressed the view that this was due also to the best-execution requirements. Another member therefore added that whilst the problem was not caused by MiFID, the issue was the length of time the stock was held and that these periods were of less than a second and wondered if we could not require a change in this respect. A further member noted that the use of high frequency trading could result in less liquidity for SME stocks as they would be crowded out by this practice. Additionally, a member wondered if it might not be helpful to study the impact high frequency trading has on retail investors.

In conclusion, Eva-Christina Smeets noted that in preparing the guidelines, ESMA's taskforce had engaged the market surveillance units in the national competent authorities as well as the surveillance units at some trading platforms to gain their views. Regarding scope, Eva-Christina Smeets confirmed that the requirements are directed at investment firms and therefore do not focus entirely on exchanges but include broker crossing systems and therefore cover OTC trading. Regarding the suggestion to set time limits for the length a stock was held, Eva-Christina Smeets noted that the guidelines had not addressed such issues as they were not legally binding and on certain issues such as this, it would be necessary for there to be a legal framework to ensure it is implemented consistently and as such, this is something for the Commission to consider. Eva-Christina Smeets also noted that the paper had identified (as in her presentation) a number of further issues that the Commission should consider.

Members of the Group decided to respond to this consultation and to form a sub group to prepare the response. It was agreed that the Group could adopt their final views in the Stakeholder Group meeting of 11 October.

5. ESMA Consultation Paper on possible delegated acts under Level 2 of the Prospectus Directive (ESMA/2011/141)

Lee Piller from ESMA provided an overview of the consultation paper. Following the presentation, an initial exchange of views took place.

A number of members welcomed the paper as clear and succinct, although it was noted by one member that the paper should be checked to ensure the meaning is clear should this text be adopted for legislative purposes.

¹ <http://www.bankofengland.co.uk/publications/speeches/2011/speech509.pdf>



A member raised a number of very specific queries regarding the way in which ratings would be indicated around the various thresholds. Clarifications of these issues were later addressed by Lee Piller with the member on the margins of the meeting.

Significant discussion took place amongst the Members on the need to ensure that the prospectus regime strikes the right balance between ensuring adequate protection of investors and avoiding unnecessary costs that could hinder SME's access to financing. A member indicated that whilst it might be a slightly lighter regime than for well established companies on exchanges, the risks of SME's were also greater and the investor should be well informed. There appeared to be broad consensus that the lighter regime for MTFs was appropriate and reflected the nature of the investors.

Lee Piller noted that regarding the costs for SME's, whilst they were marginally higher given the amounts of capital they were seeking to raise, the costs of developing a prospectus rested largely with the advisory firms. Regarding the costs incurred as a result of the competent authorities, Lee Piller noted that these varied.

Members were very keen for the KID approach to be adopted for prospectus for structured securities and fixed income and a large number of members noted that they did not want the delay regarding PRIPS to affect this. The summaries were considered by members as a critical element in ensuring better information for retail investors. A further member noted that there should be caution exercised over the reliance on ratings.

The Group decided that they would like to respond to this consultation and would form a sub group. Given the very short deadline to respond, and the fact that a response would need to be sent by mid-August, it was proposed that this response would take the form of a non-paper with individual views rather than a Group view.

6. Forward planning of the work of the Stakeholder Group

Verena Ross, ESMA's Executive Director noted that ESMA would try to provide an indication of future work for discussion at the Group's next meeting.

7. AOB

A member requested that the consultation paper on third country issues under the AIFM be circulated as soon as possible.

Guillaume Prache
Chair



Attendees

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

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

Representing Financial Services Employees
Ms Sofia Argirova
Ms Gabriele Zgubic

Representing consumers
Ms Dorothea Mohn
Mr Guillaume Prache
Dr Zita Ceponyte
Ms Sari Eeva Johanna Lounasmeri

Representing SME's
Mr Salvatore Bragantini

Representing academics
Prof. Angel Berges-Lobera
Prof. Niamh Moloney
Prof. Pierre-Henri Conac

Apologies

Mr Jarosław Dominiak (representing consumers)

Prof. Aleksander Chlopecki (representing academics)

Dr. Jesper Lau Hansen (representing academics)



ESMA Staff

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Verena Ross

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Clement Boidard

Richard Stobo

Eva-Christina Smeets

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