



## Summary of Conclusions

### Securities and Markets Stakeholder Group

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**Date:** 12 and 13 September 2012  
**Time:** 14:00 – 17:00 on 12 September and 9:00-13:00 on 13 September  
**Location:** ESMA, 103 rue de Grenelle, 75007 Paris  
**Contact:** [jacob.lonnqvist@esma.europa.eu](mailto:jacob.lonnqvist@esma.europa.eu) T: +33 1 58 36 43 39

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Excused from the SMSG were: Lars Hille, Sally Dewar, who partly participated over the phone, and Angel Berges-Lobera, who party participated over the phone.

#### 1. Adoption of agenda

The agenda was approved, with the addition of a discussion of the ESMA Consumer Guide under the heading of the retailisation topics in the agenda.

#### 2. Approval of the summary of conclusions of June meeting

– SMSG/2012/44

The Summary of conclusions was approved, with limited changes discussed and agreed.

#### 3. Actions arising out of the joint meeting with the ESMA Board of Supervisors

The Chair and the ESMA Chair both noted satisfaction with the discussions in the joint meeting of the morning.

The ESMA Chair noted that in the meeting ESMA and the SMSG did have the right group of people at the right level including both ESMA Board of Supervisors members and their alternates.

##### 3.A. Investor protection

ESMA, Laurent Degabriel outlined the progress made with regard to the ETF investigation that ESMA has begun following the proposal of the SMSG, detailing the number of jurisdictions approached and the



preliminary results of the answers received from the supervisors of those jurisdictions. The answers received dealt with the potential problems they had perceived in the area of ETF distribution arrangements and the methods that might be employed in addressing the issue. The topic could possibly be brought to the level of a suitable ESMA Standing Committee for a broader approach.

A couple of members noted that not only ETFs but also other structured products could be problematic as clients often do not realise what they are paying for due to the construction of such products.

A few members mentioned that the attention on investor protection issues could usefully be broadened to capture matters like conflict of interest and other topics.

Laurent Degabriel mentioned that some Members States are looking at putting in place some more horizontal systems for control of the distribution of products as compared to what they currently have.

It was noted that initiatives had been taken by some regulators as regards the use of mystery shopping.

The ESMA Chair noted that, as regards individual firm practices, if there is a problem in that respect a supervisory response is the most appropriate. He also high-lighted that breach of Union law cases need to be very strong and clear cases; this would mainly arise with respect to breaches of clear legal requirements.

The Chair expressed openness to widen the scope. The Chair stated a need for further discussion in this area and he referred to a public consultation from the French Supervisor AMF which had shown that a very large proportion of intermediaries did not apply the inducement requirements of MiFID.

**Conclusion:**

ESMA would continue its work on the ETF topic and ESMA and the investor protection working group should stay in contact on this topic and other investor protection issues.

**B. Shadow Banking (non-bank lending)**

The Co-Rapporteur Peter De Proft accounted for the initial work of the working group by suggesting the working group concentrate on five questions, being: collateralisation, money market funds, securitization, securities lending, and the definition of shadow banking. He also mentioned the other on-going initiatives with regard to shadow banking in the EU and globally.

The ESMA Chair noted that there is no immediate rush for ESMA on the Shadow Banking area but that the view of the SMSG would be most welcome.

**Conclusion:**

The working group would continue its work following the outline described and report at the next SMSG meeting.

**C. SME financing**

The Rapporteur Judith Hardt referred to the discussion on the report of the morning and presented the policy recommendations, which were tabled at the meeting for decision. The Group noted that some members of the Board had been quite sceptical. Some asked for further evidence, while others had been positive, noting that there might be a market failure in this area. She outlined the recommendations as presented in that paper, divided between policy recommendations related to investment funds and fiscal policy recommendations.

The recommendations were discussed in the group, leading to a number of suggestions for amendments in relation to i.a.

- comments should be added on bankruptcy/insolvency,
- the recommendation on prospectuses focused on sponsors rather than approval by supervisors,
- the usefulness of illustrating with examples how reduction of costs of small companies could be achieved.

A couple of members mentioned that the link between more SMEs in the market and growth of the economy is not made and that it could be useful to try to make this link stronger in the report. Discussion also included the ceiling for investments by investment funds and Alternative Investment Funds, respectively.

#### **Conclusion:**

The meeting concluded that the report should be sent for one last round of comments by the Group.

The ESMA Chair undertook to bring the report to the ESMA Board of Supervisors once it had been completely finalised in order to stimulate a wider debate in the ESMA Board of Supervisors on the report.

#### **D. EMIR**

The rapporteur Thomas Book presented the report. The rapporteur stated that he had tried to achieve a very precise paper together with the group and asked that ESMA should be careful not to “overdo” it.

ESMA noted the very tight time-lines for the work and that the technical standards would be delivered from ESMA by the end of the month. The joint work with EBA covers a small part and deals with bilateral trades. Work on third country issues was also on-going. The technical standards on CCP interoperability will be consulted on by the end of the year. ESMA, EBA and EIOPA have decided to postpone the work on the joint standards on bilateral margins to take account of global work on this issue. ESMA expects to finalise its work, depending on the progress internationally,, during first quarter or mid next year.

The work on guidelines on interoperability is still at a very initial stage – there will be no CCP registered under EMIR before next year. ESMA will consult on this topic in due time.

One member noted that the response from ESMA did not reflect the responses to all the questions that the SMSG had given at an earlier stage.

ESMA stated that it would be happy to go into a detailed discussion and that it would come back to the SMSG with a feedback statement including comments in detail on the views presented by the SMSG.

One member noted that while it is known why there is such a very compressed time-table on this important topic, and that this is very unfortunate, considering that it is such a huge market, ESMA has to get it right from the outset because there is no second possibility to change it. Currently there are still developments on-going in the US which might mean that we should wait and see the end outcome on that side. The topic is so important that we need to allow ourselves to be a bit delayed rather than not getting it right.

The ESMA Chair stated that ESMA was working closely with US and other global regulators to achieve as much global alignment of standards as possible.

ESMA reminded the SMSG of the large number of comments received from different stakeholders and noted that some of the views expressed in the consultation are not the same as those of the SMSG.

As mentioned in the morning, the new clearing obligations make clearing obligatory also for non-financial companies. ESMA has requested data from the market on this in order to assist on the development of policy but has so far not received any such data that could assist.

The ESMA Chair noted that ESMA will have to take a decision and deliver its technical standards to the Commission by the end of the month.

**Conclusion:** ESMA has taken note of the advice given by the SMSG. The SMG will come back to the EMIR topics at a later stage (e.g. as regards inter-operability).

#### **4. Steering Committee's Report**

##### ***4 A. Feedback from the meeting with the Chairs of EBA and EIOPA Stakeholder Groups***

Vice-Chair Judith Hardt accounted for a lunch that she and the Vice-Chair Peter De Proft and the Chair Guillaume Prache had had with the Chair of the EBA Stakeholder Group, Sony Kapoor and the Chair of the EIOPA Insurance Stakeholder Group, Chris Verhaegen.

The Chairs and Vice-Chairs of the three Stakeholder Groups had discussed:

- That they should coordinate more of their work where appropriate.
- They had decided to draft a common letter to EU authorities on common key challenges and achievements.
- They had identified horizontal issues such as shadow bank issues, insurance products as investments and SMEs, as well as common administrative issues.
- They would be comparing practices.

The EBA and EIOPA Stakeholder Groups had also shown interest in having an annual activity report. It was noted that the EBA stakeholder group always starts with a "market developments" session at their meetings, which is also the common practice in the EU Financial User's Group.

##### **Conclusion:**

The Steering Committee would continue to report back from contacts held with the Chairs of the other Stakeholder Groups.

The SMSG should in its future agendas include an item on recent market developments at the beginning.

#### ***4 B. Discussion of SMSG first year activity report - SMSG/2012/53***

The SMSG discussed an early draft of a first year activity report and suggested amendments.

The Chair concluded that further revisions would be made. He further noted that the annual report is a public document, and that the SMSG should discuss what to do as a next step.

The ESMA Chair noted that one possibility would be to publish in spring, like most annual reports. He also noted, as a comment on the discussion on resources, that ESMA gives quite substantial contributions to the work of the SMSG and its various working parties not only from its secretariat but from all its experts involved at various stages.

#### **Conclusion:**

The Vice-Chair Judith Hardt volunteered to draft a new version of the foreword/introduction to the annual report taking into account the comments made. Comments should be sent as soon as possible. Agreement could be reached in a written form or at the November meeting, depending on the comments received.

### **5. The 2013 SMSG Work Programme, and meeting calendar**

Before entering into discussion on the work programme for next year, ESMA presented work that it is doing with regard to the consultation on the definition of market making activities and primary market activities with regard to short selling. ESMA explained that the period of comments to the consultation would be extremely limited - only about three weeks until 5 October - due to the very tight deadlines dictated by the Regulation entering into force on 1 November.

Members of the Group made comments including remarks that the regulation could be very damaging to the market if the regulation was not given the right form. Members were of the view it should be a priority to participate in the consultation.

#### **Conclusion:**

The Group agreed that it should give its opinion on the consultation and that the working group of SMSG in charge of preparing a reply should meet with the experts of ESMA in the process of drafting an opinion.

#### ***5.A Discussion of a working programme for 2013, 2012/SMSG/54***

Verena Ross explained that ESMA was in the process of deciding its work programme for 2013. The draft comprehensive work programme had just been discussed in the Management Board and would be approved at the Board of Supervisors meeting on 24 September together with the more high-level multi-annual work programme.



ESMA undertook to share the ESMA work programme with the SMSG once finalised, but that the SMSG was welcome to see the current draft.

The SMSG Chair noted that the SMSG indeed already had a preliminary 2013 work programme attached to its 2012 work programme.

Members of the SMSG mentioned topics they would like to see included into the work programme, to some extent depending on the speed of the negotiations of the legislative measures, including:

- The Transparency Directive, MiFID and MAD,
- Possibly some topic related to the discussions of the banking union if it would lead to a revision of the ESMA Regulation,
- Securities lending, if it would appear in the ESMA work programme,
- CSD,
- CRA, following the launch of CRA III,
- Interoperability guidelines of CCPs.

The Chair reminded the SMSG of the three year review of the ESFS that will take place in the course of 2013 and that the output and functioning of the SMSG will be part of it. He also confirmed that CSD regulation, securities lending (as part of the shadow banking work) and the major securities directives (TD, MAD and MiFID) would be covered in the work programme. He also reminded the Group that the 2012 work programme was based on the assumption that the SMSG could reasonably finalise two advice papers per plenary meeting, not more (i.e. 10 for the whole year). Therefore, a prioritization effort is needed also for 2013.

The Vice-Chair Judith Hardt noted that SME and shadow banking could be more clearly spelled out under horizontal issues.

#### **Conclusion:**

The Chair concluded that the Steering Committee would circulate a new version of the work programme for approval at the November meeting, taking into account the comments made at the meeting and the final ESMA work programme.

### ***5. B Approval of Calendar of meetings for 2013***

A suggested meeting calendar was presented including meetings of the SMSG evenly spread across the year and two meetings of the SMSG jointly with the ESMA Board of Supervisors, beginning of the year and the beginning of autumn.

Members put forward certain limitations in terms of availability and preferences.

#### **Conclusions:**

The meeting calendar was approved as presented.

## **6. Presentation of the functioning of the Consultative Working groups (CWGs) of ESMA**



At the request of the Steering Committee, Verena Ross presented the functioning of the ESMA Consultative working groups.

Comments raised by members on the issue included the following:

- Possible duplication of work and how to avoid that,
- Independence of the consultative working groups,
- Correspondence in national structures,
- Interaction between the SMSG and the Chairs of the Standing Committees from time to time.

Verena Ross clarified that the role of the Consultative working groups, being more directly connected to one particular ESMA Standing Committee, is quite different from that of the SMSG, which has a much more wide-ranging and formalised role under the Regulation. She confirmed that participants in the CWGs are supported along the same lines as those of the SMSG. The list of CWGs and their members are made public on the ESMA web-site.

The Chair requested a list of all the names of the persons participating in the Consultative working groups and highlighted the importance of ensuring a clear delineation of the work of the SMSG and the Consultative Working Groups. He noted that the SMSG's role, in particular, was to become involved early and to take a strategic view.

A few members noted that the SMSG does not always have to be involved in issues under discussion. The SMSG should know if the CWG had been involved in the advice in question.

### **Conclusion:**

ESMA undertakes to provide complete lists of the CWGs to the SMSG and further share - as a general rule - information with the SMSG on whether a CWG had been involved at an earlier stage of any given consultation process.

## **7. SMSG advice**

### **7. A AIFMD**

The rapporteur Peter De Proft reported on the work that had been undertaken in the summer as regards the development of advice, with the goal of developing a quite short text in reply to the consultation on remuneration under the AIFMD. Topics dealt with include proportionality and relationship to other sets of remuneration guidelines.

ESMA outlined briefly the main content of work done and discussed it with the SMSG working group.

A member of the working group outlined the content of some of the work done by the working group:

- A heterogeneous group of asset managers are covered by the rules and they fall under several directives. Proportionality will be important.
- The rapporteur noted that UCITS V is under consultation and will affect many fund managers outside of the AIFMD.

ESMA informed the Group that no consultative working group had been involved on the AIFMD remuneration. ESMA said that the work on the MiFID remuneration guidelines would follow later in September for a normal three month consultation.

The Chair drew the attention of the Group to the fact that the opened “UCITS VI” public consultation from the European Commission also includes rules on remuneration. The Chair reminded everyone that it would be a step away from the SMSG principles to provide a piece of advice which will not have been agreed by the SMSG at a meeting and invited comments.

**Conclusion:**

The Group concluded that it would need to give advice on this important topic, where the consultation will close on 27 September.

**7. B. Retailisation**

The meeting discussed an advanced draft version of an ESMA Consumer Guide to investing, added to the agenda.

Members of the SMSG thought that it might be helpful for ESMA to have comments on this type of documents. Comments included:

- ESMA ought to use more accessible language and assess the basic risks which arise in the investment process and in using investment services; bearing in mind in particular that many consumers may have very limited knowledge of the financial sector.
- ESMA ought to cooperate with national Authorities competent in the area of consumer protection of financial instruments.

**Conclusion:**

ESMA would take the comments into account and emphasised the close cooperation with national competent authorities on these topics.

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ESMA presented the two reports - on structured products and on alternative UCITS - that have been shared by ESMA with a request for the SMSG to provide its advice.

The presentation was followed by numerous questions and comments on the technical issues related to sampling and statistics. Comments also included recognition of the importance of the topic given that problems in these markets are perceived to exist.

ESMA explained how the statistical sampling had been made. The results had been robust, reflecting results from earlier academic studies. ESMA also explained that the purpose of the reports was to provide input for policy discussions.

The ESMA Chair added that the reason ESMA had asked for the input of the SMSG on the reports was that it wanted to make sure that they fulfilled high academic requirements.

**Conclusion:**

The Group concluded that the SMSG would provide advice to ESMA through the work of the investor protection working group.

**8. A O B**





It was recalled that the vice-Chairs Judith Hardt and Peter De Proft would co-chair the next SMSG meeting on 23 November.

The need for timely communication of meeting documents was reemphasised.

**List of participants at the SMSG Meeting on 12 and 13 September 2012**

<b>Name</b>	<b>Authority / Organisation / Department (if internal)</b>	<b>Participation at the meeting on 12/13 September</b>
Guillaume Prache	Chair of SMSG, Managing Director of the European Federation of Financial Services Users (“EuroFinance”)	Present
Judith Hardt	Vice-Chair of SMSG, Secretary General, FESE	Present
Peter De Proft	Vice-Chair of SMSG, Director General, EFAMA	Present
Carlos Arenillas	Chairman and CEO of Equilibria Investments SIL.	Present
Sophia Argirova	Vice Chairperson of the Management Board of the Association of Bulgarian Investor Relations Directors /ABIRD	Present
Ludo Bammens	Director European Corporate Affairs KKR - KOHLBERG KRAVIS ROBERTS & CO. (London)	Present
Roland Bellegarde	Member of the Management Committee NYSE Euronext Group Executive Vice President & Head of International Listings and European Execution	Present
Angel Berges-Lobera	Professor of Finance, Universidad Autonoma Madrid	Phone (partly)
Thomas Book	Member of the Executive Boards of Eurex Frankfurt AG, Eurex Zürich AG and Eurex Clearing AG	Present
Pedro Braga da Cruz	Consultant of Companhia Portuguesa de Rating, S.A	Present
Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Present
Zita Ceponyte	President, Lithuanian Consumer Institute	Present
Aleksander Chlopecki	Professor of Law, University of Warsaw	Present

Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Present
Hans van Damme	EFRAG Supervisory Board, Vice Chair	Present
Sally Dewar	Managing Director - International Regulatory Risk	Phone (partly)
Carmine Di Noia	Deputy Director General and Head of Capital Markets and Listed Companies, ASSONIME	Present
Jaroslaw Dominiak	President of the Management Board of the Association of Individual Investors	Present
Lars Hille	Member of the Board of Managing Directors of DZ BANK AG	Excused
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Present
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Dorothea Mohn	Policy Officer for Pension Schemes and Capital Investment, Federation of German Consumer Organization	Present
Niamh Moloney	Professor of Financial Markets Law, Law Department The London School of Economics and Political Science	Present
Katerina Papageorgiou	Attorney-at-Law, Deutsche Bank AG	Present
Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Present
Xavier Rolet	LSE Group Board on 16 March 2009 and became CEO on 20 May 2009	Present
Adriana Tanasoiu	Chief Executive Officer of Depozitarul Central (Romanian Central Securities Depository)	Present
Tjalling Wiersma	Head of Legal & Compliance, Shell Asset Management company	Present

Gabriele Zgubic	Head of Department of Consumer Policy Austrian Federal Chamber of Labour, Vienna	Present
<b>ESMA</b>		
Steven Maijoor	ESMA Chairman	Present
Verena Ross	ESMA Executive Director	Present
Jacob Lönnqvist	Senior officer, legal cooperation and convergence	Present
Stephan Karas	Head of unit, Legal, cooperation and convergence	Present (partly)
Laurent Degabriel	Head of Investment and Reporting Division	Present (partly)
Rodrigo Buenaventura	Head of Markets Division	Present(partly)
Fabrizio Planta	Senior officer for Post-trading	Present (partly)
Sarah Raisin	Senior officer, Investor Protection, Intermediaries, Financial Innovation	Present (partly)
Antoine Bouveret	Senior economist	Present (partly)
Richard Stobo	Senior officer, Investment management	Present (partly)
Antoine Baratelli	Senior officer, Investment management	Present (partly)
Matteo Rava	Officer, Investor Protection, Intermediaries, Finan- cial Innovation	Present (partly)