



Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 21 November 2013
Time: 9:00 – 17:00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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1. Adoption of agenda

The agenda was adopted.

2. Approval of the summary of conclusions of the September meetings

– *SMSG/2013/022 and 2013/BS/000*

The revised summary of conclusions from the SMSG meeting was approved.

The revised summary of conclusions from the joint meeting with the ESMA Board of Supervisors was approved.

The Securities and Markets Stakeholder Group (the SMSG or the Group) discussed briefly the comments made since the last meeting on the advice regarding enforcement of financial information. The SMSG Chair concluded that the version sent to the full Group on 21 October was the final version to be published. It was noted that the two advice papers on EMIR had been approved as they had been presented to the last SMSG meeting.

3. Steering Committee Report

The ESMA Chair reported briefly on the activities of the Steering committee in preparing the meeting and the draft work programme for 2014.

4. Recent market developments



The SMSG discussed firstly ***Investor Protection and EU regulatory status, (“PRIPS” and other initiatives)***,

Vice-Chair Peter De Proft accounted for the recent developments in the EU Parliament regarding the Key Information Document regarding investment products (also known as PRIIPS). Following the vote in Parliament it is unclear what the scope will be and which different types of products to be included. While corporate bonds remain in scope as does “complex” label remains in the text (which might be better suited for MiFID) it is not certain that insurance products will be fully covered. There is also some confusion between product distribution issues (which relate more to MiFID and IMD rules) and product manufacturing ones. The idea of complexity would need to be applied consistently. The role for ESMA with regard to product intervention is also unclear in the current proposal. Compromises in the European Parliament on this dossier seem difficult.

Members of the meeting gave a variety of comments on the topic: It was noted that there is an unfortunate mixing up of disclosure and distribution rules and ESMA should have powers for supervisory convergence in the area,

It was noted that tax reasons likely were behind many of the developments.

One member noted that since clients only have contact with distributors, the main obligations should lie there.

The SMSG Chair expressed that the most important issue would not be whether to include corporate bonds, but to reach a solution so that life insurance products are clearly included.

The ESMA Chair noted that there was substantial controversy regarding PRIIPS in the Parliament. A key aspect of the proposal should be to have life insurance products within the scope and noted that it might help if ESMA and EIOPA Stakeholder groups together expressed their views on this issue. Regarding problems with the quality of the legal text, there is not much ESMA will be able to do in order to repair such a deficiency using supervisory convergence tools. He suggested including the PRIIPS topic into the work programme of SMSG for the coming year.

One member of the Group noted that the views of the future SMSG on the topic was not known and raised a wish to discuss also other topics like proxy advisors and MAD discussion paper just released.

Conclusion: The Group will follow the developments of the topic.

The SMSG discussed a second topic being, the ***Forex market***.

The SMSG Chair accounted for the recent developments with regard to the Forex market and the investigations of possible malpractices that are being undertaken. He noted that this is an enormous market that seems to be unregulated at European level. The Group noted that the supervision of the Forex markets was not within ESMA scope but also acknowledged the importance of the topic.

Conclusion: While no immediate action was noted the Group will continue to follow the topic.

ETFs – update from ESMA on its findings regarding Exchange Traded Funds.



The ESMA Chair reported on the work that ESMA has undertaken in investigating how ETFs are distributed and sold across the EU, following-up on an earlier request from the SMSG. While ESMA has reached some robust and interesting findings in this area, there is still work to be done.

Conclusion: ESMA will be able to report back to the SMSG for its first meeting in 2014.

5. SMSG work programme 2014

The Group discussed a draft work programme prepared for the meeting, which is essentially based on the ESMA work programme.

One member remarked that early involvement from the SMSG also on the market abuse discussion paper published on 14 November as well as on the public statement on acting in concert published on 12 November, even if not formally requested under the ESMA Regulation, would have been useful as it was done for the proxy advisor paper.

The ESMA Chair said that the acting in concert paper came from the network of takeover regulators and added that sessions regarding the market abuse could have been arranged as had been the case for the MiFID topic and better communication between the SMSG and ESMA could have accomplished that; he noted that the draft work programme did indeed mention early involvement from the Group and that the principle of agreeing two papers per meeting, i.e. ten papers per year would still be a goal.

It was noted by some members that the work programme ought to be named provisional in order to allow the incoming SMSG to have the final say on the programme.

Other members noted that the work programme was too open and followed the ESMA work programme without making precise enough choices and ten papers per year might be too much in that an average of two papers agreed for publication per meeting might be too much, i.a. given the start phase of the SMSG in its new composition. In addition many of the topics e.g. regarding MiFID and MAD are very wide-ranging and can easily comprise several different advice papers.

One member wished to add benchmarks to the work to be done.

Remarks were also made that the detailed technical topics should be able to be part of the work programme, e.g. the treatment of non-EU fund managers under the AIMD, while others noted that that the work programme should not be too prescriptive because it is very difficult to know when the different draft consultations will be made available.

The ESMA Chair noted that a reply from the SMSG to the proxy advisors consultation would have meant a reply to a non-ESMA consultation, which in itself should not be excluded, and that preliminary sessions on MAD might also be arranged.

He also stated that a lot of the advice given from the SMSG in its first mandate period had been related to the single rulebook, which is natural given the role given to the SMSG in the ESMA Regulation, but ESMA would also welcome more advice to be given on supervisory convergence topics and on market developments. It would, for example, be very important to get insights on the application and conver-



gence of the AIFMD across the EU. On benchmarks he expressed concerns about when there will be political agreement on the legislation. The ESMA Chair also noted that the ESMA Board of Supervisors will discuss its experiences of the functioning of the SMSG during its first 2,5 years of activity in the next Board meeting. He accounted for the results as regards the ESMA budget and noted that ESMA had received the budget it had requested but not the FTEs (Full Time staff Equivalents).

One member noted that the SMSG is not hindered in what it can provide advice on, and requested that ESMA should further detail the topics where it would most benefit from the input from SMSG.

Members suggested coming back to topics of supervisory convergence more frequently and to set up a working group to take care of monitoring supervisory convergence.

One member suggested that the SMSG should work on principles for how it prioritizes its work.

Conclusion: The SMSG Chair concluded that the work programme should be complemented with 3-5 more precise priorities, and connected to the ESMA objectives. The deliverables column should be deleted. Every member should come up with 3-5 priorities to serve as a basis for discussion and inclusion in the work programme.

6. Crowd funding

Angel Berges-Lobera, presented a paper on crowd funding, following a presentation distributed to the meeting.

Patrick Armstrong, ESMA, accounted for work being done in ESMA in coordination with EBA and the European Commission on the topic to be discussed firstly in the Financial Innovations Standing Committee (FISC) in December, with a view to send this to the Board of Supervisors for its February meeting.

Members of the Group made observations that the crowd funding issue is an investor protection topic and the platforms should be under some form of regulation.

One member said that the SMSG ought to take a holistic view on the topic not focusing only the financial crowd funding.

Other views noted that the crowd funding platforms and issues (according to one national study) already are in fact subject to several legal requirements.

One member noted that the crowd funding industry, which had started as a reaction to the over-regulated existing forms for financing, should not be regulated, as it is active with amounts below relevant ceilings (as regards prospectus obligations etc.), and that over-regulation might kill this emerging business. There could however be clearer information e.g. on exit strategies.



Some members noted that the market is still very limited in size in Europe and that the potential problem is therefore quite limited.

The ESMA Chair noted that he favours technology neutral legislation to address crowd funding issues. He reminded that also small amounts collected through crowd funding could lead to important investor protection issues.

Conclusion: The SMSG Chair concluded that the SMSG approved the paper with one addition namely that SMSG would favour that crowd funding proposals should contain clear and visible information and that the crowd funding legislation in whatever form it takes, should be technology neutral. The SMSG paper, amended as such, will not be published.

7. MiFID topics up-date – bond markets transparency

ESMA, Rodrigo Buenaventura and Catherine Sutcliffe, presented the work ESMA has undertaken in relation to bond markets transparency, accompanied by a presentation provided to SMSG.

They provided an indicative time- line for the work that ESMA will have to do for the development of technical standards in the coming year, based on the assumption that MiFID II level 1 is agreed by end of 2013. They noted that the existing transparency requirements under MiFID I applicable to equities will be expanded significantly to non-equity asset classes and that the data available for bonds and in particular, for derivatives, is limited which makes the transparency calibration and calculation exercises challenging.

Comments from the Group included that capital gains on bonds in some jurisdictions are taxed at a higher rate if sold before the maturity date, which is then a contributing reason for low liquidity.

One member raised concern that it was during periods of low liquidity that transparency was required in order to ensure fair pricing.

One member noted the great difficulty in the task, that this would be a costly exercise and that waivers for bonds should be aligned with those for equities and that the MiFID Parliament text ought to be the one to serve as a basis for the work.

One member noted that the corporate and the government bond markets are very different in how they behave; corporate bonds are liquid only a few months after they have been issued, and then again during the last year of maturity but not in between.

One member noted that retail investors are usually not active on bond markets; and that is due to the minimum size of investment tranches and to access issues.

The ESMA Chair noted that evidence of the inadequate functioning of the bond markets had been provided to ESMA's predecessor CESR. He also mentioned the absence of a retail market for bonds in the EU except for Italy.



Rodrigo Buenaventura, Head of Markets Division, ESMA, noted that the difference in the behavior between corporate and government bonds has been accentuated with the crisis.

Conclusion: The SMSG requested to be consulted on the content of the Discussion Paper before being published for public consultation.

8. MiFID – SMSG Capital market Structure Working Group up-date (Algorithmic trading and HFT)

Roland Bellegarde presented a draft response paper developed by the micro-structural working group led by him, and noted that the paper had not been finalized yet. The note aims at responding to the questions posed by ESMA in the presentation of the work on micro-structural issues at previous meeting.

Members gave various comments: Some noted that legislation should not be allowed to kill the good part of the HFT, some members wished to further high-light the co-location issue. One member noted that SME's are crowded out from the increased liquidity, while it was also said that SME's would not benefit from the fact that HFT is not allowed. One member noted that since the issue has been decided at level 1, the role for ESMA would be to decide in the least damaging way. There was a proposal to differentiate between liquidity takers and liquidity makers.

Roland Bellegarde noted that colocation would usually be seen as facilitating HFT and that regarding liquidity takers and providers those roles are usually shifted between persons.

ESMA - Alberto Garcia - noted that it would be valuable for ESMA to receive the views from SMSG on this topic even if the view is not representing the consensual view of the whole Group and also if it is unpublished. Timing is of essence for receiving comments.

Conclusion: The working group under Roland Bellegarde would take the comments of the Group into account in its continued work to develop the paper, which would be agreed at a future SMSG meeting.

9. CRA

ESMA – Felix Flinterman, Head of Unit and Eduardo-Javier Moral-Prieto – accounted for the work ESMA has done in relation to Guidelines to reduce the over-reliance of credit ratings. The background of this work has been the “hard-wiring” of CRA ratings in standards and regulations which has been contributing significantly to market overreliance on external credit ratings. Article 5b(1) of the CRA3 Regulation states that EBA, EIOPA and ESMA shall not refer to credit ratings in their guidelines, recommendations and draft technical standards where such references have the potential to trigger mechanistic reliance on credit ratings by sector competent authorities or financial market participants.



The joint consultation, which is open for comments until 5 December 2013 proposes a definition of mechanistic reliance of credit ratings. It contains one proposed modification to an ESMA guideline, the Money Market Funds Guidelines.

One member noted that other examples existed of legislation that made mechanistic reference to credit ratings, notably Basel II, and Solvency II, rules on collateral from the ECB, and fourthly the mapping of ratings of the CRA themselves.

It was noted that the MSG would not have time to reply in writing to the consultation before it closes.

Conclusions: The MSG will provide the comments given at the meeting and will not reply formally to the consultation.

10. MSG meeting calendar 2014 and handover to new MSG

A draft calendar of meeting dates for 2014 was presented. The meeting table includes five meetings in 2014 two of which will be one and a half day meetings together with the ESMA Board of Supervisors.

Conclusion: The table of meeting dates for 2014 (2013-MSG-019) was approved.

11. AOB

One member requested that the Maystadt report be discussed briefly. The EFRAG Vice-Chair Hans van Damme accounted for the procedure in developing the report.

The ESMA Chair noted that ESMA had been consulted on the report “Should IFRS standards be more “European”?” The ESMA Chair emphasised the great importance of the topic for the European financial legislative framework and accounted for the main points of ESMA’s views expressed to the European Commission in that consultation being: the need for ensuring the proper roles of public and private interests when giving advice on IFRS; the need to ensure that all EU member states are represented as part of the democratic process of establishing legislation in the EU, and the importance of ensuring proper interaction with existing European authorities which also play a role in the area of financial reporting.

One member raised the possibility for former members of the MSG to stay in contact in a form of “alumni” group. It was noted that different possibilities for doing so would be possible.

List of participants at the Meeting on 21 November 2013

Name	Authority / Organisation / Department (if internal)	
Guillaume Prache	Chair of SMSG, Managing Director of the European Federation of Financial Services Users ("EuroFinuse")	Present
Judith Hardt	Vice-Chair of SMSG, Secretary General, FESE	Excused
Peter De Proft	Vice-Chair of SMSG, Director General, EFAMA	Present
Sophia Argirova	Vice Chairperson of the Management Board of the Association of Bulgarian Investor Relations Directors /ABIRD	Absent
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	Present
Thomas Book	Member of the Executive Boards of Eurex Frankfurt AG, Eurex Zürich AG and Eurex Clearing AG	Present on phone
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	Absent
Aleksander Chlopecki	Professor of Law, University of Warsaw	Absent
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	Present
Carmine Di Noia	Deputy Director General and Head of Capital Markets and Listed Companies, ASSONIME	Present
Jaroslav 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	Present
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Excused
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Niamh Moloney	Professor of 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	Excused
Jan Maarten Slagter	Managing Director Dutch investors Association, VEB	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



ESMA

Steven Maijoor

Jacob Lönnqvist

Rodrigo Buenaventura

Catherine Sutcliffe

Alberto Garcia

Patrick Armstrong

Felix Flinterman

Eduardo-Javier Moral-Prieto