

## Summary of Conclusions

### Securities and Markets Stakeholder Group

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**Date:** 5 February 2015  
**Time:** 9:00 -17:00  
**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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#### 1. Report from the Steering Committee

The SMSG Chair welcomed all to the meeting. He informed that the Steering Committee had the ambition to at some stage produce a joint, or to some degree coordinated, response to a consultation with the Stakeholder Groups of EBA and EIOPA, and the joint ESAs consultation on cross-selling had been identified as a possible topic. However, as always the time limits for response were tight and so it was possible that a joint work would have to await another consultation.

#### 2. Recent Market Developments and convergence issues

The SMSG discussed the following current topics:

*Cyber-security.* Peter De Proft highlighted to the group the issue of *cyber security*, being a topic of high importance and currently discussed in several international fora. The discussion showed that the members of the SMSG shared the views on importance. ESMA mentioned its coming report on automated trading guidelines also has as one main finding the need to devote more resources to cyber-security.

Chris Vervliet raised, on the basis of a note distributed to the group, the issue of cross-border selling through electronic platforms mentioning that there should be a common approach in the different jurisdictions of the EU on issues such as assessing suitability on digital platforms. He suggested that ESMA undertake work on this topic, possibly in the form of a peer review,



which was generally supported by several members of the SMSG. It was noted that ESMA is currently undertaking a peer review on suitability, which indeed will cover some of the issues raised in the note.

*The FX market and retail investors.* Judith Hardt provided an overview on the latest developments in the FX markets and the Group discussed if there should be specific protection for retail investors who had suffered losses. One member noted that unfortunately the FX market was unregulated, despite the fact that it involves so much risk for consumers. The ESMA Chair noted that forex derivatives are under ESMA's remit.

*Capital Markets Union (CMU)* Judith Hardt introduced the topic of CMU. She highlighted the relevance of this new initiative of the Commission and she also reminded the SMSG that during the last meeting, it had been decided to reactivate the work already undertaken by the SMSG on the access to funding by SMEs. Since the last meeting, two calls had taken place to organise the work. There was no time to present the work carried out by the SME working group since the last meeting.

Members discussed what they believed CMU should be comprised of and what it should bring to the EU.

The ESMA Chair outlined some of the key characteristics of the CMU. He noted among other in particular that the CMU should be understood as covering all EU member states and not only the Eurozone. He noted that the CMU project would evolve a lot around growth and less around new regulation, while there is still a lot to take care of also in terms of existing regulation. He mentioned that a lot of legislation needed to create a capital markets union would indeed already be in place, and that the work ahead would be much more about supervisory convergence, implementation and enforcement.

The SMSG concluded that it should provide its view on the CMU officially to the European Commission in the consultation that would follow the publication of the Green paper.

### **3. ESMA Strategy**

The ESMA Chair presented the strategy of ESMA up to 2020. He noted in particular that ESMA has concluded very substantial work on the single rulebook e.g. with the MiFID, MAD/MAR, EMIR, UCITS/AIFMD projects. The time has now come for a shift in direction for ESMA to focus more on supervisory convergence and on supervision. This shift will be gradual and ESMA will still have important work programmes on the single rulebook. Supervisory convergence should be understood not as breach of union law only but a broad range of in-

struments, e.g. peer review, thematic investigations and issuing opinions. He also mentioned new upward delegation possibilities that have been put in place for data collection/IT which is very important for ESMA. It will be important to make this data useful for supervisors, and investors. ESMA will also be looking at new funding solutions as the current system is coming to a limit, where ESMA is not be able to fulfil all its tasks.

Members discussed ESMA's objectives in meeting the requirements that would follow from the CMU, and members made i.a. the following remarks:

- that the objectives of ESMA should include the creation of a dynamic , efficient markets in the EU,
- that ESMA would be an important first step towards a “European SEC”,
- that the EU should ideally work towards one truly single rule book with one code at level 1 and one for level 2,
- the need for a stronger possibility for ESMA to shape level 1,
- the need /possibility to have fewer rules,
- that *equity* market union would be a more adequate phrase, than *capital*, (as there is no shortage of capital).

Judith Hardt reminded of the six work streams of the ongoing work on SMEs which in part covers the CMU issues.

The ESMA Chair commented that ESMA was already a huge step for the EU, and that another big step now will be needed as regards supervisory convergence. He noted that stability and investor confidence is not incompatible with the growth agenda and that it is important to attract foreign capital without lowering the standards. Civil liability was important but would continue to be an issue for national law for some time to come.

#### **4. Trends, Risks and Vulnerabilities**

Steffen Kern, Head of Unit, ESMA, presented the main content of ESMA's latest report on Trends, Risks and Vulnerabilities (the TRV report), for discussion in the Group. The presentation covered the developments from ESMA in this regard including three articles published on current topics and additional types of risks analysed for the hedge-fund industry. The trends for markets included price corrections and volatility, that the capital markets financing is down and that there is solid funding from institutional investments. Investors see falling returns and infrastructures experience stable operations. The systemic stress indicators are slightly up in second half of 2014, and the economic environment weaker than expected, including geo-political risks. In summary the key risks are identified as high for liquidity, market and contagion risk and very high for credit risk.

## **5. Financial innovation scoreboard**

ESMA, Patrick Armstrong and Sophie Ahlswede, presented the work of the financial Innovations standing committee and in particular the work on-going in order to establish a financial innovations scoreboard, to be used in order to identify those financial innovations that are likely to impact the objectives of ESMA. It was noted that contingent convertibles scored high and were not for retail investors. SMSG, Giedrius Steponkus noted that instability in such a complex system as financial market is an exponential function of market size, i.e. gross size of all financial instruments positions.

Members of the SMSG expressed strong support for the work of ESMA in this domain being of key strategic importance in order for ESMA to be able to fulfil its work i.a. regarding warnings or banning of dangerous financial products.

## **6. PRIIPS**

The three ESAs released a discussion paper on PRIIPS on 17 November 2014.

ESMA, Richard Stobo, presented the background for the ESAs consultation.

SMSG member Chris Vervliet presented a note in response to the consultation for discussion in the Group. He noted in particular that the discussion of costs and holding periods were still to be concluded in the group.

Members expressed i.a. the view that reference to UCITS could be useful and that costs should be expressed in euros in addition to percentage. The Group was generally supportive of the draft presented to them.

The SMSG Chair concluded that the SMSG advice would be submitted for approval in the group for written procedure.

## **7. Cross-selling Practices**

ESMA, Jocelyn McCafferty, presented the ESAs consultation on guidelines for cross-selling practices. Article 24 of MiFID, as well as other legal sources, has given ESMA the mandate to develop guidelines on cross-selling practices. There are 11 guidelines addressing firms' behaviours to ensure the full disclosure of information, prominent and timely display of information on price and non-price information, proper assessment of demand and need, adequate training of staff and suitable remuneration models.

Verena Ross noted that it would be valuable for ESMA to hear from a cross-section of Stakeholders in response to this consultation.

Members of the SMSG noted the need of training for staff, the relevance of remuneration and the fact that it would be for national regulators to put in place the requirements from the guidelines, while a next step ought to be for ESMA to have a role in supervising cross-selling practices.

The ESMA Chair noted, after remarks from the Group, that there could be a possibility to review the guidelines after a few years even if the complexity of the ESAs governance could be kept in mind in this regard.

## 8. MiFID

ESMA, Head of Division Rodrigo Buenaventura and Carsten Osterman, accounted for some of the key aspects of the current MiFID consultation as regards market aspects presented, and noticed initially that that in the 52 weeks period of preparation of the MiFID technical standards to be given to the Commission there will have been a total of 21 weeks of consultation. While referring to the preparatory document that had been presented to the SMSG they also noted the importance that should be given to the CBA document. They mentioned that ESMA will separately consult on liquidity aspect in a consultation paper that there had not been time to conclude before the year end. They also mentioned the importance of transaction reporting which can risk to be overlooked.

SMSG Members commented:

- One member asked what movements could be expected for investors, when trade data today can vary from 102 – 83 % for a bond.
- Transparency for non-equities has a huge impact for SMEs if it falsely captures non-liquid instruments.
- The consolidated tape issue had been ill-defined at level 1.
- There was support expressed on SME issues.

The importance of reminding market actors to implement the new rules in reasonable time as noted, while also acknowledging the extreme difficulties that would be associated with implementing MiFID 2 on time given the uncertainty of the final text.

Members also thanked ESMA for the changes that had been made to the draft texts following the advice that SMSG had given in the earlier consultation on the discussion paper, as regards topics like self-placements distribution and textual changes.

Rodrigo Buenaventura remarked on the need to find a consolidated tape provider. He also noted that covered bonds and warrants are normally liquid and therefore should be made



transparent. Verena Ross said ESMA is well aware of the difficulties connected to implementation times and it was noted that there would be at most six to 16 months to implement depending on the provisions. The expansion of MiFID to cover commodities meant that many new market actors were now covered by the regime but unused to work with ESMA.

The SMSG Chair concluded the discussion thanking ESMA staff for participating, noting that the SMSG would come back to the topic at future occasions.

### **9. Central Securities Depositories Regulation (CSDR)**

ESMA, Fabrizio Planta and Adina Dragomir, presented the topics of the consultations on draft technical standards and draft advice to the European Commission, on different aspects of the CSDR, open for comments until 17 February 2015.

Some members of the SMSG noted that the issue of settlement fails would not need regulation as the systems in place work well, while other member noted that the problem in some parts of the EU was that it was cheaper to fail in delivering securities than to borrow them. One other member noted that ESMA had been given the task to repair a bad level 1, but that small caps would suffer under the proposed rules.

The SMSG Chair concluded saying that it would be explored whether the SMSG might possibly still contribute to the consultation.

### **10. European Electronic Access Point (EEAP)**

ESMA, Roxana Damianov, presented the ESMA consultation paper on the use of Officially Appointed Mechanism (OAM) according to the Transparency Directive.

Members noted i.a. that the definitions of Regulated Information is not harmonised in the EU by the Transparency Directive and is often in national languages which make cross-border accessibility more difficult. Members noted that this is a key initiative for ESMA to provide and that it looks different in various parts of the EU and that there is a lack of convergence.

The SMSG Chair concluded that SMSG members' interest to contribute to the consultation should be gauged in written procedure.

### **11. CRA**

The SMSG member Rüdiger Veil outlined the content of the draft note he had produced in response to the ESAs consultation paper regarding the reduction of reliance on credit ratings.

ESMA staff thanked for the note which contained useful information and also pointed out that further consultations would take place at a later stage by the ESAs.

Verena Ross remarked, following a question on next steps, that ESMA would generally prefer to have a formal reply to consultations.

The Rapporteur Lindsey Rogerson noted that the CRA working group had made remarks on the outline for the European Rating Platform that had been shared with the working group at an earlier stage and requested that the working group be consulted on future developments of that work. She also undertook to respond formally from the working group to the ESAs consultation on reliance on ratings.

The SMSG Chair concluded that a reply to the ESAs discussion paper on the use of credit ratings among financial intermediaries in the EU should be circulated for written approval in the Group.

## **12. Prospectuses**

The rapporteur Krzysztof Grabowski outlined the content of the advice agreed in the SMSG in written form early January in response to the ESMA consultation paper on draft RTS on prospectus related issues under the Omnibus II, 2014/1186.

## **13. Return of long term investments in the EU**

Guillaume Prache presented a study on the return of pension savings, written by the organisation Better Finance for all.

## **14. AIFMD**

ESMA staff members described briefly the ESMA consultation on Guidelines for asset segregation under the AIFMD. ESMA clarified that SMSG advice could be useful to receive also if the official consultation time had been closed.



The SMSG Chair concluded that a call for interested parties should be carried out.

#### **15. AOB**

There was no other business mentioned.

### Participants at the MSG meeting on 5 February 2015

Last Name and First Name	Authority/Organisation/ Department	Attendance
Angel Berges Lobera	Professor of Finance, Universidad Autonoma de Madrid	Participated
Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Participated
Thomas Book	Eurex Clearing AG	Participated via telephone
Marina Brogi	Professor of Capital Markets, La Sapienza University, Rome	Participated
Lubomir Christov	Advisor to Bulgarian Association "Active Consumers"	Excused
Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Excused
Elizabeth Corley	CEO, Allianz Global Investors	Excused
Peter De Proft	Director General EFAMA	Participated
Carmine Di Noia	Head of Capital Markets and Listed Companies, ASSONIME	Participated
Jaroslaw Dominiak	President of the Management Board of the Association of Individual Investors	Participated
Krzysztof Grabowski	Financial Market Participant, Corporate Governance Advisor	Participated

Judith Hardt	Managing Director Swiss Finance Council	Participated
Fernando Herrero	Member of Board ADICAE, Spanish Banking users association	Participated
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Participated
Christiane Hölz	DSW	Participated
Alexander Justham	CEO, London Stock Exchange	Participated
René Karsenti	President and Board Member, ICMA	Participated
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Participated
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Participated
Niamh Moloney	Professor of Law, London School of Economics and Political Science	Participated
Zsolt Nagygyörgy	Chief Compliance Officer MFB Hungari- an Development Bank Private Ltd	Participated
Guillaume Prache	Managing Director Better Finance for All	Participated

Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Participated
Chrystelle Richard	Associate Professor Accounting and management Control Dept., ESSEC Business School	Participated
Lindsey Rogerson		Participated via telephone
Giedrius Steponkus	Chairman, Lithuanian Shareholders Association	Participated
Stavros Thomadakis	Professor Emeritus in Financial Economics of the National and Kapodistrian University of Athens	Excused
Rüdiger Veil	Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius Law School, Hamburg	Participated
Chris Vervliet	Senior Risk Manager, KBC Asset Management	Participated
Gabriele Zgubic-Engleder	Chair of the Board VKI, Head of the Austrian Federal Chamber of labour	Excused