



## Summary of Conclusions

### Securities and Markets Stakeholder Group

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**Date:** 10 and 11 July 2014  
**Time:** 14:00-17:00 on 10 July and 9:00 -13:00 on 11 July  
**Location:** ESMA, 103 rue de Grenelle, 75007 Paris  
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#### 1. Report from the Steering Committee

The SMSG Chair reported on the meeting held in London on 3 June with the Vice-Chairs of the Stakeholder Groups of EBA and EIOPA, where they had discussed principally general topics of co-operation and exchange of information, including exchanging meeting agendas and summary of conclusions. There had been discussions on possible future common work on topics of common interest, such as PRIIPS for example. The SMSG Chair would report back on further developments.

#### 2. Follow-up from discussion with the ESMA Board of Supervisors

The SMSG discussed in general terms the follow up needed following the meeting held together with the ESMA Board of Supervisors.

The SMSG Chair enquired whether the working groups on the different MiFID topics would be able to provide advice to ESMA within or closely after the deadline of 1 August applicable for the MiFID consultation to which the respective rapporteurs responded in the affirmative.

The time-lines for providing advice to the ESMA MiFID consultations were discussed and the ESMA Chair informed on the legislative advice and acts ESMA will provide for Regulatory technical standards, implementing technical standards, Delegated Acts, and Guidelines.

ESMA explained that it is under very strict deadlines so any advice SMSG would like to provide will have to be provided in August quite shortly after the official deadline. Topics covered in the current discussion paper regarding RTS and ITS will be subject to a second consultation in a consultation paper in December containing more final legislative proposals, while the issues covered in the Con-



sultation paper on delegated acts will be provided in the final form of technical advice to the Commission.

It was noted that ESC is basically not used any longer in the legislative process.

The ESMA Chair clarified that MiFID will still be a directive meaning that national transposition will be needed, and which will in turn mean that there will be some room for different national interpretations.

### **3. WG on retail investors**

The Rapporteur Pierre-Henri Conac presented a draft advice paper, noting that he thought that the SMSG could be on time for the deadline of 1 August. He invited comments on the paper.

The SMSG were generally in favour of the paper as presented.

There was a discussion on the understanding and the correct reading of paragraphs 10 and 11 in the draft MiFID text regarding inducements and views were expressed that the open architecture is not fitting with providing suitable financial instruments for consumers. ESMA explained that paragraph 10 should not be read as consequential. Under paragraph 11 inducements could be allowed because it goes beyond the basic requirement. Regarding investment research ESMA emphasized that it could in this respect only provide advice on minor non-monetary definitions and bespoke or tailored research will not be considered as minor. SMSG members also noted the view that very few situations would be considered as not being on-going relationships (thereby limiting the number of cases where advice would be given).

Comments on investment research were that few persons today pay for research and that issues on research were of the essence. Therefore, the position taken by the Consultation Paper of ESMA that research was an inducement came under severe criticism by members of the SMSG.

The SMSG Chair concluded that the working group would have to provide an advice paper in summer to be approved in written procedure.

### **4. WG on data publication**

At this stage the WG has not finalized its paper. Data publication is an important issue within MiFID II with a strong request for transparency through the RM's, the MTF's and the concept of Data Reporting Services. But the vendors are ignored and the question of cost is limited to the concept of "reasonable commercial terms".

Members of the group discussed principally the issue of consolidated tape.

The SMSG Chair concluded the discussion noting agreement that working group should continue work on the paper.



## **5. WG on transparency and trading obligations - equities**

The presentation was discussed during the joint meeting, so the rapporteur Krzysztof Grabowski summarised it shortly with a statement that the working group would be able to provide an advice paper in early August.

## **6. AIFMD Q & A document**

ESMA, Richard Stobo, informed briefly on the questions and answers document on AIFMD.

Members of the SMSG noted that there was little influence from market participants on the document while the impact of the paper was important.

The ESMA Chair stated that the document only regarded ad-hoc simple questions and that it was not necessary to consult on this type of document. ESMA will not undertake to consult on the paper.

## **7. Recent Market Developments**

ESMA, Frank Hespler, presented the main conclusions of the draft Trends Risks and Vulnerabilities paper that ESMA is working on with the aim of finalising in September.

There were generally comments of support for the work of ESMA the topics covered in the report, and comments on current market developments observed by members of the SMSG as follows:

- There were doubts whether simultaneous upgrade of credit risk and downgrade of credit risk is consistent, as all risk categories are not independent of each other; requirement for pension funds to post collateral and impact on markets;
- There were proposals that future topics could be collateral, collateralization and lack of risk sensitivity of collateral requirements to quality of counterparty, the re-hypothecation;
- The Investor protection focus of the report was assessed as too weak;
- There were concerns that emphasis on market risks might be timid, given the prominence put on good conditions in financial markets, it was claimed that we may already be in a bubble;
- Market disruptions as occurred in PT could potentially have an impact on process of issuance of new capital, especially as banks postponed some of their issuance to the near future ahead.

Frank Hespler, commented on the remarks made by the SMSG members. It was noted that the final version of the TRV report will be published in September.

## **8. WG on transparency and trading obligations - non-equities**



The rapporteur of the working group Stavros Thomadakis mentioned the different topics that he would focus the work on in the development of an advice paper - Internalisation for non-equities, definition of asset classes, the definition of large and the definition of liquid.

ESMA Rodrigo Buenaventura mentioned that especially advice on the definition of large and liquid would be helpful to ESMA.

Comments from SMSG members focused on the inflexibility of the system that is being contemplated. The setting of thresholds for liquidity or large size for example will create a set of parameters for market operation that may need to change if sudden changes in liquidity occur, for example. Such changes however, must go through a long European process that could trap the markets in unwanted situations with too heavy or too light transparency requirements

## **9. WG on trading venues**

Alexander Justham presented the views of the working group in place of the rapporteur Angel Berges-Lobera.

The SMSG Chair noted that an advice paper should be concluded in written form, with the need for three votes in order to form a possible dissenting opinion to be noted in the paper.

## **10. WG on market abuse**

ESMA, Christophe Polisset, accounted for the MAD Consultation paper the ESMA had recently issued, including the timelines.

SMSG mentioned i.a. the following topics of importance to cover in a response paper. No additional Market Abuse rules for SMEs, and no compulsory quarterly reporting. Members also wished to have feedback on the comments given to the earlier Discussion Paper.

The SMSG Chair concluded that the SMSG working group, under the lead of Rüdiger Veil, would aim at producing an advice paper to be approved in the SMSG meeting in September.

## **11. CRA**

The rapporteur Lindsey Rogerson informed the SMSG on the activities of the working group including the meetings held with ESMA staff, as follows. ESMA is tasked under CRA3 to establish a European Ratings Platform to aid the comparability and visibility of credit ratings as well as to help investors make more informed decisions. ESMA is working on the public interface of the platform. What ESMA will be able to deliver depends on budgetary resources.

ESMA staff – Paolo Santella - informed the SMSG on some of the main elements of the ERP, and the fact e.g. that the ERP will include press releases including names of lead analysts.



Verena Ross informed the Group on some of the challenges connected with the project including legal constraints and property rights, and means to finance the project.

It was noted that ESMA at present is identifying the functionality potential users of the ERP would like, and will be able to present these options to the SMSG in November to provide details on what will be in the ERP launch in June 2015, on which the SMSG will be able to comment.

## **12. AOB**

The ESMA Chair informed the group that Jan Maarten Slagter had resigned from the SMSG due to a change in his professional activity, and that a call for a new SMSG member would be launched soon in the category of user of financial services.

Verena Ross informed the SMSG on the main elements of the ESMA work programme and the fact that the current budget proposal regarding ESMA included zero growth for 2015 which means that ESMA may not be able to carry out all tasks it has been entrusted with.

The SMSG decided that it would authorise the Steering Committee to write a letter to the EU institutions highlighting the need for a budget for ESMA that allows ESMA to perform all its tasks.

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The SMSG member Zsolt Nagygyörgy informed the SMSG, based on a written presentation shared with the SMSG, about a study on cross-country comparison of compliance functions in different European states.

SMSG members welcomed the useful information contained in the study, noting the differences between rules and guidelines, the fact that compliance is expensive and that a difference in application of compliance creates competitive disadvantages.

The EMSA Chair welcomed the findings of the presentation noting the importance of having a proper “legal hook” for Guidelines.

List of Participants at the SMSG meeting on 10-11 July 2014

<b>Name</b>	<b>Organisation</b>	
Angel Berges-Lobera	Professor of Finance, Universidad Autonoma Madrid	Excused
Thomas Book	CEO, Eurex Clearing AG	Excused
Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Present
Marina Brogi	Professor of Capital Markets, La Sapienza University, Rome	Present
Lubomir Christov	Advisor to Bulgarian Association "Active Consumers"	Present
Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Present
Elizabeth Corley	CEO, Allianz Global Investors	Present
Peter De Proft	Director General, EFAMA	Present
Carmine Di Noia	Head of Capital Markets and Listed Companies, ASSONIME	Present
Jaroslawn Dominiak	President of the Management Board of the Association of Individual Investors	Present

Krzysztof Grabowski	Financial Market Participant, Corporate Governance Advisor	Present
Judith Hardt	Director General, FESE	Present
Fernando Herrero	Member of Board ADICAE, Spanish Banking users association	Present
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Present
Alexander Justham	CEO, London Stock Exchange	Present
René Karsenti	President and Board Member, ICMA	Present
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Jan Maarten Slagter	Director, VEB (Dutch Association of Shareholders)	Excused
Niamh Moloney	Professor of Law, London School of Economics and Political Science	Present

Zsolt Nagygyörgy	Chief Compliance Officer MFB Hungarian Development Bank Private Ltd	Present
Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Present
Guillaume Prache	Managing Director EuroFinUse	Present
Chrystelle Richard	Associate Professor Accounting and management Control Dept., ESSEC Business School	Present
Lindsey Rogerson		Present
Giedrius Steponkus	Chairman, Lithuanian Shareholders Association	Present
Stavros Thomadakis	Professor Emeritus in Financial Economics of the National and Kapodistrian University of Athens	Present
Rüdiger Veil	Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius Law School, Hamburg	Present
Chris Vervliet	Senior Risk Manager, KBC Asset Management	Present
Gabriele Zgubic-Engleder	Chair of the Board VKI, Head of the Austrian Federal Chamber of labour	Present





Rodrigo Buenaventura  
Carsten Osterman  
Alberto Garcia  
Catherina Sutcliffe  
Laurent Degabriel  
Frank Hespler  
Paolo Santella  
Jacob Lönnqvist