

## SUMMARY OF CONCLUSIONS

### Securities and Markets Stakeholder Group

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**Date:** 16 April 2015  
**Time:** 09.00 -17:00  
**Location:** ESMA, 103 rue de Grenelle, 75007 Paris  
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No Item

Verena Ross apologised on behalf of Steven Maijoor not being able to attend the meeting

#### 1. Report from the Steering Committee

The SMSG Chair informed that he would initiate a new way of setting the agenda taking input from the SMSG members at an earlier stage of the process rather than presenting a draft agenda for comments as has been done so far. In this way, it would be possible to present members with a final agenda representing input from both members and ESMA.

#### 2. Recent Market Developments

Topic 1: Jesper Lau Hansen reminded the Group of the investigations going on in several Member States regarding the matter of funds marketed and charged as actively managed while in fact closely following indexes, and therefore not to be considered as sufficiently actively managed – so called closet indexing.

Verena Ross mentioned that ESMA has begun work on this topic looking at some 600 funds across the EU. Richard Stobo, ESMA, accounted for the methodology used for the work. ESMA will give an update on this work at the June meeting of the Group.



Topic 2: Peter De Proft accounted for a consultation underway by EBA on guidelines proposing criteria to set limits on EU institutions' exposures to shadow banking entities. In those guidelines EBA uses a definition of shadow banking which captures also for example UCITS and AIFs, without sufficiently taking into account the regulation outside CRR and CRD.

Verena Ross confirmed that indeed shadow banking entities do not form a homogeneous group. She mentioned that ESMA, after having been involved at a later stage of the process, now worked together with EBA on this consultation.

Topic 3: Jesper Lau Hansen accounted for the principle of ne bis in idem/double jeopardy and how this legal principle had been upheld in the Italian case of Grande Stevens and in a recent French decision. He mentioned that this case mainly was of relevance for legislators but also for ESMA in that it would be relevant for ESMA. National Competent Authorities need to be correctly set up so that they can ensure that the procedures followed (i.e. ensuring respect for the rights of defence) and the organisation of the administrative authorities imposing the fines comply with the requirements of the ECHR and the related case law.

ESMA was asked how it gets access to the market abuse jurisprudence throughout the EU. SMSG Members also asked if ESMA will focus on convergence of Member States' enforcement practices in the field of market abuse.

Verena Ross noted that ESMA relies on the sharing of information that takes place in the Market Integrity Standing Committee where ESMA and National Competent Authorities inform each other of relevant legal cases in this area. She added that ESMA has not yet defined the areas of primary focus for supervisory convergence work concerning the Market Abuse Regulation and the Market Abuse Directive.

In addition some of the members of the group shared their experiences and ideas on the usefulness of settlements and raised the point whether the EU legal framework could be amended so that ESMA also has the power to reach settlements with its supervised entities.

Topic 4: SMSG member Elizabeth Corley gave an update on the state of play in the work going in the UK on the Fair and Effective Markets Review.

### **3. Capitals Markets Union (CMU)**

The Chair introduced the discussion of the Group on the topic of the Capital Markets Union (CMU), along three themes:

- Firstly the initial reaction by the SMSG to the Green Paper's short-term projects (securitisation, ELTIF, Private Placement, Prospectuses and credit scoring);
- Secondly the draft answers to the Green Paper structured around the following chapters
  - i. Improving SME access to funding;
  - ii. Supply side: institutional investors, retail investors and international investors;
  - iii. Intermediation chain.
- Thirdly the more long-term proposals of the Green paper.

Judith Hardt made a comprehensive presentation of the CMU paper, following a slide presentation distributed to the meeting.

SMSG members made numerous comments on the Commission Green Paper and the Group had a lengthy debate on the topic.

Verena Ross informed the SMSG that ESMA planned to respond to the Commission Green Paper. The ESMA response will support the objectives of the Green Paper and will spell out the contribution of ESMA to the CMU through its main activities (amongst others single rulebook and supervisory convergence) and will in addition answer a few specific questions on SME accounting, fund management, crowd-funding, and supervisory convergence. ESMA will in addition respond to the Commission Consultation Papers on prospectuses and securitisation.

The Chair thanked Judith for a splendid presentation and the members for all the input to the discussion and concluded on the procedure saying that further comments from members could be given within a week and that the SMSG steering committee would finalise the response and submit it for approval in a written process.

#### **4. PRIIPS**

ESMA, Richard Stobo, outlined the state of play of the work that ESMA is undertaking regarding PRIIPS: The work relates to article 8 of the PRIIPS Regulation which mandates the ESAs to draw up technical standards regarding the methodology for presentation of risk

and reward and the calculation of costs to be delivered to the Commission by March 2016. The work is done within the Joint Committee and a test phase is currently carried out until September. The consumer testing is done by the European Commission relating to risk performance, multi-options, demographic representation and understanding - with focus groups being engaged in six member states. The first quantitative testing phase has just been carried out. There is also a revision carried out of the Key Information Document which shall be concluded by end of 2015.

ESMA, Emanuel Doumas, outlined the technical details of the current work of the JC regarding the cost and risk/reward indicators that will be included in the PRIIPS documentation, a piece of work that is very technical, but will have to be described and presented in an easily understandable way.

SMSG member Guillaume Prache underlined the importance of having a KID for funds and a discussion on costs, in particular given the enormous amounts invested into life insurance (1.5 Trillion euros in France alone).

The SMSG Chair thanked ESMA for the presentation.

## **5. AIFMD**

Richard Stobo, ESMA, outlined briefly the work that is being done under the AIFMD (Alternative Investment Funds Directive) where ESMA shall deliver an opinion on the 3<sup>rd</sup> country equivalence by end June 2015.

According to the AIFMD, non-EU AIFMs and non-EU AIFs managed by EU AIFMs are subject to the national private placement regime of each of the Member States where the AIFs are marketed or managed. The AIFMD however makes provision for the passport to be potentially extended in future and establishes that ESMA shall issue to the European Parliament, the Council and the Commission:

- an opinion on the functioning of the passport for EU AIFMs and on the functioning of the national private placement regimes, and
- advice on the application of the passport to non-EU AIFMs and AIFs.

In order to conduct this work ESMA is looking into the elements listed in AIFMD, including on the basis of the information provided by the national competent authorities (NCAs) quarterly about the EU and non-EU AIFMs under their supervision.

SMSG members' comments related to the IOSCO MOU and IMF assessments which may serve as help ESMA in its assessments.

ESMA will provide further information on the topic at the June meeting of the SMSG.

## **6. Supervisory convergence**

Sophie Vuarlot-Dignac, Director, ESMA, outlined ESMA's work in the area of Supervisory Convergence based on a presentation shared at the meeting. She explained the increased efforts and importance given to supervisory convergence matters also in light of the assessments from the European Parliament and the European Commission in the context of the review of the ESAs. ESMA is now applying a broader approach to supervisory convergence. The presentation included a proposal for increased involvement of the SMSG in the course of developing ESMA's work on supervisory convergence and peer reviews. The presentation also acknowledged the increased importance given to on-site visits in the course of peer reviews where so far 14 on-site visits have been carried out over the last year.

SMSG members noted the great efforts ESMA is applying in the work on supervisory convergence and the importance given to this area as demonstrated i.a. in the peer reviews undertaken in the last years. Members also suggested a number of topics suitable for peer reviews or other types of supervisory convergence related work such as:

- Market abuse where a key challenge is to detect large scale cases;
- Securities lending;
- Follow up on conduct of business rules with regard to fair, clear and not misleading information;
- Closet indexing.

The SMSG Chair concluded inviting SMSG members to suggest further topics for peer reviews and supervisory convergence work by 1 May in addition to the continuous effort to include matters concerning supervisory convergence in the agenda of SMSG meetings

## **7. Guidelines on complex debt securities and structured deposits**



ESMA, Salvatore Gnoni and Jocelyn McCafferty, presented the ESMA consultation paper (ESMA/2015/610) including draft Guidelines on complex debt securities and structured deposits.

The SMSG Chair concluded that a working group may be put together if there are sufficient volunteers to work on a consultation reply.

## **8. AOB**

The meeting date for the SMSG joint meeting with the ESMA Board of Supervisors would be 25 June 2015 (14.00-17.00). The SMSG will meet in its own setting on 26 June 9.00-17.00. (The planned dates for meetings do therefore not change.)

### List of participants at the SMSG meeting 16 April 2015

	<b>Last Name and First Name</b>	<b>Authority/Organisation/ Department (if internal)</b>	<b>Attendance</b>
1.	Angel Berges Lobera	Professor of Finance, Universidad Autonoma de Madrid	Participated
2.	Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Participated
3.	Thomas Book	Eurex Clearing AG	Participated
4.	Marina Brogi	Professor of Capital Markets, La Sapienza University, Rome	Participated
5.	Lubomir Christov	Advisor to Bulgarian Association "Active Consumers"	Participated
6.	Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Participated
7.	Elizabeth Corley	CEO, Allianz Global Investors	Participated via telephone
8.	Peter De Proft	Director General EFAMA	Participated
9.	Carmine Di Noia	Head of Capital Markets and Listed Companies, ASSONIME	Participated
10.	Jaroslav Dominiak	President of the Management Board of the Association of Individual Investors	Participated

11.	Krzysztof Grabowski	Financial Market Participant, Corporate Governance Advisor	Participated
12.	Judith Hardt	Managing Director Swiss Finance Council	Participated
13.	Fernando Herrero	Member of Board ADICAE, Spanish Banking users association	Participated
14.	Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Participated
15.	Christiane Hölz	DSW	Participated
16.	Alexander Justham	CEO, London Stock Exchange	Participated
17.	René Karsenti	President and Board Member, ICMA	Participated
18.	Jesper Lau Hansen	Professor of Law, University of Copenhagen	Participated
19.	Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Participated via telephone
20.	Niamh Moloney	Professor of Law, London School of Economics and	Participated
21.	Zsolt Nagygyörgy	Chief Compliance Officer MFB Hungarian Development Bank Private Ltd	Participated

22.	Guillaume Prache	Managing Director Better Finance for All	Participated
23.	Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Participated
24.	Chrystelle Richard	Associate Professor Accounting and management Control Dept., ESSEC Business School	Participated
25.	Lindsey Rogerson		Participated
26.	Giedrius Steponkus	Chairman, Lithuanian Shareholders Association	Participated
27.	Stavros Thomadakis	Professor Emeritus in Financial Economics of the National and Kapodistrian University of Athens	Absent
28.	Rüdiger Veil	Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius Law	Participated
29.	Chris Vervliet	Senior Risk Manager, KBC Asset Management	Participated
30.	Gabriele Zgubic-Engleder	Chair of the Board VKI, Head of the Austrian Federal Chamber of labour	Participated