



## SUMMARY OF CONCLUSIONS

### Securities and Markets Stakeholder Group

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**Date:** 3 February 2016  
**Time:** 09.00 -17:00  
**Location:** ESMA, 103 rue de Grenelle, 75007 Paris  
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No Item

#### 1. Report from the Steering Committee

The SMSG Chair remarked that it is generally highly appreciated by the SMSG if and when the ESMA can share documents with the SMG in a form under embargo prior to publication as it will allow the SMSG to offer its advice at an early point in time.

The ESMA Chair noted the request from the SMSG, while stating that the latest publication in question had only very recently been discussed and agreed for the first time in the ESMA Board of Supervisors.

#### 2. Recent Market Developments

Topic 1: Chrystelle Richard held a presentation on IFRS 9 on financial instruments.

The presentation resulted in a number of comments by the SMSG members.

The ESMA Chair noted that the expected loss model would seem to have been driven by a political pressure. ESMA has in the past criticised the composition of the EFRAG Board. ESMA has issued a Q/A document on the treatment of pillar II. ESMA is also in dialogue with the ECB concerning the communication with the public of price driving information.

Topic 2: The SMSG member Giedrius Steponkus held a presentation on the topic of application of a block chain as an autonomous organisation to manage multiparty signatures, public ledger and to issue-execute “smart contracts”.

ESMA staff explained the work that ESMA is undertaking in the area of distributed ledger technology. The ESMA work is for now aimed at so called permissioned ledger technology, including the areas under ESMA's scope, and as such excluding payment systems for example. ESMA has held a number of external meetings with stakeholders on this topic.

The following discussion led to numerous questions including on corruptibility, maintenance security of the system, competition issues, and the observation that the supervision of ledger technology will be more focused on the supervision of systems and controls and not on people. It was also noted that money laundering that is possible in the block chain system, due to its anonymity, could require special attention.

Topic 3: The SMSG member Rüdiger Veil noted the previously discussed idea of the SMSG to set up a Supervisory convergence Task force within the SMSG.

The ESMA Chair noted that ESMA's work on supervisory convergence consisted amongst others in selecting the right topics to work on. Selection and identification of the most important issues where convergence work could be of use, would be an important task for the SMSG. Sophie Vuarlot-Dignac, noted that enforcement would likely be a matter for the coming year to work on.

Conclusion: There was general interest and support in the SMSG to work on enforcement issues and the SMSG Chair concluded that a working group was going to be set up with Rüdiger Veil as rapporteur in order to work on enforcement matters as well as supervisory convergence and with a view to also feed into the work undertaken of producing an end of term report by the SMSG to reflect its work and mission in the period of 1 January 2014 – 30 June 2016.

### **3. Market Abuse**

ESMA staff presented its recently published Consultation paper on Guidelines under the Market Abuse Regulation for discussion.

The main elements of the Consultation Paper was presented to the SMSG, on guidelines for persons receiving market soundings and guidelines on legitimate interests to delay disclosure of inside information.

It was generally thought that ESMA had captured the right issues e.g. as regards delay against market expectation being tied to other forms of communication. The following discussion evolved mainly around certain conditions for when a two-tier governance system is in place in relation to the delay of information.

Conclusion: The SMSG Chair concluded that the SMSG would reply to the consultation and that the previous working group coordinated by Rüdiger Veil should be re-established for this purpose.

#### **4. MiFID delay – possible update if any**

The ESMA Chair shared with the SMSG the latest information on the expected MiFID delay decision, explaining that the time was getting quite short also with a one year delay unless ESMA had a reply from the European Commission within a few weeks as regards the technical standards in order to be able to respect the various time-lines for the building of the required IT systems.

#### **5. Consultation on MiFIR Guidelines**

ESMA presented the main features of a consultation on the guidelines it will issue regarding various MiFIR requirements as regards *Transaction reporting, Reference Data, Order Record keeping and clock synchronisation*.

The ESMA Chair noted regarding a possible discrepancy in the MiFID and MAR implementations that this had been an issue already in the initial timelines of MiFID and MAR. This is a matter for the European Commission to take into account.

Conclusion: The SMSG Chair expressed appreciation for the presentation and noted that the topic was extremely technical and not a topic where the SMSG would form an opinion.

## 6. Forthcoming DP on benchmarks

ESMA introduced to the SMSG the main elements, the time-line and expected stages of the work to be undertaken as regards benchmarks.

SMSG members noted that this is an extremely important matter and they encouraged ESMA when developing the code of conduct to continue to liaise with existing bodies/administrators who are today providing benchmarks. The group also discussed intellectual property matters and ESMA noted that the Regulation seemed to make it clear that the algorithm will not have to be published.

Conclusion: The SMSG Chair thanked ESMA for the presentation and noted that the SMSG would come back to the topic once the Discussion Paper had been published.

## 7. Closet Indexing

ESMA described the main content of the findings on Closet indexing and SMSG members noted overall satisfaction with the work that the ESMA had produced, and very recently approved in its Board of Supervisors meeting and published.

ESMA has at the level of national competent authorities set up a working group to work together with the NCAs, with regard to closet indexing. Various comments were made i.a. as regards the chosen level set for comparison in the report – some members thought that 0.65 % was the wrong level for measuring whether a fund has been following an index rather than being actively managed.

ESMA Chair Steven Maijor noted that another benchmark - down to as low as 0.3 or 0.4 per cent, could have been selected, as that is a standard price for an index fund.

ESMA stated that a disclosure of the names of the identified funds is not foreseen by ESMA. Further questions from SMSG members related to the coverage of investigations (UCITS funds only) and whether a timeframe for NCAs to take action had been set by ESMA, which is not the case. SMSG members underlined that they consider a timely investigation by the NCAs as crucial.



Conclusion: The SMSG Chair thanked ESMA for the presentation and noted that the Group will continue to follow the issue.

## **8. CRA**

The SMSG rapporteur Lindsay Rogerson noted that there was not yet an SMSG draft response to the ESMA Discussion Paper on the validation and review of Credit Rating Agencies' review of methodologies and SMSG commented on the recent ECA audit report on ESMA's CRA supervision.

Verena Ross explained the in-depth audit made at ESMA, which had dealt with a broad aspect of ESMA's supervision.

Conclusion: The SMSG Chair concluded saying the SMSG would for the end of consultation on the Credit Rating Agencies' review of methodologies on 19 February agree on a paper in response to that consultation in written procedure.

## **9. PRIIPS**

The SMSG discussed an own initiative opinion note regarding past performance in relation to PRIIPs.

Conclusion: The Group agreed the note unanimously and decided that efforts should be to spread the message of the opinion among key decision-makers.

## **10. JC advice on automated advice**

ESMA presented the ESAs joint discussion paper on automated advice.

The SMSG members were generally very supportive of the document which with high quality very well described various aspects to a new phenomenon, without over-emphasis on legal aspects.

## **11. SMSG end of term report**

The SMSG confirmed its earlier decision to produce an end of term report to be final by end of May. Marina Brogi suggested to base part of the assessment on a questionnaire.

Conclusion: The Steering Committee was requested to circulate a draft. The aim is to present the results of the SMSG self-assessment to the ESMA Board during the next joint meeting.

## **12. AOB**

There was no other business.

Participants at the MSG meeting on 3 February 2016

1.	Angel Berges Lobera	Professor of Finance, Universidad Autonoma de Madrid	Present
2.	Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Present
3.	Thomas Book	Eurex Clearing AG	Excused
4.	Marina Brogi	Professor of Capital Markets, La Sapienza University, Rome	Present
5.	Lubomir Christov	Advisor to Bulgarian Association "Active Consumers"	Excused
6.	Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Present
7.	Elizabeth Corley	CEO, Allianz Global Investors	Excused
8.	Peter De Proft	Director General EFAMA	Present
9.	Carmine Di Noia	Head of Capital Markets and Listed Companies, ASSONIME	Excused
10.	Jaroslav Dominiak	President of the Management Board of the Association of Individual Investors	Present
11.	Krzysztof Grabowski	Financial Market Participant, Corporate Governance Advisor	Present
12.	Judith Hardt	Managing Director Swiss Finance Council	Present

13.	Mark Hemsley	CEO BATS Chi-X	Excused
14.	Fernando Herrero	Member of Board ADICAE, Spanish Banking users association	YES
15.	Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Present
16.	Christiane Hölz	DSW	Present
17.	René Karsenti	President and Board Member, ICMA	Present
18.	Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
19.	Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Excused
20.	Antonio Mele	Professor of Finance, University of Lugano	Present
21.	Niamh Moloney	Professor of Law, London School of Economics and Political	Present
22.	Zsolt Nagygyörgy	Chief Compliance Officer MFB Hungarian Development Bank Private Ltd	Present
23.	Guillaume Prache	Managing Director Better Finance for All	Present

24.	Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Present
25.	Chrystelle Richard	Associate Professor Accounting and management Control Dept., ESSEC Business School	Present
26.	Lindsey Rogerson		Present
27.	Giedrius Steponkus	Chairman, Lithuanian Shareholders Association	Present
28.	Rüdiger Veil	Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius Law School, Hamburg	Present
29.	Chris Vervliet	Senior Risk Manager, KBC Asset Management	Excused
30.	Gabriele Zgubic-Engleder	Chair of the Board VKI, Head of the Austrian Federal Chamber of labour	Excused