

Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 12 July 2019
Time: 13.30 – 17:00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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1. Report from the Steering Committee (Chair and Vice-Chairs)

The SMSG Chair accounted for the work done by the steering committee since the last meeting.

2. Recent Market Developments

a) Securities lending

SMSG member Guillaume Prache presented a study from Better Finance regarding the split of profit from securities lending showing that the ESMA Guidelines on ETFs and other UCITS issues which include a specific section on efficient portfolio management techniques (EPM) was not well respected, and that the fees for securities lending vary significantly. The presentation included a recommendation to mention the possibility of securities lending in the KIID and to cap the level of costs of securities lending to 5 %.

SMSG staff members commented on the fact that the study could have gone further (only ETFs were included), the importance of funding and economies of scale and the exercise of voting rights. The study could also have gone into the question what the impact would be on the portfolio.

ESMA staff concluded that the information was useful to have but noted that the possible introduction of a cap should be dealt with at L1 and that it does not have a mandate to address

this issue. Also mentioning securities lending in the KIID would be something to be discussed at L1.

The ESMA Chair noted work on cost and performance of investment products under the CMU Action Plan, where it has been high-lighted that charges are a drag on UCITS funds gross returns.

ESMA staff will consider the findings and policy recommendations in the context of its supervisory convergence work on this matter.

b) Price Formation and market data/MiFID II/MiFIR

SMSG member Kerstin Hermansson presented a study on pricing of Market Data (“The Copenhagen Study”) commissioned by the Swedish and Danish Security Dealer Association, which concluded that the trading venues have a monopoly of market data and that this leads to prices above cost of distribution and large complexity. The report advocates the regulation of access to market data including standardization and one single EU supervisor, which would lead to a level playing field and higher market transparency.

SMSG Vice Chair Rainer Riess presented the “Oxera report”, commissioned by FESE, showing that market data offered by stock exchanges account for only around 15 % of the entire value chain and that the cost of market data has only increased by 1% over the last 6 years to 245 million €. The report concludes that current charging structures for market data by exchanges are unlikely to have detrimental effects on market outcomes for investors.

The SMSG debated the conclusions of the two reports.

ESMA staff noted the ongoing debate on this topic and informed the SMSG of the MiFID II/MiFIR review report regarding the development of prices for pre- and post-trade data and on the consolidated tape for equity instruments, which ESMA opens for comments until 6 September 2019.

The SMSG decided to set up a Working Group to respond to the ESMA consultation on this matter.

3. EMIR 2.2 Technical Advice

ESMA staff outlined the content of the three consultations it had issued in relation to EMIR 2.2.

The presentations covered technical advice on tiering, on comparable compliance and on fees. The consultations deal with the recognition regimes for third country CCPs (TC-CCPs) including through a new regime, Tier 2 CCPs, i.e. systemically important for the financial system in the EU or one MS.

4. Short-termism

ESMA presented the questionnaire it has issued in order to respond to the mandate received from the Commission to produce a report by the end of the year on the potential reasons for undue short-termism. ESMA explained its task of collecting evidence of undue short-termism and its consequences, and the six main topics identified for ESMA's advice, being:

- Investment strategy and investment horizon,
- Disclosure of ESG factors and its contribution to long-term investment,
- The role of fair value in better investment decision-making,
- Institutional investor engagement,
- Remuneration of fund managers and corporate executives,
- Use of CDS by investment funds.

The SMSG discussed various aspects in relation to short-termism such as the fact that short-termism is not necessarily negative, governance aspects, the growth of passive investment and index management, and unclarity of definitions. Members noted that the topic was highly debated in some countries, such as the Netherlands.

The ESMA Chair noted that the topic is complex and multi-faceted and remarked that for example, high turnover of share ownership can also contribute to deep and liquid markets.

The SMSG Chair concluded that the SMSG would work on the matter and present ESMA with comments on the topic by 15 August.

5. PRIIPs

ESMA staff updated the SMSG on the latest state of play as regards PRIIPs.

Regarding the Regulation's scope, ESMA had received a response from the Commission in May 2019 stating that it was not possible to agree ex-ante whether some categories of bonds fall in- or outside the PRIIPs Regulation. ESMA will address these aspects in the form of level 3 measures. Moreover an opinion to the Commission advising to modify the level 1 PRIIPs

Regulation may be issued when needed to make the PRIIPS KID effective. ESMA will also work on amendments of the level 2 RTSs with a focus on performance scenarios and the cost section of the PRIIPs KID. Finally, the Commission will work on a consumer testing exercise in cooperation with the ESAs aiming at testing different alternative options to the performance scenario section.

In respect of the review of the L2, the final results of the consumer testing in respect of the presentational aspect of the performance scenarios are expected by the end of 2019. ESMA will also launch a consultation paper on the review of the PRIIPS level 2 (focussing in particular on past performance and presentation of costs). The results of both the consumer testing and the consultation paper can then be taken into account in the proposed revised PRIIPs RTS. The final RTS are expected to be sent to the Commission in Q1 2020.

6. ESMA Work programme

ESMA Head of Resources Department Nicolas Vasse presented the draft ESMA work programme for 2020, describing the process for developing the work programme and the priorities within the general context of Brexit and new mandates for ESMA under EMIR 2.2, the ESAs Review, cross-border funds distribution, the Investment Firms Framework and sustainable finance.

He outlined ESMA's main priorities for 2020 relating to supervisory convergence risks.

The SMSG discussed various aspects of the ESMA work and proposals were made to work on securities lending, PEPP and leveraged fees.

The SMSG Chair thanked for the presentation and ESMA undertook to provide feedback on a number of questions.

7. AOB

The SMSG Chair asked the ESMA Chair when and how the new composition of the SMSG in view of the ESA review would be implemented. The ESMA chair responded that this was currently being examined and that feedback would be given on this issue at a later stage.

PARTICIPANT LIST

1.	Alexakis, Christos	Associate Professor in Finance, ESC - Rennes School of Business
2.	Bezzina, Geoffrey	Head Arbitrer's office, Malta
3.	Biernacki, Piotr	Vice President of the Polish Association of Listed Companies and President of the Foundation for Reporting Standards
4.	Colaert, Veerle	Professor of Financial Law, University of Leuven
5.	De Meyer, Jasper	Financial Services Officer at BEUC, the European Consumer Organisation
6.	Gay Guggenheim, Nathalie	Head of Regulatory Transformation, Global Banking and Markets, HSBC
7.	Gurau Audibert, Adina	Head of Asset Management, Association Française de la Gestion financière (AFG)
8.	Gustafsson, Andreas	SVP & General Counsel Europe, Nasdaq (Stockholm)
9.	Hermansson, Kerstin	Board Member Swedbank
10.	Hölz, Christiane	Managing Director, Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW)
11.	Koster, Paul	Dutch Investors' Association VEB
12.	Lenz, Rainer	Chair of the Board of Directors, Finance Watch
13.	Litvack, Eric	Managing Director at Société Générale
14.	Nietsch, Michael	Professor of Law, EBS Universität für Wirtschaft und Recht
15.	Oberndorfer, Martha	Member of the Advisory Council, Austrian Shareholder Association
16.	Petrella, Giovanni	Full Professor of Banking, Università Cattolica

17.	Prache, Guillaume	Managing Director, Better Finance
18.	Riess, Rainer	Director General of Federation of European Securities Exchanges (FESE)
19.	Santillán, Ignacio	CEO, Spanish Investors Compensation Scheme for investment firms (FOGAIN)
20.	Scheck, Martin	CEO, International Capital Market Association (ICMA)
21.	Schindler, Alexander	Member of the Executive Board, Union Asset Management Holding AG
22.	Suominen, Santeri	Legal Adviser, Confederation of Finnish Industries (EK)
23.	Troiano, Vincenzo	Professor of Law, University of Perugia
24.	Viana, Octávio	President of the Board of Directors, Associação de Investidores e Analistas Técnicos Mercado de Capitais (ATM)
25.	Viver, Juan	Independent consultant