

Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 6 May 2020
Time: 9.00 – 12.15
Location: Phone conference system
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1. Introductory remarks from the SMSG Chair and the ESMA Chair

The SMSG Chair welcomed all to this new meeting setting.

The ESMA Executive Director Verena Ross welcomed all to the meeting in this new working mode, thanking the SMSG for their valuable work over the last weeks despite the Covid-19 pandemic situation.

2. Covid-19 crisis

For ESMA Christian Winkler gave a presentation of the current market situation and highlighted in particular the market outlook following the Covid-19 outbreak with the very severe GDP deterioration, and the EU monetary and coordination responses. He described the latest market developments as having stabilised with an apparent decoupling between the real economy and certain asset classes.

ESMA Executive Director Verena Ross thanked the SMSG for its useful own initiative advice on Covid-19. She then accounted for the Covid-19 response work of ESMA including (i) the close cooperation with the European Commission, EBA and EIOPA, as well as the ECB/ESRB; (ii) work in different areas such as on IFRS9, postponement of several reporting and consultation deadlines and coordination of short-selling measures and (iii) the creation of a dedicated ESMA web-page on the Covid-19 response work.

SMSG members noted that ESMA plays a pivotal role in the crisis and the SMSG thanked ESMA for the work already done. They then presented their respective views on the developments in the markets and the policy responses as a result of the Covid-19 crisis, in relation to numerous different topics such as:

- The need for delays and flexibility; the challenges of the Work From Home environment; the need for coordination between the ECB, ESMA and national authorities, mentioning that it would be useful if there would be one dedicated website in respect of measures taken by different authorities;
- In respect of short selling, one member stressed the necessity to have common interpretations of the rules and greater coordination amongst NCAs being promoted by ESMA;
- In respect of asset management, the need for increasing liquidity and postponement of the liquidity stress testing was mentioned. One member raised the problem that national markets do not all have the same liquidity management tools. It would have been useful to temporarily lift the ban on the use of liquidity from repo transactions, to allow temporary borrowing up to 20%, and to harmonise the use of ancillary cash for UCITS. The member also mentioned increased importance of sustainability risks and the need for extended deadlines for consultations on, inter alia, climate benchmarks;
- One member raised the problem that there are less market participants than before the 2008 crisis, and that the number of trading desks in banks is declining. The focus on market liquidity has become increasingly important;
- It was suggested that derogations are needed in respect of clearing of non-cleared derivatives, and flexibility as regards EMIR Refit reporting of NFC-clients;
- Observations were made as regards to the volatility on the European debt markets and the functioning of secondary and primary markets. The impact of the CSDR was also mentioned, with a call for a potential delay of implementation of the settlement fails regime;
- Views were expressed on the need for lit markets to be available for individual investors, a call for consistent short selling measures and the preservation of shareholder rights in virtual general meetings (one member mentioned that basic rights are harmed if shareholders do not have the possibility to ask questions during the meeting) as well as the need to support EU capital markets in line with the CMU initiative. Concerns were raised about the bond markets, mentioning insufficient transparency and the problem that individual investors have been pushed out (5% participation in 2012 to 2% participation in 2018). This is all the more problematic as bonds are more and more bought by central banks, raising the question whether the bond market will in the end become a tool for central bank policy rather than part of an efficient capital market;

- One member mentioned that postponing corporate disclosure is also dangerous for market transparency, and that there is a need for timely disclosure. Otherwise there is a risk of reduced price discovery, limited comparability and a race to the bottom (avoiding to be the first to publish negative information). Another member added that the MAR and the transparency directive should be enough to ensure sufficient disclosure.

The ESMA Executive Director Verena Ross thanked the SMSG members for their rich input on a multitude of topics. She emphasised that it would be useful to have a common liquidity management toolkit consistent between Member States, in accordance with the ESRB recommendation. This should be picked up in Level 1 Legislation, while ESMA will try to achieve progress on the basis of supervisory convergence, which is, however, difficult because of national differences in current legislation. Regular stress-testing in the asset management sector is key.

ESMA has already extended consultation deadlines and will consider doing the same in the future, but this may stretch the timelines set out in Level 1 legislation. ESMA will discuss this where necessary with the Level 1 legislators. Regarding MiFID, the issues mentioned are well noted, but points to the need to wait for a correct data picture to learn lessons from the crisis. In respect of CSDR she referred to the outstanding question on timing of the settlement discipline implementation and whether this requires a legislative change.

The SMSG Chair concluded that the SMSG would continue to work on the matter and detail their views on the Covid-19 crisis related topics in a paper to be concluded in written process.

3. MiFID

ESMA, Carsten Ostermann and Chloé Picandet, provided feedback to the SMSG on the advice that the SMSG had provided in response to the two consultations of ESMA on "MiFIR transparency regime for equity and equity-like instruments" and on "MiFIR report on Systematic Internalises in non-equity instruments".

ESMA also noted that on the Third country provision of services under the MiFID-MiFIR due to the postponement of the deadline for replies to the consultation, the analysis of the material remained to be done.

SMSG members high-lighted the relevance of the topic given the link to Brexit and the fact that a large number of firms could be expected to gain advantages from the third country regime.

The ESMA Executive Director noted that ESMA will work closely with the European Commission on the topic.

ESMA, Salvatore Gnoni, also accounted for ESMA's advice to the European Commission on inducements and cost and charges, on the topic of which the SMSG had earlier provided an opinion to ESMA. He mentioned the various inducement regimes in Europe and discussed possible ways forward.

Some SMSG members flagged various views on the inducement topic including that, at the least, inducements in relation to execution-only services are problematic and should be banned. Moreover, there is a need to align MiFID and IDD in respect of inducements; and the suggestion was made that financial institutions should publish on their website what quality enhancing services they provide with the inducements they receive. ESMA could give guidance on what types of quality enhancement are acceptable or not acceptable.

4. End of Term report

The SMSG discussed its planned End of Term Report. It will follow the structure of the previous reports including a self-assessment part building on a questionnaire to be distributed in the group. The report will mention what are the main trends in the role, methods and focus points in the SMSG-work. The group agreed to include the following elements in this respect:

- Concerns about the new composition of the SMSG
- Importance of own initiative work in times of crisis (COVID 19 reports)
- Importance of standing working groups on important ongoing topics (e.g. MiFID, sustainable finance)
- Importance of cooperation with other SGs on cross-sectoral themes (e.g. joint letter on changed composition of stakeholder groups).

5. AOB

The SMSG posed the question how ESMA obtains direct market input in times of crisis and how the SMSG could be helpful in this respect.

The ESMA Executive Director commented that while it might in principle be useful to have increased contacts with the SMSG in times of crisis, at the same time the crisis mode had made that challenging. She also noted that all NCA representatives have very close national stakeholder contacts and ESMA has increased contacts with NCAs during the crisis, with regular conference calls at Board and Standing Committee levels.

As this was the last meeting of the SMSG in its current composition, its Chair and the ESMA Executive Director thanked the Group for its work and positive cooperation, leading to many pieces of advice, fruitful discussions and important input to ESMA's work.

PARTICIPANT LIST

Christos Alexakis	Associate Professor in Finance, ESC - Rennes School of Business	Present
Geoffrey Bezzina	Head of the Arbitrer's office, Malta	Present
Piotr Biernacki	Vice-President of the Management Board, Polish Association of Listed Companies	Present
Veerle Colaert	Professor of Financial Law, KU Leuven University	Present
Jasper De Meyer	Financial Services Officer, European Consumer Organisation (BEUC)	Present
Nathalie Gay Guggenheim	Head of Regulatory Transformation, Global Banking and Markets, HSBC	Present
Adina Gurau Audibert	Head of Asset Management, Association Française de la Gestion financière (AFG)	Present
Andreas Gustafsson	SVP & General Counsel Europe, Nasdaq (Stockholm)	Present
Kerstin Hermansson	CEO, Swedish Securities Dealers Association (SSDA)	Present
Paul Koster	Managing Director, Dutch Shareholders Organisation	Excused
Rainer Lenz	Chair of the Board of Directors, Finance Watch	Present
Eric Litvack	Head of Regulatory Strategy, Société Générale	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Michael Nietsch	Professor of Law, EBS Universität für Wirtschaft und Recht	Present
Martha Oberndorfer	Member of the Advisory Council, Austrian Shareholder Association	Present
Pedersen, Morten Bruun	Senior Economist at the Danish Consumer Council	Present
Giovanni Petrella	Full Professor of Banking, Università Cattolica	Present
Guillaume Prache	Managing Director, Better Finance	Present

Rainer Riess	Director General, Federation of European Securities Exchanges (FESE)	Present
Ignacio Santillán	CEO, Spanish Investors Compensation Scheme for investment firms (FOGAIN)	Present
Martin Scheck	CEO, International Capital Market Association (ICMA)	Present
Alexander Schindler	Member of the Executive Board, Union Asset Management Holding AG	Present
Jean-Marc Servat	Chair, European Association of Corporate Treasurers (EACT)	Present
Santeri Suominen	Legal Adviser, Confederation of Finnish Industries (EK)	Present
Vincenzo Troiano	Full Professor, University of Perugia	Present
Octávio Viana	President of the Board of Directors, Associação de Investidores e Analistas Técnicos Mercado de Capitais (ATM)	Excused
Juan Viver	Independent consultant	Present