

## Summary of Conclusions

### Securities and Markets Stakeholder Group

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**Date:** 18 November 2021  
**Time:** 14:00 – 16.30  
**Location:** Microsoft Teams  
**Contact:** [federica.briganti@esma.europa.eu](mailto:federica.briganti@esma.europa.eu)

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#### 1. Report from the Steering Committee

The Steering committee reported that the SMSG, since the last meeting held in September 2021, has finalized the following workstreams: (i) the advice on the consultation paper on Guidelines on certain aspects of the MiFID II remuneration requirements; (ii) the draft advice on the consultation paper on the review of Short Selling Regulation (SSR).

#### 2. Adoption of summary of conclusions from 28 September 2021

The summary of conclusions was adopted.

#### 3. Recent market developments

SMSG Member Rainer Riess presented the research conducted on market structures in line with the aim for increased trading transparency set out in MiFID II. However, over the past years, trading without pre-trade transparency has grown. He highlighted the importance of market structure as (i) a reliable and representative reference price can only be formed if sufficient market share is executed on transparent multilateral venues and (ii) dark venues (e.g. multilateral trading facility (MTFs) block trading facilities, systematic internalisers (SIs)) may serve as useful execution venues for large-in-scale (LIS) orders. However, they rely for their functioning on a reference price. Therefore, there is a dilemma where many participants would like to trade in the dark to avoid potential market impact and shield their trading interests, while this is harmful to the quality of price formation by limiting the information available and fragmenting the order flow. Historically most markets operated with a concentration rule (e.g. continental markets) where only “upstairs” trading was allowed for large sizes. MiFID/MiFiR has put a complex waiver regime in place. He finally made several recommendations for legislative changes in

relation to market structures, including the need for framing appropriately the balance between dark trading and transparent trading to strengthen price formation and liquidity. He also suggested (i) to further oversee execution mechanisms that could circumvent the rules like frequent batch auctions, (ii) to restrict request for quote systems or midpoint trading and (iii) to ban conflicts of interest like payment for order flow. He also recommended (i) to streamline non-price forming transaction lists in MiFID II/MiFIR, (ii) to monitor developments in both price forming and non-price forming trading, (iii) to monitor trading of European Economic Area (EEA)'s instruments inside and outside the EU and to address data quality issues to facilitate the consolidation of data.

The SMSG discussed the recommendations of the presentation. It was highlighted that there are no transparency requirements for dark venues (as they never reach SIs).

Steffen Kern, Head of ESMA's Risk Analysis and Economics Department, presented ESMA's interim findings on the work being carried out on ESMA's annual reporting on securities market activities. He highlighted that ESMA's work reflects statistics from the data sources used and workshops with market participants. He highlighted as main findings (i) the overall number of instruments traded not having changed in 2021 and that (ii) when looking at the EEA without the United Kingdom, the trading volume went down in an important manner in 2020.

#### **4. Prospectus Regulation Upcoming Review**

From ESMA's side, Gregory Frigo gave a presentation on the work carried out to develop the input for the European Commission in relation to the upcoming 2022 review of the Prospectus Regulation (PR) in line with the requirement for the European Commission to submit a report to the European Parliament and European Council on the application of the PR, including a legislative proposal. The purpose of the review clause of the PR is to determine whether the innovations introduced by the PR, such as the new prospectus formats for secondary issuances and SMEs have been successful and whether further innovations are necessary to help the PR meet its objectives. ESMA staff is currently working on two main workstreams to provide input to the Commission in connection with the upcoming review of the PR: (i) a peer review on the scrutiny and approval of prospectuses and (ii) providing the Commission with proposals for changes to improve the PR.

#### **5. Short Selling Regulations review**

SMSG Member Urban Funered presented the draft advice on the consultation paper on the review of SSR. He highlighted the broad support for having common interpretations of the applicable rules, based on which national competent authorities (NCAs) may issue short selling bans and a common interpretation of what constitutes short selling. The main recommendations given by the SMSG are (i) to ensure further clarification on the framework on long term bans, (ii) to review the conditions for relevant competent authorities (CAs) to adopt emergency measures and ESMA intervention powers under Article 28 SSR, (iii) to develop clearer rules for issuing short term bans and ESMA's coordination role in that respect (iv) to include subscription

rights in the calculation of net short positions in shares and (v) to ensure further transparency of net short positions.

#### **6. SMSG Advice on the consultation Paper on Guidelines on certain aspects of the MiFID II remuneration requirements**

SMSG Member Chris Vervliet presented the advice on the consultation paper on Guidelines on certain aspects of the MiFID II remuneration requirements. For ESMA, Amandine Cordier supported the conclusions of the SMSG advice.

#### **7. Overview of upcoming CCP consultation papers**

For ESMA, Nicoletta Giusto provided an overview of the upcoming consultation papers to be published in November 2021 as part of the CCP Recover and Resolution Package.

#### **8. AOB**

SMSG member Piotr Biernacki, in relation to ESG reporting, asked whether activities by the IFRS foundations are discussed and coordinated with IOSCO and whether ESMA is active at IOSCO level to strengthen alignment between EU & international standards. ESMA staff replied that ESMA is indeed active and engaged at IOSCO level.

SMSG member Christiane Hölz, asks for the state of play in regard of the MAR review. ESMA staff will update the SMSG at a later stage.

## PARTICIPANT LIST – SMSG 18 November 2021

Barbara Alemanni	Full professor University of Genoa and SDA Bocconi affiliate professor
Emilios Avgouleas	Professor Law and Finance, University of Edinburgh
Henning Bergmann	CEO and member of the Board of Deutscher Derivate Verband (German Derivatives Association)
Geoffrey Bezzina	Chairman (in executive role), Board of Management and Administration, Office of the Arbiter for Financial Services, Malta
Piotr Biernacki	Vice President of the Polish Association of Listed Companies and President of the Foundation for Reporting Standards
Florence Bindelle	Secretary General at European Issuers AISBL
Lubomir Christov	Advisor to the Bulgarian National Association “Active Consumers”
Veerle Colaert	SMSG Chair and Professor of Financial Law, KU Leuven University
Jasper De Meyer	Financial Services Officer, European Consumer Organisation (BEUC)
Urban Funered	CEO, Swedish Securities Dealers Association
Adina Gurau Audibert	Head of Asset Management, Association Française de la Gestion financière (AFG)
Christiane Hölz	Lawyer, DSW
Dermott Jewell	Policy and Council Advisor Consumers' Association of Ireland
Eric Litvack	Managing Director at Société Générale
Sari Lounasmeri	CEO at Finnish Foundation for Share Promotion
Stjepan Mandic	Founder and Managing Director of Concepto Ltd
Martha Oberndorfer	Member of the Advisory Council, Austrian Shareholder Association
Morten Bruun Pedersen	Senior economic advisor at the Danish Consumer Council
Giovanni Petrella	Full Professor of Banking, Università Cattolica
Guillaume Prache	Managing Director, Better Finance
Rainer Riess	Director General, Federation of European Securities Exchanges (FESE)

Virginie Saade	Head of Government and Regulatory Policy for Europe at Citadel
Ignacio Santillán	CEO, Spanish Investors Compensation Scheme for investment firms (FOGAIN)
Martin Scheck	CEO and Member of the Board of the International Capital Market Association (ICMA)
Alexander Schindler	Member of the Executive Board, Union Asset Management Holding AG
Jean-Marc Servat	Chair, European Association of Corporate Treasurers (EACT)
Christian Martin Stiefmueller	Senior Adviser, Research & Advocacy at Finance Watch AISBL
Chris Vervliet	Deputy Secretary & Member of Select Committee European Works Council at KBC Group, KBC Asset Management, Brussels (Belgium)

Verena Ross	Chair of ESMA
Natasha Cazenave	Executive Director of ESMA
Frederiek Vermeulen	Team Leader, GEA
Steffen Kern	Head of Department, RAE
Gregory Frigo	Senior Policy Officer, INI
Stefano Sirtori	Senior Policy Officer, MDR
Salvatore Gnomi	Head of Unit, INI
Amandine Cordier	Policy Officer, INI
Nicoletta Giusto	Independent Member, CCP Supervisory Committee