



Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 28 June 2012
Time: 10:00 – 17:00h
Location: ESMA, 103 rue de Grenelle, 75007 Paris
Contact: jacob.lonnqvist@esma.europa.eu T: +33 1 58 36 43 39

The following members of the SME were excused: Dorotea Mohn, who partly participated over phone, Carlos Arenillas, and Hans van Damme. Other members of the SMSG not present were: Sophia Argirova and Aleksander Chlopecki.

1. Adoption of agenda

The agenda - SMSG/2012/32 - was approved with the amendment that the SME document was tabled at the meeting for discussion and not for adoption.

2. Summary of conclusions of February meetings

The summary of conclusions from the meeting in April – *SMSG/2012/31* - was approved with a number of changes and will be published in the final form.

3. Steering Committee's report

A. Follow-up of the reply letters received from the Commissioner Michel Barnier, and Chairwoman Sharon Bowles, respectively.

The Chair recalled that the SMSG had discussed in its April meeting to revert to the ECON Chair Sharon Bowles to ask to be included in hearings of the ECON, which came out of an earlier discussion where the SMSG had addressed Chairwoman Sharon Bowles and Commissioner Michel Barnier regarding the issue of participation of ESMA in the preparation of the technical standards. SMSG Vice-Chair Judith Hardt distributed at the meeting a draft letter that could be sent to ECON including a request to be heard yearly and including a list of the advice papers that the SMSG had given until today.



The ESMA Chair enquired of the idea behind the SMSG contacts with the ECON and highlighted that, while he recognised that it was important and relevant that the SMSG spreads knowledge to relevant parties on its work and receives proper recognition, he did not see the ECON as the natural counterpart for SMSG in terms of accountability, as it was not foreseen in the regulatory framework, since the role of the SMSG is to function as advisor to ESMA. He indicated that the SMSG might rather want to select a certain point in time to report on its activities e.g. to ECON.

The view expressed by several members in the Group supported making the work of the Group known in a suitable way, such as a report including a list of achievements and including an offer to stand ready for further explanations and discussions. The view was also that it would be difficult to control a message given in such a political setting. Furthermore the view was expressed that the web-site could be improved further to report on the activities of the SMSG.

Outcome:

A report including the achievements of the SMSG will be sent to ECON and possibly other institutions on a yearly basis including an offer to be available for further discussion. It will be tabled at the September 2012 meeting.

B. Feedback from contacts with the Chairs of EBA and EIOPA Stakeholder Groups

The Chair and the Vice-Chair Judith Hardt reported from their talks with the Chairs of the EIOPA Occupational Pensions Stakeholder Group Chris Verhaegen, and the EBA Stakeholder Group, Sony Kapoor, respectively, in accordance with the report tabled at the meeting, *2012/SMSG/35*. Both Ms. Verhaegen and Mr Kapoor had expressed an interest in stronger cooperation between the stakeholder groups and a wish to have more support from their respective secretariats. They had also expressed concerns regarding the support they receive from the EBA and EIOPA and the EIOPA OPSG Chair had also expressed the view that they should draft a common letter to the Chairs of the three ESAs expressing the need for more resources in support of their work.

The Group's comments included enquiries on the link between the work of the ESRB, EBA and ESMA on shadow banking, and a comment was made on the quality of the discussion in the EBA Stakeholder Group on consumer issues.

Some members of the Group expressed that SMSG should listen to ESMA on the interesting topics for cross-sector work rather than to create an agenda without such input. This was supported with the comment that also own topics should be dealt with.



The Chair noted that PRIPS in his view should include all topics including Pillar II and Pillar III, which indeed are affecting most European retail investors. The ESMA Chair noted that one topic that he saw as especially suitable for work between the Stakeholder Groups across the sectors was PRIPS.

Outcome: The Chair and Vice-Chairs will in the course of July try to hold a de-briefing meeting with the Chairs of the EBA and EIOPA Stakeholder Groups.

The Chairs and Vice Chairs of the ESAs four Stakeholder Groups will discuss writing a common letter regarding resources to the ESA Chairs.

C. Shadow banking

The Rapporteurs, Vice-Chair Peter De Proft and Ludo Bammens, presented the background and the short letter that was presented for approval to the meeting, *2012/SMSG/36*, which was the outcome of the latest SMSG meeting. They noted that the SMSG had decided to give attention to the topic and that the outcome had been to suggest that ESMA should be given the task to perform a gap analysis of legislation.

The ESMA Chair stated that he agreed with avoiding the misleading term Shadow banking, and that non-bank lending, would be better as the draft letter suggested. He noted that the ESMA Board of Supervisors has identified the topic as very important for ESMA, and the ESMA Board of Supervisors recently had an extensive discussion on the topic and that ESMA is in the course of shaping its own agenda on this topic.

The Group discussed the aim of the work it wished to conduct. Some members of the Group voiced concerns that it seemed unclear what the group was asking for and it was noted that the Group is trying to define a difficult concept and that it might not lead to clear answers, or be necessary, for the Group to ask the Commission for clarifications in this area. The discussion focused on the work that the SMSG could undertake in this area.

The ESMA Chair high-lighted that it would be very valuable for ESMA to have the input from the SMSG in the topic of shadow banking/non-bank lending.

Outcome: The Chair summed up the discussion by concluding that the SMSG shall set up a working group to identify the major issues in the area of shadow banking in order to be able to advise ESMA in the course of 2013 (see also next point). He invited the Rapporteurs to form a working group. He also noted that the topic will be brought to the September agenda.

D. Preparation of the next SMSG meeting Jointly with the ESMA Board of Supervisors on 12 September

An early draft agenda was presented to the Group for discussion *2012/SMSG/37*.



The Vice-Chair Judith Hardt explained that the format built on the one used in the last joint meeting in February which had proved to be a very good meeting for members of the SMSG and of the ESMA Board of Supervisors alike.

The ESMA Chair also expressed his satisfaction with the joint SMSG and EMSA Board meeting of February. He indicated that he saw merits in discussing all the topics mentioned in the draft agenda presented possibly leaving short selling outside, due to the legislative timing of that topic and that there would be not sufficient time to discuss market developments. He noted that the issue of market developments was high on the ESMA Board of Supervisors agenda and in ESMA's work and that it would be difficult to cover it properly in a relatively brief discussion between the SMSG and ESMA Board of Supervisors. He indicated the need to allow for proper time for discussion rather than reporting, and noted EMIR, SME and Shadow Banking to be the three most important topics in his view.

Several members of the Group in the following discussion expressed support for limiting the number of topics to three or four items. Other possible topics raised for consideration were MAD and the many differing interpretations across the EU. It was noted that many of the directives are up for review and that it is difficult to know what will be the outcome of level 1 discussions. Members voiced support for the remark of the ESMA Chair that input from the SMSG would be valuable and suggested the formation of a working group.

The Chair also noted a need to bring Investor protection to the common agenda (depending on the outcome of the discussion on that topic later in the agenda).

Outcome: The Chair concluded the discussion saying that the agenda should concentrate on four topics to allow for in-depth discussion and taking into account the principle of interaction at the meeting, being:

- SME
- Investor Protection issues
- Shadow banking
- EMIR

E. Complaint handling - 2012/SMSG/38

The Group discussed its ESMA Regulation Article 17(2) powers and a related request from a private party for the Group to take action.

Outcome: The Group agreed on the approach to be adopted with respect to Article 17(2) notifications and requests generally and with respect to the specific request.

ESMA feedback on SMSG advice - [not in the agenda – but request in email day before to discuss]

The Rapporteur of the MiFID investor protection and intermediaries working group, Pierre-Henri Conac, raised the topic of the feedback that ESMA had provided shortly before the meeting. He noted satisfaction with the way the ESMA has taken the effort to respond carefully to the advice given. He noted that the tone of the comments were sometimes quite direct, and added that the SMSG has the liberty also to express

views on areas which are not directly subject of a consultation. Other members of the Group made similar remarks. There was overall satisfaction from members of the Group that ESMA had presented such detailed feedback statements, and members expressed the hope that the example could be followed in the future.

F. Web-site

The Chair noted that the SMSG part of the web-site had been improved significantly and that almost all the short CVs of members of the Group were now posted on the web-site.

It was remarked that it was difficult to find the summary of conclusions on the web-site.

4. Initial discussion on the 2013 SMSG Work programme

The item was moved to the September agenda. ESMA will provide the SMSG Steering committee its draft 2013 work programme in the latter part of August in order to facilitate the development of an SMSG work programme.

5. SMSG advice

A. AIFMD – *SMSG/2012/39*

The Rapporteur of the SMSG working group, Vice-Chair Peter De Proft presented a note including technical input to be given to ESMA on the Remuneration Consultation Paper for Alternative Investment Fund Managers. The note includes technical advice on very precise questions that had been asked by ESMA in the course of the telephone meetings held in the course of developing the Consultation Paper. It was noted the ESMA would publish the Consultation Paper before the SMSG having been able to review it and that it was a standing request from the SMSG to be involved at an early stage as possible.

Laurent Degabriel, ESMA, explained that ESMA was grateful for the views given by the SMSG. It had not been possible to share the Consultation paper in a draft version before the launch and ESMA had thought it best to receive the views from the SMSG in the form of replies to the precise questions, which indeed did provide very useful information. He undertook to assist the SMSG working group in arranging further telephone meetings in the course of the consultation in order to allow the SMSG to provide its view in the Consultation in a most effective way.

Members noted the SMSG could make the most contribution if the papers could be shared at an early stage. In this case the SMSG working group had provided replies to very specific questions and discussed rather than provide a full set of advice. Members noted that market participants have invested heavily into models for remuneration that apply world-wide and that it would be very heavy to change the current systems.



Members of the Group questioned if the paper should be approved as advice and after discussion the Chair concluded with reference to Article 37 of the ESMA Regulation that the paper should be approved as technical input.

Peter De Proft also agreed that the content would be too technical to take into account as advice for the full Group.

Outcome: The Chair concluded the discussion saying that AIFMD WG will consider giving further input and/or advice in the course of the ESMA Consultation, (and that therefore advice/technical input will need to be tabled at the September meeting). Separate telephone conference meetings between ESMA Staff and the SMSG working group will be set up during the consultation period.

B. EMIR

The Rapporteur of the SMSG working group noted that ESMA had recently issued its consultation on EMIR and raised the issue if SMSG should continue its work and now produce an updated advice to the very voluminous Consultation issued by ESMA.

The ESMA Chair noted that the ESMA discussion paper on EMIR had resulted in a large number of replies and that a similar amount could be expected this time. Upon comments from members of the Group he confirmed that the work on CCPs has been undertaken together with Central Banks.

Rodrigo Buenaventura, ESMA, outlined some of the elements of the Consultation paper - it provides more detail on international work, CCP work has been done jointly with the European Central Bank and national central banks, OTC derivatives particular risks are covered. He confirmed that there had been discussions with also the US counterparts and that the rules suggested are very much aligned with those of the US, and that there are only few issues where the rules are not aligned. The scope of application of the rules is among issues still under discussion.

The Rapporteur, Thomas Book gave his view that the working group should undertake the follow-up work and among the questions to consider were among others the confidence interval in margining, OTC list as one list of products covered or depending on liquidity, the costs for industry to apply the proposed rules, and the 99,5 % margin level.

Fabrizio Planta, ESMA stated that the difficult issue would be to find the right balance and that ESMA's thinking is that 99,5 % would be the appropriate level. ESMA has been consulting on the appropriate level with limited response, and would now do so again. As to the reason for ESMA to assess margins it is a task that ESMA has been mandated to do, and 99% is the minimum level in the global CPSS/IOSCO standards, and it is for the CCPs to provide input.

Outcome: The Chair concluded that the EMIR working group should take up its work again and produce input/advice to the on-going ESMA consultation, which closes on 5 August. Advice of the SMSG will have to be sent to the SMSG Group on 27 July.

6. SMSG own initiative working groups

A. SME financing

The Rapporteur Vice-Chair Judith Hardt presented the draft paper that had been produced by the working group together with Anne Holm Rannaleet as co-rapporteurs and Ludo Bammens.

The discussion that followed in the Group regarded the focus of the report and the definition of SMEs. Views were expressed that a definition of what the Group considers to be SMEs should be provided at the beginning of the report and opinions were expressed both in favour of focusing on small- as well as on medium-sized enterprises. Further views were expressed that the distinction should be made clearer in the paper between those companies that can go to the market and those that cannot, and also between start-ups and SMEs. It was noted that there are 23 million SMEs in the EU but only 6 000 listed companies.

Some members noted that the views among legislators on the need for investor protection regulation for retail investors varies back and forth over time, and this observation should be taken to the paper.

The point on clearer definition of remit should be taken into account in the paper but useful information, outside the remit of ESMA should not be omitted, but possibly put in an annex.

The view was also made that banks are the main provider of capital for small companies and that there should be no differentiation in requirements between different markets. Another viewpoint was that the regulation is biased against SMEs, that there are examples in Europe of very successful market places specialised in SMEs, and that a pan-European SME directive should be considered. Other members doubted that a separate MiFID market compartment would be a good solution. The point was made that there is a need to reduce cost for small and medium companies but not the information.

Differing views were made on the suitability for retail investors to invest in SME: from them being suitable and not more unsafe than other investments to the other view that they are not so safe. Special SME focused funds for retail investors were mentioned as a suitable vehicle for investment for retail investors. Also debt instruments should be covered. A member made the point that the impact of Basel III rules began to show a decrease of lending activities to SMEs.

A member noted that the discussion at the September meeting should be not only of a paper but that also a presentation would be valuable.

The ESMA Chair thanked the group for a valuable draft paper and noted that the paper could be made a bit more concrete in some areas. He mentioned that while e.g. the PD regulation provides quite a heavy framework for SMEs to follow, less regulation may not be the only response, when also other factors like taxation are very important.

The Rapporteur noted differing views on the definition and on the suitability for retail, that initial recommendations, to be provided by one member, would be included into the report, with a view to table the report at the September meeting together with a presentation.

Outcome: The Chair concluded that the SME sub-group will continue its work on the report as the Rapporteur had outlined and that the final report and a presentation would go to the September meeting. He also questioned why there should be a floor for venture capital and he also noted a very interesting exam-



ple from Poland where there is a flourishing equity market for SMEs which have no access to funding from banks.

B. Investor protection

The Chair acting as rapporteur of the working group presented the proposal as presented in the note tabled in April to the Group. *2012-SMSG-26 and complemented by a graph*, and accounted for the telephone meetings held in the working group lately involving ESMA. The SMSG has suggested that ESMA investigate, as Article 17 or otherwise, to what extent standard index ETFs are disclosed, advised and proposed to European individual investors/consumers. The SMSG has presented to ESMA finding of one European Competent Authority suggesting that such plain vanilla ETFs are very rarely, if at all suggested to retail investors.

Laurent Degabriel ESMA, noted a need to be clear on the type of products discussed and wanted to be cautious not to be seen as promoting ETFs over any other products.

The Chair highlighted that the suggestion regarded the most comparable products being plain vanilla index ETFs and that there ought to be an attempt to use Article 17 by the SMSG.

In the following discussion one member noted the need to take into account that retail investors will more and more turn to ETF's and similar types of products. Another member noted that bonds are sold to retail investors under differing rules in various jurisdictions and that there should be a level playing field.

Verena Ross noted that there would be a need to check if the issue presented by SMSG only dealt with one or two Member States or if it was more widely spread.

A member voiced scepticism about breach of union law cases in this area and noted that market analysis or Article 9 of the ESMA Regulation could present more suitable tools.

The first step will be a fact-finding study conducted by ESMA, starting from observations already made in one jurisdiction.

Outcome: The Chair concluded that ESMA will report by the end of July on the possible scope and outline of the fact-finding study. The topic will go to the September agenda for a report by ESMA on the progress of the fact-finding study and further discussion i.a. on the scope of the study. He noted that the bond issue mentioned could also be interesting to look at.

7. CRA working group – some issues of CRAs

The Rapporteur of the working group gave a presentation, as prepared by the CRA working group based on the presentation circulated ahead of the meeting.

The discussion that followed the presentation included topics on delegated acts under the CRA Regulation that ESMA had developed, issues on comparability between treatment of EU and US firms by CRA, and back-testing. It was noted that three companies have a market share of 97% but that there are examples of



smaller credit rating companies being very active too, in certain segments or geographical areas. The possibility for ESMA to host the full credit rating report on its web-site in order to provide the full information for back-testing purposes was discussed and examples of Competent Authorities publishing links to the full ratings reports were given.

Verena Ross thanked the working group for the presentation including a lot of valuable data. She noted that the presentation reflected the role of ESMA as defined in the current CRA regulation and that there had been a lot of difficult discussions also in CRA III of what the role of ESMA should be.

Outcome: The CRA sub-group will continue its work and will report back next to the Group at the 23 November meeting with material for discussion. The membership of the working group will be checked.

8. AOB

There was no other business.



List of participants at the Meeting on 28 June 2012

Name	Authority / Organisation / Department (if internal)	Participation at the meeting on 28 June
Guillaume Prache	Chair of SMSG, Managing Director of the European Federation of Financial Services Users (“EuroFinuse”)	Present
Judith Hardt	Vice-Chair of SMSG, Secretary General, FESE	Present
Peter De Proft	Vice-Chair of SMSG, Director General, EFAMA	Present
Carlos Arenillas	Chairman and CEO of Equilibria Investments SIL.	Excused
Sophia Argirova	Vice Chairperson of the Management Board of the Association of Bulgarian Investor Relations Directors /ABIRD	Absent
Ludo Bammens	Director European Corporate Affairs KKR - KOHLBERG KRAVIS ROBERTS & CO. (London)	Present
Roland Bellegarde	Member of the Management Committee NYSE Euronext Group Executive Vice President & Head of International Listings and European Execution	Present
Angel Berges-Lobera	Professor of Finance, Universidad Autonoma Madrid	Present
Thomas Book	Member of the Executive Boards of Eurex Frankfurt AG, Eurex Zürich AG and Eurex Clearing AG	Present
Pedro Braga da Cruz	Consultant of Companhia Portuguesa de Rating, S.A	Present
Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Present
Zita Ceponyte	President, Lithuanian Consumer Institute	Present
Aleksander Chlopecki	Professor of Law, University of Warsaw	Absent
Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Present

Hans van Damme	EFRAG Supervisory Board, Vice Chair	Excused
Sally Dewar	Managing Director - International Regulatory Risk	Present
Carmine Di Noia	Deputy Director General and Head of Capital Markets and Listed Companies, ASSONIME	Present
Jaroslav Dominiak	President of the Management Board of the Association of Individual Investors	Present
Lars Hille	Member of the Board of Managing Directors of DZ BANK AG	Present
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Present
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Dorothea Mohn	Policy Officer for Pension Schemes and Capital Investment, Federation of German Consumer Organization	Excused
Niamh Moloney	Law Department The London School of Economics and Political Science	Present
Katerina Papageorgiou	Attorney-at-Law, Deutsche Bank AG	Present
Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Present
Xavier Rolet	LSE Group Board on 16 March 2009 and became CEO on 20 May 2009	Present
Adriana Tanasoiu	Chief Executive Officer of Depozitarul Central (Romanian Central Securities Depository)	Present
Tjalling Wiersma	Head of Legal & Compliance, Shell Asset Management company	Present
Gabriele Zgubic	Head of Department of Consumer Policy Austrian Federal Chamber of Labour, Vienna	Present

ESMA		
Steven Maijoor	ESMA Chairman	Present
Verena Ross	ESMA Executive Director	Present
Jacob Lönnqvist	ESMA	Present
Laurent Degabriel	Head of Investment and Reporting Division	Present (partly)
Rodrigo Buenaventura	Head of Markets Division	Present(partly)
Fabrizio Planta	Senior officer for Post-trading	Present (partly)