



Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 19 June 2013
Time: 9:00 – 17:00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
Contact: jacob.lonnqvist@esma.europa.eu T: +33 1 58 36 43 39

1. Adoption of agenda

The agenda was approved.

2. Approval of the summary of conclusions of the April meeting – *SMSG/2013/09*

The summary of conclusions of the April meeting was approved.

3. Steering Committee Report

The Chair and Vice-Chair reported briefly on their latest activities, notably the preparations for the ESFS review conference which was held in Brussels on 24 May.

4. ESMA Review Public Hearing

The Vice-Chair Judith Hardt, accounted for panel participation at the ESFS review Conference in Brussels on 24 May, where she had put forward the views of the SMSG, as developed in the two task forces led by Carmine Di Noia, and Jean-Pierre Pinatton, respectively, on behalf of the whole Group. She stated that in her view the SMSG had come out of the conference in a very good light, and so had ESMA.

Several conference participants had stated that they had not been aware of the high level of productivity of the SMSG. There had also been a lot of remarks on the good work done by ESMA in its first year and a half of activity.



Verena Ross reported that her impression from the conference, where the ESMA Chair Steven Maijor has spoken, was also positive and she also noted that ESMA and the SMSG had received many positive comments.

5. ESMA Review

Carmine Di Noia presented the draft report and described the work that had been done in the working group. Generally the view of the working group was that ESMA should have more powers and a stronger focus on investor protection.

One member of the Group suggested the addition of several topics to the draft paper based, i.a. on the findings from the IMF report.

Other members of the Group mentioned that the points that had already made it into the paper following two conference calls should form the basis for the report.

The governance of ESMA and possible benefits for a so called twin peaks model was discussed at some length, as was the focus on investor protection in the draft reply. It was decided to divide the report into short and long-term topics as the likelihood for revisions of the Treaty should be taken into account.

Conclusion

It was decided a period of 10 days should be given for inclusion of the results of the discussion, following which the report should be finalized in a conference call and if necessary a vote could take place on the text, by sections if necessary. The report would be transmitted to the European Commission on time for its consultation deadline, i.e. at latest on 19 July, together with the self-assessment report attached to it.

6. Assessment of the Group – closed session

Jean-Pierre Pinatton presented the draft report. After some discussion, it was agreed to follow the same next steps as for the ESMA Review paper.

7. Recent Market Developments

- ***FTT and its impact on the securities markets***

The Vice-Chair Peter De Proft presented the topic of Financial Transaction Tax (FTT). The view was expressed by several speakers that the FTT would be very damaging to the market. The view was also made by one member that a very small general fixed kind of tax would not be unreasonable. Other views were that the tax could push consumers to save in less secure markets where the tax would not be applied.



Verena Ross noted that there is very little that ESMA can do on the topic and is not formally asked to develop a view on the issue. She also noted that while appreciating the seriousness of the potential impact of the FTT, significant work on the issue at SMSG level should be carefully considered vis-à-vis other priorities.

Conclusion

It was concluded that the topic could be discussed in the SMSG again at a later stage depending on the political developments, (possibly in the SME Group).

- ***The real value of pensions savings***

The Chair, Guillaume Prache, presented a research report of EUROFINUSE on the real value of pensions' savings which was shortly to be made public. The report shows that the value of pensions saving is very difficult for consumers to see and it also demonstrates that the inflation adjusted return on pensions savings in many cases had been negative in the three European markets covered by the report. The SMSG discussed the findings of the report and noted i.a. the difficulty to calculate the real return net of tax for individual consumers given the very diverse individual tax situations. It was also noted that disclosure of past performance after tax is mandatory in the US and that consumers have been getting that information for a long time.

Conclusion

Verena Ross thanked for an interesting report and noted the strong links to cross-sector issues like PRIPs.

- ***Crowd funding***

Angel Berges Lobera presented the topic of Crowd funding, based on a note distributed to members.

He noted that this is a new phenomenon which is quickly developing. It was noted that there are already guidelines from some regulators. Comments from the Group included that this is an area of innovation and that it should not be regulated in the same way as the traditional markets without good reason.

Laurent Degabriel explained that crowd funding schemes usually fall within a 5 Million Euro limit and are therefore subject to possible national regulation. ESMA had discussed the issues at its May Board of Supervisors meeting.

Conclusion

ESMA is currently discussing what its next steps would be, also following closely what national supervisors are doing.

8. SMSG working groups – Reports on recent developments



A. AIFMD

ESMA presented the main components of the consultation paper on Guidelines on reporting under the AIFMD.

The Guidelines build upon articles 1 and 24 of the Regulation regarding reporting and the level 2 text that had been detailed following ESMA's advice.

ESMA's reporting Guidelines apply to Competent Authorities and aim at providing: clarification on the extensive set of information that AIFMs should report to national competent authorities, the timing of such reporting, and the procedures to be followed when AIFMs move from one reporting obligation to another.

ESMA invited comments from the SMSG on the information items that could be included in the reporting framework.

The following discussion included comments on the usefulness of the information that needs to be gathered according to the Guidelines and cost aspects related to providing such information. It was noted that the information in question was for the Competent Authorities.

Conclusion

SMSG members were invited to provide input on possible additional information items by 1 July. It was noted that the topic was too technical and the timing too short for the Group as a whole to provide comments on the consultation and that any comments would be informal from the working group.

B. Investor protection

i. ETFs

Laurent Degabriel outlined the plans of ESMA for how to take forward the request of the SMSG to look into the ETF topic, which had been brought to ESMA in 2011.

ESMA will firstly conduct an economic research study aimed at investigating the ownership by retail and non-retail investors of ETFs tracking main indices across in the EU (in the ten largest markets), and secondly ESMA would in parallel continue to study and seek evidence from a number of countries on how index ETFs are sold and distributed to retail customers, and carefully consider how this inter-acts with aspects of the cost-effectiveness of the advice that retail clients receive.

He stated that it was not clear at this stage to what extent ESMA will be able to receive data from NCAs and whether information will need to be demanded directly from firms.

The time line for this work should last until the end of the year for the data gathering and into the first quarter of next year for the analysis of the work.



Verena Ross clarified that MiFID II will not change this aspect of ETF distribution.

Conclusion

The Chair noted that the Group was very supportive of the efforts of ESMA and that he would formalize this support in a letter to be addressed to the ESMA Chair.

ii. Follow-up on CFD and Warrants

The Group was reminded of the discussions held in the April meeting on the topics of CFDs and warrants.

Following a question on the policy of ESMA to issue Guidelines and warnings, Verena Ross noted that guidelines are normally linked closely to underlying legislative measures. She stated that warnings on complex products are in the pipe line.

Conclusion

ESMA to report back to MSG following the current work on complex products and assesses whether additional action could be considered in this area.

iii. Issuance of debt to retail investors without a rating

The member who wished to raise the topic stated that the issuance of debt instruments to retail investors without a rating raises an issue of investors' protection, as the mentioning of risks in the prospectus is not enough, as they also need to be analysed (and retail investors do not have the resources to individually adequately do it). As a collateral effect, primary bond market protection / stability as a fundamental provider of funds to companies (especially SME and intermediate sized companies) may be in danger if large unexpected defaults affecting retail investors occur, with an impact in economic development. That member also stated that the need of a rating to issue debt to retail investors has been acknowledged for a long time in North America and more recently in various emerging markets (e.g. in India). Moreover, different rules about the obligation of having a rating to issue debt to retail investors in various EU Member-States (i.e., not having a single rule book) contributes to the fragmentation of financial markets in the EU.

Other members of the Group gave the view that the risk factors of the prospectus should be mentioned in the prospectus. It was noted that there are market places that have been successful in the trading of bonds for retail.

Verena Ross noted that the regulatory trend in the past years has been to strive to rely less on ratings.

Conclusion

The Chair noted that it was an issue for level 1 and should be remembered for the future.

iv. Other investor protection concerns



There were no other topics mentioned under Investor protection.

Verena Ross noted that complex and structured products will be among the topics to be discussed at the ESA's Consumer Protection Day on 24 June.

C. SME financing

The documents containing the replies of the SMSG to the ESMA draft Discussion Paper on SME Growth market had been tabled for the meeting. It was noted that the majority of the Group would prefer to have more time to review the final paper before taking a decision.

Nevertheless a discussion should take place on the comments that ESMA has on the draft replies included into the ESMA paper.

The comments made included the need to focus on the creation of jobs in Europe and the role that SMEs play in this respect. A solution for this still seems far away. Other views included a need to focus on the Small companies among the SMEs. Finally, it was remarked that it should be left for the issuer to decide if he wished to go to the regulated markets.

Verena Ross noted that many comments of the SMSG were outside ESMA's scope in terms of likely Level 2 mandates and suggested that the final paper should be shared also with the European Commission as the comments dealt with the Level 1 text.

She also shared the views of some SMSG members that specific amendments of the Prospectus directive and MiFID will only be able to bring limited results, in terms of increasing growth of SMEs.

Conclusion

It was concluded that the documents would be recirculated for comments for a two week period and that it then would be finalised another two weeks thereafter.

D. CRA

ESMA presented an update of the activities in the area of CRA3 implementation and the expected work ahead on the Regulatory Standards that shall be developed in the coming year. The work ahead includes:

- A review of the Guideline on the over-reliance on credit ratings by financial institutions, by 31 December 2013
- New transparency requirements for ratings concerning structured-finance (SF) instruments, for which ESMA will develop RTS on information to be disclosed, frequency, and presentation through a standard template by 21 June 2014
- Development of the new European Rating Platform (ERP), which shall provide real-time rating data and statistics, and for which ESMA will adopt a draft RTS by 21 June 2014.



- ESMA will also develop RTS on the content and format of periodic reporting on fees charged by CRAs by 21 June 2014.

Conclusion

The Group will come back to CRA issues in the course of the year.

E. Prospectus supplements

The issue was not covered in the meeting given the fact that the consultation time is shortly elapsing and the SMSG will not be able to provide a reply to this very specific consultation.

F. Benchmarks

ESMA presented a detailed feedback to the SMSG on the advice it had given to the ESMA/EBA consultation paper on Principles for Benchmark-Setting Processes in the EU (ESMA/2013/12).

Verena Ross summarised the main points of the advice of the SMSG that ESMA had taken into account: Benchmarks should be subject to governance and transparency based requirements and the principles, also in line with SMSG's advice, make a distinction between users and final users. Also in relation to intellectual property where the SMSG encouraged a balanced solution between the need for increased disclosures in respect to indices and benchmarks and the protection of intellectual property rights, ESMA has listened to the advice given and put strong emphasis on transparency, especially on the rules governing the administration of the benchmark, and on the disclosure of past performance in order to support confidence in benchmarks.

9. ESMA work programme 2014

Verena Ross explained that the work programme would be decided in principle in a first version in the Management Board of ESMA and that it thereafter could be shared with the SMSG for its comments.

The main parts of the work programme will concern MiFID, Investor Protection issues and Supervisory convergence.

Verena Ross also outlined the main features of the on-going call for candidates to the Stakeholder group to take office starting January 2014.

Conclusion

The work programme will be shared with the SMSG when the ESMA Management Board has worked on it and ESMA has developed a more final draft.



10. MiFID/MIFIR

ESMA gave a presentation on the work under way in ESMA in relation to product intervention following from Articles 31-33 of MiFIR. According to these ESMA will have possibilities to temporarily intervene and will have a coordination role as well as in the possible product intervention by national authorities.

The presentation led to numerous remarks and comments from the Group, as follows:

One concern is the coordination of product intervention which will need to be made with colleagues of other ESAs for those sectors. Comments also regarded the possibilities of ex-ante or ex-post banning, and some views were that both possibilities would be needed and the ESMA should be the controlling body for the use of the ban, while others found the ex-ante use of banning to be a too heavy burden for regulators. It was noted that a “threat” to consumers, as in the earlier text, would not be the same as “concern”, as in the Council text.

Verena Ross thanked the Group for the useful comments made and noted that all arguments needed to be weighted and taken into account. She also noted that a discussion would have to take place across the ESAs. The MiFID/MiFIR text was expected to be final by the end of the year.

Conclusion

This presentation formed part of ESMA’s commitment to inform the MSG on MiFID topics in the course of 2013 before formal consultations are being started on technical standards under MiFID II.

11. AOB

There was no other business.



List of participants at the Meeting on 19 June 2013

Name	Authority / Organisation / Department (if internal)	
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
Sophia Argirova	Vice Chairperson of the Management Board of the Association of Bulgarian Investor Relations Directors / ABIRD	Present
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)	On phone
Zita Ceponyte	President, Lithuanian Consumer Institute	Absent
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	Excused
Lars Hille	Member of the Board of Managing Directors of DZ BANK AG	Excused
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	On phone
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Niamh Moloney	Professor of Law, Law Department The London School of Economics and Political Science	Excused
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
Jan Maarten Slagter	Managing Director Dutch investors Association, VEB	Present
Adriana Tanasoiu	Chief Executive Officer of Depozitarul Central (Romanian Central Securities Depository)	Present
Tjalling Wiersma	Head of Legal & Compliance, Shell Asset Management company	Excused
Gabriele Zgubic	Head of Department of Consumer Policy Austrian Federal Chamber of Labour, Vienna	Present



ESMA Staff

Verena Ross

Jacob Lönnqvist

Stephan Karas

Laurent Degabriel

Carsten Ostermann

Sarah Raisin

Richard Stobo

Stephanie Christodoulou

Paolo Santella

Eduardo-Javier Moral-Prieto

Antoine Bouveret