



Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 25-26 September 2013
Time: 14:00 – 17:00 on 25th and 9:30-13:00 on the 26th
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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1. Adoption of agenda

The agenda was approved.

2. Approval of the summary of conclusions of the June meeting

The summary of conclusions was approved.

3. Steering Committee Report

The Chair reported that the steering committee had met physically and had held conference calls with ESMA to prepare the meeting with the ESMA Board of Supervisors and today's meeting.

4. Follow-up from discussion with the ESMA Board of Supervisors

SMSG members were generally satisfied with the outcome of the meeting of the morning together with the ESMA Board of Supervisors. Some practical suggestions for the future were noted.

It was suggested that some items from the morning session could be picked up as own initiative work streams and in particular the crowd funding topic, discussed in an earlier SMSG meeting, was mentioned.

It was noted that in connection with the EC's public consultation on the ESFS review one MEP had made remarks on the limited usefulness of the SMSG and it was suggested to try to set up a meeting



with the MEP in order to find out what could have prompted such a remark as well as share the work undertaken by SMSG so far

Verena Ross responded to a question on how budget cuts that ESMA will be experiencing could come to affect the work like the TRV report (cf. annex 1 of the 2014 ESMA work programme), and the risk that ESMA may not have resources to carry out all the work currently expected of it.

Conclusion: The SMSG concluded that it should address key MEPs –Rapporteurs and shadow Rapporteurs – in order to stress i.a. the importance that ESMA receives the budget it needs in order to fulfill its tasks.

The SMSG also concluded to set up a working group on crowd funding to be led by Angel Berges-Lobera.

5. EMIR

ESMA gave a presentation (based on slides distributed during the meeting) of the ESMA Discussion paper to prepare the regulatory technical standards (RTS) which will implement provisions of EMIR regarding the obligation to centrally clear OTC derivatives, (ref. ESMA/2013/925).

The Rapporteur of the SMSG EMIR working group, Thomas Book, presented the draft reply to the ESMA Discussion paper.

The SMSG Chair noted that the date of early 2015 presented a major problem, as well as the deviations from the US obligations. He stated that given the topics and the time-table it was not obvious that the SMSG ought to provide official advice on the topic today.

Verena Ross thanked the SMSG for its overall support. She remarked that the clearing of OTC Derivatives is a global market and ESMA is currently engaging with the US and other global regulators. She mentioned that ESMA, when working out which financial instruments should be centrally cleared and which not, is concentrating on the economic features of the financial instruments and closely coordinating this work internationally.

One member mentioned that in 2015 also the Target 2 framework will be rolled out and it will be too late to change anything from a practical standpoint. Others emphasized the need to get some certainty in the timeline. ESMA staff explained that a delay in the reporting of exchange-traded derivatives had been suggested to the Commission.

ESMA presented the ESMA Consultation for draft regulatory technical standards (RTS) on contracts having a direct, substantial and foreseeable effect within the Union and non-evasion of provisions of EMIR, (ref. ESMA/2013/892). ESMA will have to develop RTS on this topic.

Thomas Book presented the SMSG advice paper on the topic.

A discussion took place on the type of advice that the SMSG should concentrate on asking if the two current EMIR papers would not be too technical for the SMSG.



The SMSG Chair suggested that the SMSG should adopt its advice papers as drafted by the working group, but also noted a need in the future for the SMSG to more clearly decide for itself what types of advice it would like to focus on.

Conclusions: Both advice papers were approved by the SMSG.

6. AIFMD

Vice-Chair Peter De Proft noted the situation in July this year when the European Commission had informed ESMA at a late stage in the rule-making process that it did not intend to approve the draft Regulatory Technical Standards ESMA had developed on article 4(4) of the AIFMD on the definition of AIFMs of open-ended and closed-ended AIFs.

ESMA had conducted a quick round of consultation in order to develop the new Regulatory Technical Standards in July. ESMA has since also developed a set of Guidelines on the reporting obligations. ESMA submitted its revised draft RTS to the Commission on 13 August.

The meeting discussed the situation and reasons for the European Commission having refused draft RTS developed by ESMA.

Conclusion: The SMSG will continue to follow similar situations.

7. MiFID II topics up-date – Micro-structural issues: Some key issues arising from the MiFID II

ESMA gave a presentation on Micro-structural issues within the remit of the MiFID II developments, following slides presented to the meeting. In the presentation a number of different scenarios were high-lighted regarding the RTS that ESMA will have to develop on microstructural issues, such as high-frequency trading, depending on which version of the legislative text will prevail. The presentation included a number of questions on topics where the views of the SMSG were invited.

The meeting noted that from a methodological point of view, for each of the questions posed, a fundamental discussion would first be needed in order to discuss a number of high-level questions, such as e.g. the type of market structure that Europe would like to see in the future and similar questions.

Conclusions: The SMSG decided that Xavier Rolet would lead a group to respond to a number of fundamental high-level questions, before entering into more detailed feedback on HFT issues. The existing HFT group could form the basis for such work.

8. ESMA work programme 2014



ESMA presented the ESMA work programme for 2014 using slides distributed during the meeting, explaining that the Board of Supervisors had approved the work programme as recently as 24 September, subject to a few minor amendments.

The meeting discussed in particular the budget proposed by the Commission for ESMA which would lead to considerably less staff than requested for 2014, and the type of tasks that may not be performed in such a case.

Conclusion: The SMSG will decide its own work programme, based on the ESMA work programme at its November meeting, although it will be up to a newly formed SMSG to execute it. The SMSG work programme will have to be prioritized and include ten work streams maximum to be dealt with in 2014, hence targeting two advice papers per meeting.

9. CRA

ESMA presented the status of the CRA Guidelines on the reduction of over-reliance on ratings, based on slides distributed during the meeting. The Guidelines will have to be adopted by 31 December 2013.

The co-ordinator of the work stream, Carmine Di Noia, accounted for the planned work ahead.

Conclusions: The meetings between the SMSG CRA working group and ESMA staff, which had proved useful in the past, will continue, with the view of presenting the results of the work of the working group at the next SMSG meeting.

10. Enforcement of Financial information

ESMA presented briefly the consultation on Guidelines on enforcement of financial information, (Ref. ESMA/2013/1013), referring to earlier SMSG meetings, which had discussed the topic.

One of the coordinators of the working group, Jean-Pierre Pinatton, presented the draft advice paper of the SMSG.

Members comments included a view that requirements applicable to companies admitted to trading should not be extended to MTFs.

ESMA staff commented that common enforcement exercises had been carried out last year.

The ESMA Chair noted that IFRS is one of the areas where the most convergence has taken place, because IFRS had been one of the first pieces providing a detailed technical framework across the EU and convergence in this field has already a long tradition.

Conclusion: It was concluded that a few additional comments made during the meeting would be included into the advice and that it thereafter would be sent for written approval by the SMSG mem-



bers prior to the consultation deadline of 15 October. The Chair recalled to everyone that no response means agreement.

11. Advice regarding the Joint Position of the ESAs on manufacturers' products oversight and governance process

The Chair reminded of the discussion held the day before in the joint meeting with the ESMA Board of Supervisors.

The ESMA Chair noted that there are some instances where a regulator should be able to ban products, and that the ESAs therefore had seen a need to develop this position paper, but that it also needed to be further developed including the distribution topic, which will be done in a second step.

One member noted that regulatory duties also should be balanced against needs of growth of the economy, as is explicitly the case for the FCA.

Conclusion: The SMSG paper, which had already been communicated to the other ESAs, will not be published given the continued work on the topic by ESMA.

12. Information requirements for assessment of acquisitions and increases in holdings in investment firms (MiFID)

ESMA presented the background of the work done by ESMA together with EBA and EIOPA based on Guidelines developed by the former level 3 committees.

The Chair accounted for one comment from a SMSG member saying that the SMSG ought to focus on more high-level questions. The Chair stated he agreed with that assessment.

Conclusion: The SMSG decided not to respond to this ESMA consultation.

13. SMSG meeting calendar 2014

The SMSG discussed briefly the calendar for 2014 based on a draft circulated by ESMA, and issues related to handover between the current SMSG and the new one.

Conclusion: The SMSG will decide on calendar and handover at its November meeting.

14. Responding to ESMA advice

The SMSG discussed what type of topics and advice it wishes to focus its work on as a group. Also the relationship between the SMSG and the specialized Consultative Working Groups (CWGs) was discussed.



The comments made included observations that:

- the SMSG is often coming too late into the process in order to provide input on strategic issues,
- the SMSG cannot separate itself from ESMA, the SMSG should focus on the areas where it will have the most influence and added value, possibly the SMSG should now look at the work programme the year after next,
- the SMSG could do more own-initiative work,
- the SMSG should have the same priorities as ESMA,
- the SMSG should have a link into the working groups of ESMA and choose focus areas carefully, the work of the SMSG and agendas should be more selective.
- investor protection topics should be more prominent,
- the SMSG would like to follow the discussions held at CWG meetings, and ideally the SMSG should be involved both before and after the consultation of the CWGs,

The ESMA Chair noted that a number of topics are discussed mainly in the SMSG and not so much in any CWG, such as e.g. benchmarks, and SME financing. Also cross-sector issues involving the Joint Committee, new topics, and supervisory convergence are discussed mostly in the SMSG. The CWGs meanwhile, focus much more on regulatory technical standards and on Guidelines, and goes more in-depth on fewer topics.

Conclusions: ESMA will inform the SMSG of the activities of the CWGs. The SMSG Steering Committee will draft the SMSG 2014 Work Programme focusing on issues at the earliest stage possible and of a more strategic than technical nature.

15. AOB

The SMSG discussed where to conduct the work on crowd-funding and confirmed that the work shall be done in a new working group, including crowd financing. The new working group shall be led by Angel Berges-Lobera.

There were no other AOB topics.



List of participants at the Meeting on 25 - 26 September 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. | 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 | Present |



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|-----------------------|---|---------|
| Sally Dewar | Managing Director - International Regulatory Risk | Excused |
| 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 | Excused |
| 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 |
| Niamh Moloney | Professor of Law, 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 |
| 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 | Present |
| 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

Nicolas Vasse

Antonio Baratelli

Alberto Garcia

Maud Timon

Matteo Rava

Nathalie Piscione

Paolo Santella

Richard Stobo

Roxana Damianov

Sarah Raisin

Thierry Sessin-Carraci