



Summary of Conclusions

Securities and Markets Stakeholder Group meeting 23 September 2014

Date: 23 September 2014
Time: 9:00 - 17:00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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1. Report from the Steering Committee

The SMSG Chair informed on the letters that had been sent in July to European institutions highlighting the importance of ESMA getting the budget it had asked for, in order to be able to properly conduct all of its tasks. He informed that there had been no formal feedback on those letters.

Verena Ross thanked the SMSG for the support given by the letters, and informed the meeting that the European Parliament is going through the budget and that negotiations will on the budget thereafter commence in so called trilog between the three European institutions.

Verena Ross apologised on behalf of Steven Maijoor who was unable to attend due to the annual accountability hearing with the European Parliament.

2. Meeting calendar of the SMSG for 2015

A draft calendar prepared by ESMA was discussed. The SMSG Chair indicated reservations regarding the number of meetings planned in the draft calendar, as well as the proposed reduction of SMSG meeting time in connection with the obligatory joint sessions with ESMA Board of Supervisors.

Verena Ross explained that the calendar, as regards the meetings had to be adapted to the meeting schedule of the ESMA Board of Supervisors, leaving only the day after the ESMA Board meetings free for a joint SMSG and Board of Supervisors' meeting.

Several SMSG members expressed the view that the interaction with the ESMA Board of Supervisors could be intensified, and the idea was presented that the SMSG should have the possibility to report back to the ESMA Board of Supervisors at the ESMA Board meeting itself by a short intervention. Secondly



several members mentioned that it would be very useful to hold an SMSG meeting the day before the joint meeting even if, as pointed out, the ESMA Chair and ED and most ESMA staff would not be able to take part in such a meeting.

Verena Ross stated that the SMSG would be very welcome to meet the day before in its own setting, and also undertook to investigate the possibilities for the SMSG to attend the Board of Supervisors' meetings, possibly with a start in November 2014, in order to report on its work. The SMSG would in that case probably be represented by its Chair and one or two other persons.

Conclusion

The SMSG Chair concluded that the meeting calendar was approved with the addition of two half day meetings for the SMSG in the afternoons of on 25 June and 10 December 2015.

3. SMSG work programme 2015

Vice-Chair Peter De Proft introduced the topic highlighting the importance of having an SMSG work programme in place, not only mirroring the ESMA work programme. He mentioned in particular three areas highlighted in recent Eurofi discussions, which would be relevant to try to incorporate in the SMSG work programme: finance for growth; securitisation, which will be a priority for SME's; and finance for long term projects. Lastly the capital markets union that should be in place by 2019 will be a major item to follow.

Members commented as follows:

- The SMSG could bring up its own initiative SME Report again in order to possibly amend it in light of new developments.
- SMSG work in this area should be consistent with the ESMA work programme.
- Prospectuses should be added to the list.

Verena Ross reminded the group of the heavy regulatory agenda in MiFID, MAD/MAR, CSDR and UCITS V which would continue to generate work for the SMSG in order to respond to requests for advice on the single rulebook.

Conclusion

The SMSG Chair concluded that questions would be sent out in order to gather interest in the setting up of a joining a working group on SME. At least six members would have to indicate their interest for the WG to be set up.



4. Recent Market Developments

SMSG member Angel Berges-Lobera informed the SMSG of two recent developments from the securities markets, being Gowex, the Spanish alternate market which had gone bankrupt in the summer and Banco Espirito Sancto, the Portuguese bank which had recently been subject to a resolution plan, and which seems to have sold its own shares to the general public.

The SMSG members noted:

- The problematic fall in confidence for SME markets brought about by the fraud underlying the Gowex example.
- The retail investor protection problems related to the Gowex case where stocks dropped to close to zero.
- The self-placements used in Banco Espirito Sancto as in similar Spanish cases a few years ago. SMSG considered these problems should lead to a report by ESMA or the SMSG. SMSG members found that directors and auditors did not seem to have been doing their duties properly in these companies and this is a test for the new European Supervisory Authorities as national authorities do not seem to have been working well.
- A disappointment that although this problem of self-placement had been clearly identified, also by the SMSG in previous work, it could still cause major problems in individual Member States.

Verena Ross thanked the SMSG for an interesting discussion and noted that several interesting issues for ESMA to be aware of in relation to MiFID SME markets and investor protection issues. She recalled that ESMA – together with the other ESAs – had issued a reminder on self-placement concerns recently. She also noted that an ESMA investigation would seem to be more difficult.

ESMA, Christian Winkler, detailed the work undertaken by ESMA in order to respond to questions on the impact of high frequency trading (HFT) to the EU financial markets.

- The SMSG discussed the questions raised by ESMA on the HFT project and noted the move in direction of normality, where algorithmic trading becomes the norm, the fact that HFT strategies become more accessible, which has reduced the advantage of speed and has produced a more level playing field, and some members also mentioned that fragmentation had positive sides in promoting competition, but also made transparency and best execution more difficult, and could result in ‘ghost liquidity’ due to the simultaneous placement of individual orders on different trading venues to secure best execution.

The SMSG member Giedrius Steponkus made a presentation “Financial instruments market vis-a-vis money system” on hierarchical structures in the financial markets. A case study presented from Lithuanian financial market dominated by foreign banks oligopoly served as an example.

- The SMSG discussed some aspects raised by the presentation, noting the importance of competition aspects in this regard.

5. WG on Retail Investors



The rapporteur Pierre-Henri Conac presented briefly the main topics of the investor protection paper - product governance, self-placement, KID, ETFs and product intervention rules - on which the group had reached conclusions in the report.

6. WG on transparency and trading obligations – equities

The rapporteur Krzysztof Grabowski presented briefly a few of the main conclusions from the paper on transparency and trading obligations for equities, adopted by the SMSG by written procedure during the summer, emphasising that the paper was focused on a limited number of high-level questions.

7. WG on transparency and trading obligations – non-equities

Thomas Book presented on behalf of the rapporteur Stavros Thomadakis the main findings from the paper transparency and trading obligations for non-equities, adopted by the SMSG by written procedure during the summer, high-lighting that the advice papers had mentioned in particular the need to achieve a flexible approach to transparency and liquidity.

Verena Ross thanked the SMSG for the four very high quality advice papers received - investor protection, trading venues, equity transparency and non-equity transparency - and pointed out that these papers are still being contemplated in the ESMA working groups, at the same time as some 800 other responses received on the MiFID consultation. Due to the high number of responses ESMA was not yet in a position to provide feedback in any great detail to the papers provided.

Conclusion

The SMSG Chair thanked the rapporteurs and the working groups for the work well concluded. He concluded that the WG on Retail Investors should stay in place given the high importance and recurring nature of investor protection issues and the fact that the SMSG might receive more work in the area soon. In respect of the two other WGs, they were dissolved as required by the SMSG Rules of Procedure, but new WGs may be set up when work from ESMA in these areas require it. Verena Ross noted that ESMA would be issuing consultation papers on the technical standards for MiFID2/MiFIR around the turn of the year.

8. WG on Market Abuse

The rapporteur Rüdiger Veil presented the draft advice produced in response to the ESMA Consultation on draft technical advice for delegated acts and draft technical standards, according to a presentation shared with the meeting.

Members of the SMSG raised comments of a preference for speaking about negligence instead of alternative concepts. As MAD/MAR deals with criminal law there cannot be too much of a sweeping



approach. Safe harbour concept should not be made too large. The concept of phishing was discussed and found problematic.

Conclusion

The SMSG Chair concluded that the paper was ready to be sent for approval in written form after the meeting when the rapporteur first had taken into account comments made at the meeting.

9. WG on Data Publication

The rapporteur Jean-Pierre Pinatton presented the draft paper of the WG for discussion in the SMSG.

SMSG members noted the great difference in price between the price in and the price out for consumers of the end product and asked ESMA to find a possibility to look into this oligopoly situation. SMSG members also agreed that it would be helpful to have transparency on the matter.

Verena Ross thanked the rapporteur and the group for the very interesting paper. She noted however that ESMA has no mandate to look at data vendors (as a regulated activity in itself), and that the issue at least in part would seem to belong more with competition authorities.

Conclusion

The SMSG Chair concluded that the paper was approved to be handed over as advice to ESMA to be published.

10. ESFS Review

The meeting discussed the ESFS review and the report by the European Commission, and Verena Ross commented on a number of topics regarding possible political developments to come.

The SMSG discussed in this context also the presentation of the SMSG on the ESMA web-site where several SMSG members asked to have the SMSG displayed at a more prominent place at the ESMA web-site. Jacob Lönnqvist mentioned the request for volunteers from SMSG to be involved in ESMA's website project.

The SMSG discussed possible developments of the ESFS following the review of the Commission.

Conclusion

The SMSG Chair concluded that the SMSG could put together a small group to work on questions in relation to visibility. The SMSG would continue to actively follow the development of the ESFS.



11. Consultation on EMIR

ESMA outlined the content to the future RTSs as regards interest rate swaps and credit default swaps, which had been developed following the consultations held in the summer until 18 August and 18 September, respectively. ESMA answered to comments made on the proposals.

Conclusion

The SMSG Chair concluded that SMSG would continue to follow the topic.

12. UCITS V and EuSEF and EuVECA

ESMA – which was soon to launch firstly a consultation on technical advice for delegated acts on UCITS V and secondly a consultation on technical advice under the Regulations on European Social Entrepreneurship Funds (EuSEF) and European Venture Capital Funds (EuVECA), – outlined the main components of these two planned consultations.

Conclusion

The SMSG Chair concluded that the SMSG would later consider whether to set up a working group to respond to the UCITS consultation.

13. Prospectuses

ESMA briefly introduced the main topics of a Consultation Paper to be launched shortly, dealing with topics regarding the approval process of prospectuses, including publication and advertisements.

Conclusion

The SMSG Chair concluded that the SMSG would consider to set up a working group to respond to the consultation paper.

14. AOB

ESMA mentioned an upcoming Joint Committee Discussion Paper on Reducing Reliance on Ratings. SMSG Chair noted that the SMSG may consider responding to such a JC initiative together with the other ESA Stakeholder Groups.



List of members present at the SMSG meeting on 23 September 2014

Angel Berges Lobera	Professor of Finance, Universidad Autonoma de Madrid	Present
Thomas Book	CEO, Eurex Clearing AG	Present
Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Present
Marina Brogi	Professor of Capital Markets, La Sapienza University, Rome	Present
Lubomir Christov	Advisor to Bulgarian Association "Active Consumers"	Excused
Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Present
Elizabeth Corley	CEO, Allianz Global Investors	Phone participation
Peter De Proft	Director General, EFAMA	Present
Carmine Di Noia	Head of Capital Markets and Listed Companies, ASSONIME	Phone participation
Jaroslawn Dominiak	President of the Management Board of the Association of Individual Investors	Present
Krzysztof Grabowski	Financial Market Participant, Corporate Governance Advisor	Present

Judith Hardt	Managing Director Swiss Finance Council	Present
Fernando Herrero	Member of Board ADICAE, Spanish Banking users association	Excused
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Present
Alexander Justham	CEO, London Stock Exchange	Present
René Karsenti	President and Board Member, ICMA	Present
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Excused
Niamh Moloney	Professor of Law, London School of Economics and Political Science	Present
Zsolt Nagygyörgy	Chief Compliance Officer MFB Hungarian Development Bank Private Ltd	Absent
Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Present
Guillaume Prache	Managing Director EuroFinUse	Excused
Chrystelle Richard	Associate Professor Accounting and management Control Dept., ESSEC Business School	Present



Lindsey Rogerson		Excused
Giedrius Steponkus	Chairman, Lithuanian Shareholders Association	Present
Stavros Thomadakis	Professor Emeritus in Financial Economics of the National and Kapodistrian University of Athens	Excused
Rüdiger Veil	Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius Law School, Hamburg	Present
Chris Vervliet	Senior Risk Manager, KBC Asset Management	Present
Gabriele Zgubic-Engleder	Chair of the Board VKI, Head of the Austrian Federal Chamber of labour	Present

ESMA

Verena Ross
Alberto Garcia
Benjamin Burlat
Erica Conter
Christophe Polisset
Michele Mazzoni
Richard Stobo
Antonio Baratelli
Jose Moncada
Frederiek Vermuelen
Paolo Santella
Stephen Hynes
Jacob Lönnqvist