



Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 4 and 5 November 2014
Time: 14:00-17:30 on 4 November and 9:00 -13:00 on 5 November
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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1. Report from the Steering Committee

The Chair briefly informed the Group on the activities of the steering committee since the last meeting in preparing the current meetings and the intervention that they will make in the Board of Supervisors.

2. Preparation for the discussion with the ESMA Board of Supervisors

The Chair informed on the planned topics of the agenda with the Board of Supervisors and asked members for input in order to prepare that discussion.

Judith Hardt informed on the short remarks she would make on the topic of active fund management, on the basis of a request from some SMSG members to include this topic into the agenda after press coverage on a study made by the Danish FSA.

Pierre-Henri Conac informed the group on what he intended to say on the topic of self-placement and the group exchanged views on the topic. It was noted that, for a bank, placing a



capital increase only or mostly to retail investors who are also depositors constitutes a red flag and one solution mentioned was to require a certain part of self-placements to be done by institutional investors. Rudiger Veil informed the group on the presentation he intended to hold at the Board of Supervisors meeting, such as the treatment of journalists and other topics considered especially important to raise with the Board members.

The Group also discussed what views to put forward to the Board on the issue of active and passive funds, where views were put forward that the SMSG may not have yet worked on the issue to be able to present a coherent view, but it was nevertheless considered very useful to discuss the topic with the Board of Supervisors and to have the presentation from the Danish FSA. The SMSG decided to keep the topic on the agenda for 2015.

3. WG on Prospectuses

The Chair reminded on the request for advice ESMA had sent on the topic and asked for the views in the group on conducting work in the area.

Some members of the Group mentioned that they believed the nature of the consultation was too technical and therefore not a priority for the SMSG to focus on, while other members favored to form a working group and produce an advice paper.

Conclusion: A working group was set up to produce an advice paper. The working group will be coordinated by Krzysztof Grabowski. The SMSG was granted time unit mid-January to deliver a response to the consultation.

4. Small and Medium-sized Enterprises

Judith Hardt accounted for the background of the work on the SME report which had been concluded with a report by the SMSG in 2012. The report is holistic covering both company and financial law aspects. At the SMSG meeting in September had been decided to renew the work on the topic in order to take into account the developments on various topical issues such as securitization, prospectuses crowd funding, self-placements and perhaps also aspects of the capital markets union, as well as further developments in MiFID II.

Members expressed in the discussion that the SMSG could start its work in order to be ready to provide a response to the expected Commission Green paper. Different views were expressed as regards a possible need to create special rules for SMEs compared to Regulated Markets, to avoid fragmentation among the 28 Member States, to note the difference between the Banking Union as tied to the Euro-zone and the newly coined Capital Markets Union, which must include all Member States, while others noted the importance of SMEs for job creation. It



was noted that there is great disparity in size of national companies and that “SMEs” in some markets constitute the main companies on normal regulated market.

The ESMA Chair Steven Maijoor mentioned that he supported the idea of the SMSG to renew its report on SMEs and it would in particular be very useful for ESMA to get a better understanding of which main measures out of a very large possible group of measures would be the most important ones for SME’s in order to focus policy work on areas where it would be most efficient. Upon request he also commented on the Capital Markets Union saying that the developments were still in a very early stage and it would have to be defined what the capital markets union was to become. However it could be noted that in any case it will be a structure for the EU as a whole.

One member mentioned the US example where public markets start at a much higher level, and where private markets seem to function much better. The successful Polish SME market was also mentioned.

Verena Ross mentioned that it would be very useful if the SMSG work could also look at the topic of cross-border issues in this respect.

Conclusion: It was concluded that an SME working group should be set up to be coordinated by Judith Hardt in order to revise the current SME report of 2012.

5. Supervisory convergence

Sophie Vuarlot-Dignac presented the activities of ESMA in the field of supervisory convergence activities within ESMA in the last couple of years according to a document shared with the meeting, outlining activities in the areas of providing technical standards, guidelines, technical advice, Q&As and peer reviews. She outlined the coming peer reviews to be undertaken on suitability and prospectuses approval processes.

Comments from the members of the SMSG were supportive of the work undertaken by ESMA in the sphere of supervisory convergence and included remarks on the wide and qualitative work done in the supervisory convergence area.



One SMSG member suggested an involvement of SMSG in the finalization of a peer reviews to provide an outsiders view on the topics reviewed. One member mentioned that it would be useful if ESMA could work the issue of the degree to which digital platforms are covered. Questions were raised on the participation of Member States in peer reviews and the risk of conflicts of interest.

The SMSG Chair highlighted the importance he would personally attach to supervisory convergence matters as being on par with the creation of new rules.

The EMSA Chair further mentioned that the reason for looking into prospectuses was the risk of regulatory competition and the concentration that can be observed to some jurisdictions. He mentioned that the input from the SMSG on peer review topics would certainly be very valuable as well as on the final reports. Regarding breach of union law cases the ESMA Chair commented that the reason that there have not been any cases decided by ESMA is to some degree due to the fact that EU supervisors are obviously trying to avoid to be in breach of the law. The ESMA Chair stated that he shared the concerns on risks for fragmentation within Europe. Logical cases to bring forward by the SMSG would be about continued incorrect application.

Conclusions: The SMSG will come back to supervisory convergence matters regularly at its future meetings.

6. Recent Market Developments

Elizabeth Corley gave an update to the SMSG on the ongoing work in the UK on the “The Fair and Effective Markets Review”.

Members of the group discussed this work and especially its connections to work in other international fora like ISDA and IOSCO, FSB and the US. Regarding benchmarks in particular it was found to be very important to engage with the US

Giedrius Steponkus held a presentation on the topic of shadow banking, which constituted a continuation to his presentation “Money view on financial market“ from the September meeting. As shadow banking is widely spread on balance sheets of different institutions including traditional banks it only makes sense to define this phenomenon as an activity (not as an institution or both). He explicitly argued in favour of naming this more and more dominant modus operandi as a “Money market funding of capital market lending”.



Members of the SMSG noted i.a. the need to thoroughly comprehend the whole financial system when looking at shadow banking matters.

Verena Ross stated that the key issue is inter-linkages between systems and risks being transmitted from one part of the financial system to another. Work is ongoing within the ESRB and with EBA on this issue and the joint committee is also looking at the issue of securitisation.

7. WG on market abuse

The rapporteur Rüdiger Veil accounted for the main parts of the market abuse advice paper that the SMSG had approved in a written form earlier in the autumn and published on its website. He highlighted the topics he intended to raise in the discussions with the ESMA Board of Supervisors in the discussion on the joint meeting.

He also mentioned the further work that he considered would be useful to work on and bring up in a discussion with ESMA Board of Supervisors.

Questions noted included whether ESMA has a right to renew guidelines issues under CESR. One member also noted a degree of nervousness from stakeholder regarding the number of guidelines issues by ESMA.

It was noted that the level of self-regulation from journalists would seem to vary to a great degree among different European countries and that it worked better in some places compared to others. The problem of defining journalists in an era of web-based information sharing was also commented upon.

Verena Ross noted that it was a matter of prioritisation on what to focus when it came to issuing guidelines and that ESMA in principle has competence to amend the CESR guidelines. Enforcement of IFRS is an example where ESMA has issued recommendations. She also agreed that the issue of the role of journalists is important. Market soundings was another topic to look at as well as the issue of delayed information.

8. CRA

ESMA staff updated briefly on the work that ESMA is undertaking in the area of CRA with regard to firstly the JC consultation paper on over-reliance on ratings and the secondly the ERP European Rating Platform.

SMSG members made a few comments on comparability.



Outcome: Verna Ross stated that ESMA would come back on both these topics. If necessary, the SMSG will respond by written procedure.

9. Public consultation in relation to the CRR

Carsten Osterman, ESMA, accounted for the background to the consultation and the legal technicalities explaining why this essentially banking oriented topic had resulted in a task for ESMA to define “main indices” and “recognised exchanges”.

10. Consultation on Guidelines to secure the consistent classification of derivatives

Rodrigo Buenaventura, ESMA, explained the background for the consultation on the topic of a consistent classification of derivatives.

11. Clearing obligation - third set

Rodrigo Buenaventura explained the relevance of cooperating with the US regulators in this area. There is a need to be able to decide on recognition of “swap dealers” and the respective regimes these entities will face in Europe and the US.

ESMA is now consulting on a proposal to include also several non-deliverable foreign exchange forward classes, commonly referred to as NDFs, into the clearing obligation.

The SMSG Chair thanked ESMA for their presentations and noted that the SMSG would not have any advice to provide in relation to these consultations. It was remarked that EMIR appeared to set higher requirements than in US law, which made cooperation with the US difficult.

The SMSG Chair thanked Rodrigo Buenaventura and Carsten Osterman for their presentations.

12. UCITS V

Antonio Baratelli, ESMA, presented the results of the consultation that had been held by ESMA in October and which now had been concluded. .

An SMSG member remarked that a prohibition for UCITS of having a management company and custody in the same group company would destroy the EU model of the fund industry.



Verena Ross thanked the SMSG for the comments and stated the ESMA had already in the UCITS consultation had a number of comments along those lines which would merit careful consideration.

13. EuSEF and EuVECA

Jose Moncada, ESMA, explained the main elements of the consultation that ESMA is holding on European Social Entrepreneurship funds and European Venture Capital Funds. The consultation paper deals with advice on the types of goods and services, methods of production for goods and services and financial support embodying a social objective. The second and third parts deal with the advice on the conflicts of interest of EuSEF and EuVECA managers, respectively. The fourth part deals with the advice on the methods for the measurement of the social impact. The fifth part deals with the advice on the information that EuSEF managers should provide to investors.

SMSG members recognised the importance of this new area and expressed some tentative views on the topics, which showed considerable interest in the matter

Conclusion: The SMSG would set up a WG to prepare a response to the ESMA consultation under the lead of Anne Holm Ranneleet. The advice will be approved in written form.

14. AOB

There were no other business topics.



Participants at the SMSG meeting on 4-5 November 2014.

| Last Name and First Name | Authority/Organisation/ Department (if internal) | Presence |
|--------------------------|--|----------|
| Angel Berges Lobera | Professor of Finance, Universidad Autonoma de Madrid | Present |
| Thomas Book | CEO, Eurex Clearing AG | Excused |
| 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" | Present |
| Pierre-Henri Conac | Professor of Commercial and Company Law, University of Luxembourg | Present |
| Elizabeth Corley | CEO, Allianz Global Investors | Present |
| Peter De Proft | Director General, EFAMA | Excused |
| Carmine Di Noia | Head of Capital Markets and Listed Companies, ASSONIME | Present |
| Jaroslaw Dominiak | President of the Management Board of the Association of Individual Investors | Present |



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| 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 associa- tion | 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 | Present |
| Niamh Moloney | Professor of Law, London School of Economics and Political Science | Present |
| Zsolt Nagygyörgy | Chief Compliance Officer MFB Hungarian Development Bank | Present |
| Jean-Pierre Pinatton | Chairman of the Supervisory Board of Oddo & Cie Group | Present |

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| Guillaume Prache | Managing Director EuroFinUse | Excused |
| Chrystelle Richard | Associate Professor Accounting and management Control Dept., ESSEC Business School | Present |
| Lindsey Rogerson | | Present |
| Giedrius Steponkus | Chairman, Lithuanian Shareholders Association | Present |
| Stavros Thomadakis | Professor Emeritus in Financial Economics of the National and Kapodistrian University of Ath- | Present |
| Rüdiger Veil | Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius | 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 | Excused |