

Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 22 September 2015
Time: 09.00 -17:00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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No Item

1. Report from the Steering Committee

The SMSG Chair welcomed Professor Antonio Mele as a new member to the Group, in the category of academics. He also informed the SMSG that the meeting would be chaired by the Vice-Chair Judith Hardt in the afternoon.

2. Recent Market Developments

The SMSG discussed current topics as follows:

CMU

SMSG Vice-Chair Judith Hardt informed the Group of the likely main content of the Capital Markets Union Action Plan expected to be published by the European Commission shortly.

Members stated that the results were close to the group's expectations. Some members mentioned the EU consultation on a Pan European Pension Plan (PEP). Unfortunately, only EIOPA (and not also ESMA had been consulted). This was unfortunate as pensions will increasingly become an important savings channel for Europeans. Investor representatives stressed that they wanted a simple, open default option allowing

savers across Europe to 'opt in'. The key will be to give PEPs the 'most favourite nation' clause. This would allow pension providers to offer products across borders in a more competitive manner.

MiFID II

SMSG Vice-Chair Peter De Proft introduced a discussion regarding the challenges faced by industry as regards the implementation of the MiFID II given the uncertainty of what the regulation will ultimately look like.

Some SMSG members expressed concern about these uncertainties because the financial industry is currently making large investments to adapt IT systems to the new regulatory environment.

The SMSG also discussed the impact of some level 1 issues especially on liquidity and market making.

The ESMA Chair commented that ESMA was in charge of level 2 i.e. the delegated legislation and that the main timing issues are in level 1 legislation, which is in the hands of the co-legislators.

Market developments in China

SMSG Member Elizabeth Corley gave a presentation on recent market developments in China. The presentation focused on growth slow-down and decreasing production, the effect of the strong Chinese currency, capital outflows and tightening of financial conditions as well as Chinese regulators' responses.

3. Market Abuse

The Rapporteur Rüdiger Veil presented on behalf of the working group an SMSG draft advice, in view of the level 3 guidelines that will be required under the new Market Abuse legislation, as well as some other matters considered important to address in the view of the SMSG. The Group also suggested that ESMA should develop an on-line IT-tool that could hold in one place all the relevant legislation and guidance in the area of market abuse.

The Group discussed i.a. the issue of delay of information and it was noted that this important requirement will be dealt with in the guidelines only. The discussion also evolved around definition of insider information and the matter of new information that contradicts earlier information.

The SMSG Chair concluded that the paper was approved and should be published and it was noted that the SMSG would come back to the matter of guidance in the market abuse sphere.

4. EMIR standards relating to margin period of risk for CCPs

ESMA presented the main points of ESMA's discussion paper on standards for recognising third country central counterparties. The European Commission has not yet concluded on equivalence of the US regulation compared to EMIR, but it can be noted that major differences exist between the two regimes. ESMA investigates whether it would be appropriate to allow EU CCPs to apply a one-day liquidation period of client accounts.

One SMSG member noted that a change from two to one day period for the margin period of risk would lower the protection standards.

The SMSG Chair thanked ESMA staff for the presentation concluding that the SMSG would not be able to respond to the consultation due to its technical nature and issues of timing.

5. PRIIPS

Guillaume Prache, rapporteur for the Priips working group summarized for the group the key items of the SMSG advice paper delivered to ESMA in connection with its consultation during the summer.

The Group discussed in particular the fact that past performance was not going to be made part of the information to be included to clients under PRIIPs. The Group noted that efforts should be made to contact other bodies or academics to seek best practices that could be used in argumentation to provide a stronger framework for PRIIPs. It was noted that the PRIIPs framework would in the end not provide the full picture but that industry standards could be added.

ESMA presented the current work of the ESAs, noting that it had been an explicit policy choice by the European Commission mentioned in the mandate to ESMA not to include past performance or other requirements leading to the same result. ESMA presented the work done by the ESAs e.g. as regards methodology options on risk disclosure be-

ing a qualitative multi-criteria approach, a UCITS-like approach and a forward-looking modelling. Current consumer testing has shown good results for a seven-scale system not unlike the one used for UCITS. Furthermore, “what if” scenarios for three different market developments are part of the current thinking, however without a probability for the various scenarios. Finally the presentation mentioned various options currently considered for presentation of costs.

Verena Ross thanked the group for the reply given to the ESAs consultation which unfortunately had been necessary to be conducted during the summer period given the time constraints the ESAs are working under noting also the necessity to respect the limits provided by Level 1.

ESMA staff added that up-front charges are likely to be included in the past performance, while what-if scenarios will not include respective probabilities.

Outcome

The SMSG Vice-Chair Judith Hardt concluded the discussion taking up a proposal from the Group that a letter should be sent to the European Commission on the issue of past performance. Guillaume Prache was tasked with drafting a letter on behalf of the Group.

6. UCITS V

ESMA presented its consultation paper (CP) on UCITS V on sound remuneration standards, which stays open until end October as per earlier written communication.

The AIFMD guidelines were taken as a starting point and ESMA departed from them only when strictly necessary. In particular, the proposed approach on proportionality mirrors the one followed under the AIFMD guidelines

ESMA would be interested to know the impact that an alternative approach (i.e. the prohibition of disapplication on the basis of proportionality of any of the remuneration rules) would have on management companies.

Outcome

Following a sounding of interest in the Group the SMSG Vice-Chair Judith Hardt concluded that a working group would be set up and be coordinated by Anne Holm Rannaleet.

7. ELTIF

ESMA presented its current consultation on ELTIFS which is open to comments until 14 October as per earlier written communication.

Verena Ross noted that ELTIFS will be a topic that has strong links with the CMU.

Outcome

The SMSG Vice-Chair Judith Hardt concluded that the SMSG would not be giving a reply to this consultation.

8. Closet Indexing

ESMA presented the work that it is undertaking in relation to so called closet indexing (i.e. funds labelled as actively managed while in reality closely following an index) which follows from the launch of investigations into the phenomenon in several Nordic countries. ESMA has concluded a first stage of its work in which it has analysed public data in order to assess how far funds in scope of the study deviate from a benchmark. ESMA provided a description of the methodology used and the results following from a first analysis. ESMA informed that the results would be subject to a discussion at the ESMA Board for Supervisors meeting shortly.

The Group discussed aspects of the methodology presented and first results.

Verena Ross thanked the Group for the views provided and stated that ESMA will be able to provide more information at the next SMSG meeting.

9. MiFID II Guidelines on draft ITS

ESMA presented its current consultation on draft ITS regarding the suspension and removal of financial instruments from RM, MTF or an OTF, the notification and provision of information for data reporting service providers, and the weekly aggregated position reports for commodity derivatives and emission allowances and derivatives thereof. The consultation will be open for comments until end October.

Outcome

The SMSG Vice-Chair thanked ESMA for the presentation concluding that the SMSG would not be responding to this consultation due to its technical nature.

10. CRA related work

ESMA updated the SMSG on various aspects of its recent work in the area of Credit Rating Agencies. The presentation related firstly to validation of CRAs' credit rating methodologies, where ESMA is currently finalising a note on quantitative and qualitative techniques based on its experiences in the supervision of CRAs. Secondly ESMA presented the work it conducts following a mandate to provide technical advice in relation to i.a. measures to promote competition. Thirdly the presentation related to the advice given by ESMA to the European Commission on steps taken as regards references to ratings which trigger or have the potential to trigger sole or mechanistic reliance on ratings, a topic on which SMSG has previously provided advice to ESMA.

The SMSG Vice-Chair Judith Hardt thanked ESMA for the presentation.

11. Review of EMIR Article 9 reporting standards

ESMA presented its work done on amending technical standards relating to the minimum details of the data to be reported to trade repositories.

Verena Ross noted that this was work relating to aligning and tidying up the rules applicable.

The SMSG Vice-Chair Judith Hardt thanked ESMA for the presentation.

12. European Single Electronic Format (ESEF)



ESMA presented its consultation planned to be launched shortly for a three month period on the European Single Electronic Format.

The requirement stemming from the Transparency Directive will mean that the issuers will have to prepare their annual financial accounts in a single electronic reporting format ESEF from January 2020. Among the policy objectives of the ESEF is to facilitate accessibility for investors and improve analysis for investors and competent authorities. ESMA will in view of this requirement be obliged to develop technical standards to specify the electronic reporting format that must be followed and in doing so conduct a field test of available reporting standards and carry out a cost-benefit analysis.

The SMSG discussed aspects of the basic set-up of the ESEF considered and the taxonomy that will have to be followed.

Outcome

The ESMA Vice-Chair Judith Hardt thanked ESMA for the presentation and concluded that the SMSG would form a working group in order to provide advice to ESMA on its CP.

13. AOB

There was no other business.

SMSG members' attendance at the SSMG meeting on 22 September 2015

	Last Name and First Name	Authority/Organisation/ Department (if internal)	Attendance
1.	Angel Berges Lobera	Professor of Finance, Universidad Autonoma de Madrid	Present
2.	Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Present
3.	Thomas Book	Eurex Clearing AG	Present
4.	Marina Brogi	Professor of Capital Markets, La Sapienza University, Rome	Excused
5.	Lubomir Christov	Advisor to Bulgarian Association "Active Consumers"	Present
6.	Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Present
7.	Elizabeth Corley	CEO, Allianz Global Investors	Present
8.	Peter De Proft	Director General EFAMA	Present
9.	Carmine Di Noia	Head of Capital Markets and Listed Companies, ASSONIME	Present
10.	Jaroslawn Dominiak	President of the Management Board of the Association of Individual Investors	Present

11.	Krzysztof Grabowski	Financial Market Participant, Corporate Governance Advisor	Present
12.	Judith Hardt	Managing Director Swiss Finance Council	Present
13.	Fernando Herrero	Member of Board ADICAE, Spanish Banking users association	Absent
14.	Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Present
15.	Christiane Hölz	DSW	Present
16.	Alexander Justham	CEO, London Stock Exchange	Excused
17.	René Karsenti	President and Board Member, ICMA	Present
18.	Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
19.	Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
20.	Antonio Mele	Professor of Finance, University of Lugano	Present
21.	Niamh Moloney	Professor of Law, London School of Economics and Political	Present

22.	Zsolt Nagygyörgy	Chief Compliance Officer MFB Hungarian Development Bank Private Ltd	Excused
23.	Guillaume Prache	Managing Director Better Finance for All	Present
24.	Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Present
25.	Chrystelle Richard	Associate Professor Accounting and management Control Dept., ESSEC Business School	Present
26.	Lindsey Rogerson		Present
27.	Giedrius Steponkus	Chairman, Lithuanian Shareholders Association	Present
28.	Rüdiger Veil	Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius Law School, Hamburg	Present
29.	Chris Vervliet	Senior Risk Manager, KBC Asset Management	Present
30.	Gabriele Zgubic-Engleder	Chair of the Board VKI, Head of the Austrian Federal Chamber of labour	Present