

Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 8 February 2018
Time: 9.00 - 17:00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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1. Opening statements from the Chair

The Chair welcomed Professor Blanaid Clarke to her first meeting as a member of the SMSG.

2. Report from the Steering Committee

The SMSG Chair accounted for plans to work together with the stakeholder groups of EBA and EIOPA on various aspects of the work programme for 2018 as well as on topics in relation to the ESAs review.

ESMA accounted for the procedure envisaged in terms of sharing the consultative working group agendas with the SMSG.

3. ESAs review

SMSG member Jennifer Payne presented the paper of the group focusing on ESAs review aspects in relation to the role of the SMSG. The Group discussed next steps as regards its note, finding that it ought to be shared with the Commission and that the SMSG should

look into the possibilities of working with the stakeholder groups of the other ESAs on the topic.

The SMSG Chair concluded that the Group approved the paper. He stated he would investigate the willingness of the EBA and EIOPA stakeholder groups to contribute to a common paper of the stakeholder groups of the three ESAs to share with the Commission.

4. Recent market developments

a. Virtual currencies

SMSG member Eric Litvack presented his views as regards virtual currencies. He accounted for the rapid and very important rise in use of virtual currencies last year and the listing of futures on bitcoins of small denominations (making them more accessible to retail investors). He noted that these type of products have thereby become a concern for the clearinghouses and could create a reputational risk.

Members of the SMSG discussed the nature of the assets, applicable rules and warnings for retail investors. They also noted that listings bring professional traders into the process, and allows for short positions, which is beneficial for price formation.

Verena Ross and ESMA staff gave an account of the activities of ESMA in the area of virtual currencies referring to the ESMA report on the matter and the concerns in relation to retail investors accessing these products.

b. Cybersecurity

SMSG member Jean-Marc Servat presented his observations on the topic of cybersecurity in terms of background and definitions, well-known cases and the typical way in which attacks are carried out.

The SMSG discussed the topic including aspects of resources, coordination and weak links.

ESMA staff and Verena Ross described the actions ESMA is taking in its transversal project on cybersecurity, in cooperating with ECB, ESRB and the other ESAs.

c. Sustainable Finance

René Karsenti presented the main elements of the report from the High-Level Expert Group on Sustainable Finance, focusing on the principles the HLEG final report sets for green and social bonds, its markets and the green label providers. He described the other priority recommendations from the HLEG final report including a taxonomy, investor duties, upgrading of disclosures and enabling retail investors to access sustainable finance opportunities, among other recommendations.

The Group discussed various aspects of sustainable finance such as green bonds requirements, adjustments of capital requirements, suitability assessments etc. Members of the Group also mentioned taxation as an important factor and OECD related work on the topic.

Verena Ross gave a brief account of the planned activities of ESMA in the area, which will include work in the areas where ESMA already is active, closely linked to the recommendations such as suitability assessments, prospectuses, green bonds content, and CRA related aspects. ESMA, however need to look at the skills needed and the data available, among other aspects. She pointed out that the ESA Review proposes enlarging ESMA's objectives of ensuring financial stability, investor protection and orderly markets, by adding sustainability and financial innovation.

The SMSG Chair concluded that the Group will discuss in its April meeting whether it wants to establish a working group with the aim to provide advice to ESMA on the integration of sustainable finance into ESMA's work programme.

5. Work programme 2018

The SMSG Chair presented an outline for a SMSG work programme which will take into account the ESMA and the JC work programmes. Possible topics for the SMSG were noted to be PRIIPS revision, possibly with the stakeholder groups of EBA and EIOPA, and secondly the MAR revision, which could be a topic for a SMSG own initiative report. The SMSG Chair referred to the paper on corporate disclosure from Paul Koster and accounted for the planned further work in the area, which might also include other stakeholders.

Verena Ross gave a presentation of ESMA's work programmes for 2018, explaining that ESMA's annual work programme has been further detailed in the regulatory, supervision, supervisory convergence and risk assessment work programmes.

The SMSG Chair thanked ESMA for the presentation and concluded that the Group would re-discuss its 2018 work programme at the April meeting.

6. Product intervention

ESMA informed the Group of the developments as regards its possible use of product intervention powers following from MiFID II with regard to binary options and to CFDs.

Following comments from SMSG members on the consultation period and the chosen instruments, ESMA explained the differences between the two instruments in question, and also noted that there was in the call for evidence data coming from the NCAs explaining the consumer detriment, which has also been mentioned by the SMSG in its own report on product intervention from June 2017. ESMA further commented on national measures already in place and aspects of non-EU instruments.

The ESMA Chair noted that the instruments in question and the way they were sold to retail investors resulted in high levels of consumer detriment and also stated that ESMA would be able, in case product intervention measures would be established, to address offers coming from outside the EU too.

7. MiFID implementation

SMSG member Kerstin Hermansson presented a note on MiFID implementation issues. She thanked ESMA for the very important work done and mentioned that stakeholders were overall happy with the smooth start of MiFID II. She noted three areas where stakeholders would seek more clarity, being transactions outside the EU, the PRIIPS scope and research.

ESMA staff described the situation regarding the double volume cap (DVC), legal identifiers (LEIs), and dark trading, costs and charges disclosure, effects on provision of investment research etc. ESMA also informed of the status as regards implementation in Member States as far as known. ESMA accounted for the expected shift of trading to systemic internalisers and lit markets in the early days of January 2018 compared to figures from 2017. ESMA announced its planned work to deal with implementation challenges e.g. with regard to DVC and the tick size regime and possible changes to RTSs on the latter topic as well as numerous opinions and Q&As.

In the area of investor protection, ESMA staff accounted for the many thousand replies received and the assessments of national measures on product interventions that already exist, as well as the issues of costs/charges, research and the expected Q&A on minor non-monetary benefits.



The SMSG Chair thanked all for the presentations and the fruitful discussion.

8. Supervisory convergence/peer reviews

ESMA staff presented the ESMA peer review on certain aspects of the MiFID compliance function requirements, and noted that the compliance function is a key source of information for supervisors on firm's compliance with MiFID requirements responsible for identifying, assessing, advising, monitoring and reporting on the risk that a firm fails to comply with its legal obligations and applicable standards.

The peer review covered the period of 1 July 2014 to 30 September 2016 dealing with the MiFID compliance function requirements guidelines nr 1-4. The review covered all member states and included on-site visits to five authorities, including contacts with stakeholders in three jurisdictions. The review showed a high level of compliance with the Guidelines among all but three NCAs and demonstrated a diversity in the supervisory approaches applied by NCAs.

SMSG members commented on the high usefulness of the compliance function and had comments on the future work with regard to the key good practices identified.

The SMSG Chair thanked ESMA for the presentation.

9. Securitisation

ESMA presented the main components of its three ongoing consultations regarding securitisation.

The presentation described the securitisation market, as a key part of the CMU, where there is a need for high quality securitisation to contribute to a well-diversified funding base and act to improve capital efficiency.

The ESMA consultation covers three parts:

- Transparency requirements,
- STS (Simple, Transparent and Standardised) criteria and notification
- Third parties authorisation of STS.

The SMSG Chair thanked ESMA for the presentation.

10. AOB

Jean Berthon suggested setting up a working group on costs and charges.

The SMSG decided to respond to the European Commission consultation of barriers for SMEs to access public markets. The rapporteur of the working group on SME Growth Markets, Giovanni Petrella, will prepare the response based on the SMSG report as already adopted.

PARTICIPANT LIST

1.	Christos Alexakis	Associate Professor in Finance, ESC - Rennes Business School	Present
2.	Georg Baur	Member of Management Board, VOEB, Association of German Public Banks	Present
3.	Harald Benink	Professor of Banking and Finance, Tilburg University	Excused
4.	Jean Berthon	Vice-Chair, Better Finance	Present
5.	Lubomir Christoff	Advisor, Bulgarian National Association Active Consumers	Present
6.	Blanaid Clarke	Professor of Corporate Law, Trinity College	Present
7.	Veerle Colaert	Professor of Financial Law, University of Leuven	Present
8.	Elizabeth Corley	CEO, Allianz Global Investors	Excused
9.	Bartosz Dziemaszkiewicz	Vice-President, Polish Individual Investors Association	Present
10.	Francisco Javier Echarri	CEO, LDS Partners and Advisor on SME related matters	Excused
11.	Mark Hemsley	CEO of BATS Chi-X Europe	Present
12.	Kerstin Hermansson	Managing Director, Swedish Securities Dealers Association	Present
13.	Christiane Hölz	Lawyer, DSW	Present
14.	René Karsenti	President, ICMA	Present
15.	Paul Koster	Chair, European Investors Association	Excused

16.	Eric Litvack	Managing Director, Societe Generale	Present
17.	Rainer Lenz	Chairman of the Board of Directors, Finance Watch	Excused
18.	Jennifer Payne	Professor of Corporate Finance Law, University of Oxford	Present
19.	Giovanni Petrella	Professor of Banking, Universita Cattolica, Milano	Present
20.	Rainer Riess	Director General, FESE	Present
21.	Anna Maria Romano	Accounting expert, FISAC CGIL	Excused
22.	Ignacio Santillan	CEO, FOGAIN, Spanish Investor Compensation Scheme	Present
23.	Jean-Marc Servat	Chair, EACT	Present
24.	Jarkko Syyrilä	Head of Compliance, Nordea Asset Management	Present
25.	Greg Van Elsen	Financial Services Officer, BEUC	Present
26.	Chris Vervliet	Senior Risk Advisor, KBC Asset Management	Excused
27.	Rüdiger Veil	Professor of Law, Bucerius Law School, Hamburg	Present
28.	Tim Ward	CEO, Quoted Companies Alliance	Present