

ESMA Securities and Markets Stakeholder Group

SMSG - End of Term Report 2018





Foreword

The Securities and Markets Stakeholder Group (here called the SMSG or the Group) was first established in April 2011 under ESMA's founding Regulation to help facilitate consultation with stakeholders in all areas relevant to ESMA's tasks.

The third mandate of the SMSG was launched in July 2016 and comes to an end in December 2018. This report summarises the work and key achievements of the Group during this time. During the current mandate period, the Group produced 21 papers in the form of public opinions, statements, advice and own initiative reports. More details on these papers are included herewith and the papers are also available on the SMSG section of the ESMA website.

The End of Term Report assesses the Group's current composition and functioning and makes a number of recommendations. We also consider our role in advising ESMA as well as the impact of our work. The report concludes with a number of considerations for the future tasks of ESMA and the cooperation of the Stakeholder Groups established to provide advice to the ESAs.

We drafted the third End of Term Report in the spirit of our mandate i.e. to help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority. We hope to have contributed in the most effective way in assisting ESMA in the further improvement of the regulation and the supervision of European financial markets.

Paris, 31 December 2018

Rüdiger Veil

(Chair)

Christiane Hölz

(Vice Chair)

Jarkko Syyrila

(Vice Chair)

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Executive summary

This report marks the end of term of the third mandate period of the Securities and Markets Stakeholder Group (SMSG). It covers the period from 1 July 2016 to 31 December 2018. The SMSG wishes to share its experiences with the public with a view to enhance the functioning of the SMSG as well as the overall European System of Financial Supervision of which it is a part. The report covers five areas: (i) the role of the SMSG, (ii) the composition of the SMSG, (iii) how the Group works, (iv) the lessons the SMSG has drawn from its work and (v) an overview of the papers adopted by the SMSG in this mandate period.

PART I. The Role of the SMSG

1. The legislative mandate

The ESMA Regulation requires establishing the Securities and Markets Stakeholder Group (SMSG) to help facilitate consultation with stakeholders in areas relevant to the tasks of ESMA. The tasks of ESMA are laid down in the ESMA Regulation. The main objective is to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. In particular, ESMA shall contribute to improving the functioning of the internal market and enhancing consumer and investor protection. This field of tasks and activities determines the work of the SMSG. The SMSG shall be consulted on actions taken concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial market participants, concerning guidelines and recommendations. The SMSG may submit opinions and advice to ESMA on any issue related to the tasks of ESMA. Furthermore, the SMSG may request investigations from ESMA into alleged breaches or non-application of Union law.

2. Developments of ESMA's Work and the Advisory Role of the SMSG

In its first years, ESMA has mainly aimed at strengthening regulation and creating a level-playing field (so-called single rulebook work). By the end of 2016, ESMA had delivered most of the key elements required for the single rulebook, in particular on the MiFID II- and MAR-regime. ESMA has since then focused more and more on supervisory convergence. In addition, new challenges have arisen, such as the UK's decision to leave the EU and the further digitalisation of financial markets.

These developments have also impacted the work of the SMSG. It considers as one of its main tasks to provide a high level advice to ESMA on the preparation of standards, proposals of delegated acts and the issuance of guidelines/recommendation. Insofar, the SMSG responded to nine consultations from ESMA in the last 2.5 years. In addition, the SMSG contributed to ESMA's work by dealing with matters that were deemed important by its members due to developments in European financial markets. This "own initiative work" has become another important strategic focus of the SMSG in this mandate period. The SMSG appreciates the opportunity to discuss its

workstreams with ESMA's Chair and ESMA's Executive Director and to regularly exchange views on its advice papers and opinions with ESMA's Board of Supervisors.

The issues dealt with by own initiative advice papers in this mandate period include (i) securities lending, (ii) product intervention under MiFIR, (iii) access to public capital markets for SMEs, (iv) cost and past performance of the main categories of retail investment, insurance and pension products, (v) sustainable finance and (vi) initial coin offerings and crypto assets. In addition, the SMSG contributed to the political discussion about the review of the operations of the European Supervisory Authorities, by providing advice to ESMA and by sharing its position with the European Commission, various members of the European Parliament and the Council. The SMSG has welcomed the European Commission's initiative to reform the operation of the ESAs. In particular, the SMSG has brought to the attention of the co-legislators that there is much more that can be done to foster convergence among national authorities. There is also a need to reinforce consumer and investor protection in the EU, and ESMA should play an important role in this regard. It is therefore key to strengthen ESMA's powers.

Moreover, the SMSG discussed towards the end of its term two issues with strategic implications for European securities markets. The first issue was the question whether the current decentralized structure of supervision on securities markets in which national authorities play a predominant role is still optimal. Similar to banking where the ECB has become the direct supervisor for banks, one may study the question whether the EU should move towards a European authority exerting direct supervision on securities markets. The second issue was the question to what extent disruptions (for instance related to climate change and new technologies) are likely to have a significant impact on the value of securities traded on European financial markets in the near future. This may have important consequences for investors.

SMSG members noted that the approaching end of the current mandate would not allow sufficient time for working groups to achieve significant progress on the two strategic issues highlighted above. A future SMSG may want to consider this matter again.

PART II. THE COMPOSITION OF THE SMSG

1. Membership

The ESMA Regulation requires that the SMSG shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants. The members of the SMSG shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.

The SMSG is at present comprised of 30 members representing the relevant stakeholders and academia. For a list of members, present and past, and the category they represent see Annex 1. The members represent the following categories mentioned in Art. 37(2) ESMA Regulation, here provided in alphabetical order with the number of members in each category:

- Academics (7)
- Consumers (6)
- Financial Institution Employees (2)
- Financial Market Participants (10)
- Small and Medium Enterprises (2)
- Users of financial Services (3)

At present, 23 members (76.66 pct.) are men and 7 (23.34 pct.) are women. More information about the members are provided in Annex 1.

The SMSG acknowledges that it is the prerogative of the Board of Supervisors to appoint members of the SMSG. However, the Group wishes to draw attention to the requirements for the composition of the SMSG laid down in the ESMA Regulation: “In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.” The SMSG recommends that the Board of Supervisors considers gender diversity more fully when deciding on the composition of the Group.

The ESMA Board of Supervisors appoints members of the SMSG for a period of 2½ years. Members may serve two successive terms. Five members are currently serving a second mandate period and cannot be reappointed, including the Chair. Five members were replaced and one member was re-appointed during the mandate period.

Members are appointed to represent a certain category of stakeholders, described in the ESMA Regulation. Where a member changes its affiliation and by that falls within a different category of stakeholders, it should inform ESMA and in our view also the Steering Committee. The Board of Supervisors should consider whether it is necessary to replace the member to ensure the intended balance is maintained while taking into account the remaining term of office of the respective member.

2. Steering Committee

According to the SMSG Rules of Procedure, the SMSG appoints a chair and two vice-chairs at the beginning of its mandate period. Together, they constitute the Steering Committee that oversees the work of the SMSG, prepares the agenda for meetings and generally acts as the interface between the SMSG and ESMA. The SMSG appointed Rüdiger Veil (Academic) as chair and Christiane Hölz (Users of Financial Services) and Jarkko Syyrila (Financial Market Participant) as vice-chairs.

The SMSG considers it has proven to be beneficial to have an academic chairing the group with two vice chairs representing different stakeholders to reflect diverse backgrounds as far as possible also in the Steering Committee. Continuity of experience between SMSG mandate having proven to facilitate stakeholder productivity and lessons-learned, the SMSG recommends for the future, that the Steering Committee should not comprise more than two reappointed members to ensure continuity through the renewal cycle.

PART III. Working Methods

1. Rules of Procedure

The SMSG believes that its advice is most valuable to ESMA where it reflects a consensus of the different constituencies represented in the SMSG. ESMA receives from public consultation the view of special interest groups, but the SMSG would like to offer ESMA a view of where there may be reached a common consensus. The SMSG Rules of Procedure therefore stipulate that the Group, as far as possible, shall take decisions by consensus. Where different opinions prevail this is included in the SMSG advice, provided that a divergent opinion is supported by three members or more.

2. Meetings

According to the ESMA Regulation, the SMSG shall meet at least four times a year. However, the Group has deemed it appropriate to have five annual meetings and recommends to maintaining this number of meetings, evenly spread over the year.

The meetings take place at ESMA's premises in Paris. One meeting in the 1st and one in the 2nd half of the year is placed in connection with a meeting of the Board of Supervisors allowing the SMSG to discuss with members of the Board key issues after their own meeting has ended. The SMSG is of the opinion that it has proven to be beneficial to hold a preparatory meeting among its members only prior to a meeting with the Board of Supervisors to allow for an utmost preparation and recommends to maintain this practice in the future.

At its meetings, the SMSG discusses its work in progress and exchanges views with ESMA on recent market developments and supervisory convergence. The SMSG values the participation of both the ESMA Chair Steven Maijoor and ESMA Executive Director Verena Ross, and of the various ESMA staff. The SMSG welcomes the strong commitment to its work by ESMA.

In addition, the SMSG would welcome a regular participation of the EU Commission in its meetings in order to be aware of the discussions and views and to update the SMSG on its current work programme within the remit of ESMA.

Most of the preparatory work has been carried out in Working Groups, due to the frequency of consultations and short deadlines. They usually held their meetings via conference calls. Nevertheless, this kind of communication cannot replace the value and outcome of physical meetings, which allows for a much deeper and detailed discussion.

3. Secretariat and administrative support

According to Art. 37(4) ESMA Regulation, ESMA shall ensure adequate secretarial support. Since the establishment of the SMSG, ESMA has assigned one person, Jacob Lönnqvist, to act as secretary and provide administrative support. Jacob Lönnqvist also serves as full time employee of ESMA with the appending workload. The SMSG is grateful to him for his support and cooperation.

Non-industry members of the SMSG receive a set reimbursement for participation in the meetings held in Paris, which covers transport (economy) and accommodation and an allowance. The SMSG believes that current remuneration standards are not adequate and below current practices of other EU organisations.

4. Relationship with ESMA, ESMA's CWGs and cooperation with other Stakeholder Groups/user groups in the financial services area

The SMSG values its relationship with ESMA and its staff. As stated above, the constant participation of ESMA's Chair and its Executive Director as well as its staff in our meetings shows a genuine interest in our advice. In the future, certain areas of improvements should be considered including a broadening of the areas on which the SMSG and ESMA interact (notably with respect to ESMA's direct supervisory duties), periodic feedback by ESMA on specific issues on which the SMSG has provided comment, and an earlier involvement of the SMSG in ESMA's consultation process. The SMSG as an internal body of ESMA is bound by confidentiality and thus could be formally involved even before a public consultation process is being launched. This would enable the group to discuss more of its advice papers also in physical meetings.

In addition, potential involvement of the SMSG in the ESMA Q&A elaboration process is currently under discussion.

Furthermore, the SMSG would welcome that a formal process is being implemented to ensure a regular involvement in consultations from the joint committee of the ESAs. Here again, an early involvement of the SMSG would facilitate a coordinated response together with stakeholder group of other ESAs.

ESMA's work is supported by Standing Committees who have consultative working groups (CWGs) made up of external stakeholder representatives. Members of CWGs are expected to provide technical assistance to the Standing Committees in relation to all aspects of their work. The SMSG has requested from ESMA that the interaction between the CWGs and the SMSG be improved. This would allow an earlier involvement of the SMSG in the single rulebook work to fulfil its tasks. ESMA has agreed to share with the SMSG both meeting calendars and agendas of individual CWGs meetings (ESMA Note 20 September 2017, ESMA22-106-362). However, ESMA

has not established a mechanism yet which ensures timely access of the SMSG to the relevant information. The SMSG therefore suggest that the process be improved. A review of best-practices for stakeholder engagement at the NCA level, as well as in certain Third-countries, could help define a roadmap toward best-in-class stakeholder governance.

The SMSG has cooperated with the other Stakeholder Groups and provided joint advice on specific themes of common interest (e.g. joint advice by the BSG and SMSG on EBA and ESMA Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders). In addition, the SMSG discussed with the BSG, OPSG and IRSG the Commission's proposals for a review of the ESAs and sent joint letters to the Commission, members of the European Parliament and Council highlighting specific aspects the co-legislators should take into account in the reform process. One of our own initiative papers has been shared with the EU Commission's Financial Services User Group (FSUG). The SMSG still sees room for improvement regarding the fulfilment of its legally required mandate to work as an interface with other user groups in the financial services area established by the Commission or by Union legislation (recital 48 of ESMA Regulation).

The SMSG valued the exchanges with the other stakeholder groups and recommends to continuously explore the possibility of providing joint responses, especially to consultations from the joint committee of the ESAs. It would also be valuable to share the agendas of the Stakeholder Groups between themselves in order to promote transparency between the groups regarding the issues being discussed and considered, which could help to facilitate joint work on areas of common interest.

Finally, on some occasions, a representative of the European Commission has attended the BoS/SMSG meetings. The SMSG considers that the outcome of this was positive and thus, in future meetings of the SMSG with ESMA, the SMSG would be favourable to receive an EC observer provided that the items to be discussed might directly or indirectly impact level 1 or 2 provisions.

5. Impact

ESMA publishes the SMSG papers and responses to consultations and also includes our advice in its feedback statement to consultations. The impact of the SMSG own initiative papers on ESMA's work and agenda, in contrast, is rather difficult to measure. The SMSG would welcome a formalised process being established within ESMA that ensures the SMSG receives from ESMA timely feedback on whether and how its advice is being taken into consideration.

In addition, it would also be helpful if ESMA provided its own view to the SMSG of how the stakeholder group has assisted its thinking overall at the end of each term.

PART IV. SMSG SELF-ASSESSMENT AND KEY MESSAGES

1. Survey

In June 2018, SMSG members were invited to respond to an end-of-term survey to understand their views on different areas of the SMSG's activities and performance. SMSG members rated the following areas: working methods; working relations with ESMA; independence, composition and transparency; quality of advice; visibility, public impact, effectiveness and timeliness of SMSG reports.

The survey included questions to be answered with an ordinal rating, questions to be answered on the basis of the members expectations, and open-ended comments.

SMSG members appear to be overall satisfied of the SMSG's activities and performance with an average rating between "satisfied" and "more than satisfied". However, the signalling value of the ratings should be considered with care because of the linearity assumption used to convert qualitative rating in numerical grades and the possible heterogeneity in the rating attribution across SMSG members. A statistical test was performed in order to assess if a difference exists in the average ratings of the 2016 and 2018 surveys: no statistical evidence that the answers are different was found.

The answers based on expectations showed that the overall sentiment of the SMSG members is very positive as the "more than expected" and the "as expected" answers exhibit, jointly considered, by far the largest number of responses. This evidence holds particularly for the SMSG working methods.

2. Key messages

SMSG members provided many insightful remarks and suggestions in the open-ended comments section of the survey. Such remarks and suggestions that can form the basis for further thoughts in order to improve the contribution of the SMSG.

We present below the key messages arising from the open-ended comments.

- The topics discussed in the SMSG are very relevant as well as highly technical. Different point of views may arise. The SMSG approach to the discussion has always been highly collaborative and open. All contributions have been valued. This balanced approach is attributable to the members dedication and to the leadership of the group. This approach is suggested to be maintained and supported in the future.
- The SMSG contributed mainly along two dimensions: by providing advice to ESMA on specific topics, and by issuing ad hoc reports and opinions on more general issues. The SMSG appears to be very well placed to investigate new and emerging topics. In this respect the heterogeneity of background and expertise among SMSG members represents a key strength of the group.

- The SMSG could also be used by ESMA as sounding board on strategic issues. The group is perceived by its members as an advisory board for the Authority. This role does not require a strong public visibility of the group. The SMSG intends to support the authority by representing the point of views of different stakeholders.
- A cooperation between SMSG and the Consultative Working Groups established by ESMA in different areas might be considered in order to provide more detailed contributions on highly technical consultation papers and request for advice.
- The interaction with other Stakeholder Groups established at EBA and EIOPA proved to be useful and is suggested to be continued and reinforced in the future.

PART V. ACTIVITY REPORT

1. SMSG Advice Papers, Statements and Letters

- Response to ESMA's Consultation Paper on Draft technical standards under the Benchmarks Regulation, 11 November 2016, ESMA/2016/SMSG/022 (Rapporteur: Rainer Riess)
- Response to ESMA's Consultation Paper on MiFID II product governance, 16 December 2016, ESMA/2016/SMSG/024 (Rapporteur: Chris Vervliet)
- Joint Statement of the SMSG and the BSG on the Draft Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders, 3 February 2017 (Rapporteur: Paul Koster)
- Advice to ESMA: Own initiative report on product intervention under MiFIR, 16 June 2017, ESMA22-106-264 (Rapporteur: Veerle Colaert)
- Advice to ESMA and EBA: High-level response to JC Discussion Paper 2016 86 on the Use of Big Data by Financial Institutions, 7 April 2017, ESMA22-106-196 (Rapporteur: Antonio Mele)
- Securities lending: SMSG advice to ESMA in anticipation of a peer-review of UCITS Guidelines compliance, ESMA2 2-106-265 (Rapporteur: Jean Berthon)
- SMSG Response to the Public Consultation on the operation of the ESAs, 10 May 2017 ESMA 22-106-210 (Rapporteur: Jennifer Payne)
- Joint Statement with BSG, IRSG and OPSG on the European Commission's Consultation on the operation of the ESAs, June 2017, ESMA 22-106-272 (Rapporteur: Jennifer Payne)
- SMSG Response to the Public Consultation on Prospectus Regulation Level 2, 6 October 2017, ESMA 22-106-407 (Rapporteur: Georg Baur)
- SMSG comments on the proposals regarding the operation of the ESAs' Stakeholder Groups, 8 February 2018, ESMA 22-106-897 (Rapporteur: Jennifer Payne)
- Response to ESMA's Consultation Paper on draft guidelines on non-significant benchmarks, 7 November 2017, ESMA22-106-1353 (Rapporteur: Rainer Riess)
- Response to the request to provide advice on draft RTS re. variation margins required for physically settled foreign exchange forward contracts (FX derivatives), 24 November 2017 (Rapporteur: Rüdiger Veil)

- Advice to ESMA on Guidelines on certain aspects of the MiFID II suitability requirements, 8 November 2017, ESMA22-106-474 (Rapporteur: Veerle Colaert)
- Response to ESMA's Consultation Paper on draft regulatory technical standards under the new Prospectus Regulation, 9 March 2018, ESMA22-106-911 (Rapporteur: Rainer Riess)
- Report: Access to public capital markets for SMEs, 8 November 2017, ESMA22-106-535, submitted also to the European Commission in the course of the consultation on "Building a proportionate regulatory environment to support SME listing" (Rapporteurs: Giovanni Petrella and Tim Ward)
- Joint Letter to the Commission, Council and European Parliament, with BSG, IRSG and OPSG on the European Commission's legislative proposal following the review of the Operations of the European Supervisory Authorities COM (2017) 536 final, 1 June 2018 (Rapporteur: Jennifer Payne)
- Letter to Vice-President Valdis Dombrovskis, European Commission, on the Implementation of PRIIPS, 20 July 2018, ESMA22-106-1084 (Rapporteur: Georg Baur)
- Advice to ESMA: SMSG opinion on the European Commission request to the European Supervisory Authorities to report on the cost and past performance of the main categories of retail investment, insurance and pension products, 20 September 2018, ESMA22-106-1296 (Rapporteur: Giovanni Petrella)
- Advice to ESMA on Sustainable Finance, 20 September 2018, ESMA22-106-1301 (Rapporteur: René Karsenti)
- Advice to ESMA: Own Initiative Report on Initial Coin Offerings and Crypto-Assets, 19 October 2018, ESMA22-106-1338 (Rapporteurs: Veerle Colaert and Jean-Marc Servat)
- SMSG reply to the Joint Consultation Paper concerning amendments to the PRIIPs KID, 4 December 2018, ESMA22-106-1591 (Rapporteur: Jarkko Syyrila)

2. SMSG Permanent Working Group on MiFID II/MiFIR Implementation

The SMSG has discussed the industry state of play for implementation of MiFID II/MiFIR with ESMA and jointly with the ESMA Board of Supervisors, based on reports from the SMSG Permanent Working Group on MiFID II/MiFIR.

The SMSG exchanged views with ESMA on a broad range of issues, such as the development of market standards for target market-information, persistent data quality and availability concerns, the applicability of the tick size regime to Systematic Internalisers.

The SMSG observed that the implementation of MiFID II/MiFIR in January 2018 went relatively smoothly considering the complexity of the new regime. However, it appears that some areas remain incomplete and the interpretation of certain rules is not yet convergent.

3. SMSG Presentations on Recent Market Developments and Supervisory Convergence

SMSG meetings begin with discussions on recent market developments and supervisory convergence. Such discussions have the purpose for the SMSG to highlight to and exchange views with ESMA on topics of general interest in the securities markets and related areas.

Topics discussed in the 3rd mandate period include among others:

- Current conditions and future evolution of the liquidity in the secondary European corporate bond market
- National supervision and enforcement in retail finance
- Considerations for the Post Brexit MiFID II environment
- ESMA's work on supervisory convergence regarding Brexit
- Leverage in investment funds
- Legal situation with regard to clearing of derivatives contracts in a post-Brexit situation
- Commission Action Plan on Sustainable Finance
- PRIIPS information on future performance
- Commission Action Plan to foster the use of Financial Technology
- Latest state of play on Brexit preparations
- New benchmarks in the Market - process of replacing benchmarks
- Equity market developments on periodic auctions
- UCITS/PRIIPS developments

Annex I - Members and categories



The SMSG at its first meeting in 2016 after appointment together with ESMA chair Steven Maijor and ESMA Executive Director Verena Ross in front of ESMA's premises in 103 rue de Grenelle, Paris, France.

Back row from left: Christophe Nijdam, Lindsey Rogerson, Bostjan Krisper, Jean Berthon, Georg Baur, Lubomir Christov, Giovanni Petrella, Veerle Colaert, Chris Vervliet, René Karsenti, Antonio Mele, Harald Benink, Verena Ross (Executive Director, ESMA), Rainer Riess, Bartosz Dziemaszkiewicz, Mark Hemsley, Christos Alexakis, Ignacio Santillan, Jennifer Payne, Jean-Marc Servat, Javier Echarri.

Front row from left: Kerstin Hermansson, Jarkko Syrriila (Vice-Chair), Rüdiger Veil, (Chair), Steven Maijor (Chair, ESMA), Eric Litvack, Anna Maria Romano, Greg van Elsen.

Missing from the picture: Christiane Hölz (Vice-Chair), Geoffrey Bezzina, Blanaid Clarke, Elizabeth Corley, Andreas Gustafsson, Paul Koster, Rainer Lenz, Juan Manuel Viver, Tim Ward.

Members	Representing	Appointment ^{*)}
Christos Alexakis	Academics	1 July 2016 (I)
Georg Baur	Financial market participants	1 July 2016 (I)
Harald Benink	Academics	1 July 2016 (I)
Jean Berthon	Consumers	1 July 2016 (I)
Geoffrey Bezzina**	Consumers	1 March 2018 (I)
Lubomir Christov	Users of financial services	1 July 2016 (II)
Blanaid Clarke***	Academics	1 January 2018 (I)
Veerle Colaert	Academics	1 July 2016 (I)
Elizabeth Corley	Financial market participants	1 July 2016 (II)

Bartosz Dziemaszkiewicz	Consumers	1 July 2016 (I)
Javier Echarri	Small and medium enterprises	1 July 2016 (I)
Andreas Gustafsson****	Financial market participants	1 Juni 2018 (I)
Kerstin Hermansson	Financial market participants	1 July 2016 (I)
Christiane Hölz (Vice-Chair)	User of financial services	1 January 2015 (II)
René Karsenti	Financial market participants	1 July 2016 (II)
Paul Koster	Consumers	1 July 2016 (I)
Rainer Lenz*****	Users of financial services	1 July 2017 (I)
Eric Litvack	Financial market participants	1 July 2016 (I)
Jennifer Payne	Academics	1 July 2016 (I)
Giovanni Petrella	Academics	1 July 2016 (I)
Rainer Riess	Financial market participants	1 July 2016 (I)
Anna Maria Romano	Employee representatives	1 July 2016 (I)
Ignacio Santillán	Financial market participants	1 July 2016 (I)
Jean-Marc Servat	Financial market participants	1 July 2016 (I)
Jarkko Syyrila (Vice-Chair)	Financial market participants	1 July 2016 (I)
Greg van Elsen	Consumers	1 July 2016 (I)
Rüdiger Veil (Chair)	Academics	1 July 2016 (II)
Chris Vervliet	Employee representatives	1 July 2016 (II)
Juan Manuel Vivier*****	Consumers	1 March 2018 (I)
Tim Ward	Small and medium enterprises	1 July 2016 (I)

*) Roman number marks appointment (I) or reappointment (II).

***) Geoffrey Bezzina replaced Bostjan Krisper.

****) Blanaid Clarke replaced Antonio Mele.

*****) Andreas Gustafsson replaced Mark Hemsley.

*****) Rainer Lenz replaced Christophe Nijdam.

*****) Juan Manuel Vivier replaced Lindsey Rogerson.

Annex II- Rules of Procedure

The Securities and Markets Stakeholder Group

DECISION OF THE SECURITIES AND MARKETS STAKEHOLDER GROUP

Rules of Procedure

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (the European Securities and Market's Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC¹ (the 'Regulation' and 'Authority'), in particular Article 37 of the Regulation

Whereas:

- (1) Article 37(1) of the Regulation provides that the Group's role is, to 'help facilitate consultation with stakeholders in the areas relevant to the tasks of the Authority'. More in particular, Article 37(1) provides that the Group 'shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial institutions, Article 16 concerning guidelines and recommendations. Such facilitation of consultation implies the Group being asked to give its advice in advance of the issue of any such consultation by the Authority.
- (2) Article 37(5) provides that the Group 'may submit opinions and advice to the Authority on any issue related to the tasks of the Authority, with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32', where the latter refer to common supervisory culture, peer reviews of competent authorities and assessment of market developments.
- (3) Article 17(2) of the Regulation provides that the Group may submit a request to the Authority, as appropriate, to investigate the alleged breach or non-application of Union law.
- (4) The Authority's working language is English and it is therefore advisable that the Group has the same working language.
- (5) Group members may be on occasion privy to documents and information which are not yet public and are therefore confidential in nature. The Members firmly undertake not to disclose this information to any individuals outside the Group.

¹ OJ L331, 15.12.2010, p. 12.

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Article 1 – Membership appointment and mandates

- (1) The appointment of the Group members is made by the Board of Supervisors in accordance with Article 37(3) of the Regulation.
- (2) Group members serve in a personal capacity in accordance with their appointment under Article 37.
- (3) According to Article 37(4) of the Regulation, Group members shall serve for a period of two and a half years, following which a new selection shall take place.
- (4) Members may serve two successive terms.
- (5) Should a member's position be vacated for whatever reason before the end of their term, a new member shall be appointed out of the list of alternates adopted by the Authority at the latest call for expression of interest for setting up the Group.

Article 2 – Chairperson and Vice-Chairperson

- (1) The Group shall be chaired, in a personal capacity, by one of the Group members. The Group shall elect a Chairperson and one or two Vice-Chairperson(s) during its first meeting or at the beginning of the second meeting. The number of elected Vice-Chairpersons can be increased to three if considered necessary by the Group members, in order to ensure continuity. The election of the Chairperson and Vice-Chairperson shall be preceded by and based on a nomination procedure. Any member of the Group may nominate him- or herself or any other member of the Group.
- (2) The Chairperson shall be chosen by consensus. If consensus cannot be achieved the Chairperson shall be elected in a secret ballot by a simple majority of the Group members present at the time of the election. If no simple majority is achieved in the first round, a second round of voting shall be held between the two candidates who received the highest number of votes in the first round. The Chairperson shall serve for the remainder of his or her current term as a Group member.
- (3) The Chairperson shall:
 - (a) chair the meetings of the Group;
 - (b) with the Vice-Chairperson(s), co-ordinate the agenda for the meetings of the Group with the Authority and the members of the Group;
 - (c) provide the agreed output of the Group to the Authority's Board of Supervisors; and
 - (d) make public statements on behalf of the Group on the basis of formally agreed positions.
- (4) To assist the Chairperson, the Group shall also elect one or two Vice-Chairperson(s), in a personal capacity, from among its members following the same procedure used to elect the Chairperson and, where possible, at the same meeting. Where there is a tie between two candidates, the Group may agree to appoint both candidates as Vice-Chairpersons. The Vice-Chairperson (or one of the Vice-Chairpersons) shall replace and represent the Chairperson in case of absence or impediment. If the Chairperson and the Vice-Chairperson (or both Vice-Chairpersons) are absent the meeting shall be

chaired by a member of the Group nominated by the Chairperson and Vice-Chairperson(s). The nomination shall be communicated to the Group seven days in advance of the meeting where possible.

- (5) The Chairperson or a Vice-Chairperson may be removed from office on a decision adopted by two-thirds of the members of the whole Group.
- (6) If the position of Chairperson or Vice-Chairperson is vacant, whether due to removal from office or otherwise, an election shall be held as soon as possible to appoint a new Chairperson or Vice-Chairperson under the procedure set out in this Article. Where two Vice-Chairpersons have been appointed, the position of Vice-Chairperson is not vacant if one Vice-Chairperson remains in position.

Article 3 – Convening and location of meetings

- (1) Meetings of the Group shall be convened by the Chairperson. The Group shall meet at least four times a year in accordance with Article 37(1) of the Regulation in the form and according to the timetable determined in agreement with the Authority. The Group shall meet with the Board of Supervisors regularly, at least twice a year, in accordance with Article 40(2) of the Regulation. Additional meetings of the Group may be convened depending on the calendar of ESMA's regulatory output and related consultation procedures.
- (2) The Group meetings shall in principle be held at the Authority's premises. However, whenever there is an objective need and upon request of the Group and agreement with the Authority, one meeting per year may exceptionally be held in another location that is convenient to all members of the Group. Each member can attend the meeting in conference call twice a year, and additionally with the agreement of the Chairperson.
- (3) In order for the Group to convene and make decisions, there shall be a quorum of two-thirds of its members. If the quorum is not met, decisions may be taken without quorum on a preliminary basis subject to subsequent approval by written procedure.

Article 4 – Agenda

- (1) The Chairperson of the Group shall draw up the agenda following a consultation with the members of the Group and the Authority. The Chairperson will announce at the beginning of the meeting the items that were suggested by the members of the Group but were not scheduled for discussion.
- (2) The agenda and the supporting documents shall be circulated to the Group by its secretariat 10 days in advance of each meeting. New items may only be added to the agenda in the light of new developments at the start of a meeting if there is consensus from members present.
- (3) A yearly work plan linked to the Authority's work plan shall be adopted each year by the Group and kept under regular review by the Group. Dates as well as some more strategic key topics for meetings of the next calendar year shall be agreed upon in the autumn.

Article 5 – Secretariat support and Group documents

- (1) The Authority shall ensure adequate secretariat support for the activities of the Group, its Chairperson and Vice-Chairperson(s).

- (2) The Authority shall send drafts on which the Group is consulted and all other working documents to the Group members at the earliest opportunity and no later than one week in advance of the date of the meeting.
- (3) In urgent or exceptional cases, the time limits for sending the documentation may be reduced to three working days of the Authority in advance of the date of the meeting.
- (4) The Authority shall organise meeting facilities, circulate meeting agendas, background materials and minutes, provide technical coordination for the preparation of opinions, advice or any other input the Group may wish to provide to the Authority and arrange the reimbursement of travel expenses.

Article 6 – Role of the Group

- (1) The role of the Group is to help facilitate the Authority's consultation with stakeholders in areas relevant to the tasks of the Authority. In carrying out its role the Group:
 - (a) expects to receive from the Authority, and discuss with it, information on issues relevant to the Group's role sufficiently early as to enable the Group to carry out its role most effectively;
 - (b) shall be consulted by the Authority on actions taken in accordance with Articles 10 to 15 of the Regulation concerning regulatory technical standards and implementing technical standards; and
 - (c) shall be consulted by the Authority on actions taken in accordance with Article 16 of the Regulation concerning guidelines and recommendations to the extent that these do not concern individual financial market participants.
- (2) The Group may also:
 - (a) submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 (regulatory technical standards, implementing technical standards, and guidelines and recommendations), 29 (common supervisory culture), 30 (peer reviews of competent authorities) and 32 (assessment of market developments) of the Regulation; and
 - (b) request the Authority to investigate an alleged breach or non-application of Union law within the scope of Article 17 of the Regulation.
- (3) Where the Group issues opinions or advice at the request of the Authority, the Group shall deliver its opinions or advice within the deadline requested by the Authority. The Authority shall ensure that the Group has sufficient time to agree and deliver its opinion or advice. Where the Group issues opinions or advice on its own initiative, it shall liaise with the Authority.

Article 7 – Decision-making

- (1) As far as possible, the Group shall take decisions by consensus.
- (2) In the event that a consensus has not been reached and decisions are put to a vote, agreement among two-third of the members present shall be required except in relation to elections for the Chairperson or Vice-Chairperson which shall follow the procedure set out in Article 2.

- (3) In exceptional circumstances where it has not been possible to reach consensus and three or more members present consider that their views are not adequately reflected in an opinion to be issued by the Group, those members are entitled to include a minority opinion in the Group's opinion. Such a minority opinion may state the names of the members whose views it reflects.

Article 8 – Written procedure

- (1) If necessary, the Group and any Working Group may adopt its decisions through use of written procedure. To this end, the Authority shall be responsible for the distribution to the Group members of drafts on which the Group is being consulted and/or any other working documents.
- (2) The written procedure is to be initiated by the Chairperson of the Group or by the rapporteur of any working group upon a request on the part of at least 50% of the members of the Group or working group or on his/her own initiative.
- (3) The written procedure shall specify the date by which Members shall provide their views or votes which shall not normally be less than ten days after the launch of the written procedure. Votes on decisions taken by written procedure shall be in written form and a failure to vote shall be considered a vote for the proposal.
- (4) However, if one-third of Group members ask for the question to be examined at a meeting of the Group, the written procedure shall be suspended and the question shall be added to the agenda of the next meeting of the Group or on the agenda of an extra-ordinary meeting to be organised according to the urgency of the issue.

Article 9 – Working language

The working language of the Group shall be English.

Article 10 – Working groups

- (1) In agreement with the Authority, the Group may establish working groups, from among its members, to examine specific issues related to the discharge of the Group's tasks.
- (2) Working groups shall be dissolved as soon as their tasks are fulfilled. Working groups shall appoint a rapporteur who will coordinate the activity of the working group and chair its meetings in a fair and inclusive manner.
- (3) The Group shall decide on the mandate, composition and duration of each working group. These working groups shall report to the Group. The composition of these groups should reflect, where possible, a balance of the Group's constituencies.
- (4) Working Groups shall aim to provide a report to the Group that can form the basis for a decision to be taken by the Group. Reports shall therefore reflect views discussed in the working group, including minority views, in a way that is designed to achieve consensus in the Group. Working groups shall therefore work on the basis of consensus. In the event consensus is not reached, the working group shall adopt its report on the agreement of two-thirds of its members present.
- (5) Working group meetings shall be held at the Authority premises or such other location as is agreed by the members of the working group and the Authority or via conference call.

- (6) Working groups may in its work interact with ESMA Staff.

Article 11 – Attendance and duties of Group Members

- (1) The Chairperson and the Executive Director of the Authority is invited to attend the meetings of the Group and can ask the Vice-Chairperson and/or members of the Authority's Management Board and/or the Chairpersons of the relevant Standing Committees and working groups of the Authority and/or members of the Authority's staff to join specific meetings.
- (2) The European Commission may also be invited to attend the meetings of the Group.
- (3) At each meeting, the secretariat shall draw up an attendance list.
- (4) Members are expected to attend and actively participate in the meetings of the Group.
- (5) Members are expected to actively contribute to the work undertaken by the Group and to undertake any other duties decided on an *ad hoc* basis by the Group.
- (6) Failure to attend three meetings of the Group in a twelve month period shall be deemed a failure to perform the member's duties. In such a case, upon consultation with the Group Chairperson, the Authority may ask the Board of Supervisors to vacate the current position and to select a new Group member.

Article 12 –Conflicts of interest

- (1) At the start of each meeting, any member whose participation in the Group's or a working group's deliberations would raise a conflict of interest on a specific item on the agenda, other than the fact of their current positions with organisations, shall inform the Chairperson or rapporteur and disclose the conflict to the Group or working group in a transparent manner. That member may continue to participate in the discussion but shall not have the right to-vote on such items. In the event that the Chairperson's participation in a specific item on the agenda would raise a conflict of interest, the Chairperson shall inform the Group and the discussion of that item shall be managed by the Vice-Chairperson (or one of the Vice-Chairpersons).
- (2) Members' conflicts of interest will be duly noted in any report or opinion published by the Group or any of its working groups.

Article 13 – External Guests

- (1) Exceptionally, the Chairperson or a rapporteur may invite an external party to give testimony on a specific subject for consideration by the Group or working group as input. A suggestion to invite an external party can be made by any member and shall be approved by a simple majority of all members following consultation with the Authority. Once the external guest has been approved, the Chairperson or rapporteur shall inform the members no later than at the same time as the agenda is circulated and ask the members if any other point of view should be heard at the same meeting.
- (2) The external guest will only be asked to participate in the part of the meeting directly related to her/his testimony and will be bound by the same rules on confidentiality regarding the session as set out in these Rules.

Article 14 – Summaries of conclusions

- (1) Summaries of the discussion and conclusions on each point on the agenda shall be drafted by the Authority and circulated to the Group following approval by the Chairperson.
- (2) Summaries of conclusions of previous meetings shall be adopted by the Group by written procedure or at meetings.

Article 15 – Information and confidentiality

- (1) The Authority shall provide to the Group all information that is necessary for it to carry out its role, subject to professional secrecy as set out in Article 70 of the ESMA Regulation and ESMA's Rules of Professional Secrecy and Confidentiality.
- (2) Members of the Group shall not share outside the Group any unpublished documents of the Authority which have been made available to them.
- (3) If Members of the Group fail to respect these obligations, the Authority may request the Member to stand down.

Article 16 – Regular Reporting and Transparency

- (1) The Authority will include in its annual report a one-page overview of the activities of the Group, including a summary of any opinions, reports and other advice it has formulated over the course of the given year.
- (2) The summary for inclusion in the annual report shall be approved by the Chairperson and Vice-Chairperson(s) of the Group.
- (3) The Group may produce an Activity Report that shall contain an executive summary of the opinions and reports delivered by the Group listing main achievements and inputs to the Authority, which shall be prepared by the Group and reviewed by the Chair and Vice-Chair(s).
- (4) The Authority shall make public on its website:
 - (a) the names of members of the Group and any changes or amendments to the Group's membership;
 - (b) the opinions and advice of the Stakeholder Group and the results of their consultations; and
 - (c) the summaries of conclusions of its meetings
 - (d) Short biographies (CV's) of the Members of the Group.

Article 17 – Correspondence

- (1) Correspondence sent to the Group by third parties shall be addressed to the Authority, for the attention of the Stakeholder Group Chairperson.

- (2) Correspondence sent to Group members by the Authority or group Members shall be sent to the e-mail address which they provide for that purpose.

Article 18 – Access to documents

- (1) Public access to the Group's documents shall be the same as that applying to the Authority's documents.
- (2) The Authority shall be competent to take decisions regarding requests for access to Group documents.

Article 19 – Protection of personal data

All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EC) No 45/2001.

Article 20 – Collaboration with other groups

The Group should work as an interface with other groups in the financial services area established by the Commission or by Union legislation or as otherwise agreed with the Authority.

Article 21 – Amendments to these Rules of Procedure

The Group may amend these Rules of Procedure by a majority of two-thirds of the Group's members, in particular in order to take into account possible developments in the roles, tasks and organisation of the Authority and the Group.

Done at Paris on 22 September 2016

SMSG Chair
For the Securities and Markets Stakeholder Group