

Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 28 September 2021
Time: 10:30 – 15:30
Location: Microsoft Teams
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1. Report from the Steering Committee

The Steering committee reported that the group, since the last meeting held on 17 June 2021, has finalized the following workstreams: (i) the SMSG Advice on Money Market Funds; (ii) the SMSG Advice on digital finance and (iii) the SMSG advice on the retail investor strategy. Furthermore, the SMSG has also provided input on ESMA's 2022 Annual Working Programme and has set up a new working group on remuneration of staff.

The Steering Committee highlighted the importance of the SMSG meeting in person, as soon as the health situation allows.

2. Adoption of summary of conclusions from 17 June 2021

The summary of conclusions was adopted.

3. Recent market developments

- a) For ESMA, Steffen Kern, Head of Risk Analysis and Economics, presented ESMA's current risk assessment and outlook while soliciting the SMSG to provide feedback on the current risk environment. He highlighted that the risk overview shows a continued strong financial market performance in an environment of elevated risks. He highlighted the presence of political risks together with asset prices higher than pre-COVID 19 level across asset classes and a strong economic rebound amid remaining uncertainty. He also commented that the key-narrative across the risk assessment (as set out in ESMA's Trends, Risks and Vulnerabilities Report) shows an uneven recovery and a peak up in risk-taking with episodes of market exuberance. He concluded that the risk

assessment, in terms of traffic lights and indicators, remains high to very high. He also commented that ESMA staff are reviewing the current risk assessment towards the next TRV to be published in February 2022 and that they expect it to remain high, unless there is a clear evidence of overall economic improvements. He also discussed the markets ESMA staff is looking at and the medium to long term impact of Evergrande on the EU market.

The Group discussed the presentation, focusing on the impact of Evergrande and sustainability. First, it was highlighted that Evergrande's impact on the US-EU seems to be limited while the exposure to the bond markets seems to be more concerning. Furthermore, in relation to sustainability, concerns were raised about the low availability of data consistent with the taxonomy requirements, which causes problems for ESG investments (without data no investments). Finally, an SMSG member also remarked that the main risks for retail-investors are the rising inflation and the potential increase in the interest rate-level.

- b) Guillaume Prache presented the research conducted on value for money (VFM). The research focused on both the UK FCA assessments on value for money and the EIOPA initiative on the framework to assess value for money in the EU unit-linked insurance market. He also highlighted that regular reviews and assessments are needed, as "value for money" cannot be adequately assessed ex ante but only ex post.

For ESMA, Antonio Barattelli highlighted the work conducted by ESMA in the past on closet index funds and on the Guidelines on performance fees in UCITS and certain types of AIFs. Notably, ESMA has developed a supervisory briefing addressed to NCAs on the supervision of undue costs. In addition, he highlighted that in 2021 ESMA has launched a common supervisory action, which is still on-going and will deliver findings on the supervision of costs in UCITS. On the MiFID side, Salvatore Gnoni also mentioned the recent and on-going workstreams on costs of services and products (in particular, relevant guidelines, Q&As and two common supervisory actions on suitability and product governance).

- c) For ESMA, Michael Leibeck presented the Consultation Paper on the review of the MiFID II framework on best execution reports by highlighting the key components, including the background and the approach taken by the Consultation Paper. He also indicated the Consultation Paper's proposals to address shortcomings of the current regime and outlined possible improvements to the reporting regime to ensure a more effective regulation and supervision and enhance investor protection; and in respect of potential future legislation to establish a Consolidated Tape under MiFID II.

Rainer Riess gave a presentation on the perspectives on the MiFID II best execution regime, by highlighting that there is room for improvement of execution quality and how this is measured. He also highlighted some recommendations for improvement: (i) to appropriately frame the balance between dark trading and transparent trading; (ii) to prioritize measurement of best execution and (iii) to prohibit payment for order flow. The SMSG discussed further how to improve the execution quality.

4. Digital Finance

Christian Stiefmueller, rapporteur of the working group, presented the Group's advice on Digital Finance. He explained that the advice underlines the importance of digitalisation and sets out guiding principles that should inform the process of digitalisation, mainly regulatory consistency and legal certainty to prevent fragmentation. According to the advice, it is important to maintain a 'level playing field' among providers of services and safeguards against competitive imbalances. Furthermore, it is important to maintain high standards of protection for users, generally, and their data, in particular. In relation to data centric business models and fragmentation of value chains, the Group highlighted the systemic risk aspect. The group commented that the advice suggested a joint coordinating team responsible for DORA to overcome the complex allocation of supervisory responsibilities. The Group highlighted the potential of digital tools to address fragmentation in a positive way. The Group also advised on platforms and bundling of services, by highlighting the emergence of digital platforms in retail financial services. On mixed-activities groups, the Group reiterated that it is necessary to have a systematic approach as well as differentiations amongst different services and more clarity on what is the regulatory scope.

From ESMA's side, Anne Chone thanked the group for the advice, while noticing that business models are constantly evolving. ESMA staff undertook extensive work, reached out to stakeholders for insights and is currently putting together interim findings. While highlighting that the final results have not been finalized yet, she confirmed that ESMA has been focusing on various aspects suggested by the advice.

5. Retail Investment Strategy

Guillaume Prache, rapporteur of the working group, presented the SMSG's response to the Retail Investment Strategy consultation.

From ESMA's side, Salvatore Gnoni thanked the Group for the rich document produced by the SMSG. He updated the SMSG on current ESMA work conducted in relation to the EC request for advice on certain aspects of Retail Investment Strategy received in July 2021. In this regard, ESMA will publish a call for evidence. Furthermore, he highlighted two key topics for ESMA, also mentioned in the SMSG advice: on inducements, he flagged the supervisory convergence work conducted by ESMA to reduce divergences in the application of the requirements; on PFOF, ESMA adopted a statement, with a strict approach to PFOF, and added transparency on PFOF in the proposal for future reporting on best execution.

6. Guidelines on remuneration of staff

For ESMA, Amandine Cordier presented the Consultation Paper on Guidelines on remuneration of staff. She commented that, under the MIFID I framework there were no specific requirements on remuneration. With MIFID II, specific remuneration requirements have been provided by the legal framework. Following the changes in the legal text, ESMA updated its 2013 Guidelines. She highlighted that the section design of remuneration policy and practices has been cleared and reorganized and a new reference to staff career progression has been included. Furthermore, new paragraphs were added on governance and controlling risks related to remuneration policies and practices.

Chris Vervliet, rapporteur of the working group, presented the work done by the Working Group so far, commenting that 2 meetings had been set up so far. He highlighted that the text does not provide an overview of current remuneration practices and shortcomings that have been detected in respect of current practices. Furthermore, there is no reference to remuneration in the 2020 Common Supervisory Action on MIFID II suitability requirements. Given the lack of information regarding problems with existing practices, it was difficult to assess the relevance of the Guidelines. Overall, and subject to a number of more detailed comments, he concluded that the feedback on the Guidelines was, in general, positive.

7. Guidelines on insider dealing

For ESMA, Stefano Sirtori presented the outcome of the Consultation on a Proposal to amend the Market Abuse Regulation Guidelines on delayed disclosure of inside information. He commented that ESMA has mainly consulted on how to deal with the MAR transparency requirements in relation to three main areas: i) reduction, redemption or repurchase of own funds of financial institutions; ii) draft Supervisory Review and Evaluation Process (SREP) decisions; iii) final SREP decisions. He highlighted that the main issue at stake is finding a balance between transparency of inside information under MAR and the need for confidentiality stemming from the prudential supervisory framework. The main proposals are to add to the guidelines two new cases of legitimate interests to delay the disclosure of inside information and guidance to assess the presence of inside information in the SREP decisions.

Piotr Bernacki from the SMSG presented his views on this topic. He commented that the delayed disclosure of inside information is one of the most complex issues within the market abuse regime because of the conditions to be met and the lack of clarity on the boundaries on when certain conditions are met. The proposed changes address potential conflicts financial institutions may encounter. He highlighted the need for clear guidance on how financial institutions should act in situations when the rationale of different pieces of regulations may conflict (one requires confidentiality and another transparency). Finally, further guidance from ESMA on inside information, also for non-financial institutions, seems to be required.

8. Draft 2022 Annual Work Programme



For ESMA, Natasha Cazenave presented the 2022 Annual Work Programme and how the SMSG's advice has been incorporated.

9. AOB

The SMSG raised concerns on the delay of the adoption of draft RTS Taxonomy-aligned disclosures. For ESMA, Patrik Karlsson provided updates on the state of play of the draft RTS Taxonomy-aligned disclosures and the integration with the draft RTS Sustainable Finance Disclosure Regulation. He commented that ESA staff is in the final stage of this workstream. He also highlighted that it had been challenging to find consensus amongst the ESAs. He concluded that the ESAs hope to be able to deliver the Final Report with draft RTS by mid-October 2021.

For ESMA, Salvatore Gnoni provided updates on ESMA's statement on payment for order flow. He commented that, on the basis of the statement, NCAs are expected to carry out supervisory activity on this phenomenon which seems concentrated in a limited number of jurisdictions. Information will also be collected through the call for evidence which ESMA will launch to inform its response to the abovementioned request for advice sent by the Commission in July 2021.

PARTICIPANT LIST

Barbara Alemanni	Full professor University of Genoa and SDA Bocconi affiliate professor	Present
Emilios Avgouleas	Professor Law and Finance, University of Edinburgh	Present
Henning Bergmann	CEO and member of the Board of Deutscher Derivate Verband (German Derivatives Association)	Present
Geoffrey Bezzina	Chairman (in executive role), Board of Management and Administration, Office of the Arbiter for Financial Services, Malta	Absent
Piotr Biernacki	Vice President of the Polish Association of Listed Companies and President of the Foundation for Reporting Standards	Present
Florence Bindelle	Secretary General at European Issuers AISBL	Present
Lubomir Christov	Advisor to the Bulgarian National Association “Active Consumers”	Present
Veerle Colaert	Professor of Financial Law, KU Leuven University	Present
Jasper De Meyer	Financial Services Officer, European Consumer Organisation (BEUC)	Present
Urban Funered	CEO, Swedish Securities Dealers Association	Present
Adina Gurau Audibert	Head of Asset Management, Association Française de la Gestion financière (AFG)	Present
Christiane Hölz	Lawyer, DSW	Present
Dermott Jewell	Policy and Council Advisor Consumers' Association of Ireland	Absent
Eric Litvack	Managing Director at Société Générale	Present
Sari Lounasmeri	CEO at Finnish Foundation for Share Promotion	Present
Stjepan Mandic	Founder and Managing Director of Concepto Ltd	Present
Martha Oberndorfer	Member of the Advisory Council, Austrian Shareholder Association	Present
Morten Bruun Pedersen	Senior economic advisor at the Danish Consumer Council	Present
Giovanni Petrella	Full Professor of Banking, Università Cattolica	Present

Guillaume Prache	Managing Director, Better Finance	Present
Rainer Riess	Director General, Federation of European Securities Exchanges (FESE)	Present
Virginie Saade	Head of Government and Regulatory Policy for Europe at Citadel	Present
Ignacio Santillán	CEO, Spanish Investors Compensation Scheme for investment firms (FOGAIN)	Present
Martin Scheck	CEO and Member of the Board of the International Capital Market Association (ICMA)	Absent
Alexander Schindler	Member of the Executive Board, Union Asset Management Holding AG	Present
Jean-Marc Servat	Chair, European Association of Corporate Treasurers (EACT)	Present
Christian Martin Stiefmueller	Senior Adviser, Research & Advocacy at Finance Watch AISBL	Present
Tanguy van de Werve de Schilde	Director General EFAMA	Present
Chris Vervliet	Deputy Secretary & Member of Select Committee European Works Council at KBC Group, KBC Asset Management, Brussels (Belgium)	Present