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|  | 22 February 2018 |

**62nd meeting of the european financial markets lawyers group**

FINAL AGENDA

**23 February 2018**

**Venue:** *ING Bank N.V.*

*Amsterdamse Poort, Bijlmerplein 888 1102 MG Amsterdam, The Netherlands*

**Meeting room:** AMP C 05.01

***\*\*\*Welcome coffee from 8:30 to 9:00\*\*\****

1. **Welcome by the Chair and adoption of the agenda** *(9:00-09:05)*

*Invited guests*:

* Alexander Schubert, Policy Officer, Resolution Task Force, Directorate‑General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), European Commission (Item 2-8)
* Martijn Boeve, Principal Legal Counsel, ING Legal Financial Markets (Item 2-8)
* Nicolas Spitz, Partner, and Arut, Kannan, Partner, Law Firm Spitz Poulle Kannan, Paris (Item 9)

1. **Proposal for a regulation for prudential requirements of investment firms** *(09:05-10:00)*

**Presenters:**Asmaa Cheikh

**Background:** In December 2017 the European Commission adopted a proposal for a regulation and a proposal for a directive to amend the current EU prudential rules for investment firms. The two acts would amend the existing prudential framework for investment firms set out in the CRD IV/CRR and MiFID2/MiFIR. The aim of the review is to introduce more proportionate and risk-sensitive rules for investment firms, while bringing the largest, systemic ones under the same regime as European banks.

At the meeting it is proposed to discuss how this reform is being considered by the members and what impact the application of specific prudential rules resulting from liquidity requirements might have on investment firms.

In addition, as regards to the amendment of the CRR, new criteria have been introduced for financial instruments to qualify as Additional Tier 1 and Tier 2 instruments. The grandfathering provision stated under Art. 494 of the Proposal may be considered as too restrictive for certain types of debt instruments issued prior and still existing at the date of entry into force of the amended CRR.

**Action point to consider**: Point for information and discussion. Eventual action by the EFMLG will be considered.

**Document:**

* [Power Point presentation 1 by Asmaa Cheikh](https://darwin.escb.eu/livelink/livelink/overview/218500302)
* [Power Point presentation 2 by Asmaa Cheikh](https://darwin.escb.eu/livelink/livelink/overview/218511438)
* [Proposal for a regulation on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU) No 1093/2010, COM(2017)790](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-790_en).
* [Proposal for a directive on the prudential supervision of investment firms and amending Directives 2013/36/EU and 2014/65/EU, COM(2017)791](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-791_en).

1. **Directive on the ranking of unsecured debt instruments in insolvency hierarchy** *(10:00-10:15)*

**Presenter:**Asmaa Cheikh

**Background:** As the final step of the legislative process, the Council adopted the act on 8 December and the final act was signed on 12 December 2017. It is proposed to discuss at the meeting some questions relating to the directive.

**Action point to consider**: Eventual action by the EFMLG will be considered.

**Document:**

* [Power Point presentation by Asmaa Cheikh](https://darwin.escb.eu/livelink/livelink?func=ll&objaction=overview&objid=218500752)
* [Directive (EU) 2017/2399 as regards the ranking of unsecured debt instruments in insolvency hierarchy](http://eur-lex.europa.eu/eli/dir/2017/2399/oj).

1. **DG-FISMA and the current reform package on the BRRD II** *(10:15-10:45)*

**Presenter:**Alexander Schubert, DG-FISMA, European Commission

**Background:** The presentation will provide introduction to the work of DG FISMA and give an overview on the current reform package concerning the Bank Recovery and Resolution Directive (BRRD II), and the open items, in particular: the moratorium tool.

**Action point to consider**: Point for information. Eventual action by the EFMLG will be considered.

**Document:**

* [Power Point presentation by Alexander Schubert](https://darwin.escb.eu/livelink/livelink/overview/218543029)
* [Item 04 - Organisation-chart European Commission, DG-FISMA](https://darwin.escb.eu/livelink/livelink/overview/218559580)

***\*\*\*Coffee break (10:45-11:00)\*\*\****

1. **Follow-up on EMIR review** *(11:00-11:15)*

**Presenter:**Holger Hartenfels

**Background:** It is proposed to have an update on the most recent developments following the workshop (organised by the EBF and ISDA) with members of the European Parliament on 1 February 2018 and the meeting with Rapporteur Mr Werner Langen on 19 February 2018, in Brussels.

**Action point to consider**: Eventual action by the EFMLG will be considered.

**Document:**

* [Power Point presentation (Holger Hartenfels)](https://darwin.escb.eu/livelink/livelink?func=ll&objaction=overview&objid=218541829)
* [BRRD II consolidated text prepared by the Bulgarian presidency](https://darwin.escb.eu/livelink/livelink?func=ll&objaction=overview&objid=218538726)

1. **MIFID Implementation challenges – follow-up** *(11:15-12:00)*

**Presenters:**Philippa Howley and Ignacio Ollero García-Agulló

**Background**: MIFIR and MIFID2 apply as of 3 January 2018. Due to the size and scope of MIFID2/MIFIR, many banks face implementation challenges. It is proposed to discuss some key issues and challenges for discussion among the members as a follow-up to the previous discussions at the last EFMLG meeting on 9 November 2017. To recall, at that meeting there was an agreement that some of the issues need to be clarified without delay, e.g. whether best execution should be applied to all OTC transactions or what is the scope of record keeping obligations. There has been also a consensus that stocks should be taken at the home institutions whether all members are facing the same (or similar) implementation challenges.

**Action point to consider:**

* Members have been asked actively to liaise with their banks’ regulatory team ahead of the meeting to specify the top five issues that are relevant from their perspective.
* Based on the input from members, follow-up is to be discussed..

**Documents:**

* [Power Point presentation (Philippa Howley and Ignacio Ollero García-Agulló)](https://darwin.escb.eu/livelink/livelink/overview/218546118)
* [ESMA 70-156-117 MIFIR Opinion on TOTV](https://darwin.escb.eu/livelink/livelink/overview/218563487)
* [MiFID II Implementation challenges - EBF\_030515 - MiFID 2 Implementation questionnaire answers](https://darwin.escb.eu/livelink/livelink/overview/218565322)

1. **Euribor/Euribor+ - most recent developments, as well as the issues arising from the implementation of the Benchmark Regulation** *(12:00-12:30)*

**Presenters:**Olivier Coupard with the EMMI Legal Working Group members, Fernando Conlledo Lantero, Moise Ba and Malene Stadil

**Background:** It is proposed to have a discussion on the most recent developments at EMMI and beyond. In addition, it is proposed to raise issues arising from the implementation of the Benchmark Regulation, including the latest evolvement on fall-backs.

**Action point to consider**: Point for information. Eventual action by the EFMLG will be considered.

**Document:**

* [Power Point presentation (Möise Ba)](https://darwin.escb.eu/livelink/livelink/overview/218417903)
* [Benchmark Regulation](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.171.01.0001.01.ENG&toc=OJ:L:2016:171:TOC).
* IOSCO - "[Statement on Matters to Consider in the Use of Financial Benchmarks](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD589.pdf)" - 5 January 2018.

***\*\*\*Lunch break (12:30-13:30)\*\*\****

1. **Issues around MIFID in the Netherlands: inducement rules and access to Dutch markets** *(13:30-14:30)*

**Presenter:**Martijn Boeve, Principal Legal Counsel Regulatory, ING Legal Financial Markets

**Background**: As of 1 January 2014 a strict ban has been implemented in the Netherlands on inducements for investment firms servicing MiFID retail clients. The presentation will give an overview of the specific Dutch rules and detail what they mean for market practitioners. Further, in the Netherlands some specific rules were introduced in respect of access to Dutch markets, which partially deviate from the MiFID II framework. These rules will be also highlighted in the presentation.

**Document:**

* [Power Point presentation (Martijn Boeve)](https://darwin.escb.eu/livelink/livelink/overview/218345568).

1. **The future of the European Master Agreement (EMA) – Report on the recent developments** *(14:30-15:30)*

**Presenters:**EMA Task Force members and guest speakers Nicolas Spitz and Arut Kannan, Partners, Law Firm Spitz Poulle Kannan, Paris.

**Background**: EMA Task Force members will give an update on the EBF work. In addition, guest speakers Nicolas Spitz and Arut Kannan will also present on the EMA.

**Action point to consider:** Eventual action by the EFMLG will be considered, in particular with respect to the next activities of the EFMLG TF.

**Document:**

* [Power Point presentation by Nicolas Spitz and Arut Kannan, Law firm Spitz Poulle Kannan](https://darwin.escb.eu/livelink/livelink/overview/218563510).

***\*\*\*Coffee break (15:30-15:45)\*\*\****

1. **Miscellaneous** *(15:45-16:15)*
   1. *Possible discussion on new members and membership criteria*
   2. *Quadrilateral 2018*

**Action point to consider**: To discuss the topics for the preparation of the next issue. The following topics were raised for the panel clusters:

* + FinTech.
  + Brexit.
  + FX Global Code.
  + De-regulation.
  + The reform of the European Bank Recovery and Resolution Directive (BRRD II) and the open items (e.g., moratorium)
  1. *EFMLG Newsletter – 2018*

**Action point to consider**: To discuss the topics for the preparation of the next issue.

**Documents**:

* + [EFMLG Newsletter – Q3](http://www.efmlg.org/TO%20UPLOAD/EFMLG%20Newsletter%20Q3%202017_.pdf).
  + [Addressees of the EFMLG newsletter](https://darwin.escb.eu/livelink/livelink/overview/188835704).

1. **Financial law issues relating to Brexit** *(16:15-17:00)*

*a) The outcome of the exit negotiations and potential cliff edge risks of Brexit in respect of market efficiency and financial stability (16:15-16:40)*

**Presenter:**Olivier Coupard

**Background:** On 10 January 2018 ISDA published updated FAQs that address the possible UK position post-Brexit. ISDA noted that there was still considerable uncertainty as to the format of the UK’s relationship with the EU after conclusion of the exit negotiations, including the potential transitional period after the UK’s exit during which passporting rights of UK and EU firms, respectively, may be maintained. Thus, the responses to the FAQs involve an assessment of the various outcomes of the exit negotiations and the consequences of those outcomes, without the possibility to give a definitive answer in all cases.

Further, on 22 January 2018, the Association for Financial Markets in Europe (AFME) published a short paper highlighting some of the potential cliff edge risks that Brexit may pose for market efficiency and financial stability, specifically highlighting transitional arrangements with some cliff edge risks.

**Action point to consider**: It is proposed to discuss the most relevant points from the FAQs and the AFME report. Eventual action by the EFMLG will be considered.

**Document:**

* [ISDA FAQs](https://www.isda.org/2018/01/10/brexit-faqs/) (on the ISDA website).
* [AFME, *Brexit: Key cliff edge risks in wholesale financial services*, 22 January 2018](https://www.afme.eu/en/reports/publications/brexit-key-cliff-edge-risks-in-wholesale-financial-services/).

*b) Brexit and settlement finality (16:40-17:00)*

**Presenter:**Asmaa Cheikh

**Background:** As regards settlement finality, it is argued in some EU Member States that the minimum transposition of the Finality Settlement Directive may require to be revisited in the context of Brexit to provide for equivalent regime to domestic firms participating directly in third country securities settlement systems (see Recital (7)). It is proposed to discuss whether this issue is being shared in other Member States.

**Action point to consider**: It is proposed to discuss the most relevant points. Eventual action by the EFMLG will be considered.

**Document:**

* N/A