

BVI¹ position on the Commission's targeted consultation on assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI)

We generally support the European Commission's approach of assessing the adequacy of macroprudential policies in the entire NBFI sector and analysing any need for further action. However, after many years of using the term 'shadow banking' after the 2008 financial crisis, which was introduced at the time without any pejorative meaning,² it is important to emphasise that many of the entities covered by the NBFI concept are themselves subject to strict regulations in the European Union. Compared to other legislators in third countries, the EU Commission has already done its homework here. This applies in particular to investment funds managed by managers who fall under the AIFM and UCITS Directives and account for a good 21 per cent of the NBFI sector in the EU.

Investment funds play a significant role in financing the real economy. They bring together the money provided by millions of savers and institutional investors and match it with the capital demands of companies and governments. They thus enable growth and innovation. Moreover, particularly open-ended investment funds diminish systemic risks in general as they balance between investors who want to divest and those who want to invest in a financial market. In general, the European fund industry is resilient and able to absorb economic shocks. One of the reasons for this is that the AIFM and UCITS Directives already contain comprehensive measures to address the handling of relevant financial risk on a micro level and any systemic risks on a macro level. In addition, other EU frameworks – such as CRD/CRR and Solvency II – impose strict regulatory requirements on investments by institutional investors such as banks and insurance companies in funds, so that the interconnectedness between institutional investors and their investments in funds is already considered from a macro-prudential perspective. Moreover, with the updated European Market Infrastructure Regulation (EMIR), the European legislator has established strict cross-sector rules to curb systemic risks in the European derivatives market. This results in further comprehensive obligations for certain parties, including investment funds. Due to these sector-specific requirements in the European NBFI sector, there is no need for additional macro-prudential tools similar to the ones existing in the banking sector.

Rather, we observe that in several areas excessive regulation ties up huge amounts of resources that could be used for investments in technology and the development of new markets. Therefore, the well-functioning European regulatory system should not be overloaded with new and different rules just because jurisdictions outside the EU are maybe not able to establish adequate rules or monitor compliance with these rules and therefore cases may arise that have an impact on the financial market in certain countries (such as the Archegos debacle and the UK gilt crisis in 2022). Instead of developing a new macroprudential policy framework that would duplicate the existing sector-specific frameworks, the existing instruments should first be utilised to the full and used in a balanced way without compromising the global competitiveness of companies. This essentially includes the following aspects, which we will address in detail in our answers to the questions raised in the [consultation paper](#):

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

² Cf. footnote 3 of the [Recommendations](#) of the Financial Stability Board, Shadow Banking: Strengthening Oversight and Regulation, 27 October 2011.



- No EU framework provides a detailed **definition of what NBFIs are**. Rather, the term NBFIs, which was coined by the Financial Stability Board (FSB) and is still used by the European Central Bank (ECB), has developed over time. Accordingly, NBFIs are all non-banks that are neither banks, central banks nor public financial institutions; NBFIs include insurance companies, pension funds, investment funds (including money market funds and hedge funds), central counterparties, broker-dealers, financial entities, captive financial institutions and money lenders, trust companies and structured financing vehicles (SFVs). To make matters worse, for the purposes of their macroprudential tools, banking regulators use the term '*shadow banking entities*' in the CRR, which is much narrower and not synonymous with the term NBFIs. In the fund sector, this only includes money market funds (MMFs), alternative investment funds (AIFs) that use leverage on a substantial basis and AIFs that, under their fund rules or instruments of incorporation, may, as part of their ordinary activities, grant loans or acquire for their own account exposures arising from the lending activity of third parties. All other funds are not included but fall under the general term of NBFIs. We would therefore welcome it if the Commission were to fundamentally reconsider the terminology of '*shadow banking entities*' within the meaning of the CRR and the valuation of which funds should be included in light of the recent and further planned strict regulation of funds (e.g. in the area of MMFs).
- The Commission should continue work on **better data collection about NBFIs and data exchange between the authorities** such as ECB, national central banks, national competent authorities (NCAs), European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB). Before further macroprudential measures are defined, this data should first be adequately analysed and evaluated. Assertions for possible systemic risks based on model calculations are not sufficiently valid.
- In any case, there is a **need for better transparency of risk analyses on a country basis** in the reports published by the supervisors assessing the impact of any potential systemic risks for the European financial market – individual risk factors were only visible in certain markets (such as LDI funds).
- There is a **need for a common understanding on how to calculate leverage in investment funds**. The AIFMD review has already given ESMA a mandate to also demand information on the leverage values of AIFs and UCITS as part of fund reporting. We believe that this offers a good opportunity to align the calculation methods of leverage for UCITS and AIFs with regard to the commitment and gross methods. This will also require further adjustments to the existing implementing measures under the AIFM and UCITS directives (Level 2).
- In order not to underestimate the possible impact of unregulated market participants in the NBFIs sector, we suggest that the EU Commission conducts an **overall review of the activities of unregulated NBFIs and their impact on financial stability**.
- There is **no need for strengthening the powers of ESMA or ESRB for addressing potential systemic risk**. However, in order to enhance effectiveness of supervision of asset managers (such as asset managers embedded in large, cross-border active financial groups) it could make sense to envisage enhanced cooperation and regular exchanges between the NCAs responsible for supervising the individual entities within the group.



To the questions raised in the consultation we have the following specific answers. However, we limit our answers to those areas that are relevant to the fund sector. As money market funds do not play a significant role in the German market, we are not issuing an opinion on these issues either, but rather refer to the position of our European association EFAMA.

I. Key vulnerabilities and risks stemming from NBFIs

Question 1. Are there other sources of systemic risks or vulnerabilities stemming from NBFIs' activities and their interconnectedness, including activity through capital markets, that have not been identified in this paper?

We do not see any other sources of systemic risks or vulnerabilities stemming from investment funds' activities and their interconnectedness. The potential systemic risks mentioned in the report, such as liquidity mismatches, excessive leverage and interconnectedness, are already being mitigated at EU level by many measures through EU regulations. These include, in particular, the latest revision of the AIFMD, which has significantly improved liquidity management by introducing new and binding liquidity management tools for UCITS and AIFs, new uniform EU rules for risk and liquidity management when AIFs grant loans and the reporting of UCITS and AIFM in order to make it easier for EU authorities to identify potential systemic risks.

The failure of Archegos Capital Management, an unregulated 'family office' outside the EU, as mentioned in the consultation paper, cannot be used as an example to justify the introduction of additional measures in the already strictly regulated fund sector. In order not to underestimate the possible impact of unregulated market participants in the NBFIs sector, we suggest conducting an overall review of the activities of unregulated NBFIs and their impact on financial stability. If these firms are found to be capable of posing systemic risks to the financial market, supervisors should carefully consider the effectiveness, feasibility and potential costs when designing policy measures.

However, regarding interconnectedness, for both banks and non-banks, due to the current dispositions of some regulations on eligible assets for meeting margin calls, the interconnectedness can also have the role of a stress canal, especially when the margin call volumes are unexpected. For instance, being required to only use cash as collateral for meeting variation margin calls implies to sell assets and can have an unintended procyclical effect and amplify stress on the markets. Being able to put as collateral for cleared markets' variation margin calls, along cash, highly liquid assets (in particular investment grade government bonds) would significantly limit contagion during stressed moments on the markets and hence contribute to financial stability.

Question 2. What are the most significant risks for credit institutions stemming from their exposures to NBFIs that you are currently observing? Please provide concrete examples.

The CRD/CRR requirements already comprehensively cover any significant risks from exposures of credit institutions to NBFIs. It is the credit institutions' responsibility to appropriately evaluate their exposure – not only to NBFIs – and to integrate it into their internal risk management systems. Credit institutions are responsible for how they hedge NBFIs transactions as part of their own risk processes. If they cannot keep their promises to pay because investment funds are potential 'risky', this must not lead to tighter rules for investment funds or their manager. After all, funds are inherently risky. Rather, banks must assess and evaluate their own risks. The banking regulations in the CRD/CRR contain sufficient rules for this. We therefore see no need for further regulation here in terms of new



macroprudential measures by credit institutions. Rather, what is needed is consistent and appropriate supervision of compliance with the existing rules.

As mentioned above in the introductory part, the special macroprudential measures of credit institutions relate to exposures to so-called '*shadow banking entities*', which are defined in the CRD/CRR framework much more narrowly than NBFIs and only include MMFs, AIFs that use leverage on a substantial basis and AIFs that, in accordance with their fund rules or articles of association, grant loans or acquire for their own account exposures arising from the lending activities of third parties as part of their ordinary business activities. In this respect, we see no need to tighten these measures further. Rather, we even see a kind of over-regulation here, the added value of which should be re-examined. Delegated Regulation (EU) 2023/2779 currently defines which entities are categorised as '*shadow banking entities*' for the purposes of the CRR and which can lead to increased risks for financial stability. In our understanding, the qualification as '*shadow banking entity*' in the CRD/CRR framework not only results in a reporting obligation for banks. It also leads to an inclusion of the exposures of the investment funds (look-through) in the large exposure limits of the bank (cf. Article 395 CRR II). In our view, the list contained in Delegated Regulation (EU) 2023/2779 no longer considers the latest developments and supervisory measures with regard to certain fund types in the EU as follows:

- First, MMFs should be removed from Article 1(1)(c)(i) of the Delegated Regulation (EU) 2023/2779 as these are now highly regulated products through the MMFR, providing easy and diversified access to short-term debt markets. This applies all the more since the MMFR is to be revised and tightened even further.
- Second, due to the EU-wide uniform definition of originating loans via AIFs, which has been introduced as part of Directive (EU) 2024/927 (AIFMD review), Article 1(1)(c)(iii) of the Delegated Regulation (EU) 2023/2779 could lead to inappropriate results. AIFs that grant shareholder loans whose nominal value in total does not exceed 150% of the AIF's capital should be exempted from this regulation as it is the case under the new AIFMD (e.g. in Art. 15(3) last subparagraph, Art. 15(4b) last subparagraph). So far, real estate funds that grant shareholder loans to investment companies in order to acquire real estate are not classified as shadow banking entities because the granting of debt capital is no riskier than the provision of equity capital since direct influence of the AIFM (on behalf of the AIF) on the investment company is ensured without the participation of third parties, and all means of control are guaranteed. Due to the new broad definition of loan-originating activities via funds in the AIFMD, we see a risk that such shareholder loans could also fall under the current definition of shadow banking in the future. Due to the newly created exception for the granting of shareholder loans in the AIFMD (such as in Article 15(3) last subparagraph AIFMD), such funds should therefore be explicitly excluded.

Question 3. To what extent could the failure of an NBFIs affect the provision of critical functions to the real economy or the financial system that cannot easily be replaced? Please explain in particular to which NBFIs sector, part of the financial system and critical function you refer to, and if and how you believe such knock-on effect could be mitigated.

- ☒ 1 - To a very low extent
- ☐ 2 - To a low extent
- ☐ 3 - To a significant extent
- ☐ 4 - To a high extent
- ☐ 5 - To a very high extent



☐ Don't know / no opinion / not applicable

We refer to investment funds as NBFIs. They play a significant role in financing the real economy. They bring together the money provided by millions of savers and institutional investors and match it with the capital demands of companies and governments. They therefore enable growth and innovation. Moreover, we consider investment funds to diminish systemic risks in general as they balance between investors who want to divest and those who want to invest in a financial market. In general, the European fund industry is resilient and able to absorb economic shocks. One of the reasons for this is that the AIFM and UCITS Directives already contain comprehensive measures to address the handling of relevant financial risk on a micro level and any systemic risks on a macro level. In addition, other EU frameworks such as the CRD/CRR and Solvency II Directive impose strict regulatory requirements on investments by institutional investors such as banks and insurance companies in funds, so that the interconnectedness between institutional investors and their investments in funds is already considered. Moreover, with the updated European Market Infrastructure Regulation (EMIR), the European legislator has established strict cross-sector rules to curb systemic risks in the European derivatives market. This results in further comprehensive obligations for certain parties, including investment funds. Due to these sector-specific requirements in the European NBFi sector, there is no need for additional macro-prudential tools similar to the ones existing in the banking sector.

At this point, we reiterate that also a potential failure of the AIF-/OGAW management company has no influence on the assets managed by the funds. The UCITS-/AIFM guidelines provide sufficient regulations for safeguarding such failures, which, incidentally, have occurred extremely rarely in practice in the past. The fiduciary function of fund managers plays a pivotal role in this regard.

Question 4. Where in the NBFi sectors could systemic liquidity risk most likely materialise and how? Which specific transmission channels of liquidity risk would be most relevant for NBFi? Please provide concrete examples.

First of all, investment funds are financial products which inherently involve financial risks, including liquidity risk. While asset managers are obliged to inform their investors about investment strategies and risk profiles of investment funds according to strict transparency requirements including fees, redemption terms and suspension, the decision of the investor to invest in the fund is taken according to his own assessment of risk. In order to minimise the risk of underperformance of the managed funds, strict risk management requirements including setting of limits and stress testing to the relevant financial risk of the managed funds apply. That process involves performing strict liquidity management including definition of liquidity risk limits and liquidity stress tests, in both normal and stressed market conditions, for each individual fund. It is of utmost importance that managing financial risks needs to be observed in the overall context of the individual fund's portfolio including the investment objective, the investment instrument and redemption terms. All of these issues have a different effect on the riskiness of the fund's portfolio and give asset managers the flexibility to react depending on current and potential market conditions. These micro-measures will therefore go a long way to significantly limiting potential systemic liquidity risks for the European financial market. The new liquidity management requirements (e.g. the obligation to use at least two liquidity management tools in open-ended funds) resulting from the AIFMD review will also go a long way to closing any gaps in individual EU member states.

Furthermore, the European investment fund industry – unlike the banking sector – has a wide variety of different business models. European asset managers, which serve a variety of investors (institutional and retail) and use different concepts (public and special), hold all types of assets, from traded securities to alternative investments such as real estate. This diversity not only results in a wide range



of asset liquidity and significant differences in the availability of market data. This also means that the liquidity profiles of investment funds differ significantly depending on the fund and redemption conditions. We believe that the central banks' approach of summarising the rather illiquid assets in which funds invest across all funds and then presenting them as a systemic liquidity risk is misguided. This is because they do not consider the fact that investors in the individual funds behave differently and that the funds pursue different investment strategies. In this context, we refer to our analysis in our [remarks](#) on the FSB's Call for papers 'Systemic risks and policies to address them in non-bank financial intermediation'.

- Our research shows that in- and outflows of a particular institutional investor group are mostly independent from other groups' behaviour and the current level of financial stress in financial markets, thus effectively limiting contagion risk. These German funds also did not propagate market stress through their investment decisions during the COVID-19 crisis. The available data on investment decisions of these fund managers indicate pro-cyclical, but less pronounced changes in the asset mix compared to retail funds.
- Our analysis of the German open-ended retail investment fund market also shows that investment management companies for the most part can manage liquidity risks to fulfil daily redemption requests. Liquidity management depends on the types of assets, investors, investment strategies, markets, and possible national legal restrictions for using liquidity management tools. When looking back to the post-crisis scenario after 2008, significant outflows first increased and later decreased slightly in open-ended retail investment funds, but not to the pre-crisis level. However, the average levels of significant net outflows did not change over time.

However, we also refer to our answer to Q2. In order not to underestimate the possible impact of unregulated market participants in the NBFIs sector, we suggest that the EU Commission conducts an overall review of the activities of unregulated NBFIs and their impact on financial stability. If these firms are found to be capable of posing systemic liquidity risks to the financial market, supervisors should carefully consider the effectiveness, feasibility and potential costs when designing policy measures.

Question 5. Where in the NBFIs sectors do you see build-up of excessive leverage, and why? Which NBFIs could be most vulnerable? Please provide concrete examples.

Leverage in investment funds means methods such as the use of derivatives, borrowing of cash or securities which might, but not necessarily has to increase the ratio of the fund's market exposure over its net asset value. There is a wide variety of funds and fund strategies in different jurisdictions and market structures which allow different methods to increase leverage. In this respect, the use of leverage is not a risk as such. According to the AIFMD, managers of AIFs are required to set leverage limits for the funds they manage, to monitor the leverage and to disclose information regarding the overall level of leverage employed vis-à-vis investors and competent authorities. UCITS are legally restricted in using leverage methods such as use of derivatives and borrowing agreements.

However, it is important to highlight that the use of leverage by investment funds is limited within the European market, with the notable exception of hedge funds. ESMA recently stated this in its [report](#) 'Assessing risks posed by leveraged AIFs in the EU'. There, ESMA also shows how the mechanisms already contained in the AIFM Directive (e.g. Article 25 AIFMD) are effective and how the supervisory authorities can also exert influence if weaknesses are identified.



In addition, national rules limit the use of leverage in certain funds. In Germany, for example, the use of leverage 'on a substantial basis' (three times the fund's net asset value) is prohibited by national regulation for the most common type of AIF with institutional investors in practice, the special fund with fixed investment conditions. Moreover, all these German funds observe the UCITS limit on global exposure to derivative instruments. In addition, the German legislator has defined further measures to limit the use of leverage (e.g. setting borrowing limits) for these funds and all other funds distributed to retail investors.

Question 6. Do you observe any systemic risks and vulnerabilities emerging from crypto assets trading and intermediaries in the EU?

BVI members have a limited experience in crypto trading. Nevertheless, we see MiCAR as a significant step forward because this EU regulation creates a harmonised regulatory framework for crypto assets for the European market, which promotes innovation and enables the potential of crypto assets to be exploited while safeguarding financial stability and investor protection.

Question 7. Considering the role NBFIs have in providing greater access to finance for companies and in the context of the capital markets union project, how can macroprudential policies support NBFIs' ability to provide such funding opportunities to companies, in particular through capital markets? Please provide concrete examples.

BVI has compiled 44 [measures](#) to increase the attractiveness of the Capital Markets Union for the benefit of all market participants. We would like to emphasise the following points in particular:

- **Anchoring competitiveness as a regulatory objective:** The EU must promote the global competitiveness of the European financial sector. To this end, we propose, among other things, the establishment of a dedicated department in the EU Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union or in the Commission's Secretariat-General. This is because European asset managers are burdened with high costs due to the implementation of the many detailed EU rules, to the detriment of their global competitiveness. This money is lacking for further digitalisation, for example. EU legislation should therefore also consider the global competitiveness of the European financial sector as a third objective in addition to the two objectives of financial market stability and consumer protection when weighing up decisions.
- **Implement the EU's better regulation agenda:** We are calling for financial regulation to be more principle-based in order to enable adaptation to different business models. EU legislators should also take into account the special features of the already heavily regulated fund industry compared to banks and insurers and incorporate the practical experience of market participants. In addition, they should adopt fundamental regulations at the level of directives and regulations (Level 1) and not defer them to Level 2 or Level 3. We are also in favour of using the review of existing legislation to reduce unnecessary bureaucracy.
- **Removing barriers to financing the sustainable transformation:** The financing of the sustainable transformation of the European economy is hampered by overburdened and inconsistent regulation, which has so far hardly incentivised support for the sustainable transition. In order for the financial sector to realise its full potential, legal requirements must not unduly restrict investment discretion. In addition, regulation should not only focus on the 'green niche', but promote the transition of the entire real economy. Regulation should make it easier for investors to understand and choose sustainable investments. We therefore support the EU Commission's considerations to introduce a product classification system for sustainable products.



- **Establish an action plan for private pensions:** The spread of the Pan-European Personal Pension (PEPP) is not getting off the ground due to the limitation of fees. The cost cap makes the product uneconomical for providers. Legislators should therefore reconsider the cost cap. We also propose an EU action plan to make citizens in the EU aware of the need for private pension provision and to identify solutions.
- **Increase data availability and transparency:** The lack of standards for financial market data makes reporting and supervision by the authorities more difficult. The financial sector is dependent on data oligopolies such as stock exchanges, rating agencies or index providers and has to accept massive price increases due to their market power. The regulatory framework for the provision and utilisation of financial market data should therefore be improved under appropriate conditions. We also recommend making data available free of charge and licence-free via a public data collection point for benchmarks, making the European Rating Platform practicable for institutional use, stipulating in EU law that market data is not protected by copyright and expanding the share ticker to include pre-trade data. Finally, we are calling for the streamlining of supervisory reporting obligations at EU level.
- **Exploit the potential of new technologies:** Regulatory obstacles are slowing down the use of big data, artificial intelligence, blockchain, cloud computing and crypto assets in the financial services industry. It is important for the fund industry that EU legislators for UCITS and ELTIFs regulate investments in crypto assets, for example. In addition, custodians must be allowed to hold crypto assets in custody alongside traditional assets and should not have to apply for additional licences in other member states for cross-border services.
- **Making capital markets efficient:** We support the creation of an efficient market for the settlement of securities. In line with the USA, we are in favour of shortening the settlement period to T+1 in Europe. However, a reasonable period of time, including a test phase, is required for implementation so that all market participants can adapt their systems. In order to give the Capital Markets Union a face and, in particular, to give small and medium-sized companies from smaller EU markets better access to funding, we propose a separate EU index family that includes all listed companies in the EU. We consider proposals for standardised European supervision of funds to be inefficient. The national authorities know their respective domestic markets better than the EU authority ESMA. In order to avoid disadvantages for investors and the industry, product supervision must remain the responsibility of the national supervisory authorities. When creating a Capital Markets Union, the EU should focus on the capital market, not on bureaucratising it. The EU should also take further measures to enable funds to invest more of the capital they manage in sustainable transformation. This includes, for example, the further development of bonds issued by the EU as part of its regional policy to finance green and social EU projects (impact bonds). As a first step, the subsidies granted as part of the EU's regional and cohesion policy should be securitised.

II. Overview of existing macroprudential tools and supervisory architecture in EU legislation

Other open-ended funds (OEFs)

Link between liquidity mismatch and liquidity risks

Question 16. How can NCAs better monitor the liquidity profile of OEFs, including redemption frequency and LMTs, in order to detect unmitigated liquidity mismatches during the lifetime of OEFs?



In general, we disagree with the narrative – which is unfortunately permanently repeated – that supposedly (too) many opened-ended funds are exposed to liquidity mismatch which would pose a risk to financial stability. Hence, we have the impression that there is an increasing assumption that investors should be able to make a risk-free investment in funds. However, liquidity risks are not avoidable, they can only be minimised under certain assumptions. Liquidity management under stressed market conditions is also assumption dependent. The overall liquidity of the fund depends not only on how liquid the assets are, but also on the extent to which investors redeem their units. Fund's redemptions typically contain only a (minimum) portion of the fund volume. Therefore, a 100% (or at least 50%) liquidity match is neither necessary nor in the interest of investors.

In our view, the AIFMD review already contains the appropriate measures to obtain the necessary information on the liquidity risks of funds via UCITS and AIF reporting. There is also no need for additional requirements related to OEF which hold a large proportion of their investments in inherently less liquid assets. The European legislation already requires a strict and efficient liquidity management process. Hence, common requirements in managing liquidity risks of investment funds and in using liquidity management tools (as a general rule) are much more important. This has already been comprehensively addressed by the AIFM and UCITS Directives.

Moreover, it is common standard and required in the EU that the manager has to monitor the liquidity profile of the fund's portfolio, having regard to the contribution of individual assets which may have a material impact on liquidity, and the material liabilities and commitments, contingent or otherwise, which the OEF may have in relation to its underlying obligations. For these purposes the manager shall also consider the profile of the investor base, including the type of investors, the relative size of investments and the redemption terms to which these investments are subject. **Therefore, it cannot be ignored that an OEF with a limited number of investors who cooperate with the manager concerning intentions to subscribe and redeem units or shares of the OEF must be treated differently from those where the investor structure is more comprehensive and not known down to the last link (such as OEFs offered to a wide range of retail investors). We therefore see the need to distinguish between OEFs distributed to retail or institutional investors.** The same applies, for example, to funds with a restricted group of investors and a long-term investment horizon, in which an early exit has an economically disadvantageous effect on the investor and thus a sudden increased redemption demand is not to be expected.

Question 17. What is the data that you find most relevant when monitoring liquidity risks of OEFs?

We refer to our answer to Q16. The relevant data have already been comprehensively identified by the AIFM and UCITS Directives. It is of utmost importance that any guidance on liquidity management of OEF consider that managing liquidity risks needs to be observed in the overall context of the individual fund's portfolio including the investment objective, the investment instrument, redemption terms and investor base. All of these issues have a different effect on the liquidity. In particular, investment funds can compensate outflows with inflows and vice versa.

We also see no need for an abstract classification of the liquidity of inherently less liquid assets or asset categories. In particular, it should be avoided that a new bucketing list sets too strict binding requirements on liquidity analysis of assets. Otherwise, we see the danger that the management company might not be able to react to changes in the market and they could make decisions with some of evidence of 'herd behaviour' with further impact to new (systemic) risk. Such requirements would also pose administrative burdens for the management companies and fundamentally change their



already established and well-functioning systems. Therefore, it is important that liquidity management should be based on a case-by-case assessment.

Question 19. On the basis of the reporting and stress testing information being collected by competent authorities throughout the life of a fund, how can supervisory powers of competent authorities be enhanced to deal with potential inconsistencies or insufficient calibration between the LMTs selected by the manager for a fund or a cohort of funds and their assets and liabilities liquidity profile? How can NCAs ensure that fund managers make adjustments to LMTs if they are unwilling to act? How could coordination be enhanced at the EU level?

The relevant data and data exchange between competent authorities, ESMA, ECB and ESRB have already been comprehensively addressed by the AIFM and UCITS Directives. We see no need to further strengthen the existing supervisory powers of the competent authorities in this regard. We refer to our answers to Q62 and Q63.

Competent authorities already facilitate analysis of the risk impact of investment funds in the European Union. In particular, information of the risk profile of alternative investment funds gathered by competent authorities are shared with ESMA and the ESRB so as to facilitate a collective analysis of the impact of the risk profile (including leverage and liquidity) of investment funds on the financial system in the Union as well as a common response to potential risks. These measures ensure that competent authorities are able to quickly intervene on a case-by-case basis in case of identified potential risks to financial stability or to the functioning of financial markets. We therefore welcome ESMA's insights about their analyses of investment funds³. As a main outcome, the fund industry is resilient and is able to absorb economic shocks. We also welcome that ESMA has already started establishing guidance to operationalising existing tools to address risks and to identify the effect of macro-systemic shocks affecting the economy as a whole. These figures should be used by all financial stability bodies such as the ESRB and the ECB. That involves the need for country-by-country analyses and the need for further strengthening data exchange between supervisory authorities and financial stability bodies.

Open-ended funds have at their disposal different tools for dealing with liquidity shortages, including the possibility to suspend redemptions. The wide variety of liquidity management tools across jurisdictions such as redemption fees, gates, redemption restrictions, redemption in kind, swing pricing, side pockets or notice periods will help to reduce any herding effects by the potential use of a limited range of such tools. The AIFMD review also closed the gap to make liquidity management tools available to funds in instances of stressed market conditions. **In any case, it must be at the discretion of the manager of the funds which tools they want to use because of very different fund types and structures.** Regardless of this, we cannot imagine that fund managers would not make adjustments to the LMTs if the responsible supervisory authority were to see a need for action in this regard. There has been a constructive dialogue between the authorities and the supervised companies for many years in this regard.

Question 20. [To asset managers] What measures do you find particularly effective to measure and monitor liquidity risk in stressed market conditions?

³ ESMA Economic Report, Stress simulation for investment funds, 2019, Ref. ESMA50-164-2458, available under the following link: https://www.esma.europa.eu/sites/default/files/library/esma50-164-2458_stresi_report.pdf.



The measures in liquidity management for funds do not differ depending on whether the markets are stressed or normal. The AIFM and UCITS directives already provide for comprehensive measures that we consider sufficient.

Question 21. [To asset managers] What difficulties have you encountered in measuring and monitoring liquidity risks and their evolution? Are there enough tools available under the EU regulations to address liquidity mismatches?

Please refer to our answers to the previous questions. The measures contained in the AIFM and UCITS Directives are already sufficient and effective. In particular, the liquidity management of funds is not a new invention of the legislator. Rather, there have been many years of intensive experience and practices in this area that have proven themselves.

Question 22. [To asset managers] What are the challenges in calibrating worst-case and stress-case scenarios related to redemptions and margin calls?

On redemptions, the AIFM and UCITS Directives and the ESMA guidelines on liquidity stress tests already provide sufficient and appropriate guidance in conducting and calibrating scenarios related to redemptions. In any case, special specifications for specific calculations of stress tests and scenario analyses for reporting purposes only should be avoided. We believe that the use of granular data is more effective, enabling the supervisory authorities to carry out their own stress tests.

On margin calls, we refer to our [position paper](#) on the FSB's consultation report on liquidity preparedness for margin and collateral calls. The European legislator has already provided a highly regulated framework for investment funds and their liquidity management including margin calls and collateral management. In fact, strict rules and practices on liquidity management of margin and collateral have been in place for many years for European investment funds. In addition, with the updated EMIR⁴, the European legislator has established strict cross-sector rules to curb systemic risks in the European derivatives market. This results in further comprehensive obligations for certain parties, including investment funds, relating to derivatives transactions.

Moreover, the fund industry's share of derivatives transactions in the European market is not very large and did not have a significant impact even in times of crisis. According to the latest report on derivatives published by ESMA, banks continue to dominate the derivatives holdings in the European market⁵.

UCITS account for 2% of total notional (43% of exposures were in currency derivatives, 35% in interest rate, 12% in equity and 10% in credit) and **AIFs, also 2% of total notional**. Of these, both UCITS and AIFs held almost two thirds in interest rate derivatives, a fifth in currency, and 8% and 7% in credit and equity respectively in 4Q22. ESAMA has also provided an overview of the **impact of the COVID-19 crisis** in its report on EU derivatives markets⁶ for the whole European Market. Here, too, the proportion of derivatives used via funds was very low compared to other market participants.

Based on the current strict European regulation and the market impact of the use of derivatives by investment funds, we see no inadequate liquidity preparedness with respect to spikes in margin and collateral calls during times of stress. The well-functioning European regulatory system should not be overloaded with new and different rules just because jurisdictions outside

⁴ [Regulation \(EU\) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories](#).

⁵ Cf., [ESMA's Market Report](#), EU Derivatives Markets 2023.

⁶ [ESMA Annual Statistical Report 2021](#), EU Derivatives Markets.



the EU might not be able to establish adequate rules or monitor compliance with these rules and therefore cases may arise (such as the Archegos debacle) that have an impact on the financial market in certain countries.

In particular, German funds were not affected by the problems of GBP Liability-Driven Investment (LDI) strategies. Irrespective of this, we also see no need for stricter or further regulations at this point, as there are already measures in place (e.g. Article 25 of the AIFMD) that are intended to contain any systemic risks. ESMA has already made extensive use of this.⁷ In particular, ESMA has issued some advice to the Central Bank of Ireland and the Commission de Surveillance du Secteur Financier (CSSF) on investment restrictions for GBP LDI funds to ensure their resilience. In this context, ESMA also invites other competent authorities of AIFMs managing such funds to adopt similar measures.

III. Excessive Leverage

Open-ended funds (OEFs)

Question 43. What are other tools than those currently available under EU legislation which could be used to contain systemic risks generated by potential pockets of excessive leverage in OEFs?

We refer to our answer to Q5. There is no need for additional tools, as the current UCITS/AIF Directives' Review framework is already comprehensive.

However, we currently see significant differences in the calculation of UCITS gross leverage values among EU member states and also differences in the use of the commitment method for AIFs and UCITS. Even if the acceptable methods by which the fund manager could increase the fund's exposure differ among AIFs and UCITS in order to protect investors, the metric for the calculation of the market exposure should be based, in principle, on the same method for both UCITS and AIFs. Such an approach would efficiently ensure a sustainable and meaningful understanding and monitoring of leverage for financial stability purposes. We therefore see an urgent need to adjust the calculation of leverage in the Level 2 measures of the AIFM and UCITS Directives as follows:

- The calculation of the leverage of UCITS using the commitment approach should be aligned with the AIFMD commitment approach under Article 8 of the Delegated Regulation (EU) No 231/2013 (AIFMR).
- UCITS using the value at risk approach are required by (not-binding) CESR's guidelines from 2010 to disclose the expected level of (gross) leverage (cf. Box 24(2) of the CESR guidelines). That gross leverage calculation should be based on the AIFMD calculation method under Article 7 of the AIFMR.
- It is of utmost importance to clarify that the value at risk is just a risk measurement and not a leverage figure. Therefore, the calculation of the value at risk established under the UCITS Directive (and the CESR guidelines) should be maintained and – if necessary – reviewed. Improvements could be suggested, for instance, for the calculation of the absolute VaR where high market volatility in stressed situations have led to inconsistencies or limit breaches.

In general, the leverage calculation methods (gross and commitment) as provided in the AIFMR work very well and are appropriate in practice. However, we also see the need for additional improvements

⁷ Cf. [Information](#) provided by ESMA, 29/04/2024.



to the AIFMR on certain topics such as considering cash (or cash equivalents) as a deductible item under the commitment method or amending the conversion methods for derivatives instruments (such as swaps, interest rate futures and bond futures). We are happy to provide specific suggestions on request.

Question 44. What are, in your view, the benefits and costs of using yield buffers⁶¹ for Liability-Driven funds, such as it was done in Ireland and Luxembourg, to address leverage?

These fund types are not issued in Germany. Nevertheless, these cases also show that the mechanism set out in Article 25 AIFMD works as a macro tool because ESMA was able to take appropriate measures to reduce the risks in coordination with the competent authorities in Luxembourg and Ireland.

Question 45. While on average EU OEFs are not highly leveraged, are there, to your knowledge, pockets of excessive leverage in the OEF sector that are not sufficiently addressed? Please elaborate with concrete examples.

We are not aware of pockets of excessive leverage in the OEF sector that are not sufficiently addressed.

Question 46. How can leverage through certain investment strategies (e.g. when funds invest in other funds based in third countries) be better detected?

It is important to note that, based on the definition of leverage in the AIFM Directive, investing in other funds is not a leverage method that can be used to increase the investment level of the fund. The explanation in the consultation paper therefore raises questions for us. According to the consultation paper, there should be better understanding on what is the ability to detect leverage when using complex investment strategies involving, for instance, synthetic leverage via investment in other funds. Neither the AIFM nor the UCITS directive recognises the concept of synthetic leverage. However, we suspect that the consultation paper could refer here to the [statements](#) by the ECB on 'synthetic leverage in the investment fund sector' (cf. Box 7). There the ECB refers to synthetic leverage that can stem from derivative instruments or securities financing transactions that create exposures contingent on the future value of an underlying asset, which becomes evident, for instance, when a derivative position's value moves strongly, potentially creating a profit or loss. The latest ECB [report](#) also indicates that investment funds make use of synthetic leverage in the form of derivative exposures on different types of underlying asset class. However, in this regard, there is no connection with investments in other funds. Investment funds are usually securities or equity investments whose value is used as exposure for the purpose of calculating leverage. In this respect, only the price of the target fund share or unit is relevant. When funds invest in other funds (whether funds in the EU or in third countries), they speculate on a higher return as a result of the increase in value of the fund. This should not be confused with a leverage method, which involves taking targeted measures to increase the overall investment level of the fund (e.g. by borrowing or using derivatives).

Moreover, Article 6(3) of the Delegated Regulation (EU) No 231/2013 clearly states that exposure contained in any financial or legal structures involving third parties controlled by the relevant AIF shall be included in the calculation of the exposure where the structures referred to are specifically set up to

⁶¹ "The yield buffer is defined as the level of increase in yields that a fund can withstand before its net asset value (NAV) turns negative." See, [The Central Bank's macroprudential policy framework for Irish-authorised GBP-denominated LDI funds](#), p. 3.



directly or indirectly increase the exposure at the level of the AIF. However, for AIFs whose core investment policy is to acquire control of non-listed companies or issuers, the AIFM shall not include in the calculation of the leverage any exposure that exists at the level of those non-listed companies and issuers provided that the AIF or the AIFM acting on behalf of the AIF does not have to bear potential losses beyond its investment in the respective company or issuer.

There are therefore already sufficient rules in the AIFM Directive for such cases. We see no need for any improvement to better detect leverage for these cases.

IV. Monitoring Interconnectedness

Question 52. Do you have concrete examples of links between banks and NBFIs, or between different NBFI sectors that could pose a risk to the financial system?

We are not aware of concrete examples of links between banks and NBFIs, or between different NBFI sectors that could pose a risk to the financial system.

Question 53. What are the benefits and costs of a regular EU system-wide stress test across NBFI and banking sectors? Are current reporting and data sharing arrangements sufficient to perform this task? Would it be possible to combine available NBFI data with banking data? If so, how?

In our view, current reporting and data sharing arrangements are sufficient for regulators and supervisors to perform their tasks – as long as regulators and supervisors cooperate.

Question 54. Is there a need for arrangements between NBFI supervisors and bank supervisors to ensure timely and comprehensive sharing of data for the conduct of an EU-wide financial system stress tests? Please elaborate.

As mentioned in our answer to Q19, ESMA has already started establishing guidance to operationalising existing tools to address risks and to identify the effect of macro-systemic shocks affecting the economy as a whole. These figures should be used by all financial stability bodies such as the ESRB and the ECB. That involves the need for country-by-country analyses and the need for further strengthening data exchange between supervisory authorities and financial stability bodies.

Question 55. What governance principles already laid out in existing system-wide exercises in the EU, such as the one-off Fit-for-55 climate risk scenario analysis or the CCP stress tests conducted by ESMA, could be adopted in such system-wide stress test scenario?

Stress scenarios for NBFIs (especially for funds) differ significantly from those of banks due to the different business models. We therefore do not consider the implementation of EU-wide stress tests across all sectors (banks, insurers, funds, etc.) based on the same methods to be appropriate or expedient. Rather, we consider it sufficient for the competent authorities to assess the impact of macro-systemic shocks in relation to the specific business models on the basis of the data reported to them on the individual sectors. In any case, however, it must be possible to exchange data between the respective authorities in order to be able to assess any effects and impacts - especially for any interconnectedness. Moreover, it must be the task of the supervisory authorities to set such macro-



prudential tools for identifying vulnerabilities resulting from certain relevant risks such as less liquidity in the market.

Question 56. [To NBFIs and banks] In your risk management practices, do you run stress tests at group level, and do you monitor the level of interconnectedness with (other) NBFIs (within and beyond your own sector; e.g. portfolio overlaps)?

In practice, the benefit of aggregated stress tests (at group or company level) could be only seen for certain asset classes where the relevant risk could be an aggregated risk across several funds which invest in the same asset classes. Creating aggregated stress scenarios for these asset classes may be helpful to get an overview of how certain scenarios could affect a range of funds. However, such an approach should not be implemented as a mandatory requirement. It must remain up to the decision of each manager whether and to what extent such aggregated scenarios across several funds are useful.

Moreover, conducting a debate on stress tests at group level is also a question of identifying risks with an impact on the financial stability on a macro-prudential level. We therefore propose as a first step analysing the results of data reports such as the AIFMD or UCITS reporting or the reports for the national central banks whether there is a potential structural vulnerability that may pose risks to financial stability at all before setting up requirements on such stress tests as a must on micro-level.

V. Supervisory coordination and constituency at EU level

Open-ended funds (OEFs)

Question 57. How can we ensure a more coordinated and effective macroprudential supervision of NBFIs and markets? How could the role of EU bodies (including ESAs, ESRB, ESAs Joint Committee) be enhanced, if at all? Please explain.

Financial stability supervisors need to operationalise their macro-prudential toolkit. We see the need for further improvements in information and data sharing between *all financial stability bodies* such as ESMA, ESRB, ECB, national central banks and national competent authorities. This requires a single regulatory reporting mechanism which will reduce operational effort and burden for asset managers as well as supervisory authorities. For a common understanding of financial stability risks and in order to avoid excessive burdens for cross border activities of asset managers, the main challenge is to agree at least on harmonised data reporting and exchange standards between the industry and supervisory bodies to enable better understanding and supervision. The AIFMD reporting as an aggregated and consolidated reporting standard is appropriate to fulfil its purpose of monitoring systemic risks of AIFs. Nevertheless, we see overlaps with other reports such as transaction reporting under EMIR, MIFIR and SFTR, central bank reporting for statistical purposes on funds as well as the regulatory fund reports for money market funds and the various national UCITS reports. A general overhaul of fund reporting towards mere raw data delivery can meet the demands of supervisors for more granular data to monitor systemic risks.

However, such a data reporting for investment funds (UCITS and AIFs) and data sharing between the supervisors have already been comprehensively addressed by the AIFMD review. The amended AIFMD and UCITS framework mandates ESMA to prepare a report identifying redundancies and overlaps in the existing reporting obligations for UCITS managers and AIFM by April 2026 and one year later, to table implementing technical standards for streamlining reporting requirements in a uniform EU



format. These data, while reported to the relevant NCA, will become directly available to ESMA that can on that basis perform data analyses for detecting potential stability risks and recommending / coordinating supervisory responses among the NCAs. In any case, the current approach of forwarding the data to ESMA via the NCAs should be retained so that the NCAs continue to be able to carry out risk analyses for the respective national markets.

These mandates already empower ESMA for evolving the regulatory framework and supervisory toolkits to enhance supervision of UCITS managers and AIFMs through coordinated data management and analytics. In addition, ESMA can submit proposal for effectuating data exchange between itself, the NCAs and the ESRB that would help facilitating truly data-driven supervision. Thus, ESMA should swiftly make use of its discretion to submit such proposals.

Enhanced coordination mechanism (implementation and adoption of NMMs)

Question 58. How could the currently available coordination mechanisms for the implementation of macroprudential measures for OEFs by NCAs or ESAs (such as leverage restrictions or powers to suspend redemption on financial stability grounds) be improved?

We see no need for further adjustments here. In particular, Article 25 AIFMD already contains comprehensive powers for ESMA to intervene in cooperation with the national supervisory authorities with regard to a possible systemically relevant use of leverage with an impact on the financial market.

Question 59. What are the benefits and costs of introducing an Enhanced Coordination Mechanism (ECM), as described above, for macroprudential measures adopted by NCAs?

We refer to our answer to Q58, an Enhanced Coordination Mechanism (ECM) is unnecessary. There are already enough legal bases in the AIFM and UCITS Directive to allow ESMA to coordinate macroprudential measures. Moreover, considering the limited role of these measures in addressing vulnerabilities in the fund sector and the fact that certain measures rarely concern more than a handful of jurisdictions, the institution of an ECM would be grossly disproportionate.

Question 60. How can ESMA and the ESRB ensure that appropriate National Macroprudential Measures (NMMs) are also adopted in other relevant EU countries for the same (or similar) fund, if needed?

The creation of supervisory convergence in the capital markets should be the sole responsibility of ESMA. The ESRB should only be an observer in this matter. Irrespective of this, we also see no compelling need to transfer national macroprudential measures (NMMs) from one EU member state to other EU member states in every case. Rather, it must also be taken into account whether there are also differences in the markets due to local particularities and therefore special macro-prudential measures make sense for one country but not for another (e.g. because the fund volume for comparable funds is significantly lower). In this case, too, Article 25 AIFMD provides sufficient powers to give special consideration to precisely these aspects. However, there is a need for better transparency of risk analyses on a country basis in the reports published by the supervisors assessing the impact of any potential systemic risks for the European financial market – so far, individual risk factors were only visible in certain markets (such as LDI funds).



Question 61. Are there other ways of seeking coordination on macroprudential measures and possibly of reciprocation? What could this system look like? Please provide concrete examples/scenarios and explain if it could apply to all NBFIs sectors or only for a specific one.

We do not see the need for any further enhanced coordination on macroprudential measures in the fund sector.

Supervisory powers of EU bodies

Question 62. What are the benefits and costs of improving supervisory coordination over large (to be defined) asset management companies to address systemic risk and coordination issues among national supervisors? What could be ESMA's role in ensuring coordination and guidance, including with daily supervision at fund level?

We are not convinced that potential systemic risk could be adequately tackled by EU coordinated supervision of large asset management companies. As discussed in the previous sections of the consultation, potential for systemic risk could be associated with certain investment/product features and thus can materialise only in relation to specific funds due to their investment activities. Given that asset management companies, especially large ones, manage several hundreds of funds with very different strategies and investments in various markets as well as different asset classes, the assumption that potential risks at the fund level will be higher for large asset managers is simply not justified.

In addition, no asset manager or a group of asset managers has so far been identified as systemically relevant. However, Article 25 AIFMD already provides:

- rules for supervisory cooperation between NCAs supervising the AIFM, ESMA and the ESRB, and
- instruments for NCAs to identify the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy. In addition, ESMA requires NCAs to perform risk assessments on a quarterly basis including factors such as the size of an AIF or a group of AIFs is sufficient to move the market⁸.

Further centralisation of supervision based on the criterion of systemic relevance is therefore neither necessary nor appropriate.

Question 63. What powers would be necessary for EU bodies to properly supervise large asset management companies in terms of flexibility and ability to react fast? Please provide concrete examples and justifications.

As explained above, we do not see the case for strengthening the powers of ESMA or ESRS for addressing potential systemic risk. However, in order to enhance effectiveness of supervision of asset managers (such as asset managers embedded in large, cross-border active financial groups) it could make sense to envisage enhanced cooperation and regular exchanges between the NCAs responsible for supervising the individual entities within the group. Such cooperation must not necessarily take the form of formal colleges of supervisors or should not involve determination of a lead supervisor, given that no specific supervisory approach at the group level applies in the asset management sector.

⁸ Cf. ESMA [guidelines](#) on Article 25 of Directive 2011/61/EU.



Moreover, as subsidiaries of banks, insurance companies or investment firms, asset managers are already subject to the group consolidation regulations of the respective parent company (CRD/CRR, Solvency II, IFD/IFR).

Question 64. What are the benefits and costs of having targeted coordinated direct intervention powers to manage a crisis of large asset management companies? What could such intervention powers look like (e.g. similar to those in Article 24 of EMIR)?

First of all, we do not understand what situation the EU Commission has in mind when thinking about “a *crisis of large asset management companies*”. As explained above, the potential systemic risk discussed with regard to the fund sector could only relate to individual funds and their investment activities and do not depend on the size of the asset management company.

In addition, Article 25 AIFMD (in conjunction with Article 50 AIFMD) already requires specific procedures on supervisory cooperation in cases of identified systemic risks. Moreover, the AIFMD review aims at improving the supervisory cooperation in the AIFMD and UCITS Directive including the reporting requirements. In particular, the competent authority of the host Member State of an AIFM shall be able to address a reasoned request to the competent authority of the home Member State of that AIFM to take supervisory action. In addition, ESMA will be able to request that a competent authority presents a case before ESMA where that case has cross-border implications and might affect investor protection or financial stability. It is intended for ESMA’s analyses of such cases to provide other competent authorities with a better understanding of the discussed issues, contribute to preventing similar instances in the future and protect the integrity of the market for AIFs or UCITS.

It should not be ignored that the business models of asset managers differ significantly from those of banks and insurers. Investment funds are financial products which inherently involve financial risks. We disagree with the narrative – which is unfortunately permanently repeated – that supposedly (too) many opened-ended funds are exposed to liquidity mismatch which would pose a risk to financial stability. Investments in funds are generally not risk-free and liquidity risks as such not avoidable, even though they can be minimised by applying certain assumptions. Liquidity management under stressed market conditions is also assumption-dependent.

However, as a first step, careful analyses based on valid data are needed that are actually capable of assessing any systemic risks of funds or asset management groups with an impact on financial stability. To this end, supervisory authorities and legislators must first do their homework to adequately collect such data and develop an appropriate macroprudential toolkit before considering further measures for asset managers. For a common understanding of financial stability risks and in order to avoid excessive burdens for cross border activities of asset managers, the main challenge is to agree at least on harmonised data reporting and exchange standards with the industry and supervisory bodies to enable better understanding and supervision. These data collections are already addressed in the AIFMD review.
