

## COMMENTS BY THE CNMV'S ADVISORY COMMITTEE ON THE CONSULTATION OF THE EUROPEAN COMMISSION ON MACROPRUDENTIAL POLICIES FOR NON-BANK FINANCIAL INTERMEDIATION (NBFI)

### I. INTRODUCTION: GENERAL CONSIDERATIONS

The CNMV's Advisory Committee (hereinafter "Advisory Committee") is grateful for having the chance to make observations and comment on the European Committee's consultation assessing the adequacy of macroprudential policies for non-bank financial intermediation (hereinafter "NBFIs") (hereinafter "Consultation")<sup>1</sup>.

This first section tackles **the main considerations regarding the macroprudential approach to NBFIs contemplated in the Consultation, these being the starting point for the answers to the specific questions posed by the Consultation** and which are included in Section II below.

#### A) Avoiding the replication of the banking sector macroprudential approach to Asset managers

- As opposed to banks, Collective Investment Scheme Management Companies (hereinafter "CISMCs" and "CISs") follow the agency model without taking risks as the main player, that is to say, they do not trade their own assets but manage the money of investors following specific mandates. This implies that it is the investors who bear the economic risks associated with the underlying assets and are aware of these risks due to the reporting obligations set by the regulations (both the pre-contractual and post-contractual). The changes in the underlying assets market value is reflected in the net asset value of the Fund, it being a fiduciary duty of Management Companies to invest the assets in the interest of the participants and of managing liquidity.

In addition, the assets of the investors are not in the balance sheet of the CISMC, they are held in a depositary subject to requirements and regarding such assets there are regulations safeguarding them in the case of insolvency of the depositary (separation of assets and cash belonging to the Fund with respect to the rest of the assets in the case of insolvency proceedings).

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<sup>1</sup> European Commission targeted consultation assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI), 22 May 2024: [https://finance.ec.europa.eu/document/download/ddd6c515-3796-4db3-b91d-88a1a64acf07\\_en?filename=2024-non-bank-financial-intermediation-consultation-document\\_en.pdf](https://finance.ec.europa.eu/document/download/ddd6c515-3796-4db3-b91d-88a1a64acf07_en?filename=2024-non-bank-financial-intermediation-consultation-document_en.pdf)

In Spain, the Pension Fund sector (hereinafter “PF”), as it does not have independent legal status either, it also operates under the management of a Pension Fund Management Entity (hereinafter “PFME”), with separate assets held by a depositary.

Therefore, these are different models to that of banks, which do operate on their own account and have risks in the balance sheet.

- Another differential aspect regarding banks is that the latter play a major role in the financial system and their bankruptcy could therefore lead to far-reaching consequences, as acknowledged by the term “too big to fail”. This difference is crucial, since the impact of a potential crash of a Management Company, either regarding CISs or PFs, is relatively small on financial markets, inasmuch no asset manager is large enough or occupies such a relevant position, save a few possible exceptions, so as to destabilise the securities markets.
- In addition, the separation of the existing assets between the Management Company and the Funds it manages, allows for the substitution of the Management Company. As a real example in the Spanish economy, mention can be made of the Banco Madrid Management Company, whose substitution for another Management Company did not affect the rest of the market or trading of the CISs, beyond the temporary suspension of subscriptions, redemptions and transfers applied by the CNMV, and confirmed the separation of assets since the assets of the CISs were not affected by the insolvency proceedings against Banco Madrid<sup>2</sup>.

Regarding the macroprudential tools proposed for banks, as capital and liquidity buffers (anti-cyclical), these tools do not provide added value to asset Management Companies, as acknowledged in the statement on the macroprudential approach to asset management<sup>3</sup> published in April, in which four European authorities (FMA, AMF, CONSOB and CNMV) backed the opinion that *it was very improbable that such anti-cyclical regulatory requirements would be useful in reducing risks to financial stability. This is due to the fact that asset managers take decisions in the name of investors. Consequently, the idea of inducing asset managers to act in an anti-cyclical manner (in practice, against the preferences of their investors) cannot be an adequate solution. [...]. Two additional arguments stand out against the macroprudential measures: (i) the decisions on asset management must be adopted by the asset managers themselves, not by the public authorities, due to the risk of providing the wrong incentives; and (ii) direct intervention by a public authority on a subset of investment funds would probably be interpreted as a widespread concern, which could lead to panic among investors.*

- On its part, EIOPA’s technical advice for the review of the IORP II Directive once again rejects the inclusion of solvency requirements within the scope of IORP (Occupational Pensions Funds) focussing on greater harmonisation of the internal risk assessment. In this respect, the focus is placed on the liquidity risk related to

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<sup>2</sup> See relevant facts regarding Banco Madrid Gestión de Activos, S.A., S.G.I.I.C. of 27 April 2015: <https://cnmv.es/portal/consultas/datosentidad.aspx?nif=A-80466006> and 20 February 2017: <https://www.cnmv.es/web/services/verdocumento/ver?e=YHqOCJXlzH%2f952bMckjvnrojc5caDaczWitwUsYwRmRQSRh0dt1K2vXNhAR3mLSV>

<sup>3</sup> Statement by the national competent authorities of Austria (FMA), Italy (CONSOB), Spain (CNMV) and France (AMF): [A macro-prudential approach to asset management](#)

margin contributions in derivatives trading and the need for IORP to adequately manage this risk<sup>4</sup>.

- In the case of CISMCs, it is possible to eliminate the vulnerabilities facing certain sectors without having to resort to the aforementioned buffers. For example, eliminating the alleged first mover advantage in the CIS sector is possible, ensuring that the Investment Funds charge investors redeeming their shares the transaction costs taken on by the Fund (e.g., by applying swing pricing). Similarly, it would be possible to reduce the procyclicality of margin calls both in the case of CISs and PFs, allowing market participants to fulfil this demand for liquidity by permitting the presentation of other types of assets as collateral (e.g., sovereign bonds or units in money market funds (hereinafter “MMFs”)), not exclusively cash.

As a result of all the above, **treating the asset management sector in the same way as banks would create an "unlevelled playing field", affecting the competitiveness of European financial markets**, this precisely being contrary to the recent reports by independent experts<sup>5</sup> and the recommendations of the European Securities and Markets Authority (hereinafter “ESMA”)<sup>6</sup>, indicating the need to reduce the over dependence on bank financing and to reinforce financing via capital markets.

In the same sense, to ensure a regulatory environment that promotes an efficient channelling of resources in the Eurozone and a greater development of securities markets in the future, any regulatory or supervisory change should take into account the specificities of the Spanish alternative financing ecosystem, avoiding the extrapolation of standards applied to other entities diverging from this and which become an obstacle for its appropriate expansion, distancing us from markets such as the US or UK markets.

## **B) Reconsidering the need for new macroprudential tools considering the data on vulnerabilities detected in asset management and the macroprudential supervision tools already in the regulations**

### **1. Risk of excessive leverage**

Leverage is not evenly distributed in the securities markets. This statement is substantiated by the fact that, according to the Financial Stability Board (hereinafter “FSB”), although Pension Funds, CISs and insurance companies represent a large part of the financial assets (two thirds of the total assets of

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<sup>4</sup> [EIOPA's technical advice for the review of the IORP II Directive](#) of 28 September 2023.

<sup>5</sup> See **Letta, E.** (2024). Much more than a market: speed, security, solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens. <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>; **Draghi, M.** (2024). The future of European competitiveness. [https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961\\_en?filename=The%20future%20of%20European%20competitiveness%20\\_%20A%20competitiveness%20strategy%20for%20Europe.pdf](https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf); **Noyer, C.** (2024). Developing European capital markets to finance the future: Proposals for a Savings and Investments Union. <https://www.ebf.eu/wp-content/uploads/2024/05/EN-Report-Developing-European-capital-markets.pdf>

<sup>6</sup> Position Paper ESMA. (2024). “Building more effective and attractive capital markets in the EU”: [https://www.esma.europa.eu/sites/default/files/2024-05/ESMA24-450544452-2130 Position paper Building more effective and attractive capital markets in the EU.pdf](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA24-450544452-2130%20Position%20paper%20Building%20more%20effective%20and%20attractive%20capital%20markets%20in%20the%20EU.pdf)

NBFIs), 90% of the leverage in balance sheets is concentrated in a small percentage of the so called other financial intermediaries (hereinafter “OFIs”)<sup>7,8</sup>.

The majority of Funds, both regarding Investment and Pensions, follow simple investment strategies, with a very limited use of leverage, which reduces the risk of generating financial instability. Only a small percentage of CISs dedicate themselves to alternative strategies which may be riskier. Regarding this, it should be recalled that leverage is limited in the case of UCITS (Article 51.3 of the UCITS Directive<sup>9</sup>) and the manager must establish and comply with its leverage limit in its prospectus in the case of Alternative Investment Funds (hereinafter “AIFs”). Likewise, Article 25 of the AIFM Directive<sup>10</sup> establishes the possibility for National Competent Authorities (hereinafter “NCAs”) to limit the leverage of one or more AIFs in certain cases. Furthermore, there are leverage limits in relation to Pension Funds (Articles 71 et seq. of Spanish Royal Decree 304/2004, of 20 February, approving the Pension Schemes and Funds Regulation, hereinafter “RPFP”).

At the national level, according to the 2023 annual report by the Macroprudential Authority Financial Stability Board (hereinafter “AMCESFI”), the analysis of the CISs at the end of the financial year shows that the leverage of Spanish Investment Funds was far below the maximum amount permitted<sup>11</sup>. The 2022 NBFi report published by the CNMV<sup>12</sup> states that, even regarding the Free Investment Schemes, the level of leverage is moderate, with only 4 pure Free Investment Schemes exceeding 100% leverage from 105 registered Free Investment Schemes<sup>13,14</sup>.

At the European level, in accordance with the “Open-ended funds and resilient capital markets” report drafted by EFAMA<sup>15</sup>, it is also shown that the leverage in the European Investment Fund sector continues to be low and is often used for reasons other than obtaining additional exposure to an underlying market, including efficient portfolio management and risk management. In this sense,

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<sup>7</sup> broker-dealers, hedge funds, finance companies, holding companies and securitisation vehicles.

<sup>8</sup> FSB, The financial Stability implications of Leverage in Non-Bank financial Intermediation, September 2023.

<sup>9</sup> Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to certain undertakings for collective investment in transferable securities.

<sup>10</sup> Article 25 of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers (hereinafter “AIFM Directive”): The competent authorities will assess the risks that an AIFM resorting to leverage regarding the AIFs it manages may entail, and always provided this is considered necessary for the stability and integrity of the financial system, the competent authorities of the Member State of origin of the AIFM, after informing ESMA, the ESRB and, where applicable, the competent authorities of the pertinent AIF, will set the leverage limits to which an AIFM may resort or other management restrictions of the AIF managed in order to limit the impact of the leverage on the generation of systemic risk in the financial system or market disturbance risks.

<sup>11</sup> AMCESFI, 2023 Annual Report (pages 39 and 40):

[https://www.amcesfi.es/f/webwam/RCL/Publicaciones/archivos/AMCESFI\\_Informe\\_Anual\\_2023.pdf](https://www.amcesfi.es/f/webwam/RCL/Publicaciones/archivos/AMCESFI_Informe_Anual_2023.pdf)

<sup>12</sup> CNMV Report. “Non-bank Financial Intermediation in Spain”. Financial year 2022:

[https://www.cnmv.es/DocPortal/Publicaciones/Informes/Monitor\\_IFNB\\_2022.pdf](https://www.cnmv.es/DocPortal/Publicaciones/Informes/Monitor_IFNB_2022.pdf)

<sup>13</sup> The Spanish CIS Regulation (RIIC) establishes a Free Investment Scheme debt limit (Article 73 of the RIIC).

<sup>14</sup> Includes Free Investment Scheme and Collective Investment Schemes of Free Investment Schemes

<sup>15</sup> EFAMA, 5 July 2023 “Open-ended funds and resilient capital markets - the perspective of the European asset management industry”: <https://www.efama.org/sites/default/files/files/Open-ended%20funds%20and%20resilient%20capital%20markets.pdf>

ESMA's approach to monitor leverage in the Fund<sup>16</sup> sector seems very reasonable and its methodology could be applied to other market participants operating with leveraged strategies.

As a conclusion, **recourse to leverage is low in European Investment Funds, basically within the scope of AIFs, with supervisors having the appropriate and necessary information and macroprudential tools para their control.**

## 2. Liquidity risk

Liquidity management is another key point to guarantee stability in financial markets. In this sense, European and Spanish regulations already consider numerous measures that reinforce stability, more so after including, with the recent modification of AIFM Directive and UCITS, the obligation to incorporate two CIS liquidity management tools. Likewise, it must be taken into account that:

- In the Investment Fund area, the UCITS and AIF Directives demand Management Companies have risk management procedures that identify and control the liquidity risk associated with each position (Article 51.1 of the UCITS Directive and Article 16 of the AIFM Directive and Article 48 of Delegated Regulation 231/2013<sup>17</sup>).

The ESMA Guidelines on liquidity stress testing in UCITS and AIFs of 16 July 2020 require these tests are performed and that they also take into account, not just the redemptions, but also the margin calls the Fund must face.

In the case of CISs, the Spanish legislation anticipated the inclusion of certain liquidity tools in the regulations previously to the aforementioned revision of the European Directives and the CNMV has published a Liquidity management guide (Technical Guide 1/2022 of the CNMV on the management and control of the liquidity of CISs) unifying in a single document all the relevant supervisory criteria related to the management and control of the liquidity of CISs. As developed in the next section, there are also macroprudential tools available to the supervisor regarding liquidity.

- In the case of Pension Funds, they also have an efficient risk management function, including liquidity risk management, albeit the IORP II Directive itself indicates in recital (48) that they are vehicles with low liquidity risk, given the nature of investors in the very long term. Similarly, they must perform an internal risk assessment (hereinafter "ORA"), which includes an assessment of the efficiency of the risk management system.

In addition, in its Consultation Paper on the draft Opinion on the Supervision of Liquidity Risk Management of IORPs, EIOPA identifies three possible sources of material liquidity risk in the case of occupational pension funds: a) margin calls in derivatives; b) early redemption of vested rights by participants;

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<sup>16</sup> ESMA Guidelines on Article 25 of Directive 2011/61/EU, 23/06/2021: [https://www.esma.europa.eu/sites/default/files/library/esma34-32-701\\_guidelines\\_on\\_article\\_25\\_aifmd.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-32-701_guidelines_on_article_25_aifmd.pdf)

<sup>17</sup> Delegated Regulation (EU) 231/2013 of the Commission, of 19 December 2012, supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general conditions on carrying out the activity, depositaries, leverage, transparency and supervision.



and c) individual or collective transfers of vested rights, indicating that the risks deriving from b) and c) are residual<sup>18</sup>.

In any case, The Pension Fund legislation in Spain imposes a liquidity ratio determined by each Pension Fund based on the needs and characteristics of the pension plans attached (Article 73 RPFP), together with liquidity requirements in the case of investing in structured products (Article 81 ter.2 b) RPFP).

In addition, from a historical point of view, according to the non-bank financial intermediation report by the CNMV, the following should be highlighted regarding Spanish Investment Funds from the impact of the crisis deriving from the lockdown due to COVID in March 2020 (a crisis caused by an occurrence external to the market itself):

- *The use of liquidity management tools of Spanish funds in 2020 was higher than usual, due to the COVID-19 crisis, which led to a significant increase in redemptions in March, as previously mentioned. No Spanish fund had to activate any extraordinary liquidity measures, such as suspension of redemptions or side pockets. Only five funds had to make partial redemptions. Furthermore, during the crisis, the CNMV strengthened its coordination mechanisms with management companies by encouraging these institutions to use, where appropriate, any liquidity management tools available. In particular, the CNMV recommended the valuation of assets according to bid prices and swing pricing schemes<sup>19</sup>.*
- *Investment funds were particularly affected by the COVID-19 crisis in March 2020, causing a decline in the value of the assets of such institutions, as well as an increase in net redemptions. In the subsequent months, we experienced a new expansionary phase that left the annual balance almost completely unchanged<sup>20</sup>.*

There were no relevant incidents regarding Spanish Investment Funds in the case of the invasion of Ukraine (low exposure), as reflected in the 2021 non-bank financial intermediation report by the CNMV<sup>21</sup>.

Based on all the above, **it is not considered necessary to impose new regulatory demands in this area.**

### **3. Macroprudential Supervision in Spain: AMCESFI and macroprudential tools regarding liquidity and leverage included in the Spanish legislation**

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<sup>18</sup> [Opinion on the supervision of the management of operational risks faced by IORPs \(EIOPA-BoS-19-247\)](#)

<sup>19</sup> Non-bank financial intermediation in Spain. 2020 financial year. Page 10

<sup>20</sup> Non-bank financial intermediation in Spain. 2020 financial year. Page 28

<sup>21</sup> CNMV Report on non-bank financial intermediation in Spain. 2021 financial year (page 31): [https://www.cnmv.es/DocPortal/Publicaciones/Informes/IFNB\\_2021\\_2.pdf](https://www.cnmv.es/DocPortal/Publicaciones/Informes/IFNB_2021_2.pdf)

The Spanish market has an authority responsible for macroprudential supervision, AMCESFI, created by Royal Decree 102/2019, of 1 March, which establishes the Macroprudential Authority Financial Stability Board, its legal regime and develops certain aspects relating to macroprudential tools, with the aim of contribute to the stability of the financial system as a whole through the identification, prevention and mitigation of whatever circumstances or actions may originate a systemic risk. For this purpose, AMCESFI follows up and analyses the factors that can affect the systemic risk and may issue opinions, alerts and recommendations.

AMCESFI has proven to be a basic pillar to protect the stability of the Spanish financial system, it being expected that, by means of an adequate combination of macroprudential tools, it may continue mitigating the systemic risks without harming the dynamism and efficiency of the market.

Finally, it should be highlighted that, in the latest report by AMCESFI (corresponding to 2023)<sup>22</sup>, there is a positive assessment of the levels of leverage and liquidity of Spanish Investment Funds:

*“The estimated leverage of the investment funds of FE1<sup>23</sup> reveals that the market risk exposure of these institutions continues below the maximum levels permitted according to the legislation. The leverage of the entities is assessed through the use of derivatives (indirect leverage), as financial indebtedness (direct leverage) is severely restricted by the regulations. In this manner, the analysis of the NBFI CISs shows that gross exposure to market at the close of the 2023 financial year amounted to 2023 27.5% of their assets, a lower percentage than in 2022 (40%), while the net exposure only amounted to 10.8% of the assets. This last figure makes clear that by the end of the year the leverage of Spanish investment funds was below the maximum permitted (100% of assets).*

*The liquidity conditions of Spanish investment funds continued being satisfactory in 2023, with a slight improvement regarding the previous year. Liquidity risk assessment is particularly important in the case of these funds, in their majority allowing for daily redemption. The ratio of high-quality liquid assets (HQLA), that takes into account both the type of asset and its credit rating when determining the liquid assets of the portfolio, was of 55.5% for the total of the NBFI funds (53.9% in 2022). The figure was 49.9% for mixed funds, 61.7% for fixed income funds, and 61.8% in the the case of money market funds. Individually, it can be seen that most investment funds had an HQLA level exceeding 40%, with only 15.9% of mixed funds and 6.2 % of fixed income funds (in terms of assets) with a ratio below this threshold”.*

Likewise, the Royal Decree for constitution of AMCESFI<sup>24</sup> includes in Article 15 tools for macroprudential supervision of the liquidity and leverage of CISs:

*“Article 15. Macroprudential tools.*

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<sup>22</sup> 2023 AMCESFI Annual Report. Pages 39 and 40:

[https://www.amcesfi.es/f/webwam/RCL/Publicaciones/archivos/AMCESFI\\_Informe\\_Anual\\_2023.pdf](https://www.amcesfi.es/f/webwam/RCL/Publicaciones/archivos/AMCESFI_Informe_Anual_2023.pdf)

<sup>23</sup> FE1 are (FE1) collective investment vehicles with characteristics that make them susceptible to massive redemptions,

<sup>24</sup> Royal Decree 102/2019, of 1 March, which establishes the Macroprudential Authority Financial Stability Board, its legal regime and develops certain aspects relating to macroprudential tools.

1. *The Bank of Spain, the CNMV and the Directorate-General for Insurance and Pension Funds may adopt, under the terms envisaged in the corresponding sectoral regulations, the following macroprudential tools in order to prevent systemic risks and to ensure a sustainable contribution of the financial system for economic growth:*

*[...]*

*f) The suspension of the redemption of units in collective investment institutions, pursuant to the provisions of Article 4.10 of the Regulation implementing Spanish Law 35/2003, of 4 November, on collective investment schemes, approved by Spanish Royal Decree 1082/2012, of 13 July, when, due to the number and size of the institutions affected, may have implications from the point of view of financial stability or the orderly operation of the securities market.*

*g) The adoption of measures aimed at reinforcing the level of liquidity of the portfolios of collective investment schemes as regulated by Spanish Law 35/2003 of 4 November, on Collective Investment Schemes, together with those of collective investment entities regulated by Law 22/2014, of 12 November, regulating venture capital firms, other closed-end collective investment schemes and management companies of closed-end collective investment schemes, amending Law 35/2003, of 4 November, on Collective Investment Schemes.*

*h) Setting limits to the level of leverage of collective investment schemes, venture capital firms, or closed-end collective investment schemes, together with other management restrictions regarding the vehicles manages, pursuant to Article 71 septies of Law 35/2003, of 4 November, and Article 87 of Law 22/2014, of 12 November, when such measures are adopted to preserve the stability and integrity of the financial system.*

In any case, the use of macroprudential tools will be considered as a last resort. The CNMV, together with the other three European authorities, acknowledges in the aforementioned statement on the macroprudential approach to asset management, that the intervention of authorities should only take place in the more extreme cases and that, in its place, the best method to follow would be a combination of ex ante requirements on liquidity and leverage and a wide availability of liquidity management tools used by the asset Management Companies, in the best interest of investors, as foreseen in the recent modification of UCITS and the AIFM Directive, also for the purposes of the financial stability mandate.

Positive mention should also be made of the assessment by AMCESFI of securities trading and post-trading financial infrastructures with registered address in Spain. The central counterparty (BME Clearing) and the central securities depository (Iberclear) are followed up and assessed by this authority. Therefore, this same report, apart from providing the results of the quinquennial of the International Monetary Fund, which highlights the improvements in the area of market infrastructures, expressly refers to these two entities:

*“Also, in reference to Central Counterparties (CCPs), the CNMV performed a review of the concentration risk management framework and of the methodology applied in the non-compliance simulation exercises. There was also the approval by the CNMV of the BME Clearing Recovery Plan and the inclusion of products linked to crypto-assets within its clearing activities. This authorisation resulted*



*from the analysis conducted by the CNMV in cooperation with the European Securities and Market Authority (ESMA) and the College of Supervisors of the CCP. Regarding the risk magnitudes of BME Clearing, during 2023 the initial margins required were reduced by a total of 25%, in respect to their average value in 2022, with the reduction in margins demanded in the Energy segment (–56%), as a consequence of the notable reduction in prices and volatilities of electricity and natural gas contracts cleared by BME Clearing, standing out even more.*

*Regarding the central depository, Iberclear, CSDR Refit came into force in January 2023. The Regulation introduces modifications to the settlement discipline regime. Furthermore, the rule provides that ESMA will draft a report for the European Parliament and the Council on the assessment of a possible reduction in the settlement cycle, its suitability, costs and benefits, risks and schedule without significant incidents. On the other hand, according to Iberclear’s data, under the penalisation regime, during 2023 there was a notable reduction in the number of penalties and a 33% drop in their total amount.”*

### **C) Developing an integral macroprudential policy focussed on financing via the securities markets (MBF)<sup>25</sup>**

For this it is necessary to:

#### **1. Overcoming the use of terminology such as non-bank financial intermediation (NBFI)**

In the same way the term “shadow banking” was recently overcome<sup>26</sup>, it is considered that the reference to non-bank financial intermediation “NBFI” must evolve:

- I. In the first place, continuing to group all financial institutions other than banks under the same macroprudential risk perspective, when the different agents will respond to different risks and probably convey them in a different manner within the financial system<sup>27</sup>, is an erroneous starting point.
- II. Similarly, because the use of uniform terminology for entities that are so different hinders the adaptation of the necessary policies to guarantee the stability of the system for the specific characteristics of each agent, together with the creation of the pertinent macroprudential tools.

<sup>25</sup> In line with the proposal of the Bank of England included in its document: Financial Stability in Focus: The FPC’s approach to assessing risks in market-based finance: <https://www.bankofengland.co.uk/-/media/boe/files/financial-stability-in-focus/2023/the-fpcs-approach-to-assessing-risks-in-market-based-finance.pdf>

<sup>26</sup> This is how the ESRB referred to the EU NBFI Risk monitor report up to 2018 ([https://www.esrb.europa.eu/pub/reports/nbfi\\_monitor/html/index.es.html](https://www.esrb.europa.eu/pub/reports/nbfi_monitor/html/index.es.html)).

<sup>27</sup> As noted in the Discussion Paper of the Central Bank of Ireland (page 7): *The Central Bank also recognises that the fund sector is just one part of overall NBFI sector. In time, other parts of the NBFI sector may also require a macroprudential lens, depending on the specific systemic risks those sectors pose.* CBI Discussion Paper. July 2023. “An approach to macroprudential policy for investment funds”: [https://www.centralbank.ie/docs/default-source/publications/discussion-papers/discussion-paper-11/dp-11-an-approach-to-macroprudential-policy-for-investment-funds.pdf?sfvrsn=23059f1d\\_3](https://www.centralbank.ie/docs/default-source/publications/discussion-papers/discussion-paper-11/dp-11-an-approach-to-macroprudential-policy-for-investment-funds.pdf?sfvrsn=23059f1d_3)

- III. Thus, the NBFi concept includes both regulated and supervised entities (such as the Investment Funds subject to the UCITS<sup>28</sup> and AIFM<sup>29</sup> Directives and the Pension Funds subject to the IORP II Directive<sup>30</sup>, and, in the case of Spanish Pension Funds, the IORP II regulatory framework, with some exceptions, is also replicated for personal Pension Funds) and unregulated entities such as family offices that are more opaque for regulators. Also, depending on the scope of the concept<sup>31</sup>, doubts could arise regarding the consideration of the market infrastructures as NBFi, when such entities are subjected to intense regulation in the EU, and carry out their activity within a continuously supervised and monitored framework.

## **2. Considering all players participating in the financial intermediation via the different securities markets**

According to the main objective of the macroprudential policy of maintaining financial stability, reinforcing the resistance capacity of the financial system and limiting the vulnerability increase, it is considered that an adequate approach to deal with macroprudential risk could be to develop an analytical framework that allows the EU to concentrate on the risks inherent to the securities markets themselves and identify which activities contribute to that risk, more than an analysis segmented into entity typology.

In this context, and considering the notable focus placed by the consultation on CISs, it is necessary to defend a macroprudential policy specifically aimed at financing in securities markets that takes into account that the asset management sector only represents a part of the broad set of participants in securities markets. Investment Funds are not the only participants in securities market and, therefore, all the players (regulated and non-regulated) participating in the financial intermediation via the main markets must be considered for the aforementioned framework to have a comprehensive view.

In addition, Funds offer diversification to investors and are subject to strict regulations with which they must comply that include rigorous rules regarding leverage limits, eligibility of assets and diversification.

For this reason it is considered that, instead of isolated sector macroprudential risk perspective (in the case of the consultation focussed on NBFIs), an approach focussed on the market intermediation activity may be more appropriate, in such a way that what is assessed is the stability and integrity of the main securities markets, according to the interconnectivity between all the players participating in

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<sup>28</sup> Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

<sup>29</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

<sup>30</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision.

<sup>31</sup> The actual document of the Consultation refers to the concept coined by the FSB, "the NBFi sector", a category in which financial market infrastructures are also included.

these, that is, the identification of collective vulnerabilities, enabling the identification of possible systemic risk focal points<sup>32</sup>.

To this effect, stress testing with the intervention of a sample of all the agents participating in the markets could be an extremely useful tool, both for supervisors and for the market participants themselves to integrate the behaviours of other agents facing possible shocks and to correct their own responses, making the financial ecosystem more robust and collaborative.

### 3. Promoting greater coordination in macroprudential supervision and data exchange at European level

The benefit of an increase in coordination between the supervisory bodies of Member States, for the coherent application of macroprudential policies, is acknowledged. Insufficient coordination may give rise to instability problems, as admitted by the Consultation, but this must not be sufficient but also efficient.

This is precisely one of the aims of the European Systemic Risk Board (hereinafter “ESRB”)<sup>33</sup>: to eliminate the fragmentation and reach greater coherence between macroprudential and microprudential supervision<sup>34</sup>. One of the options to show the increase in the importance of the securities markets sector lately could be to reinforce the weight of European Supervision Authorities (hereinafter “ESAs”) in this body, currently chaired by the European Central Bank (hereinafter “ECB”) which also supports its Secretariat.

For these purposes, attention is drawn to the Proposal for a Regulation on shared information proposed by the European Commission (hereinafter “EC”) and currently in the ‘trilogue’ negotiations stage<sup>35</sup> (hereinafter “Proposal for a Regulation on shared information”). The object of this Proposal is to streamline the exchange of information between financial sector supervisors in order to modernise the supervision and to establish a system that provides precise,

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<sup>32</sup> According to excerpts of the document by the Bank of England: Financial Stability in Focus: The FPC’s approach to assessing risks in market-based finance. *No part or sector of the system of MBF can be assessed fully in isolation, so the FPC uses a combination of perspectives to identify and prioritise vulnerabilities.*

*Systemically important activities can often be carried out by a large number of small entities. This means the FPC needs to consider markets as a whole and the collective behavioural responses of firms in stress.* Bank of England. Financial Stability in Focus: The FPC’s macroprudential approach to operational resilience Financial Policy Committee March 2024: <https://www.bankofengland.co.uk/-/media/boe/files/financial-stability-in-focus/2024/financial-stability-in-focus-the-fpcs-macroprudential-approach-to-operational-resilience.pdf>

<sup>33</sup> Article 3.2 of Regulation (EU) 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

<sup>34</sup> “Responsibility for macro-prudential analysis remains fragmented, and is conducted by various authorities at different levels with no mechanism to ensure that macro-prudential risks are adequately identified and that warnings and recommendations are issued clearly, followed up and translated into action. A proper functioning of Union and global financial systems and the mitigation of threats thereto require enhanced consistency between macro- and micro-prudential supervision”. Recital 11 of the aforementioned Regulation 1093/2010.

<sup>35</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 as regards certain reporting requirements in the fields of financial services and investment support: [text of the European Commission](#), [text of the Council](#) y [text of the European Parliament](#).

consistent and pertinent information to the supervision authorities (both ESAs and national ones) while minimising the regulatory load regarding the submission of information<sup>36</sup>. Likewise, it is relevant to highlight that this Proposal for a Regulation establishes different rules aimed at eliminating redundant and obsolete regulatory requirements regarding information<sup>37</sup>.

Inasmuch as this Proposal for a Regulation on shared information is at an advanced processing stage, the efforts regarding coordination of prudential supervision and data exchange should be channelled through this to avoid duplication and inefficiencies deriving from the simultaneous processing of rules having the same purpose.

Taking the above into account, under the “single report” principle, there is an opportunity to favour efficiency when exchanging data between ESAs and the respective NCAs, regarding the information referring to the entities under their corresponding scope of supervision. This would permit an efficient management of the large volume of data generated in the Member States for their later analysis at ESRB level.

In this way, reinforcing the position of ESAs in the ESRB and facilitating information exchange at the European level could attain a greater cohesion in the macroprudential policy of securities markets.

Notwithstanding the above, ANCs would continue being responsible for collecting the data relating to supervision in their respective jurisdictions, while also for monitoring any event that may compromise the stability of their local markets, apart from supervising the entities trading under their regulation.

In this respect, it is relevant to point out that, at the domestic level, national supervisors already have sufficient and detailed information to perform prudential supervision. Therefore, although it is considered useful for ESAs to bring together information on the portfolios of the agents participating in the different markets, this submission of information and cooperation between supervisory bodies must be performed based on the information already held by NCAs. ESMA, the European Insurance and Occupational Pensions Authority (hereinafter “EIOPA”) or the ECB, avoiding the creation of new obligations regarding information (in line with the principles that inspire the Proposal for a Regulation on shared information).

#### **4. Taking into consideration not only the demand for liquidity but also the supply of liquidity**

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<sup>36</sup> *Explanatory Memorandum*, section 1, of the Proposal for a Regulation on shared information.

<sup>37</sup> Recital 4 of the Proposal for a Regulation on shared information by the EC: “*The European Supervisory Authorities should regularly review the reporting requirements and propose, where appropriate, to streamline and remove redundant or obsolete requirements. They should coordinate this work via the Joint Committee of the European Supervisory Authorities. Facilitating the sharing and reuse of the information collected by authorities, while safeguarding data protection, professional secrecy and intellectual property, should reduce the burden on reporting entities and on authorities by avoiding duplicative requests, in line with the Strategy on supervisory data in EU financial services. Information sharing should also contribute to better coordination of supervisory activities and supervisory convergence*”.

Finally, at times of crisis, attention should be paid not only to demand-side constraints, but also to how to reduce supply-side constraints in liquidity.

In this sense, the FSB has shown that recent volatilities in the markets are due to the breach there is between liquidity demand and supply during periods of crisis, however, the focus still remains on the demand for liquidity.

Accordingly, the proposal is made to the European Commission to consider possible options that increase the supply of liquidity such as, for instance, through requesting banking supervisors to review how to reinforce the supply of liquidity, may it be by means of lower requirements in the case of market makers, at times of crisis, or by modifying the possibilities available to participants in markets with a central counterparty to face margin calls (in practice extending such possibilities).

## **5. Giving preference to adequate sectoral supervision and regulation as opposed to new macroprudential tools**

The macroprudential framework must ensure that risks are of a macroprudential nature, not serving as compensation for a lack of adaptation of the legislation or for the effective supervision by the authorities<sup>38</sup>.

In the case of Investment Funds, not only did the review of the UCITS and AIFM Directives provide Management Companies with sufficient liquidity tools, but the CNMV can also act ex ante in the Fund authorisation procedure. Ultimately, it can even revoke the authorisation of the Fund or the CISMIC for a failure to comply with the risk management systems.

In any case, from the macroprudential approach to asset management, an adequate ex ante supervision is considered more appropriate to mitigate vulnerabilities than the inclusion of procyclical tools such as liquidity buffers, whose adequacy as macroprudential tools for asset management are in question.

In the case of being considered adequate, extending ex ante supervision tools to other participants of markets with excessive leverage is recommended, in line with the obligations deriving from the application of Article 25 of the AIFM Directive.

In addition, it should be indicated that some of the measures under consultation, without being specifically aimed at financial market infrastructures, could affect their operation and supervision (for example, the “System-wide stress test”). In this respect, insistence should be placed on the adaptation of the current sectoral regime applicable to these infrastructures, with Regulations that contain an exhaustive framework of prudential, organisational and operational requirements, in the case of CCPs this being completed with a specific regime for recovery and resolution. Therefore, any measure aimed at improving the macroprudential supervision of

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<sup>38</sup> Verena Ross, Chair of ESMA, stated as follows: “we need to be careful and differentiate risks that are macroprudential in nature and need to be addressed by macroprudential tools, from risks resulting from inadequate regulation or lack of proactive supervision and enforcement. Let’s ensure that the macroprudential framework is not there to compensate for loopholes in the regulation and/or supervision.” Macroprudential policy for investment funds conference, Keynote speech from Verena Ross, ESMA Chair, 20 May 2024 (p.7) [https://www.esma.europa.eu/sites/default/files/2024-05/ESMA50-43599798-9644\\_Verena\\_Ross\\_Speech\\_Macroprudential\\_framework\\_for\\_investment\\_funds.pdf](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA50-43599798-9644_Verena_Ross_Speech_Macroprudential_framework_for_investment_funds.pdf)



NBFIs that may, indirectly, have an impact on the specific regulation of CCPs and central securities depositories, must be carefully analysed and weighted.

#### **D) Considering the existing regulation within the macroprudential scope in the insurance sector**

The viewpoint is fully shared with the European Commission regarding the fact that the insurance sector considers a limited systemic risk and that, also, it has broad macroprudential tools to assess and mitigate this within the context of the European prudential framework, Solvency II. Likewise, it is appropriate to highlight that Solvency II is currently under review in order to grant the supervisory authorities additional powers regarding macroprudential matters.

In addition to Solvency II, the Insurance Recovery And Resolution Directive (“IRR”) will soon be published in the Official Journal of the EU. This regulation establishes a harmonised framework at EU level that will provide the authorities a set of instruments for resolution that allows them to intervene sufficiently in advance and hastily if insurance companies are unfeasible or will probably become unfeasible, so as to guarantee the rights of insurance policy holders.

Among other questions, the IRRD will regulate the obligation of insurance companies to draw up preventive recovery plans establishing measures to restore their financial situation whenever his deteriorates significantly. This also establishes the obligation for the authorities to draw up resolution plans and to assess the feasibility of the entities and groups, conferring powers to the supervisory authorities for early intervention, in the case of a deterioration of the financial situation or a failure to comply with the regulatory requirements.

Based on that stated above, it is considered that the insurance sector has an adequate prudential framework and, therefore, needs no further requirements. This assessment is fully aligned with the following statement by the European Commission that appears on page 7 of the document under consultation:

*“The objective of this consultation is to seek stakeholders’ view on the adequacy of the macroprudential framework for NBFIs with the intent not to revisit recent legislative agreements (e.g., Solvency II review, EMIR 3).”*

## II. ANSWERS TO THE ISSUES RAISED IN THE CONSULTATION

Answers to all those issues relevant to the asset management sector are provided herein.

### **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?**

The analysis carried out by the European Commission fails to keep in mind all the risks and vulnerabilities that affect the capital market from a macroprudential point of view, as it focuses on a single category of institutions, such as NBFIs, which also encompasses a heterogeneous set of entities. Therefore, such point of view has the following problems:

- (i) As such approach is based on the type of entity rather than activities that may pose risks to securities markets, it excludes other agents that may perform tasks that are relevant to the functioning of securities markets (such as prime brokers).
- (ii) The general concept of NBFI includes a very different set of entities, including supervised and regulated entities, CISs and PFs, whose competent national authorities (hereinafter "NCAs") have detailed information (in countries, such as Spain, more than in other EU countries) and other entities, such as family offices, which are far less visible, and on which the measures to be adopted should be more focused, as long as their size imply a risk to financial stability, as they are expanding activities that provide an alternative source of financing to banking, which should be encouraged and not limited by new regulations. It is important to differentiate, within this area, entities and activities with macroeconomic and systemic impact from those without such impact.
- (iii) While the correct management of liquidity by investment vehicles is important, in the specific case of UCITS and AIFs, this issue has already addressed in the latest amendment of the Directives establishing liquidity tools with the obligation for Managers to incorporate at least two of the latter to the management of CISs.
- (iv) Moreover, the supply of liquidity should be addressed and an analysis on how to strengthen such supply, especially in times of market stress, is necessary.

In the case of Spanish investment funds, excluding hedge fund collective investment schemes, Article 8 of Order EHA/888/2008 of 27 March on transactions by financial collective investment schemes with derivative financial instruments stipulates that "*the total exposure to market risk associated with derivative financial instruments may not exceed the net assets of the CIS*", and in the case of hedge fund collective investment schemes, debt may only be incurred provided that such indebtedness does not exceed five times the value of their assets and that it is consistent with the implementation of their investment policy and strategy (Article 73.1 j) of the Spanish Royal Decree 1082/2012, of 13 July, authorising the Regulations implementing Spanish Law 35/2003, of 4 November, on collective investment schemes, hereinafter "RIIC").

**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:

As a preliminary observation, it is important to remember that CISs and PFs both operate under the principle as agents, which means that the Managers do not operate with their own assets, but manage investors' money according to specific orders. Investors are aware of the economic risks associated to the underlying assets in which they invest due to disclosure obligations set by sectoral regulations (both pre- and post-contractual). Market corrections in the value of assets are carried on to the net asset value of the fund.

Thus, while the interconnection between Asset managers and other participants of the financial market (as investors of Funds and as lenders to Funds<sup>39</sup>) cannot be denied, and also having banking groups that integrate CISMCS and PFMEs, the possibility for a crisis originating in the investment or pension fund sector could spread to other sectors is limited:

- These are highly regulated sectors, at European and national level.
- In the case of CISs, UCITS and AIFs, although there is greater freedom in the configuration of the product, Managers are subject to a control framework.
- With regard to liquidity risk, the recent revision of the UCITS and AIF Directives provided CISMCS with a wide range of liquidity tools, establishing the obligation to incorporate at least two of them.
- In regards to leverage, in the case of UCITS it is limited (Article 51.3 of the UCITS Directive) and in the case of AIFs, the Manager is responsible for setting and complying with a leverage limit in the prospectus (in the case of Spain, a limit is established in Article 73,.1 j) of the RIIC on the possibility of indebtedness for hedge fund collective investment schemes).
- Regulations for credit institutions already set solvency requirements (Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms) governing their disclosure to Investment Funds.

**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?**

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

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<sup>39</sup> In the case of debt funds regulated by Article 73.5 of the RIIC.

☐ 5 - To a very high extent

☐ Don't know / no opinion / not applicable

- The risk of default in the case of Investment and Pension Funds is very low. As mentioned above, the Funds issue equity stakes whose net asset value reflects market changes and where the risk is borne by the investor, unlike debt instruments (including bank deposits) where the risk is part of the bank's balance sheet.
- From a general point of view, the number of market participants (having a total, in Spain, of 176 Asset managers, whether CISs or pension funds, 94% of Managers are SMEs and only 6% are large companies, according to INVERCO data) and the type of functions they carry out mean that a default by one or more entities is unlikely to affect the functioning of the market. Therefore, the Spanish legislation provides the mechanism for the replacement of the CISMCS of the fund(s), in the event of insolvency of the CISMCS (Article 53 of Spanish Law 35/2003, of 4 November, on Collective Investment Schemes, hereinafter "LIIC" for its abbreviation in Spanish).

**Question 4. Where in the NBFIs sectors could systemic liquidity risk most likely materialise and how? Which specific transmission channels of liquidity risk would be most relevant for NBFIs?**

Please provide concrete examples:

Firstly, and as already mentioned, a comprehensive mapping of systemic liquidity risk should also be assessed from a point of view of liquidity supply, analysing how the interaction between demand and supply in certain market segments may lead to a decrease in traded assets or an increase in transaction costs.

Historically speaking, the intent is to make reference to the crisis resulting from the COVID-19 lock-down in March 2020 (a crisis caused by an event external to the market itself), as well as to highlight the following aspects related to the performance of Spanish investment funds according to the report on non-bank financial intermediation in Spain developed by the CNMV:

- *The use of liquidity management tools of Spanish funds in 2020 was higher than usual, due to the COVID-19 crisis, which led to a significant increase in redemptions in March, as previously mentioned. No Spanish fund had to activate any extraordinary liquidity measures, such as suspension of redemptions or side pockets. Only five funds had to make partial redemptions. Furthermore, during the crisis, the CNMV strengthened its coordination mechanisms with management companies by encouraging these institutions to use, where appropriate, any liquidity management tools available. In particular, the CNMV recommended the valuation of assets according to bid prices and swing pricing schemes<sup>40</sup>.*
- *Investment funds were particularly affected by the COVID-19 crisis in March 2020, causing a decline in the value of the assets of such institutions, as well as an increase in*

<sup>40</sup> Non-bank financial intermediation in Spain. 2020 financial year. Page 10

*net redemptions. In the subsequent months, we experienced a new expansionary phase that left the annual balance almost completely unchanged<sup>41</sup>.*

During the invasion of Ukraine, there weren't any events relevant to Spanish investment funds low exposure), as seen in the CNMV's report on non-bank financial intermediation for the financial year of 2021<sup>42</sup>.

Bearing in mind the above examples, it is safe to say that, in general, there is no strong evidence to suggest that the current European standards on Investment Funds, with the reinforcement of liquidity tools introduced by the revision of the UCITS and AIF Directives, are insufficient to manage exceptional market situations.

**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:

We reach the following consideration in relation to leverage:

- In line with the FSB, while insurance companies, pension funds and investment funds represent 2/3 of NBFIs' assets, 90% of the leverage in the balance sheet is assigned to other NBFIs such as broker-dealers, hedge funds, holding companies and securitisation vehicles.
- In the case of European funds:
  - ✓ The UCITS Directive limits leverage with derivatives (Article 51.3 of the Directive).
  - ✓ The AIFMD requires the manager to disclose the limit on leverage in the prospectus. Additionally, Article 25.3 of the AIFMD establishes that “3. *The AIFM must prove that the leverage limits for each AIF it manages are reasonable and that it complies at all times with the limits set by the AIFM. The competent authorities shall assess the risks that may arise from the use by an AIFM of leverage in respect of the AIFs it manages and, when deemed necessary for the financial system's stability and integrity, the competent authorities of the local Member State of the AIFM shall, upon prior notification to ESMA, the ESRB and, where applicable, the competent authorities of the corresponding AIF, shall set limits on the level of leverage an AIFM is allowed to employ or other management restrictions on the AIF in respect of the AIFs it manages in order to limit the impact of leverage on the generation of systemic risk in the financial system or risks of market disruption*”.

<sup>41</sup> Non-bank financial intermediation in Spain. 2020 financial year. Page 28.

<sup>42</sup> CNMV Report on non-bank financial intermediation in Spain. 2021 financial year (page 31): [https://www.cnmv.es/DocPortal/Publicaciones/Informes/IFNB\\_2021\\_2.pdf](https://www.cnmv.es/DocPortal/Publicaciones/Informes/IFNB_2021_2.pdf)



- The use of leverage in European funds is low and is used not only to gain additional exposure to certain assets, but also for risk management purposes (hedging) and as an efficient portfolio management technique<sup>43</sup>.
- Liquidity risk in the insurance industry is not significant. This is highlighted by the European Insurance and Occupational Pensions Authority (EIOPA) in its [Report on Financial Stability for 2024](#). Said report indicates that the aggregate liquidity position of insurance companies remained, in general terms, stable and, therefore, there is no reason to be concern about such risk.

Nonetheless, as part of the review being carried out for Solvency II, entities will be required to have liquidity risk management plans in place. In this regard, EIOPA has launched a [public consultation](#) process for a technical standard, until 2 January 2025, which details the expected content and requirements of such plans.

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

To date, Spanish investment funds and their Managers have very little experience in crypto-assets. This is also the case of the insurance sector.

**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:

In general, the macroprudential approach applied to financial markets should acknowledge the structural differences between banks and non-banks. Supervision of entities, such as Fund Managers, must be appropriate to its nature and risks, thus avoiding regulatory burdens that may hinder such entities' ability to contribute to the growth and stability of the capital market.

In order to be consistent with the Capital Markets Union (hereafter, "CMU") and to reduce dependence on bank financing by promoting capital market financing, it is key not to impose requirements on Investment Funds that assimilate/approximate them to banks, but rather always take into account their different natures.

In the case of Asset Managers, the counter-cyclical macro-prudential approach applied to banks does not add value. As stated by FSB, all financial institutions face similar risks, albeit to varying degrees. Nonetheless, there are several fundamental differences

<sup>43</sup> EFAMA, 5 July 2023 "Open-ended funds and resilient capital markets - the perspective of the European asset management industry": <https://www.efama.org/sites/default/files/files/Open-ended%20funds%20and%20resilient%20capital%20markets.pdf>

between the banking sector and market-based finance, as they require completely different macroprudential approaches.

Firstly, banks take up a core position in the financial system. Therefore, failure can have consequences of a greater reach, as described by the term “too big to fail”. On the other hand, with certain possible exceptions, such as central counterparties, no market participant is big enough to destabilise securities markets.

Secondly, it is impossible to get rid of solvency and liquidity risks inherent to banking activities, as this would require banks to exclusively hold safe assets, which is commercially impossible. Bearing this in mind, banking regulators have introduced micro- and macro-prudential measures, such as capital and liquidity buffers (countercyclical), to mitigate such vulnerabilities.

However, in market-based financing it is possible to remove the vulnerabilities that certain sectors may face without having to resort to such buffers. For example, eliminating the alleged first mover advantage in the fund sector is possible, ensuring that the Investment Funds charge investors who reimburse their shares any transaction costs incurred by the Fund. Likewise, reducing the procyclicality of margin calls is possible by allowing market participants to meet this demand on liquidity by submitting holdings of money market fund (hereinafter “MMF”) as guarantees against CCPs.

Contrary to the CMU’s agenda, trying to mitigate such vulnerabilities by introducing countercyclical capital and/or liquidity buffers would overlook the non-bank nature of the investment fund industry, in addition to disabling risk-taking in European financial markets.

In the context of the insurance industry, there are examples of measures that could help insurance companies to play a bigger role within the CMU framework. To such regard, it is important for the capital consumptions faced by insurance companies (Solvency II) to not be too penalising and, therefore, represent an obstacle to investment. The recent report on the future of European competitiveness ([Draghi report](#)) highlights this point and calls on regulators to assess a review of capital charges, taking advantage of the Solvency II review.

### 3. Unmitigated liquidity mismatches

#### 3.1 Money Market Funds (MMFs)

**Question 8. What are pros and cons of giving the competent authority the power to increase liquidity buffer requirements on an individual or collective basis in the event of system-wide financial stability risks? Under which other situation do you believe MMF liquidity buffers should be increased on an individual or collective basis by the competent authority?**

##### **Question 8.1 Please explain what are the pros?**

Unlike banks, Managers of Collective Investment Schemes (hereinafter, “CISMCs” and “CISs”) follow an agency model and do not assume risks as the leading player, where investors are responsible for bearing the economic risks associated with the underlying

assets and are aware of such risks due to the reporting obligations provided by the corresponding regulation (pre- and post-contractual).

Thus, in general, the macroprudential approach applied to financial markets should acknowledge the structural differences between banks and non-banks, including MMFs.

Regarding the macroprudential tools proposed for banks, as capital and liquidity buffers (anti-cyclical), these tools do not provide added value to asset Management Companies, as acknowledged in the statement on the macroprudential focus on asset management<sup>44</sup> published in April, in which four European authorities (*FMA, AMF, CONSOB and CNMV*) backed the opinion that it was very improbable that such anti-cyclical regulatory requirements would be useful in reducing risks to financial stability. This is due to the fact that asset managers take decisions in the name of investors. Consequently, the idea of inducing asset managers to act in an anti-cyclical manner (in practice, against their investors' preferences) cannot be an appropriate solution.

However, although the macroprudential tools available to a supervisor in Spain include the implementation of measures aimed at reinforcing the level of liquidity of CIS portfolios (including MMFs), the CNMV considers that these measures should be used as a last resort.

#### **Question 8.2 Please explain what are the cons?**

In light of the recent review of the AIFMD/UCITS, as well as the recent conclusions reached by FSB/IOSCO on recommendations for liquidity management in open-ended funds (OEFs) or the previously mentioned statement on the macroprudential approach to asset management, any variation in liquidity buffers notified by a public body would openly contravene the principle of entrusting the manager with the ultimate responsibility for managing the liquidity of the Funds. In practical terms, such an intervention would intervene, if not put at stake, the task of management of a Fund.

#### **Question 9. How can ESMA and ESRB ensure coordination and the proper use of this power and what could be their individual roles?**

**Please provide specific examples or scenarios to support your view:**

#### **Question 10. In view of the new UCITS supervisory reporting obligations and improvements to AIFMD reporting, how could reporting requirements under the MMFR be aligned, simplified and improved to identify stability risks (such as liquidity risks) and to ensure more efficient data sharing?**

It is important to simplify report submissions and avoid superpositions. Such simplification is attainable by optimising information flows with the improvement of the interoperability of existing reporting platforms. Therefore, data already submitted under

<sup>44</sup> Statement by the national competent authorities of Austria (FMA), Italy (CONSOB), Spain (CNMV) and France (AMF): [A macro-prudential approach to asset management](#)

UCITS, AIFMD and MMFR could be shared by NCAs without having to duplicate efforts. This would allow more effective supervision, with less redundancy and more agility in identifying risks, such as liquidity risks, without imposing unnecessary additional requirements for Funds or changing the current regulatory frameworks.

**Question 11. Do you believe that the proposed enhancements to the stress testing framework listed above are sufficient to identify and mitigate liquidity risks effectively?**

**If not, what specific elements would you suggest including in the strengthened supervision and remediation actions for detecting liquidity risks?**

**Question 12. What are the costs and benefits of introducing an EU-wide stress test on MMFs?**

**Should this stress test focus mainly on liquidity risks?**

As previously mentioned, in order for this exercise to achieve its goals, it is important to include all market participants in the increased regulatory scrutiny. While it may seem to be a tool that could be of use to inform supervisors and market participants, other players must be included in order to make the interrelationships with less popular actors/activities visible.

**Question 13. What are your views on the EU ban on a reverse distribution mechanism by MMFs?**

**Question 14. Can you provide insights and data on how the reverse distribution mechanism has impacted in practice the stability and integrity of MMFs?**

**Question 15. Should regulatory requirements for MMFs take into account whether the instrument they are investing in is admitted to trading on a trading venue (regulated markets, multilateral trading facilities or organised trading facilities) with some critical level of trading activity?**

Please explain your answer:

See answer to question 37.

### 3.2 Other open-ended funds (OEFs)

**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?**

- CIS managers provide the supervisor highly detailed information on their Funds (investment policy, liquidity profile, etc.) at the time of authorisation and upon their incorporation. Thus, Spanish investment funds provide, in their confidential statements, very detailed information on their investment portfolio and derivatives trading on a monthly basis. In this respect, in Spain, the type of reporting to the supervisor could set a standard for other European jurisdictions.
- The ESMA Guidelines on liquidity stress tests for UCITS and AIFs establish regular liquidity stress tests. Results of the latter must be made available to the competent national authorities.
- Article 25 of the AIFM Directive determines a supervisory tool for the risk of leverage and the ESMA guidelines on this article set coherent, effective and efficient practices for national supervisory authorities for a common, uniform and consistent application of Article 25 of the AIFMD.
- Lastly, the revision of the UCITS and AIFM Directives has introduced a wide range of liquidity tools into the standard to avoid potential liquidity inconsistencies, including anti-dilutive tools (swing pricing, etc.).

**Question 16. [To NCAs/EU bodies] What is the supervisory practice and your experience with monitoring and detecting unmitigated liquidity mismatches during the lifetime of OEFs?**

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

By incorporating certain variables mentioned in the CNMV Guide on the management and control of the liquidity of collective investment schemes, in accordance with the fourth point, ratios or levels of liquidity of financial instruments could be applicable. Such ratios will vary depending on the type of assets, the estimated time horizons of sale (and, where appropriate, assets' costs of liquidation), as well as repayment scenarios and other payment obligations, and stress and back-testing.

**Question 18. [To NCAs/EU bodies] What supervisory actions do you take when unmitigated liquidity mismatches are detected during the lifetime of an OEF?**

**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?**

As a preliminary observation, it is worth highlighting that the main responsibility for the liquidity management of Investment Funds lies with the Management Company.

That said, the supervisory role of national authorities is relevant. To such effect, the national supervisor is deemed to already hold sufficient tools for such action:

- At the time of the Fund's authorisation, the supervisor monitors the consistency of the investment policy and the frequency of redemptions. Throughout the lifespan of the Fund, regular information on the composition of the portfolio is provided and, at times, in the event of certain breaches, revoke the authorisation of an Investment Fund or its Management Company.
- The regulation has introduced macroprudential tools that supervisors may use to monitor liquidity (Article 70 bis. Suspension of the issue, redemption or buyback and Article 71 septies of the LIIC).

*“Article 70 bis. Suspension of the issue, redemption or buyback.*

- 1. In the interests of unitholders or shareholders, or in public interest, the CNMV may require temporary suspension of the issue, redemption or repurchase of units or shares of CIS authorised in Spain, when their price cannot be determined or other reasons of force majeure”.*

*Article 71 septies. Supervision of leverage limitations, adequacy of credit evaluation processes and liquidity risk.*

*“7. In aims of ensuring equitable treatment of unitholders or shareholders, or for the stability and integrity of the financial system, the Spanish National Securities Market Commission may, on a temporary basis and justifying the necessity and proportionality of the measure:*

*a) Require management companies of collective investment schemes, individually or in respect of their plurality, to reinforce the level of liquidity of portfolios of the collective investment schemes managed and, in particular, increase the investment percentage in particularly liquid assets, as defined by the National Securities Market Commission (CNMV).*

*b) Authorise management companies of collective investment schemes, individually or in respect of their plurality, to establish notice periods for redemptions in one or several collective investment schemes managed by them without being subject to the requirements on deadlines, minimum amount and prior notice in the management regulations which are ordinarily applicable. Said notice periods may also be established by the Spanish National Securities Market Commission, which shall determine the redemptions to which the measure is applicable”.*

- Additionally, the CNMV published a Guideline on liquidity management (Technical Guide 1/2022 on the management and control of CISs) unifying in a single document all the relevant supervisory criteria related to the management and control of the liquidity of CISs.
- Lastly, it is worth highlighting:
  - (i) ESMA's report on the joint supervisory action related to liquidity risk management in UCITS in 2020<sup>45</sup>, following the COVID-19 crisis, concluded that, in general terms, UCITS Managers proved to have implemented and enforced appropriate and sufficient liquidity risk management processes and in compliance with their regulatory obligations, while also identifying areas for improvement (for example, specific cases where the assessment of liquidity prior to investments needed to be strengthened).
  - (ii) A liquidity stress test carried out by ESMA in 2020 established that, based on an average weekly redemption shock of 20% and taking the highest historical loss amount throughout 2017-2019, more than 86% of AIFs and 90% of UCITS would be resistant to the latter<sup>46</sup>.

**Question 20. Only for asset managers: What measures do you find particularly effective to measure and monitor liquidity risk in stressed market conditions?**

**Question 21. Only for 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?**

After the recent amendment of the UCITS and AIFM Directives that incorporated liquidity tools, Managers are deemed to have a wide enough range of measures at their disposal. To this regard and considering that the Directives establish the requirement to incorporate at least two of such tools, the regulatory developments of the latter must be as flexible as possible in relation to the managers' choice of when to activate them (avoiding establishing thresholds that determine their automatic application) and the operation for their implementation (i.e., processing of pending orders).

**Question 22. Only for asset managers: What are the challenges in calibrating worst-case and stress-case scenarios related to redemptions and margin calls?**

<sup>45</sup> ESMA, Public statement on compliance with UCITS liquidity rules, 24 March 2021: [https://www.esma.europa.eu/sites/default/files/library/esma\\_34-43-880\\_public\\_statement\\_-\\_2020\\_csa\\_ucits\\_liquidity\\_risks\\_management.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_34-43-880_public_statement_-_2020_csa_ucits_liquidity_risks_management.pdf)

<sup>46</sup> ESMA, Report on liquidity risk in investment funds, November 2020, p. 40.

**Question 23. [To NCAs and EU bodies] When monitoring or using results of liquidity stress tests, are you able to timely collect underlying fund data used by managers and the methodology used for the simulation? Are there other aspects that you find very relevant when monitoring the stress tests run by managers?**

**Question 24. [To NCAs and EU bodies] How do you use information collected from stress tests at fund level for other supervisory purposes and for monitoring systemic risks?**

**Question 25. Only for NCAs and EU bodies: What are the main benefits and costs of introducing a stress test requirement at the asset management company level and how could this be organised?**

While the question is aimed exclusively for national supervisory authorities, it begs for the following thought:

CISMCs already carry out liquidity stress tests at the level of Funds. Carrying out a liquidity stress test at CISMC level does not have an added value, as each Fund has a different liquidity risk and there is ownership unbundling between assets, funds and CISMCs. Therefore, carrying out a liquidity stress test at the CISMCs level does not seem, in principle, to be of any added value.

### 3.3 Other NBFIs and markets

#### Other NBFIs

**Question 26. What are your views on the preparedness of NBFIs operating in the EU in meeting margin calls, and on the ways to improve preparedness, taking into account existing or recently agreed EU measures aimed at addressing this issue?**

Please specify the NBFIs sector(s) you refer to in your answer:

Margin contributions in the scope of derivative transactions is an element to keep in mind by NBFIs during the management of liquidity. As previously established, the concept of NBFIs encompasses a wide range of entities, some of which are not regulated, and measures should focus on this latter group, provided that their size poses a risk to financial stability. In the case of investment funds, the following should be kept in mind:

- (i) Although Investment Funds use derivatives, the most frequent use is a hedge market risks and the exposure of Investment Funds to derivatives is

quite limited<sup>47</sup>, especially in UCITS with a limit set by the UCITS Directive itself (Article 51.3 of the Directive). In the case of AIFs, the manager sets the leverage limit in the prospectus. 65% of European funds do not use synthetic leverage<sup>48</sup>.

- (ii) The UCITS and AIFM Directives require Managers to have risk management procedures that identify and control the liquidity risk associated with each position (Article 51.1 of the UCITS Directive and Article 16 of the AIFMD and Article 48 of the Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, supplementing Directive 2011/61/EU of the European Parliament and of the Council related to exemptions, general conditions to execute an activity, depositaries, leverage, transparency and supervision).
- (iii) The 2014 ESMA Guidelines on exchange-traded funds and other issues related to UCITS establish requirements for over-the-counter (hereinafter, "OTC") derivatives trading and, among others, the monitoring of counterparty risk and collateral-related risks.
- (iv) The ESMA Guidelines on liquidity stress tests for UCITS and AIFs of 16 July 2020 require the tests to take into account not only redemptions but also possible margin calls the fund must face.

In this respect, there are sufficient regulatory measures in place in the area of European Investment Funds to control the liquidity risk arising from margin contributions in OTC derivatives trading. We can make the following considerations to such regard:

- (i) As previously established, requiring liquidity buffers (for this or any other reason) for investment funds does not seem an appropriate solution and could be contrary to the interest of unitholders, as holding money hampers the profitability of investments.
- (ii) In OTC derivatives trading, it would be relevant for clearing houses and counterparties to accept, generally, non-cash collateral (with appropriate haircuts).

## **Question 27. What are relevant risk metrics or tools that can be used to effectively monitor liquidity and margin preparedness across all NBF entity**

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47 ESMA Derivatives Markets 2023. December (page 9). "Non-financial firm exposures, which account for 4% of total notional amounts had half of their exposures in interest rate derivatives, a third in currency derivatives and 10% in commodities in 4Q22. For undertakings for collective investment in transferable securities (UCITS), which account for 2% of total notional, 43% of exposures were in currency derivatives, 35% in interest rate, 12% in equity and 10% in credit. Alternative investment funds (AIFs), also 2% of total notional, had almost two thirds of their notional in interest rate derivatives, a fifth in currency, and 8% and 7% in credit and equity respectively in 4Q22": [https://www.esma.europa.eu/sites/default/files/2023-12/ESMA50-524821-2930\\_EU\\_Derivatives\\_Markets\\_2023.pdf](https://www.esma.europa.eu/sites/default/files/2023-12/ESMA50-524821-2930_EU_Derivatives_Markets_2023.pdf)

48 BCE. The impact of derivatives collateralisation on liquidity risk: evidence from the investment fund sector, Working Paper Series, No 2756, December 2022, (p. 10): <https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2756~c0ab1bcec0.en.pdf>

types?

Please provide examples specifying the sector you refer to:

As stated, the set of NBFIs is greatly heterogeneous, thus making the relevant metrics and tools to be used to limit vulnerabilities in relation to liquidity management to vary from one participant to another.

## Pension funds

**Question 28. How can current reporting by pension funds be improved to improve the supervision of liquidity risks (e.g. stemming from exposure to LDI funds, other funds or derivatives), while minimising the reporting burden? What can be done to ensure effective look-through capability and the ability to measure the impact of unexpected margin calls?**

**Please provide examples also for other NBFi sectors.**

To improve monitoring of liquidity risks in pension funds, it is essential to optimise the quality and scope of reporting made by funds without unduly increasing the reporting burden. In this regard, Article 25.2(d) of the IORP II Directive already sets the obligation for occupational pension funds to include a specific liquidity risk assessment in their internal risk assessment (ORA). In the case of Spain, this implies that the Directorate-General for Insurance and Pension Funds (DGSFP) already has detailed information on a regular basis (at least every three years) on the liquidity risks of pension funds (Article 30 *quinquies* of the Spanish Royal Legislative Decree 1/2002, of 29 November, approving the revised text of the law regulating Pension Plans and Funds).

Moreover, Article 49 of the IORP II Directive establishes a supervisory review process that not only assesses the risks faced by the funds, but also such funds' ability to manage the latter effectively. In order to strengthen this supervisory capacity, it would be beneficial to implement risk indicators, such as the projected liquidity position, also including adverse scenarios. In this regard, if at any given time a negative liquidity situation is projected, a detailed assessment could be provided. Said assessment, along with general liquidity indicators, would display in a case of stress which assets could be additionally monetised, in what amount of time and with what discounts.

An additional point to keep in mind is the need to facilitate the admission of alternative collateral to cash in derivatives transactions, both by clearing houses and counterparties. This would allow to cut down the requirement to hold large cash reserves, which usually has a negative impact on the profitability of investments, especially in the case of long-term investment vehicles. With the appropriate haircuts, the admission of other types of collateral would mitigate such impact and improve the efficiency of liquidity management, while minimising the systemic risk linked to unexpected margin calls. In this regard, it should be noted that the Spanish central counterparty clearing house, BME Clearing, accepts as collateral sovereign debt from Spain, Germany, France, Holland, Austria, Italy, Portugal, Belgium, the



United Kingdom and the United States, as well as equity included in the Ibex 35 index.

**Question 29. What would be the benefits and costs of a regular EU-wide liquidity stress test for pension funds and with what frequency?**

**What should be the role of EU authorities in the preparation and execution of such liquidity stress tests?**

EIOPA already carries out regular stress tests every two years (the last one took place in 2022). To the extent in which liquidity risk is already a variable that is part of the ORA, EIOPA could conduct a liquidity stress test that does not involve additional reporting requirements.

### Short-term funding markets

**Question 30. What would be the benefits and costs of creating a framework or a label in EU legislation for certain money market instruments (such as commercial papers) to increase transparency and standardisation?**

**Should the scope of eligible instruments to such framework/label be aligned with Article 3 of [Directive 2007/16/EC](#)?**

If not, please suggest what criteria would you consider for identification of eligible instruments:

The design of a European framework regulating the issue of promissory notes should be carefully reviewed. In particular, should its creation be framed by means of a legally binding instrument.

Currently, the commercial paper market in the European Union satisfactorily serves the short-term financing needs of its issuers, while offering different levels of feasible flexibility, transparency and liquidity, according to the operating scheme. The direct issuance to investors scheme, or the existence of regulated markets and trading systems (where transparency and liquidity levels are significantly higher) are some of the different options, with their own advantages and benefits for the various stakeholders. For this reason, and in the absence of market failures, the enforcement of regulations governing the standardisation of this means of financing does not seem appropriate.

Market practice, guided by private or public-private standardisation initiatives in an optional framework, seems the best way to achieve the objectives outlined in the Consultation.

**Question 31. Would the presence of a wider range of issuers (notably smaller issuers) to fund themselves on this market, and therefore diversify their funding sources, be beneficial or detrimental to financial stability?**

It would be beneficial, as it would contribute to the diversification of the corresponding sources of financing, by turning to securities markets in addition to bank financing.

The transparency required from issuers is key when determining the impact on financial stability. To such extent, it is worth recalling the current transparency requirements for admission to trading on regulated markets and multilateral trading facilities, which offer alternatives according to the size and complexity of the issuer's financial structure.

**Question 32. What are your views on why euro-denominated commercial papers are in large part issued in the 'EUR-CP' commercial paper market outside the EU?**

**What risks do you identify?**

Please provide quantitative and qualitative evidence, if possible:

The short-term instruments market is highly fragmented. In a single market, markets with a more domestic profile coexist with others of international nature.

Within the various markets, the so-called Euro-CP market plays a very important role in terms of volumes issued and number of participants. Despite this, some factors in this market have proved to be potentially critical.

Most instruments issued on the Euro-CP are denominated under English legislation, as an operationally centralised market in London and difficult public access to information on the securities listed on the latter. In practice, these characteristics highlight a risk resulting from the negative impact that possible changes in the regulation of the UK markets, fiscal or otherwise, could have on European issuers operating in the UK, for which the Euro-CP market is currently a significant source of funding.

The same is true for trading in its secondary market, which operates primarily on an OTC and bilateral basis between participants, with great opacity and very limited information on volumes, prices and participants.

**Question 33. What could be done to improve the liquidity of secondary markets in commercial papers and certificates of deposits?**

We believe that there are several measures that could increase the instruments' liquidity.

- a) The improvement to the processing of commercial papers in relation to the capital consumption of financial institutions (Regulation (EU) 575/2013 and Directive 2013/36/EU), going on to deem such type of short-term instrument as liquid instruments and, therefore, establishing a lower capital charge. In other regions, the effectiveness of such measures was demonstrated in 2020, when the Federal Reserve incorporated commercial paper into the

“Money Market Mutual Fund Liquidity Facility”, which has been instrumental in consolidating the US CP market.

- b) The development and facilitation of a specific repo market for commercial papers that allows market participants to hedge their positions.
- c) The broadening of the European Central Bank's monetary policy programmes to accept a wider range of money market instruments. The expansion of asset purchase programmes and the establishment of specific programmes by the monetary authority in view of the COVID crisis proved how useful such measures were.
- d) Improving the transparency of the secondary market for commercial papers to help participants have better quality information on the valuations of such assets.

**Question 34. Considering market practice today, is the maturity threshold for ‘money market instruments’ (up to 397 days) in the Eligible Asset Directive 2007/16 sufficiently calibrated for these short-term funding markets?**

The issuance of promissory notes in different European markets can be up to 540 days, or even 720 days, meaning, therefore, it would be appropriate to extend the maturities set in the Eligible Asset Directive 2007/16 to align them with the maturities used in these jurisdictions.

**Question 35. Do you think there is a risk with the high concentration of this market in a few investors (MMF and banks)?**

Please elaborate:

Yes, market concentration of a small number of investors increases the risk of illiquidity of financial products given the small number of bidders and takers for the latter. Also, should said investors belong to a specific type of financial institutions, banks, or other institutions, as is the case in the commercial paper market, this illiquidity risk is amplified as all these market participants will be subject to similar behavioural patterns that amplify the tendency to illiquidity in scenarios of stressful.

However, as previously mentioned, MMFs, like other CISs, have tools that allow them to manage such liquidity risk.

**Question 36. How could secondary markets in these money market instruments attract liquidity and a more diverse investor base, while relying less on banks buying back papers they have helped to place?**

We believe that, although having more participants in the promissory note market to provide greater liquidity and diversity is desirable and beneficial, the role financial

institutions' play in this market must continue to be very important. For this reason, as proposed in Q.33, there are specific measures that can facilitate the holding by these entities of promissory note inventories, promote market participation and market liquidity.

**Question 37. What are the benefits and costs of introducing an obligation to trade on trading venues (regulated markets, multilateral trading facilities and organised trading facilities) for such instruments?**

In regards to the existence of a centralised point of information, the obligation to trade these instruments on regulated markets or multilateral trading facilities would contribute to improving the transparency and information available on secondary market activity and, in relation to the trading and settlement infrastructure offered, would also provide greater security for trading processes.

**Question 38. Can the possibility to trade on a regulated venue increase the chances of secondary market activities in a systemic event, for instance by acting as a safety valve for funds that need to trade these assets before maturity (especially when facing strong redemption pressures, like for MMFs)?**

Centralised trading platforms are very useful role in facilitating the liquidity of financial instruments, at least under normal market conditions, both by means of consolidating multiple sources of liquidity and improving the pricing of assets; and by benefiting the efficiency of the processes of counterparty sourcing, trade execution and settlement.

However, as it became evident during the COVID crisis, platforms do not replace the total absence of liquidity in times of market volatility or peak market stress and, ultimately, the development of a deep commercial paper market requires the presence and capacity of a wide range of participants, dealers, intermediaries and investors.

## Commodities markets

**Question 39. How would you assess the level of preparedness of commodity derivatives market participants for each of the following sectors in terms of meeting short-term liquidity needs or requests for collateral to meet margins?**

	1 (Very low)	2 (Low)	3 (Medium)	4 (High)	5 (Very high)	No opinion
Insurance companies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b>UCITS</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>AIFs</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Commercial undertakings</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Investment firms</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Pension funds</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 40. In light of the potential risk of contagion from spot markets or off-exchange energy trading to futures markets, do you think that spot market participants should also meet a more comprehensive set of trading rules for market participation and risk management?**

Please elaborate on your response:

**Question 41. How can it be ensured that the functioning of underlying spot energy markets and off-exchange energy trading activity does not lead to the transmission of risks to financial markets?**

#### Other markets

**Question 42. To what extent do you see emerging liquidity risks or market functioning issues that can affect liquidity in other markets?**

- ☐ 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

Please explain your answer to question 42, providing concrete examples:

#### 4. Excessive leverage

## 4.1 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?**

The possibility of imposing limits on leverage is sufficient.

**Question 44. What are, in your view, the benefits and costs of using yield buffers<sup>49</sup> for Liability-Driven funds, such as it was done in Ireland and Luxembourg, to address leverage?**

**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:

In Spain, the AMCESFI in its Annual Report for the 2023 financial year and the CNMV's Chairman, in his appearance before the Economic Commission of April of this year, highlight that the situation of the Spanish fund industry is robust.

In 2022 and 2023 they have shown notable resilience to the market movements. They present a very low leverage (of around 10% in 2023 and 2022 in net terms) and adequately resisting the stress tests to which they are submitted every year by the CNMV.

Their exposition to one of the main sources of risk in the EU, the real estate sector, is also very low. In general, the CNMV has not identified relevant sources of risk in the so-called non-bank financial intermediation in Spain.

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

In the case of UCITS funds, the regulation establishes strict requirements related to the suitability of the invested assets. In line with Article 50.1(e)(ii) of the UCITS Directive, third country funds must comply with standards similar to those set in the UCITS Directive in areas such as asset segregation, acquiring and granting loans, and the prohibition of short selling of transferable securities and money market instruments. Should such third country funds fail to comply with said regulations, they would only be considered as closed-ended funds and would be subject to a limit of 10% of the Fund's investments, as provided in Article 50.2 of the UCITS Directive.

## 4.2 Other NBFIs and markets

<sup>49</sup> 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.

**Question 47. Are you aware of any NBFIs sector entities with particularly high leverage in the EU that could raise systemic risk concerns?**

**Question 48. Do stakeholders have views on macroprudential tools to deal with leverage of NBFIs that are not currently included in EU legislation?**

In a case where market participants exist and are identified as possibly relevant to determining macro-prudential risks, not covered by EU legislation, they should be included under this framework.

Once they have been included under the framework of macroprudential supervision, the corresponding tools deemed relevant for such actors may be applied.

However, in general terms, in the area of macroprudential supervision of markets, ESMA or the corresponding supervisor could be granted powers to control *ex ante* leverage in line with the provisions of Article 25 of the AIFMD.

**Question 49. To NCAs and EU bodies: Are you able to timely identify (financial and synthetic) leverage pockets of other NBFIs (such as pension funds, insurance companies and so on), especially when they are taken via third parties or complex derivative transactions? Please elaborate on how this timely detection of leverage could be obtained?**

**Question 50. How can it be ensured that competent authorities can effectively reconcile positions in leveraged products (such as derivatives) taken via various legal entities (e.g. other funds or funds of funds) to the ultimate beneficiary?**

### Commodities markets

**Question 51. What role do concentrated intraday positions have in triggering high volatility and heightening risks of liquidity dry-ups?**

**Please justify your response and suggest how the regulatory framework and the functioning of these markets could be further improved?**

### 5. Interconnection control

**Question 52. Do you have concrete examples of links between banks and NBFIs, or between different NBFIs 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 NBFIs and banking sectors?**

**Are current reporting and data sharing arrangements sufficient to perform this task?**

**Would it be possible to combine available NBFIs data with banking data? If so, how?**

An exercise of general stress tests for the entire EU financial system could be a very useful and beneficial tool to strengthen the resilience of such financial system.

However, should such an exercise be carried out, it must comply with the following characteristics:

- Sample with meaningful participation: Inclusion of representation of all market participants and not just certain sectors.
- Realistic scenarios: the design of the stress scenario must be representative and relevant across the EU.

Nonetheless, focusing exclusively on stress tests and the development of scenarios representing demand will be insufficient if the problem of liquidity supply is not properly addressed.

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

**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?**

**Question 56. Only for 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 Spain, CSMCs solely carry out stress tests at a level of funds, and the frequency in which the CNMV carry these out is six months, as per the methodology proposed by ESMA (under the [STRESS](#) work framework).

## 6. Supervisory coordination and consistency at a European level

### 6.1 Open-ended funds

**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?**

Based on the comprehensive macroprudential approach proposed, the following is key: (i) having an EU-wide centralisation of data (such as portfolios, derivatives trading) currently collected by NCAs for their supervised entities, which is available to NCAs, ESMA and the ECB; and (ii) ESMA to be able to conduct a centralised analysis of macroprudential risks in securities markets across the European Union. Notwithstanding the above, National Competent Authorities (NCAs) will continue to be responsible for the collection of supervisory data in their respective jurisdictions, as well as for the monitoring of events that could jeopardise the stability of their local markets, and supervising the entities operating under their regulation.

Based on ESMA's analysis, NCAs would be in a position to implement supervisory actions to mitigate the previously identified risks. To strengthen this new role, it is essential for ESMA to become the epicentre of data collection (data hub) on securities markets. This would imply that NCAs, EIOPA and the European Central Bank (ECB) must share the collected data with ESMA, which would grant the European supervisor a wider view of current market dynamics. This strategy would also help to alleviate the data collection burden faced by market participants, especially in times of financial stress.

**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?**

A possible improvement would be to strengthen communication channels, such as by sharing information in real time between NCAs and ESAs, allowing authorities to provide a more agile and coordinated response to systemic risks.

The creation of centralised platforms for data exchange and risk management between NCAs and ESAs would also facilitate the implementation of such measures, ensuring the decisions made are done so based on a consolidated view of risks in the sector, and ensuring coordinated action.

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

A possible disadvantage of extending the use of ECMs to other sectors is that the introduction of additional layers of coordination and monitoring may increase compliance costs without necessarily resulting in greater efficiency. Adding complex regulatory and supervisory structures may create a significant administrative burden for authorities and market players, which could negatively affect their day-to-day operations.

The ESRB already acts as an integrating institution for all sectors relevant to the European Union's financial stability. In this regard, its analysis and coordination activities already cover the potential risks that may arise in relation to NBFIs. Adding more layers of monitoring through the ECM could duplicate efforts, which would not only entail higher costs but could also dilute the effectiveness of the actions and measures applied.

Moreover, ESAs are better positioned to identify and mitigate spill over risks in their respective areas of supervision. Therefore, an extension of the ECM could create overlaps between ESRB's and ESAs tasks, reducing clarity in the allocation of liabilities.

**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?**

**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:

Supervisory powers of European 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?**

While the benefits of centralised supervision are positive, the idea, on the other hand, of a supervisory model similar to the Single Supervisory Mechanism used for banks, taking into account the differences between banks and asset managers, is not considered appropriate for asset management.

In fact, integrating supervision is likely to hamper the regulatory landscape, as Asset managers would continue to have to comply with different local laws, including, among others, contract, insolvency and taxation laws. Such local characteristics add to the complexity of supervision and could lead to legal conflicts between ESMA and national authorities.

On the other hand, national and cross-border supervision and coordination as foreseen in UCITS and the AIFMD must be considered effective, as long as there is no evidence

to the contrary. In addition, whether monitoring across the EU would achieve superior results is unknown.

National supervision is therefore considered to be the most effective approach for the asset management industry.

**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:

See the answer to the previous question.

**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)?**

OTHER NBFIs and markets.

**Question 65. What are the pros and cons of extending the use of the Enhanced Coordination Mechanism (ECM) to other NBFIs sectors?**

**Question 65.1 Please explain what are the pros?**

**Question 65.2 Please explain what are the cons?**

See answer to question 59 (where references to ESMA refer to EIOPA).

**ESAs and ESRB's powers in situations of crisis**

**Question 66. What are the benefits and costs of gradually giving ESAs greater intervention powers to be triggered by systemic events, such as the possibility to introduce EU-wide trade halts or direct power to collect data from regulated entities?**

Please justify your answer and provide examples of powers that could be given to the ESAs during a systemic crisis:

Given that both ESMA and EIOPA are empowered by their respective founding regulations, by virtue of Article 18, and where they deem necessary, to play a coordination role in the case of adverse developments that may threaten financial stability, no benefit has been identified from extending the intervention powers or competences of the European supervisory authorities in this matter.

Moreover, corrective or palliative measures, such as the total or partial closure of stock exchanges at European level or the suspension of the listing of a stock, must remain in the hands of national authorities, given the ongoing fragmentation between national markets, making said authorities assess the application of mechanisms such as the suspension of listing on a specific market.

Nonetheless, from an EU-wide market perspective, the benefit of increased coordination in the processing and collection of data between supervisory bodies in Member States is recognised in the interests of consistent implementation of macroprudential policies. Bearing in mind the above, there is an opportunity, under the “single reporting” principle, to foster efficiency in the exchange of data between ESAs and the corresponding NCAs, relative to information on the entities under their respective sphere of supervision.

Regarding data collection, the current approach where data is collected by national supervisors and forwarded to the relevant ESA is considered appropriate.

In any case, it is essential for any regulatory changes aimed at achieving the objectives of coordination in prudential supervision and data exchange to be channelled through the “Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No. 1092/2010, (EU) No. 1093/2010, (EU) No. 1094/2010, (EU) No. 1095/2010 and (EU) No. 2021/523 as regards certain information requirements in the areas of financial services and investment support”.

Supervision integrated into the commodity market.

**Question 67. What are the benefits and costs of a more integrated system of supervision for commodities markets where the financial markets supervisor bears responsibility for both the financial and physical infrastructure of the commodity futures exchange, including the system of rules and contractual terms of the exchange that regulate both futures and (cash/physical) forward contracts?**

International coordination.

**Question 68. Are there elements of the FSB programme on NBFIs that should be prioritised in the EU?**

Please provide examples:

As mentioned in the introduction, in aims of achieving a a comprehensive macroprudential policy for European financial markets, it is key to ensure appropriate coordination at national, European and international level:

- 1) Extend the scope of macroprudential supervision in the field of financial intermediation through securities markets to all market participants.

- 2) Strengthen the role of ESAs in the ESRB for the purposes of their respective areas of supervision.
- 3) Increasing liquidity on the supply in the case of a crisis.