

**INVERCO RESPONSE TO THE EUROPEAN
COMMISSION'S CONSULTATION ASSESSING THE
ADEQUACY OF MACROPRUDENTIAL POLICIES FOR
NON-BANK FINANCIAL INTERMEDIATION (NBFI)**



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Section I: General remarks

INVERCO¹ embraces the opportunity to make some observations and comments on the European Commission's consultation assessing the adequacy of macroprudential policies for the Non-Bank Financial Intermediation sector (hereinafter, "NBF") (hereinafter, "Consultation")².

This first section provides an overview of INVERCO's stance on the macroprudential framework for NBFIs discussed in the Consultation and which underpins the **answers to the specific questions** raised by the Commission, included in **Section II below**.

A) **Ensuring that a macroprudential approach for Spanish asset managers and pension funds does not mirror the banking sector's framework**

Unlike banks, Spanish Investment Management Companies (hereinafter "SGIIC") follow an "agency" model and do not assume risks as the principal party. Instead of operating on their own assets, they manage investors' money based on specific mandates. As a result, investors bear the economic risks associated with the underlying assets and are informed of these risks through regulatory disclosure requirements (both pre- and post-contractual). Changes in the market value of the underlying assets are reflected in the fund's net asset value (NAV). The SGIIC has a fiduciary duty to manage the assets in the best interest of its unitholders and to handle liquidity risks.

Furthermore, investors' assets are not part of the SGIIC's balance sheet. Instead, they are held by a depository institution, which is subject to specific regulations designed to safeguard these assets in the event of the depository's bankruptcy, ensuring the fund's assets and cash are kept separate from the depository's own holdings.

In Spain, pension funds ("PF") lack legal personality, and as such, they are also administered by a management entity (hereinafter "EGFP") and their assets are kept separate and held in a depository entity.

These are, therefore, represent different business models compared to banks, which operate on their own account and bear risks on their balance sheet.

Another key difference compared to banks is that they play a central role in the financial system, and their failure can, therefore, have far-reaching consequences, as the concept of "too big to fail" acknowledges. This difference is vital, since the collapse of an asset manager, whether managing a collective investment scheme (by its acronym in Spanish "IIC") or a PF, tends to have a relatively limited effect on the markets. Most SGIIC are not large or influential enough to cause any substantial disruption in the stock markets. Moreover, due to the clear separation of assets between the management company and the funds, the replacement of the manager can occur without major market disruption. A real-world example from the Spanish market is the intervention of Banco Madrid SGIIC, whose replacement by another management company did not disrupt the overall market or the

¹ INVERCO is the Spanish Association of Collective Investment Institutions and Pension Funds. It is a non-profit organisation that represents more than 833 billion euros in assets under management (53.9% of the national GDP), channelling the savings of more than 23 million unitholders accounts in Investment Funds and Investment Companies and nearly 10 million in Pension Funds. INVERCO represents 128 Spanish Investment and Pension Fund Managers, more than 30 foreign-domiciled managers and 35 Corporate Members, including the main providers of collective investment services: audit firms, depositories, law firms, platforms and IT providers (data as of September 2024).

²European Commission targeted consultation assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBF), 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

functioning of the funds, except for a temporary suspension of subscriptions, redemptions, and transfers by CNMV. This situation underscored the separation of assets, as the assets of the funds remained unaffected by Banco Madrid's bankruptcy³.

Regarding the proposed macroprudential tools for banks, **such as capital and liquidity buffers (countercyclical), these measures offer no added value for asset managers.** This view was acknowledged and highlighted in the April statement on the macroprudential approach to asset management⁴, where four European supervisors (FMA, AMF, CONSOB and CNMV) concurred that such countercyclical requirements are unlikely to reduce financial stability risks. *This is because asset managers take decisions on behalf of investors. Consequently, forcing asset managers to act in a countercyclical fashion – that is, in practice, against the preferences of their investors – cannot be a suitable solution. [...]. Two additional arguments stand out against macroprudential measures: (i) asset management decisions should be taken by asset managers themselves, and not by public authorities, or wrong incentives would be provided, and (ii) the actual use of a direct intervention power by a public authority on a subset of investment funds would likely be interpreted as a widespread concern, which could trigger investor panic.*

EIOPA, in its technical advice on the review of IORP II, once again rejects the inclusion of solvency requirements for IORPs, focusing instead on achieving greater harmonisation of internal risk assessments. It draws attention to the liquidity risks related to margin contributions in derivatives trading, emphasizing the need for IORPs to properly manage this risk⁵.

In the case of funds, it is possible to address vulnerabilities that this sector may experience without the need for the aforementioned buffers. For example, the first-mover advantage often cited in the fund sector can be eliminated by ensuring that investment funds charge, redeeming investors, the transaction costs borne by the fund (e.g., using swing pricing). Similarly, it would be feasible to reduce the procyclicality of margin calls in both funds and PF, by allowing market participants to use other types of collateral, such as sovereign bonds or units/shares in money market funds (hereinafter, "MMF")), rather than relying solely on cash.

Furthermore, increasing regulation, in the way that it is anticipated in the Consultation, would not necessarily be in the best clients' interest:

- It could push investors towards more activities outside the regulated sector (such as family offices, big tech and/or crypto-brokers).
- It could affect investors' returns, jeopardizing value for money and even affecting investors' access to the markets in times when investors' participation in stock markets are being promoted.

For all the reasons mentioned above, treating the asset management sector in the same fashion as banks would result in an "unlevel playing field", negatively impacting the competitiveness of European financial markets. This would run in direct opposition to recent expert reports⁶ and recommendations

³See relevant facts of Banco Madrid Gestión de Activos, SA, SGIC dated April 27, 2015: <https://cnmv.es/portal/consultas/datosentidad.aspx?nif=A-80466006> and dated February 20, 2017: <https://www.cnmv.es/web/services/verdocumento/ver?e=YHqOCJXlzh%2f952bMckjvnrojc5caDaczWitwUsYwRmQRSR0dt1K2vXNhAR3mLSV>

⁴Statement from the competent national authorities of Austria (FMA), Italy (CONSOB), Spain (CNMV) and France (AMF): [A macroprudential approach to asset management](#)

⁵ EIOPA technical advice on IORP II review September 28, 20223

⁶See the Enrico Letta Report "Much more than a market" April 2024 and the Noyer Report "Developing European Capital Markets to finance the future", also from April 2024.

of the European Securities and Markets Authority (hereinafter, “ESMA”) itself⁷, which stress the need to lessen dependence on bank financing and enhance capital market-based financing.

B) Reassess the need for additional macroprudential tools based on data on vulnerabilities in the European and Spanish asset management sector and existing regulatory tools

1. Risk of excessive leverage

Leverage is not evenly allocated across equity markets. The Financial Stability Board (FSB) notes that, although PF, investment funds and insurance companies hold a substantial share of financial assets (two-thirds of total NBF assets), 90% of leverage on balance sheets is concentrated within a small fraction of so-called other financial intermediaries (OFIs)^{8,9}.

Most funds, both investment and pension funds, follow simple investment strategies, with very limited use of leverage, which reduces the likelihood of generating financial instability. Only a small percentage of UCITS are dedicated to alternative strategies that could be riskier. In this regard, it should be noted that in the case of UCITS, leverage is limited (Article 51.3 of the UCITS Directive¹⁰) and in the case of alternative investment funds (hereinafter, “AIFs”), the manager must establish its leverage limit in the prospectus and adhere to it. Furthermore, article 25 of the AIFMD¹¹ establishes the possibility that National Competent Authorities (hereinafter, “NCAs”) may limit in certain cases the leverage of one or more AIFs. Also, in relation to PF, there are limits on leverage (articles 71 et seq. of Royal Decree 304/2004, of February 20, approving the Regulation of pension plans and funds, hereinafter “RFPF”).

At the national level, according to the 2023 annual report of the Spanish Macroprudential Authority (hereinafter “AMCESFI”), the analysis of the fund sector at the end of the year shows that the leverage of Spanish investment funds was well below the maximum allowed¹². In the 2022 IFNB report published by the CNMV¹³, it is indicated that even with regard to FIA, the level of leverage is moderate, with only 4 hedge funds out of 105 registered exceeding 100% leverage^{14,15}.

⁷Position 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-](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)

[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)

⁸ broker-dealers, hedge funds, financial companies, holding companies and securitization vehicles.

⁹FSB, [The financial Stability implications of Leverage in Non-Bank financial Intermediation](#), September 2023.

¹⁰Directive 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.

¹¹ 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”): Competent authorities shall assess the risks that the use of leverage by an AIFM may entail in respect of AIFs it manages and, where considered necessary for the stability and integrity of the financial system, the competent authorities of the home Member State of the AIFM shall, after notifying ESMA, the ESRB and, where applicable, the competent authorities of the relevant AIF, set limits on the level of leverage that an AIFM may use or set other management restrictions on the AIF in respect of AIFs it manages in order to limit the impact of leverage in creating systemic risk in the financial system or risks of market disruption.

¹²AMCESFI, Annual Report 2023 (pp. 39 and

40): https://www.amcesfi.es/f/webwam/RCL/Publicaciones/archivos/AMCESFI_Informe_Anual_2023.pdf

¹³CNMV Report. “Non-banking financial intermediation in Spain”. Fiscal year

2022: https://www.cnmv.es/DocPortal/Publicaciones/Informes/Monitor_IFNB_2022.pdf

¹⁴The RIIC establishes a limit on the indebtedness of free investment IICs (article 73 RIIC).

¹⁵Includes free investment IIC and free investment IIC.

At the European level, EFAMA's report "Open-ended funds and resilient capital markets"¹⁶ reveals that leverage in the European investment fund sector remains low, often being used for efficient portfolio and risk management rather than increasing market exposure to certain assets.

In this regard, we support ESMA's framework for monitoring leverage in the funds sector¹⁷ and consider that their methodology could be applied to other market participants employing leveraged strategies.

In conclusion, leverage remains limited in European investment funds, mainly concentrated in a handful of AIFs, for which supervisors have sufficient information and macroprudential tools for their control.

2. Liquidity risk

Liquidity management is a crucial element in preserving stability in financial markets. European and Spanish regulatory frameworks already foresee several stability-enhancing measures, particularly following the recent changes to AIFM and UCITS Directives, which now require the adoption of two liquidity management tools. It is also necessary to keep in mind that:

- The UCITS and AIF Directives require asset managers to have risk management procedures in place that identify and control the liquidity risk associated with each position (Article 51.1 of the UCITS Directive and Article 16 of the DGFIA and Article 48 of Delegated Regulation 231/2013).¹⁸
- ESMA's Guidelines on liquidity stress tests for UCITS and AIFs of 16 July 2020 require that these tests to be carried out and that they consider not only redemptions but also potential margin calls that the fund may have to face.
- Regarding PF, in addition to having an effective risk management function, including liquidity risk management, the IORP II Directive itself states in recital (48) that given their nature as very long-term investors, IORPs have low liquidity risk. Nonetheless, they must carry out an internal risk assessment (hereinafter, "ORA"), which includes an overall assessment of the effectiveness of the risk management system.

Additionally, EIOPA in the Consultation on its possible Opinion on risk management supervision of IORPs identifies three sources of possible material liquidity risk: a) margin calls on derivatives; b) early repayments of vested rights by participants; and c) individual or collective transfers of vested rights, indicating that the risks arising from letters b) and c), in case of IORPs, are residual¹⁹.

Furthermore, Spanish PF are required to invest the majority of their portfolios in highly liquid assets, including transferable securities and other financial instruments that are sufficiently liquid and sufficiently diversified. In addition, pension regulations require a liquidity coefficient, which is determined by each pension fund based on the needs and

¹⁶EFAMA, July 5, 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>

¹⁷ESMA 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_es.pdf

¹⁸Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general conditions for carrying on business, depositaries, leverage, transparency and supervision.

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

characteristics of the affiliated pension plans (article 73 RFPF). Moreover, specific liquidity requirements apply when investing in structured products (article 81 ter.2 b) RFPF).

For Funds, the Spanish regulation framework pre-emptively incorporated certain liquidity tools into the regulation prior to the aforementioned review of the European Directives. CNMV has also issued a Liquidity Management Guide (CNMV Technical Guide 1/2022 on the management and control of the liquidity of funds) consolidating all relevant supervisory criteria on liquidity management and control into a single document. Additionally, as discussed in the next section, in the Spanish framework, CNMV counts with macroprudential tools available in case of dire circumstances.

From a historical point of view, the CNMV's report on non-banking financial intermediation in Spain highlights the impact of the COVID-19 crisis in March 2020 (a crisis caused by an external event to the market itself), on Spanish investment funds, noting the following (this is a loose translation from Spanish):

- *In 2020, the use of liquidity management tools by funds in Spain was higher than usual as a result of the COVID-19 crisis, which led to a significant increase in redemptions in March, as previously indicated.*
- *No Spanish funds had to activate any extraordinary liquidity measures such as suspensions of redemptions or side pockets. Only five funds had to apply redemption gates. Furthermore, during the crisis, the CNMV reinforced its coordination mechanisms with management companies, encouraging these institutions to use, where appropriate, the available liquidity management tools. In particular, the CNMV recommended the valuation of assets based on bid prices and swing pricing mechanisms²⁰.*
- *Investment funds were significantly affected by the COVID-19 crisis in March 2020, which caused both a decline in the value of these institutions' assets and an increase in net redemptions. However, in the following months, a new expansionary phase was experienced, leaving the annual balance practically unchanged.²¹*

The war in Ukraine and Russia had no significant consequences for Spanish investment funds, given their limited exposure, as indicated in CNMV's 2021 report on non-banking financial intermediation²².

Given the considerations outlined above, we conclude that the imposition of new regulatory requirements as presented in this area are unnecessary.

3. Macroprudential Supervision in Spain: AMCESFI and macroprudential tools on liquidity and leverage included in Spanish regulations

The Spanish market has an authority responsible for macroprudential supervision, the AMCESFI, created by Royal Decree 102/2019, of March 1, which creates the Macroprudential Authority Financial Stability Council, establishes its legal regime and develops certain aspects related to

²⁰Non-banking financial intermediation in Spain Fiscal year 2020. Page 10

²¹Non-banking financial intermediation in Spain Fiscal year 2020Page 28

²²CNMV Report on Non-banking Financial Intermediation in Spain. Year 2021, (page 31); https://www.cnmv.es/DocPortal/Publicaciones/Informes/IFNB_2021_2.pdf

macroprudential tools, which aims to contribute to the stability of the financial system as a whole by identifying, preventing and mitigating those circumstances or actions that could give rise to systemic risk. To this end, the AMCESFI monitors and analyzes the factors that may affect systemic risk and may issue opinions, alerts and recommendations.

AMCESFI has proven to be a fundamental pillar in protecting the stability of the Spanish financial system, and we are confident that, through the appropriate combination of existing macroprudential tools, it will be able to continue mitigating systemic risks without harming the dynamics and efficiency of the markets.

Finally, it should be noted that in the latest AMCESFI report (corresponding to the 2023 financial year)²³ a positive assessment is made in relation to the level of leverage and liquidity of Spanish investment funds:

“Estimating the leverage of FE1 investment funds²⁴The data reveals that the exposure to market risk of these institutions remains below the maximum permitted by law. The leverage of the entities is assessed through the use of derivatives (indirect leverage), since financial debt (direct leverage) is highly restricted by regulation. Thus, the analysis of the IICs belonging to the IFNB shows that gross exposure to market risk represented 27.5% of their assets at the end of 2023, a lower percentage than in 2022 (40%), while net exposure⁴¹ reached only 10.8%⁴² of assets. This last figure shows that the leverage of Spanish investment funds was below the maximum permitted (100% of assets) at the end of last year.

Liquidity conditions for Spanish investment funds remained satisfactory in 2023, with a slight improvement compared to the previous year. Liquidity risk assessment is particularly important for these funds, most of which allow redemptions on a daily basis. The high-quality liquid assets (HQLA) ratio, which takes into account both the type of asset and its credit ratings⁴³ when determining the liquid assets of the portfolio, stood at 55.5% for all funds belonging to the IFNB (53.9% in 2022). This figure was 49.9% for mixed funds, 61.7% for fixed-income funds and 61.8% for money market funds. On an individual basis, it can be seen that the majority of investment funds had a level of high-quality liquid assets exceeding 40%, with only 15.9% of mixed funds and 6.2% of fixed-income funds (in terms of assets) whose ratio was below this threshold.”

Likewise, the Royal Decree establishing AMCESFI²⁵ in its article 15 includes **Macroprudential tools for the supervision of liquidity and leverage risks in funds:**

“Article 15. Macroprudential tools.

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

[...]

f) The suspension of the redemption of shares in collective investment institutions, in accordance with the provisions of article 4.10 of the Regulation implementing Law 35/2003, of November 4, on

²³AMCESFI Annual Report 2023. Pages 39 and

40:https://www.amcesfi.es/f/webwam/RCL/Publicaciones/archivos/AMCESFI_Informe_Anual_2023.pdf

²⁴FE1 are the (FE1) collective investment vehicles whose characteristics make them susceptible to massive redemptions,

²⁵Royal Decree 102/2019, of March 1, which creates the Macroprudential Authority Financial Stability Council, establishes its legal regime and develops certain aspects related to macroprudential tools.

collective investment institutions, approved by Royal Decree 1082/2012, of July 13, when, due to the number or size of the institutions affected, it may have implications from the point of view of financial stability or the orderly functioning of the securities market.

g) The adoption of measures aimed at strengthening the level of liquidity of the portfolios of collective investment institutions regulated by Law 35/2003, of November 4, on Collective Investment Institutions, as well as those of collective investment entities regulated by Law 22/2014, of November 12, which regulates venture capital entities, other closed-end collective investment entities and management companies of closed-end collective investment entities, and which modifies Law 35/2003, of November 4, on Collective Investment Institutions.

h) The establishment of limits on the level of leverage of collective investment institutions, venture capital entities or closed-end collective investment entities, as well as other restrictions on management with respect to managed vehicles, in accordance with article 71 septies of Law 35/2003, of November 4, and with article 87 of Law 22/2014, of November 12, when such measures are adopted to preserve the stability and integrity of the financial system.

In any case, the use of macroprudential tools should be considered as a last resort. The CNMV, together with the other three European authorities, recognise in the aforementioned communication on the macroprudential approach to asset management that intervention by the authorities should only be carried out in the most extreme cases, and that, instead, a combination of ex ante requirements on liquidity and leverage and a wide availability of liquidity management tools used by asset managers in the best interest of investors, as provided for in the recent amendment to UCITS and DGFIA, seems to be the best way forward, also for the purposes of the financial stability mandate.

The use of macroprudential tools should remain a measure of last resort. The CNMV, in conjunction with the other three European authorities, highlights in the mentioned communication on the macroprudential approach to asset management that intervention by authorities should be limited to exceptional circumstances. **A more appropriate approach to ensure financial stability involves implementing pre-emptive requirements for liquidity** (e.g. require certain funds to consider both implicit and explicit transaction costs when evaluating dilution risks or use notice periods consistent liquidity and redemption policy) **and leverage and encouraging the widespread adoption of liquidity management tools by asset managers, as outlined in the latest amendments to UCITS and AIFM Directives.** This approach not only serves investors' best interests but also supports financial stability objectives.

C) Create a fit-for-purpose macroprudential policy specifically designed for market-based financing (MBF)²⁶. This involves:

1. Overcoming the use of terminology such as non-bank financial institutions (NBFIs)

Just as the term "shadow banking" was recently superseded²⁷, it is considered that the reference to non-bank financial institutions "NBFIs" should also evolve.

²⁶In line with the Bank of England's proposal 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>

²⁷This was how the ESRB referred to the EU NBFi Risk monitor report until 2018 (https://www.esrb.europa.eu/pub/reports/nbfi_monitor/html/index.es.html).

To begin with, grouping all financial institutions other than banks under the same macroprudential risk perspective is a flawed approach, as their responses to risks and their potential for transmission within the financial system vary widely²⁸.

Furthermore, using a uniform term for such varied entities makes it challenging to design and implement the necessary policies and macroprudential tools that align with the specific characteristics of each agent compromising adequate systemic stability.

Thus, the concept of NBFIs includes both regulated and supervised entities such as investment funds subject to the UCITS and AIFM Directives²⁹³⁰ and PF subject to the IORP II Directive³¹(in the case of Spanish pension funds, the IORP II regulatory framework, with some exceptions, is similarly applied to personal pension funds), **as well as unregulated entities such as family offices, which remain more opaque to regulators.**

2. Factor in all actors involved in financial intermediation through the different stock markets

Given the overarching goal of macroprudential policy to maintain financial stability, enhance the resilience of the financial system and reduce vulnerabilities, it is recommended that an appropriate and practical approach to address macroprudential risk could be achieved by **developing an analytical framework built on empirical evidence that would allow the Commission to focus on the risks really inherent in the capital markets and identify which activities potentially contribute to those risks. It is of utmost importance that this revised framework is geared towards a holistic approach that evaluates the resilience of capital markets rather than a “silo approach” analysis limited by type of entity.**

In this context, and considering the consultation's notable focus on open-ended funds, it is imperative to advocate for a macroprudential policy specifically designed for financing the capital markets and that takes into account that the asset management sector represents only one part of the broad set of participants in these securities markets.

Investment funds and PF are not the only participants in the securities markets, so for the aforementioned framework to have a comprehensive view, all actors (regulated and non-regulated) that participate in financial intermediation must be considered.

both investment and pension funds, serve as a diversification tool for investors and operate under stringent regulations and supervision, ensuring strict compliance with leverage limits, eligible assets, and diversification requirements.

For this reason, it is proposed that, rather than adopting a macroprudential risk perspective based on isolated sectors (in the case of the consultation focused on NBFIs), a more suitable approach could focus on intermediation activities within the capital markets. This would involve assessing the stability and integrity of the capital markets considered critical for the financial stability while

²⁸As noted in the Discussion Paper of the Central Bank of Ireland (p. 7): The Central Bank also recognizes that the fund sector is just one part of the overall NBFIs sector. In time, other parts of the NBFIs 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

²⁹Directive 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.

³⁰Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers.

³¹Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions providing for occupational retirement pensions.

taking into account the interconnectivity between all the actors that participate in them. That is, the identification of collective vulnerabilities, enabling the identification of possible sources of systemic risk³².

Therefore, there is a need for supervisors to focus on less or non-regulated corners of the market, while accurately mapping-out and streamlining existing reporting requirements. Performing EU-wide stress tests could prove useful if well designed, nonetheless, it is important to highlight that stress-tests *per se* do not “mitigate” any risk, but inform and, as such, they should be understood as a complementary tool of a managers’ broader risk management framework. **For it to work, however, it is essential that other actors come under greater regulatory scrutiny beforehand.**

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

The importance of enhanced coordination between supervisory bodies in Member States for the consistent implementation of macroprudential policies is acknowledged. While insufficient coordination can result in instability, as recognised in the Consultation, it is not merely a matter of adequate coordination, but also ensuring its efficiency.

This is precisely one of the objectives of the European Systemic Risk Board (hereinafter “ESRB”)³³ eliminate fragmentation and achieve greater coherence between macro and microprudential supervision³⁴. One option to reflect the increasing importance of capital markets in recent times could be to strengthen the role played by ESMA in this body, which is currently chaired by the European Central Bank (hereinafter “ECB”) and whose Secretariat is held by the same.

For this purpose, there is an opportunity for ESMA to be set up as a data hub for all the information that institutions are already obliged to provide to NCAs under current legislation. This would allow for efficient management of the large volume of data generated in Member States for subsequent analysis at the ESRB level. This centralised information would be available to NCAs, ESMA, EIOPA and the ECB.

In this way, by strengthening ESMA's position in the ESRB and by compiling all the information on the institutions at European level, greater cohesion in the macroprudential policy of the securities markets could be achieved.

Notwithstanding the foregoing, the NCAs will continue to be responsible for the collection of supervisory data in their respective jurisdictions, as well as for monitoring those events that could

³²According to extracts from the Bank of England document: Financial Stability in Focus: The FPC's approach to assessing risks in market-based finance. No part or sector of the MBF system can be assessed fully in isolation, so the FPC uses a combination of perspectives to identify and prioritize 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 behavioral 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>

³³Article 3.2 of Regulation (EU) 1092/2010 of the European Parliament and of the Council of 24 November 2010 on macroprudential oversight of the financial system in the European Union and establishing a European Systemic Risk Board.

³⁴“Responsibility for macroprudential analysis remains fragmented, as it is carried out by a number of authorities at different levels, with no mechanism to ensure that macroprudential risks are adequately identified and that warnings and recommendations are clearly issued, followed up and translated into concrete measures. The proper functioning of the Union and global financial systems and the mitigation of threats to them require greater coherence between macro- and microprudential supervision.” Recital 11 of Regulation 1093/2010.

compromise the stability of their local markets, in addition to supervising the entities that operate under their regulation.

In this regard, it is important to note that, at a domestic level, Spanish national supervisors already have sufficient and detailed information to carry out prudential supervision, both from the perspective of investment and pension funds. Therefore, although it is considered useful for ESMA to bring together all the relevant information, in the case of the Spanish investment and pension funds, this transmission of information and cooperation between supervisory bodies must be carried out based on the vast information already available to the national NCAs (CNMV and DGSFP), the European Insurance and Occupational Pensions Authority (hereinafter, "EIOPA") or the ECB, **avoiding the creation of overlapping demands of information requirements**.

4. Taking into account not only the demand but also the supply side of liquidity

Finally, in times of crisis, attention must be paid not only to resilience on the demand side, but also to how to reduce tension on the liquidity supply side.

In this regard, the FSB has highlighted that recent market volatility is due to the gap between demand and supply of liquidity during periods of crisis, however, the focus continues to be on the side of liquidity demand.

The European Commission is therefore urged to consider possible options to increase the supply of liquidity, such as by asking banking supervisors to review how to strengthen the supply of liquidity (by requiring lower requirements for market makers in times of market liquidity stress) or by modifying the possibilities available to participants in the derivatives markets to deal with margin calls (in practice extending these possibilities to options other than cash).

5. Prioritising appropriate sectoral supervision and regulation over new macroprudential tools

The macroprudential framework should address risks that are macroprudential in nature and not serve as compensation for a lack of adequate legislation or effective supervision by the authorities³⁵.

In the case of investment funds, not only has the revision of the UCITS and AIFM Directives provided the Fund Managers with sufficient liquidity tools, but the CNMV can also act ex-ante in the fund authorisation procedure. It may even ultimately revoke the authorisation of the fund or the SGIC for failure to comply with the risk management systems.

From a macroprudential approach to the asset management sector, adequate ex ante supervision is considered more in line with the objective of mitigating vulnerabilities than the inclusion of procyclical tools such as liquidity buffers, whose suitability as macroprudential tools for asset management is questioned.

³⁵This was stated by Verena Ross, President of ESMA: "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

If deemed appropriate, it is recommended that ex-ante supervision tools such as the obligations arising from the application of Article 25 of the DGFIA could be extended to other market participants with excessive leverage.

Section II. Response to the questions raised by the consultation

Please see below our answers to EC's questions, in particular to those that are relevant for the Spanish asset management and pension funds industry.

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 ("EC") is not sufficiently comprehensive of all the risks and vulnerabilities affecting the capital markets from a macroprudential point of view, as it focuses on a category of entities such as NBFIs, which also includes a heterogeneous set of entities. Thus, the approach taken by the EC has the following problems:

- (i) The EC focuses on the type of entity rather than on the activities that entail risks to securities markets. Therefore, it does not cover the risks stemming from other intermediaries' activities, that may have an important role in securities markets dynamics.
- (ii) The wide concept of NBFIs includes an heterogeneous group of entities, which ranges from supervised and regulated entities (i.e. collective investment schemes ("IICs") and Pension Funds ("PFs")), for which national competent authorities ("NCAs") have detailed information (e.g. in countries such as Spain); to other entities, such as family offices, which do not have a comparable level of transparency. This second category of entities should be the main target of macroprudential measures, as long as their size poses a risk to financial stability. These are growing activities that provide an alternative source of financing to banks, which should be encouraged rather than restricted by new regulations. In this context, it is important to distinguish between entities and activities with macroeconomic and systemic impact and those without it.
- (iii) We agree that IICs should pursue an adequate liquidity risk management. That is the main reason why, for UCITS and AIFs, latest amendments to the corresponding Directives (Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds) sets out the obligation for Fund Managers ("SGIICs") to implement at least two liquidity management tools out of a specific catalogue. This reinforces the argument that UCITS and FIAs should not be subject to additional measures as regards liquidity risk management because this issue has already been addressed in the abovementioned Directive.
- (iv) The EC does not address properly the supply of liquidity. Therefore, it would be necessary to carry out an analysis on how to strengthen this supply, especially in times of market stress.

In the event of Spanish IICs, except for hedge funds, article 8 of Order EHA/888/2008, of March 27, on collective investment scheme' transactions in derivatives, establishes that "The total exposure to market risk associated with derivatives may not exceed the net assets of the IIC" (this is a loose translation from Spanish, which reads: "*La exposición total al riesgo de mercado asociada a instrumentos financieros derivados no podrá superar el patrimonio neto de la IIC*"). As regards hedge funds, they must cap their debt at five times the value of their assets, in alignment with their investment policy and strategy (article 73.1 j) Royal Decree 1082/2012, of July 13, approving the Regulation for the development of Law 35/2003, of November 4, on collective investment schemes, "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 both IICs and FP, in particular, follow an agency business model. Managers do not carry out transactions with their own assets, but rather manage investors' money according to specific mandates. Investors are aware of economic risks associated with the underlying assets in which they invest as per the information they receive from Managers in compliance of information obligations established by applicable legislation (both pre- and post-contractual information). Market corrections in the assets' value are reflected in the funds' net asset value.

Therefore, although the interconnection of Spanish Asset Managers with other financial markets participants is undeniable (both as investors in the funds and in their capacity as lenders to the funds (in the event of debt funds regulated in article 73.5 RIIC)), and even if there are banking groups that integrate SGIIICs and PF Managers ("EGFPs"), the risk that a crisis in the Investment or Pension Funds industry could extend to other sectors remains limited:

- These are highly regulated sectors, both at European and national level.
- There is a strong control framework for UCITS and AIF Managers (regardless of the AIFs allowing for more flexibility in its configuration).
- As regards liquidity risk, the recent UCITS and AIFMD review has provided SGIIICs with a wide range of liquidity tools, establishing the obligation to incorporate at least two of them.
- As regards leverage, in the event of UCITS it is limited (article 51.3 of the UCITS Directive) and in the event of AIFs, the Manager must set out a leverage limit in the prospectus and adhere to it (Spanish legislation provides for a mandatory limit: article 73.1 j) RIIC on hedge funds' borrowing capacity).
- Credit institutions' rules already establish 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) that regulate their exposure 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
- ☐5 - To a very high extent
- ☐Don't know / no opinion / not applicable

- Default risk is very low for investment and pension funds. As already mentioned, funds issue units whose net asset value reflects market fluctuations and where the risk is borne by the investor, unlike debt instruments (including bank deposits) where the risk is on the bank's balance sheet.
- From a general point of view, taking into account the size of market stakeholders (In Spain there are 176 IICs and pension funds asset managers, 94% of them are SMEs and only 6% are large companies, according to data from INVERCO) and the type of activities they carry out; a default by one or more entities can hardly affect the functioning of the market. In fact, Spanish legislation provides for an Asset Manager replacement mechanism in the event of the SGIIC's bankruptcy (article 53 of Law 35/2003, of November 4, on Collective Investment Schemes, "LIIIC").

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

Please provide concrete examples:

As explained above, a comprehensive picture of systemic liquidity risk should also include the liquidity supply and assess demand-supply interactions to identify those which may lead in certain market segments to a decrease in traded assets or to an increase in transaction costs.

From a historical point of view, we refer to the crisis arising from the COVID 10 in March 2020 (a crisis caused by an event external to the market itself), we would like to highlight the following aspects related to Spanish investment funds behaviour according to the report on non-banking financial intermediation in Spain prepared by the CNMV (this is a loose translation from Spanish):

- *In 2020, the use of liquidity management tools by funds in Spain was higher than usual as a result of the COVID-19 crisis, which led to a significant increase in redemptions in March, as previously indicated.*
- *No Spanish fund had to activate any extraordinary liquidity measures such as suspensions of redemptions or side pockets. Only five funds had to undertake redemption gates. Furthermore, during the crisis, the CNMV reinforced its coordination mechanisms with management companies, encouraging these institutions to use, where appropriate, the available liquidity management tools. In particular, the CNMV recommended the valuation of assets based on bid prices and swing pricing schemes (CNMV Report on Non-banking financial intermediation in Spain tax year 2020, page 10).*
- *Investment funds were significantly affected by the COVID-19 crisis in March 2020, which caused both a decline in the value of these entities' assets and an increase in net redemptions.*

In the following months, the industry experienced an expansive period, restating the annual balance practically unchanged. (CNMV Report on Non-banking financial intermediation in Spain tax year 2020, page 28).

As for the Ukraine war crisis, no relevant incidents arose for Spanish investment funds either (the exposure was low). This is evidenced by the CNMV Report on Non-banking financial intermediation in Spain tax year 2021 (page 31, link: https://www.cnmv.es/DocPortal/Publicaciones/Informes/IFNB_2021_2.pdf).

In light of the above examples, there is no empirical evidence to support that the current European regulations on investment funds, with the reinforcement of liquidity tools introduced by UCITS and AIFMD review, are insufficient to address 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:

See below some reflections related to leverage:

- According to the FSB, while insurance companies, pension funds and investment funds account for 2/3 of NBFIs assets, 90% of the leverage on the balance sheet is held by other NBFIs such as broker-dealers, hedge funds, holding companies and securitisation vehicles.
- In the event of European funds:
 - ✓ UCITS Directive limits leverage with derivatives (Article 51.3 of the Directive).
 - ✓ AIFMD establishes that the Manager must set out in the prospectus a leverage limit. In addition, article 25.3 of the AIFMD establishes that “3. The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times. The competent authorities shall assess the risks that the use of leverage by an AIFM with respect to the AIFs it manages could entail, and, where deemed necessary in order to ensure the stability and integrity of the financial system, the competent authorities of the home Member State of the AIFM, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF, shall impose limits to the level of leverage that an AIFM are entitled to employ or other restrictions on the management of the AIF with respect to the AIFs under its management to limit the extent to which the use of leverage contributes to the build up of systemic risk in the financial system or risks of disorderly markets.”
- The use of leverage in European funds is low, and it is used not only to obtain additional exposure to certain assets but also for risk management purposes (hedging) and as an effective portfolio management tool (EFAMA, July 5, 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>).

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

At the moment, Spanish investment funds and their Managers have very little experience in cryptoassets.

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 must acknowledge the structural differences between banks and non-banking entities. The supervision of entities such as fund Managers must be appropriate to their nature and specific risks, thus avoiding regulatory burdens that may hinder these entities' capacity to contribute to the growth and stability of the capital markets.

In order to be consistent with the Capital Markets Union (hereinafter, "CMU") and reduce reliance on bank-based financing by diversifying funding sources through capital markets, it is paramount to avoid imposing excessive requirements on investment funds that make them resemble banking entities. Instead, their distinct nature should be taken into account.

For asset Managers, the countercyclical macroprudential approach applied to banks does not provide added value. As noted by the FSB, while all financial institutions face similar risks, the extent to which they are exposed to these risks can vary. There are several fundamental differences between the banking industry and market-based finance entities, which require completely different macroprudential approaches.

Firstly, banks hold a central role in the financial system. Therefore, their failure can have far-reaching consequences, as acknowledged by the term "too big to fail." In contrast, with a few possible exceptions such as central counterparties, no market participant is large enough to disrupt securities markets.

Secondly, it is not possible to completely rule out the solvency and liquidity risks that are inherent to banking activities, as this would require banks to hold only safe assets, which is not feasible from a business perspective. Banking regulators have therefore introduced micro- and macroprudential measures, such as (countercyclical) capital and liquidity buffers, to mitigate these vulnerabilities.

In market-based finance, however, to mitigate the vulnerabilities of certain sectors without relying on such buffers. For example, it is possible to rule out the so-called first-mover advantage by ensuring that investors pay the transaction costs borne by the fund, in the event of a redemption of fund units. Similarly, it is possible to decrease the procyclicality of margin calls by allowing market participants to meet this liquidity demand by posting sovereign bonds or money market fund (MMF) shares as collateral.

Contrary to the CMU agenda, attempting to mitigate these vulnerabilities by introducing countercyclical capital and/or liquidity buffers would overlook the distinct, non-banking nature of the investment fund industry and hinder risk-taking in European financial markets.

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?

SGIIC, unlike banks, follow an agency business model, and do not take risk as principals, with investors bearing the economic risks associated with the underlying assets and being aware of said risks due to the information obligations established by the regulations (both pre- and post-contractual information).

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

Macroprudential tools applied to banks (i.e. capital and liquidity buffers and countercyclical measures) do not provide added value as regards Asset Managers. This has been publicly declared by the national competent authorities of Austria (FMA), Italy (CONSOB), Spain (CNMV) and France (AMF) in their joint statement “A macro-prudential approach to asset management” (link: https://www.cnmv.es/DocPortal/Publicaciones/OTROS/NP_EN_15042024en.pdf), which state that “*such countercyclical regulatory requirements are very unlikely to be useful as a means to reduce risks to financial stability. This is because asset managers take decisions on behalf of investors. **Consequently, forcing asset managers to act in a countercyclical fashion – that is, in practice, against the preferences of their investors – cannot be a suitable solution.***”

While in Spain the supervisor has the macroprudential tools to adopt measures that strengthen the liquidity levels of IIC portfolios (including MMFs), the CNMV views these measures as a last resort.

Question 8.2 Please explain what are the cons?

In light of the recent AIFMD/UCITS review, as well as the recent conclusions reached by FSB/IOSCO on recommendations for liquidity management in open-ended funds (OEFs) or the abovementioned Communication on the macro-prudential approach to asset management, any change to liquidity buffers announced by a public authority would directly conflict with the principle that entrusts fund managers with the ultimate responsibility for managing their funds' liquidity. Practically speaking, such intervention could disrupt, if not undermine, the fund manager's ability to effectively carry out their management duties.

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 reporting and avoid overlaps. Simplification can be achieved by optimising the flow of information by enhancing the interoperability of existing reporting platforms. Thus, data already reported under UCITS, AIFMD and MMFR could be shared among NCAs avoiding duplication of effort. This would enable more effective supervision, reducing redundancy and improving agility in risk

identification, such as liquidity risks, without imposing unnecessary additional requirements on funds or altering 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 noted, achieving the goals of this initiative requires extending regulatory scrutiny to all market participants. While we view this as a valuable tool for informing both supervisors and market participants, it is important to highlight that stress-tests per se do not “mitigate” any risk and, as such, they should be understood as a complementary tool of a managers’ broader risk management framework. For it to work, however, it is essential that other actors come under greater regulatory scrutiny beforehand.

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

Reverse distribution is not defined by the applicable legislation. To clearly understand the purpose of the ban, it is necessary to determine when this practice would be permitted and what the ban aims to achieve.

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 organized 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?

- SGICs provide the supervisor with very detailed information about their funds (investment policy, liquidity profile) both at the time of authorisation and once they have been incorporated. In addition to that, Spanish investment funds in their information reports (*estados reservados*) provide very detailed information on a monthly basis about their investment portfolio and their transactions in derivatives. Therefore, the type of reporting to the supervisor conducted in Spain could serve as a reference for other European jurisdictions.
- The ESMA Guidelines on liquidity stress tests for UCITS and AIFs provide for the periodic performance of liquidity stress tests. The results of these tests must be made available to the competent national authorities.
- Article 25 AIFMD provides a supervisory tool for leverage risk and ESMA guidelines developing this article set out consistent, effective and efficient practices for national supervisory authorities for a common, uniform and consistent application of Article 25 AIFMD.
- Finally, the UCITS and AIFM review has introduced a wide range of liquidity tools to avoid potential liquidity mismatches, which also include anti-dilutive tools (such as 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 including some of the variables outlined in the CNMV Technical Guide on the management and control of the liquidity of collective investment schemes, it would be feasible, in line with point four of such Technical Guide, to take into account liquidity ratios or levels of financial instruments. These ratios will vary based on the type of assets, the estimated time horizons for their sale (and, where applicable, liquidation costs), as well as scenarios for redemptions and other payment obligations, along with stress tests 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 important to highlight that the main responsibility for managing IICs' liquidity rests with the Management Company.

However, the supervisory role of national authorities is also significant. In this regard, we believe that the national supervisor already has sufficient tools for this task:

- At the time of the IIC's authorisation, the supervisor carries out a consistency check between the investment policy and the frequency of redemptions. During the life of the IIC, the supervisor receives regular information on the portfolio composition and may also, in the event of certain breaches, revoke the authorisation of an IIC or its Manager.
- On top of that, legislators have added macroprudential tools that supervisors can use to control liquidity (Article 70 bis. Suspension of issuance, redemption or repurchase and Article 71 septies LIIC, please see below a loose translation).

"Article 70 bis Suspension of issuance, redemption or repurchase

1. The CNMV may require, in the interest of the participants or shareholders or in the public interest, the temporary suspension of the issue, redemption or repurchase of the units or shares of the IICs authorised in Spain, when it is not possible to determine their price or another cause of force majeure occurs."

"Article 71 septies. Monitoring of leverage limits, the adequacy of credit assessment processes and liquidity risk

(...) 7. The National Securities Market Commission, in order to guarantee equitable treatment of participants or shareholders or for reasons of stability and integrity of the financial system, may, temporarily and justifying the need and proportionality of the measure:

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

(b) Authorise management companies of collective investment institutions, whether individually or collectively, to set notice periods for redemptions in one or more of the collective investment schemes they manage, without adhering to the usual requirements for time, minimum amounts, or prior registration in the applicable management legislation. These notice periods may also be established by the National Securities Market Commission, which will specify the redemptions to which the measure applies."

- Additionally, the CNMV has published a Liquidity Management Guide (CNMV Technical Guide 1/2022 on the management and control of the liquidity of collective investment schemes) that consolidates all relevant supervisory criteria related to the management and control of the liquidity of collective investment schemes into a single document.
- Finally, it should be noted that:
 - (i) ESMA's report on the joint supervisory action regarding liquidity risk management in UCITS in 2020 (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), which followed the COVID-19 crisis, it was concluded that, in general, UCITS Managers demonstrated that they have implemented and applied sufficiently sound liquidity risk management processes and that the entities complied with their regulatory obligations, although possible areas for improvement were also identified (e.g., specific cases in which the assessment of liquidity before making investments should be strengthened).

- (ii) In 2020 ESMA's liquidity stress test established that based on an average of a 20% weekly redemption shock and taking the highest historical loss amount during 2017-2019, more than 86% of AIFs and 90% of UCITS would be resilient (ESMA, [Report on liquidity risk in investment funds](#), November 2020, p. 40.).

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?

Following the recent UCITS and AIFM review with the inclusion of liquidity tools, it is considered that Asset Managers currently have a sufficient range of measures available. In this regard and considering that the aforementioned Directives already require the inclusion of at least two tools, it is paramount that regulatory developments are as flexible as possible. This flexibility should allow Managers to determine when these tools are activated (avoiding the establishment of thresholds that trigger automatic application) and how they are implemented (e.g., handling 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?

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 organized?

Although this is a question addressed exclusively to national supervisory authorities, the following reflection is worth considering:

SGIICs already conduct liquidity stress tests at the fund level. Conducting a liquidity stress test at the SGIIC level adds no additional value, as each fund presents a different liquidity risk, and there is asset segregation both between the assets of different funds and between the funds' assets and those of the SGIIC. Therefore, there does not appear to be any added value in performing a liquidity stress test at the SGIIC level.

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:

The provision of margins in derivative transactions is a key factor for NBFIs to consider when managing their liquidity. As previously noted, the concept of NBFIs includes a wide range of entities, some of which are unregulated, and it is particularly these entities that should be the focus of measures. In the case of investment funds, it is important to consider the following:

- (i) Although investment funds use derivatives, the most frequent use is for hedging market risks and the exposure of investment funds to derivatives is relatively limited³⁶, particularly in UCITS where the UCITS Directive itself sets a limit (Article 51.3 of the Directive). In the case of AIFs, the manager determines the leverage limit in the prospectus. Notably, 65% of European funds do not use synthetic leverage³⁷.
- (ii) UCITS and AIFM Directives require Managers to have risk management procedures in place to identify and control the liquidity risk associated with each position (Article 51.1 UCITS and Article 16 AIFMD and Article 48 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision).

³⁶ESMA 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

³⁷ECB. The impact of derivatives collateralization 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>

- (iii) ESMA Guidelines on Exchange Traded Funds and other UCITS-Related Matters 2014 set out requirements for trading in over-the-counter (OTC) derivatives, including monitoring of counterparty risk and collateral risks.
- (iv) ESMA Guidelines on liquidity stress testing for UCITS and AIFs of 16 July 2020 require that the tests take into account not only redemptions but also potential margin calls faced by the fund.

In this context, there are already sufficient regulatory measures in place within the European investment funds framework to manage the liquidity risk associated with margin contributions in OTC derivatives transactions. In this regard, the following points are worth considering:

- (i) As previously noted, requiring liquidity buffers (for this or any other reason) from investment funds does not appear to be an appropriate solution and could be detrimental to the interests of participants, as holding cash limits investment profitability.
- (ii) It would be beneficial for clearing houses and counterparties to generally accept collateral other than cash (with appropriate haircuts) in OTC derivatives transactions.

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

Please provide examples specifying the sector you refer to:

As mentioned earlier, the NBF pool is highly heterogeneous, meaning that the appropriate metrics and tools for managing liquidity vulnerabilities may differ 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 (eg stemming from exposure to LDI funds, other funds or derivatives), while minimizing 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 NBF sectors.

In order to enhance liquidity risks supervision in pension funds, it is key to optimise the quality and scope of the reports submitted by pension funds, while avoiding an excessive increase in the reporting burden. In this regard, article 25.2(d) of the IORP II Directive, already requires occupational pension funds to include a specific assessment of liquidity risk in their ORA. In Spain, this means that the DGSFP regularly receives detailed information (at least every three years) on the liquidity risks of pension funds (article 30 quinquies of Royal Legislative Decree 1/2002, of 29 November, approving the revised text of the Law on the Regulation of Pension Plans and Funds).

Furthermore, Article 49 of the IORP II Directive provides for a supervisory review process that not only assesses the risks faced by funds, but also their ability to manage them effectively. In order to strengthen this supervisory capacity, it would be beneficial to implement risk indicators, such as projected liquidity scenarios, that account for adverse conditions. In this regard, if a negative liquidity situation is anticipated at some point in the future, a detailed assessment could be carried out. This assessment, along with general liquidity indicators, would highlight which assets could be further monetised in a stress scenario, along with the applicable time frame and potential discounts.

Another key consideration is the need to facilitate the acceptance of collateral other than cash in derivatives transactions, both by clearing houses and by counterparties. This would reduce the need for maintaining large cash reserves, which often negatively impacts the profitability of investments, especially in long-term investments. The acceptance of alternative collateral, with appropriate haircuts, would mitigate this impact and improve liquidity management efficiency, while minimising the systemic risk associated with unexpected margin calls.

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 regularly conducts stress tests approximately every two years (the last one took place in 2022). As liquidity risk is already a variable that forms part of the ORA, it would be possible for EIOPA to conduct a liquidity stress test that would not entail 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 you would consider for identification of eligible instruments:

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?

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:

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

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?

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:

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?

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

The opportunity of this measure should be considered with an appropriate cost/benefit assessment. In the case of Spain, in AIAF SEND there is a market for promissory notes.

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)?

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"/>
UCITS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

There is no need for additional tools, as the current regulatory framework is already comprehensive as explained above. As outlined in our response to Q5, leverage is low in the European fund sector. The possibility of imposing leverage limits under Article 25 AIFMD is therefore amply sufficient.

Question 44. What are, in your view, the benefits and costs of using yield buffers³⁸ 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, both the AMCESFI in its Annual Report for the 2023 financial year, and the CNMV president, in his appearance before the Economic Commission in April of this year, highlighted the robustness of the Spanish funds sector.

In 2022 and 2023, Spanish funds demonstrated remarkable resilience to market fluctuations. They maintain very low leverage (approximately 10% in net terms in both 2022 and 2023) and pass the annual stress tests conducted by the CNMV with ease.

Their exposure to one of the EU's main sources of risk, the real estate sector, is also minimal. Overall, the CNMV does not identify any significant risks within Spain's non-banking financial intermediation sector.

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

In the event of UCITS funds, the regulation sets strict requirements on the suitability of the assets in which they invest. According to article 50.1(e) ii) UCITS Directive, third-country funds must comply with rules similar to those established in that Directive in aspects such as the segregation of assets, the borrowing and lending of funds, and the prohibition of short sales of transferable securities and money market instruments. If these third-country funds fail to comply with these requirements, they would only be considered as closed-end funds, subject to an investment limit of 10% of the fund's total assets, as set forth in Article 50.2 of the UCITS Directive.

4.2 Other NBFIs and markets

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

Where market participants exist and are recognised as relevant for assessing macroprudential risk but are not covered by EU legislation, they should be included under this framework.

Once included within the scope of macroprudential supervision, the appropriate macroprudential tools can be applied to these participants.

³⁸The 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-authorized GBP-denominated LDI funds](#), p.3.

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

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 (eg other funds or funds of funds) to the ultimate beneficiary?

From a supervisory perspective, the IOSCO Recommendations for a framework to assess leverage in investment funds require that every fund report leverage figures to its supervisor (IOSCO, [Recommendations for a framework assessing leverage in investment funds](#), December 2019). European authorities can access these figures by relying on the IOSCO Multilateral Memorandum of Understanding (MMoU), to which 130 authorities worldwide are signatories (IOSCO, Multilateral [Memorandum of Understanding concerning consultation and cooperation and the exchange of information](#), revised in May 2012; IOSCO, [Signatories to Appendix A and Appendix B List](#), consulted in November 2024).

In particular, in Spain: SGIICs are subject to information obligations as regards leverage as per CNMV Circular 3/2008 on accounting standards, annual accounts, and confidential information statements of collective investment schemes; and EGFPs have also similar reporting obligations regarding leverage by virtue of Order ETD/554/2020, of June 15, approving the models of statistical, accounting, and supervisory information for pension funds and their management entities.

Therefore, as management companies must report the leverage figures for all their funds, there is no 'hidden' leverage in the fund sector.

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?

A comprehensive stress testing exercise for the entire EU financial system could be a very useful and beneficial tool to strengthen the resilience of the entire EU financial system.

Nevertheless, if an exercise like the one proposed were to be conducted, it is considered necessary that it meets the following characteristics:

- Comprehensive participation sample: Inclusion of representation from all market participants and not just certain sectors.
- Realistic scenarios: The stress scenario design should be representative and relevant across the EU.

However, focusing solely on stress testing and demand-side scenario building will be insufficient if the liquidity supply problem is not effectively addressed.

While system-wide stress testing should not require the introduction of additional reporting requirements, it is crucial for other supervisory activities to ensure that financial institutions report sufficient data to their authorities and that this data is effectively shared among authorities.

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; eg portfolio overlaps)?

SGIICs carry out stress tests at the fund level (which is the only adequate level bearing in mind the “agency model”). In Spain, the frequency with which CNMV carries them out is every six months, in accordance with the methodology proposed by ESMA (in the framework of [STRESSI](#) work).

6. Supervisory coordination and consistency at 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?

Building on the proposed comprehensive macroprudential approach, it is key that (i) there is an EU-wide centralisation of the data (e.g. portfolios, derivatives transactions) currently collected by NCAs in respect of their supervised entities, which is available to NCAs, ESMA and the ECB, and (ii) ESMA is able to carry out 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 monitoring developments that could jeopardise the stability of their local markets, in addition to supervising entities operating under their regulation.

Based on the analysis carried out by ESMA, the NCAs would be in an optimal position to implement supervisory actions to mitigate the risks previously identified. To strengthen this new role, it is crucial that ESMA becomes the epicentre of data collection (data hub) on securities markets. This would imply that the NCAs, EIOPA and the European Central Bank (ECB) share the information they obtain with ESMA, which would allow the European supervisor to have a more comprehensive view of the market dynamics. This strategy would also help alleviate the data collection burden on market participants, particularly during 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?

One potential improvement would be to enhance communication channels, such as by enabling the real-time sharing of information between NCAs and ESAs, allowing authorities to respond more quickly and effectively to systemic risks.

The establishment of centralised platforms for data exchange and risk management between NCAs and ESAs would further support the implementation of these measures, ensuring decisions are based on a comprehensive view of sector risks and enabling 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 potential disadvantage of extending the use of ECM to other sectors is that introducing additional layers of coordination and supervision could increase compliance costs without necessarily resulting in greater efficiency. Adding more complex regulatory and supervisory structures may create a significant administrative burden for both authorities and market players, which could negatively impact their daily operations.

The ESRB already serves as central body for integrating all sectors that are relevant to the financial stability of the European Union. In this respect, its analytical and coordinating role already covers potential risks that may arise in relation to NBFIs. Additional supervision layers through the ECM could duplicate efforts, resulting not only in higher costs but also in a dilution of the effectiveness of the actions and measures taken.

Furthermore, the market stability analysis carried out by ESMA should already be sufficient to address any systemic risks related to NBFIs with contagion effect. ESMA is well-positioned to identify and mitigate risks of spillover in securities markets. Therefore, expanding the ECM could create overlaps between the roles of the ESRB and ESMA, undermining the clarity of responsibility allocation. In particular, it is noted that supervisory convergence in capital markets belongs solely to ESMA. The ESRB should only be an observer in that matter.

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 appreciated, adopting a supervisory model similar to the Single Supervisory Mechanism for banks is not deemed suitable for asset management, given the fundamental differences between banks and asset managers.

Indeed, the integration of supervision is likely to complicate the regulatory environment, as asset managers would still have to comply with various national laws, including those governing contracts, insolvency and taxation. These national particularities add complexity to supervision and could lead to legal conflicts between ESMA and national authorities.

In addition to the above, national and cross-border supervision and the coordination provided for in UCITS and AIFMD should be considered effective unless proven otherwise. Moreover, it remains unclear whether EU-level supervision would yield better results. Therefore, national supervision is regarded as the most effective approach for the asset management sector.

A different issue is that, in order to ensure supervisory convergence, it is considered that, at EU level, ESMA should be the solely competent authority in charge of for capital markets supervisory convergence, while the ESRB should only be an observer.

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 quickly?

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 (eg 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 NBFi sectors?

Question 65.1 Please explain what are the pros?

Question 65.2 Please explain what are the cons?

See answer to question 59 (references to ESMA being understood as referring to EIOPA).

Powers of ESAs and the ESRB in crisis situations

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:

Depending on the nature and cause of the systemic event, either preventive or remedial measures may be necessary.

From an EU joint market perspective, it could be beneficial to implement comprehensive preventive measures, such as direct data referrals, that the ESAs could apply across Europe. In this regard, we propose that ESMA be the responsible ESA, as it has visibility over data collection across all EU markets.

However, corrective or palliative measures, such as the total or partial closure of stock exchanges at European level or the suspension of trading in a specific security, should remain the responsibility of national authorities, due to the current fragmentation of national markets. These authorities must assess the application of mechanisms such as the suspension of trading in a specific market. However, if the security in question is of significance to the entire EU and is listed on multiple markets, it would be appropriate for ESMA to facilitate a coordinated response between all relevant markets and their respective NCAs, with special consideration given to the reference market for that security.

Finally, as regards data collection, the current approach of national supervisors collecting data and submitting it to ESMA is considered appropriate.

Integrated supervision in the raw materials 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 program on NBFIs that should be prioritized in the EU?

Please provide examples:

As noted in the introduction, in order to achieve a comprehensive macroprudential policy for European financial markets, it is essential to achieve appropriate coordination at national, European and international levels:

- 1) Expand the scope of macroprudential supervision in the area of financial intermediation through securities markets to encompass all relevant stakeholders operating within them.
- 2) Designate ESMA as the central hub for data collection in securities market supervision, aggregating data collected by other national supervisors and central banks and carrying out the necessary analyses.
- 3) Increase liquidity on the supply side during times of crisis.