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COMMENTS

***TARGETED CONSULTATION ASSESSING THE ADEQUACY
OF MACROPRUDENTIAL POLICIES FOR NON-BANK
FINANCIAL INTERMEDIATION (NBFI)***

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CECA COMMENTS ON THE TARGETED CONSULTATION ASSESSING THE ADEQUACY OF MACROPRUDENTIAL POLICIES FOR NON-BANK FINANCIAL INTERMEDIATION (NBFI)

The Spanish Association of Savings and Retail Banks (CECA) welcomes the opportunity to comment on the European Commission Targeted consultation assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI).

In order to contribute to the public consultation process please find below our comments and remarks.

I. GENERAL REMARKS

CECA advocates for the Commission to adopt a balanced regulatory framework planning that takes into account the need for new, effective regulation for certain sectors/operations, as well as the protection of actors that are already sufficiently regulated and supervised. Regarding the overall positioning for the definition of the new macroprudential framework for non-bank financial institutions (NBFI), our position can be summarized in the following points:

- **Comparable regulations for NBFI engaging in credit activities.** NBFIs engaging in credit-related activities should be subject to prudential rules and other important regulations comparable to those applicable to banks. This includes requirements for capital adequacy and liquidity, regulations such as conduct (conditions in the selling process) or AML/FT, and market transparency. Ensuring that unregulated NBFIs engaging with credit activities operate under similar standards that banks will help mitigate systemic risks and protect the financial system's integrity.
- **Support for coherent and proportional regulation.** The new framework should focus efforts on those entities or activities operating outside the European regulatory framework and on those with less stringent supervision. Many NBFI sectors already have robust regulations addressing systemic risks, including liquidity risk management and stress testing. We assert that certain non-bank financial institutions (e.g. asset management companies or insurance companies) are already adequately regulated and supervised under European and national legislation and should not face additional regulatory burdens. Additional regulation on regulated NBFIs could negatively impact their ability to support the EU Capital Markets Union by hindering their role in providing wholesale market-based funding. Regulator and supervisor's initiatives should focus in unregulated NBFI, as the lack of regulatory and supervisory oversight in their activities may lead to increasing risks to the regulated markets and to the real economy.
- **Strengthening global regulation.** The European Union is only part of the broader regulatory landscape; it is essential to consider cross-border activities at a global level. The role of the Financial Stability Board (FSB) is paramount in this context, as it can facilitate international cooperation and ensure that consistent regulatory standards are

applied globally. This alignment is critical to prevent regulatory arbitrage and to foster a stable international financial environment. This would help to better control systemic risks as well as prevent capital flight to more permissive jurisdictions, providing a level playing field and promoting financial services growth and innovation. In this sense, is crucial to put the focus on new regulation and supervisory tools on unregulated NBFIs with a global perspective, avoiding initiatives on European regulated NBFIs already adequately supervised.

- **Regulatory and supervisory level playing field with existing frameworks.** It is crucial to differentiate between NBFIs (e.g. asset managers) that operate under stringent regulatory and supervisory frameworks, such as those in Spain, and those in jurisdictions with more lenient approaches, such as Ireland or France. This distinction is vital to ensure a level playing field and maintain regulatory consistency across the European Union. By recognizing the varying degrees of regulation, we can better address the potential risks associated with less supervised entities while not increasing with unnecessary burdens those that are already well-regulated and supervised.
- **Optimization of existing tools.** Innovation in regulatory frameworks is not always necessary; instead, it is important to ensure the proper application and consistent enforcement of the existing supervisory tools available to regulators. By enhancing the effectiveness of current regulations, we can better address potential risks. Therefore, we propose that European regulators and supervisors make more effective use of the supervisory tools and data already at their disposal, learning from best practices within the different jurisdictions of the European Union. Improved communication and information exchange can enhance the overall understanding of risks and facilitate more informed regulatory decisions. Furthermore, any response to specific concerns should focus in the specific sector in the NBFIs field where the issue arose, and any generalization to the overall financial sector be proportional to the respective characteristics. By focusing on these principles, we aim to create a regulatory environment that supports a dynamic financial sector while effectively managing the risks associated with NBFIs.
- **Systemic importance of certain sectors.** The magnitude of systemic risks for all sectors should be assessed and clearly defined before proposing new measures. From there, more targeted new policies could be proposed, but not before. The development of macroprudential policies and tools for unregulated NBFIs should be done in a way that prevents banking organizations and regulated NBFIs from taking on a “gatekeeper” role in managing the risks associated with unregulated NBFIs.
- **Protection of client interests.** Any regulatory framework must primarily aim to protect investor interests and ensure that NBFIs operate transparently, providing clear and precise information about their products and risks. This not only builds trust in the system but also helps avoid reputational risks for the industry. Therefore, we request that regulatory focus be placed on those actors operating outside the regulatory and supervisory framework of Europe.
- **Distinction between responsible actors and risk actors.** It is important for the new

regulation to clearly distinguish between non-bank entities (regulated NBFIs) that operate with good practices and have already in place strong regulation, supervision and systemic risk mitigating procedures from those that not (unregulated NBFIs). This will allow the financial sector to continue contributing to the financing of key projects, without compromising financial stability.

Therefore, we believe that this approach seeks a balance between promoting a dynamic financial sector and mitigating the risks associated with NBFIs, while simultaneously ensuring sustainable financial stability.

II. Specific questions of the consultation

1. Key vulnerabilities and risks stemming from NBFIs

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

N/A

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.

N/A

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

N/A

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

N/A

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.

N/A

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

N/A

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.

N/A

3. Unmitigated liquidity mismatches

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? Please explain.

N/A

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.

N/A

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?

N/A

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?

N/A

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?

N/A

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

MMFs?

N/A

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

N/A

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

N/A

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?

N/A

Question 17. Only for NCAs and EU bodies: What is the supervisory practice and your experience with monitoring and detecting unmitigated liquidity mismatches during the lifetime of OEFs? What is the data that you find most relevant when monitoring liquidity risks of OEFs?

N/A

Question 18. Only for NCAs and EU bodies: What supervisory actions do you take when unmitigated liquidity mismatches are detected during the lifetime of an OEF?

N/A

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?

N/A

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

N/A

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?

We believe that the current regulation and supervision applied in Spain is adequate, but this is not the case in other member states.

The measures permitted under the existing regulatory framework and supervision in Spain are adequate, as we have not identified any liquidity issues that cannot be addressed with the current measures. Therefore, we understand that there is no need to propose modifications to the existing regulation with new measures, as they are sufficient if entities apply them appropriately during times of market stress.

The management companies of collective investment schemes (IIC) in Spain are among the most regulated sectors, already possessing specific tools for liquidity risk. Thus, in situations of market stress, entities must implement the necessary measures, which should be reflected in the net asset value. Consequently, it is considered that the current regime in this area is adequate, and it is the responsibility of each entity to apply the necessary mechanisms (including, among others, separating the clean portfolio from the contaminated portfolio, partial liquidation, or partial redemption).

Finally, in times of stress, one should consider the situation that may arise in money market funds. These funds may utilize liquidity buffers or mark-to-market (MTM) valuation. When assets are valued MTM, we understand that they do not pose a problem because the existing liquidity mechanisms are functioning. However, when a liquidity buffer is activated, it could potentially lead to issues if there is a high volume of redemption requests, creating a false impression that the net asset value is not declining. Therefore, it would be worth considering whether regulations should prevent the activation of liquidity buffers under certain circumstances or if additional measures should be adopted. In any case, it seems advisable to review the consistent application of money market fund regulations across the EU, as there are instances where the behaviour of such funds appears inconsistent with the investment restrictions or net asset value calculation requirements imposed by the regulations. It is unclear whether this discrepancy is due to different transpositions in various countries or differing interpretations of the common regulations by the respective supervisors.

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

N/A

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?

N/A

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?

N/A

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

N/A

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?

N/A

Question 27. What are relevant risk metrics or tools that can be used to effectively monitor liquidity and margin preparedness across all NBFIs entity types? Please provide examples specifying the sector you refer to.

N/A

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

N/A

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?

N/A

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/EC60? If not, please suggest what criteria would you consider for identification of eligible instruments.

N/A

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?

N/A

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.

N/A

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

N/A

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?

N/A

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.

N/A

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?

N/A

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

N/A

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)?

N/A

Question 39. How would you assess the level of preparedness of commodity derivatives market participants in terms of meeting short-term liquidity needs or requests for collateral to meet margins? Please rank from 1 to 5 (lowest to highest) the level of preparedness for the following participants by sector: insurance companies, UCITS funds, AIFs, commercial undertakings, investment firms, pension funds.

N/A

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.

N/A

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?

N/A

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

N/A

4. Excessive leverage

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?

N/A

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

N/A

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.

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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?

N/A

5. Monitoring interconnectedness

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

N/A

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

N/A

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? Please elaborate.

N/A

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?

N/A

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

N/A

6. Supervisory coordination and consistency at EU level

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

N/A

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?

N/A

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

N/A

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?

N/A

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 EU bodies

N/A

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?

N/A

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

N/A

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

N/A

Question 65. What are the pros and cons of extending the use of the Enhanced Coordination Mechanism (ECM) described under section 6.1 to other NBFIs sectors?

N/A

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.

N/A

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?

N/A

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

N/A

Madrid, 22 November 2024