

CNMV ADVISORY COMMITTEE RESPONSE TO THE FSB CONSULTATIVE DOCUMENTS REGARDING ASSET MANAGEMENT

The CNMV's Advisory Committee has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

A) GENERAL QUESTIONS

1.- Does this consultative document adequately identify the structural vulnerabilities associated with asset management activities that may pose risks to financial stability? Are there additional structural vulnerabilities associated with asset management activities that the FSB should address? If there are any, please identify them, as well as any potential recommendations for the FSB's consideration.

As discussed in the introduction, it is welcome that the document recognises that asset management is a distinct activity from banking and insurance, and that mutual funds generally performed well during the financial crisis.

The vulnerabilities identified by the document were also detected and addressed in the framework of the UCITS Directive and AIFMD; consequently, the bulk of the recommendations have already been incorporated into European and Spanish law; no other vulnerabilities other than those listed in the document have been identified.

2.- Do the proposed policy recommendations in the document adequately address the structural vulnerabilities identified? Are there alternative or additional approaches to risk mitigation (including existing regulatory or other mitigants) that the FSB should consider to address financial stability risks from structural vulnerabilities associated with asset management activities? If so, please describe them and explain how they address the risks. Are they likely to be adequate in stressed market conditions and, if so, how?

In general, the proposed measures address the detected vulnerabilities appropriately.

3.- In your view, are there any practical difficulties or unintended consequences that may be associated with implementing the proposed policy recommendations, either within a jurisdiction or across jurisdictions? If there are any, please identify the recommendation(s) and explain the challenges as well as potential ways to address the challenges and promote implementation within a jurisdiction or across jurisdictions.

No, in general. However, performing system-wide stress tests, in line with Recommendation 9, may face practical difficulties due to the volume of information to be aggregated by supervisors and because not all investors behave the same as regards redemption/asset sales in a situation of market stress.

B) QUESTIONS IN CONNECTION WITH THE RECOMMENDATIONS ON LIQUIDITY (RECOMMENDATIONS 1 TO 9)

Recommendation 1: Authorities should collect information on the liquidity profile of open-ended funds in their jurisdiction proportionate to the risks they may pose from a financial stability perspective. They should review existing reporting requirements and enhance them as appropriate to ensure that they are adequate, and that required reporting is sufficiently granular and frequent.

Recommendation 2: Authorities should review existing investor disclosure requirements and determine the degree to

which additional disclosures should be provided by open-ended funds to investors regarding fund liquidity profiles, proportionate to the liquidity risks funds may pose from a financial stability perspective. Authorities should enhance existing investor disclosure requirements as appropriate to ensure that the required disclosures are of sufficient quality and frequency. In this regard, IOSCO should review its existing guidance and, as appropriate, enhance it.

Recommendation 3: In order to reduce the likelihood of material liquidity mismatches arising from an open-ended fund's structure, authorities should have requirements or guidance stating that funds' assets and investment strategies should be consistent with the terms and conditions governing fund unit redemptions both at fund inception and on an ongoing basis (for new and existing funds), taking into account the expected liquidity of the assets and investor behaviour during normal and stressed market conditions. In this regard, IOSCO should review its existing guidance and, as appropriate, enhance it.

Recommendation 4: Where appropriate, authorities should widen the availability of liquidity risk management tools to open-ended funds, and reduce barriers to the use of those tools, to increase the likelihood that redemptions are met even under stressed market conditions. In this regard, IOSCO should review its existing guidance and, as appropriate, enhance it.

Recommendation 5: Authorities should make liquidity risk management tools available to open-ended funds to reduce first-mover advantage, where it may exist. Such tools may include swing pricing, redemption fees and other anti-dilution methods. In this regard, IOSCO should review its existing guidance and, as appropriate, enhance it.

Recommendation 6: Authorities should require and/or provide guidance on stress testing at the level of individual open-ended funds to support liquidity risk management to mitigate financial stability risk. The requirements and/or guidance should address the need for stress testing and how it could be done. In this regard, IOSCO should review its existing guidance and, as appropriate, enhance it.

Recommendation 7: Authorities should promote (through regulatory requirements or guidance) clear decision-making processes for open-ended funds' use of extraordinary liquidity risk management tools, and the processes should be made transparent to investors and the relevant authorities. In this regard, IOSCO should review its existing guidance and, as appropriate, enhance it.

Recommendation 8: Authorities should provide guidance and, where appropriate and necessary, provide direction regarding open-ended funds' use of extraordinary liquidity risk management tools. In this regard, IOSCO should review its existing guidance and, as appropriate, enhance it.

Recommendation 9: Where relevant, authorities should give consideration to system-wide stress testing that could potentially capture effects of collective selling by funds and other institutional investors on the resilience of financial markets and the financial system more generally.

4.- In your view, is the scope of the proposed recommendations on open-ended fund liquidity mismatch appropriate? Should any additional types of funds be covered? Should the proposed recommendations be tailored in any way for ETFs?

Firstly, we welcome the recommendations that supervisors should make liquidity management tools more broadly available to funds and that barriers to their use be lowered in order to enhance funds' capacity to cater for redemption requests, even in stressed market conditions.

In any event, the approach should be that supervisors establish what liquidity management measures they consider to be appropriate/compliant and give guidelines as to their use so as to provide greater legal certainty in this context, but the decision as to which tools to use, and when, should lie with the fund managers. If it is established that supervisors may, in exceptional circumstances, direct their use (p. 20, paragraph 2), the regulations or guidelines should define those exceptional circumstances.

As regards recommendations for increased liquidity disclosures to supervisors and investors, we have the following comments:

- Regarding the requirements for liquidity disclosures to supervisors (content, detail and frequency), it is good that supervisors have the necessary information to assess the liquidity risk that each fund poses to the system; we believe Spanish regulations amply meet that requirement¹.

¹CNMV Circular 3/2008, of 11 September, on accounting rules, financial statements and statements of confidential information of UCITS requires that fund managers submit, generally on a monthly basis, detailed information on the following aspects, among others:

- Regarding increased disclosures to investors, it is necessary to consider that the core idea in both the UCITS Directive's KID and the document established in the PRIIPS Regulation is the provision of clear, readily comprehensible information while not overloading the investor with data and information that are not of use to him/her. In that light, it does not seem appropriate to provide the investor with excessive details on how the fund manages liquidity risk. As regards funds' liquidity risk, we believe that the obligations governing disclosures to investors on liquidity risk, both pre-contractual and once invested in the fund, are set out in sufficient detail in the UCITS Directive and Spanish regulations on AIFs.

5.- What liquidity risk management tools should be made available to funds? What tools most effectively promote consistency between investors' redemption behaviours and the liquidity profiles of funds? For example, could redemption fees be used for this purpose separate and apart from any impact they may have on first-mover advantage?

The availability of liquidity risk management tools to funds should be regulated flexibly since the ultimate goal is investor protection.

The rules governing such tools should be coherent, so that a given tool should not be recommended under one regulation and disparaged under another. Such lack of coherence might arise in the case of back-end fees, used in funds whose investment policy consists of achieving a target return (guaranteed or otherwise), and applied when investors seek to withdraw before the fund's maturity, the goal being to ensure attainment of the targeted return and to protect investors who remain until maturity. Back-end fees are justifiable in the context of fund management and for the purpose of investor protection, but they might have to be discontinued, to the detriment of investors, by application of MiFID II, on the grounds that their mere existence converts the fund into a complex product².

6.- What characteristics or metrics are most appropriate to determine if an asset is illiquid and should be subject to guidance related to open-ended funds' investment in illiquid assets?

Spanish law³ contains a definition of liquid assets for the purposes of money market instruments: "*they will be considered to be liquid provided that they can be sold at a limited cost in a reasonably short period of time,*" which could be extrapolated to defining any asset as liquid. The shortness of the period must be taken into account in the case of UCITS since, as a general rule, they must offer investors same-day redemption. Meanwhile, the regulations cap investments in illiquid assets at 10% of a UCITS' assets.

7.- Should all open-ended funds be expected to adhere to the recommendations and employ the same liquidity risk management tools, or should funds be allowed some discretion as to which ones they use? Please specify which measures and tools should be mandatory and which should be discretionary. Please explain the rationales.

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- Detailed information about the securities and deposits in the fund's or compartment's investment portfolio and the various treasury accounts on the last day of the month, and the movements during the period in both cases. Additionally, detailed disclosures are required on deposits, repos and accounts, including the type of institution with which they are arranged and the maturity date.
 - Regarding less liquid securities, in which at most 10% of assets may be invested (article 48.1.j of the Regulation on Collective investment institutions), the net daily balance is reported in terms of the estimated realisable value.
 - Regarding the minimum liquidity requirements under Spanish law, the monthly average balance of the fund's or compartment's daily asset balances in overnight government bond repos, as well as cash, deposits or sight accounts at the depository or, if the depository is not a credit institution, at the credit institution designated in the prospectus for the purposes of the liquidity coefficient must be disclosed.

² Article 57.e) of the Delegated Regulation on organisational requirements for MiFID II, which is pending ratification by the Parliament and Council, specifies that the following is among the factors for classifying a financial instrument's complexity "*(inclusion of) explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it*".

³ Article 48.1 of the Regulation on Collective Investment Institutions, approved by Royal Decree 1082/2012.

Although it should be obligatory (as it is under Spanish law) for fund managers to have a liquidity management policy that includes performing liquidity stress tests and, among other goals, seeks to avoid a mismatch between the fund's investments and redemption conditions, the decision as to which liquidity management tools to use out of those provided in the regulation should lie with the fund manager, who should have sufficient flexibility to use one or another.

8.- Should authorities be able to direct the use of exceptional liquidity risk management tools in some circumstances? If so, please describe the types of circumstances when this would be appropriate and for which tools.

As described in the previous section, the decision about the use of these tools should lie with the fund manager. Prior authorisation from the supervisor should only be required for certain measures that restrict investors' rights and might have a greater impact, such as suspension of redemptions.

C) QUESTIONS RELATING TO FUNDS' LEVERAGE (RECOMMENDATIONS 10 TO 12)

Recommendation 10: IOSCO should develop simple and consistent measure(s) of leverage in funds with due consideration of appropriate netting and hedging assumptions. This would enhance authorities' understanding of risks that leverage in funds may create, facilitate more meaningful monitoring of leverage, and help enable direct comparisons across funds and at a global level. IOSCO should also consider developing more risk-based measure(s) to complement the initial measure(s) and enhance the monitoring of leverage across funds at a global level.

Recommendation 11: Authorities should collect data on leverage in funds, monitor the use of leverage by funds not subject to leverage limits or which pose significant leverage-related risks to the financial system, and take action when appropriate.

Recommendation 12: IOSCO should collect national/regional aggregated data on leverage across its member jurisdictions based on the simple and consistent measures(s) it develops.

9.- In developing leverage measures (Recommendation 10), are the principles listed above for IOSCO's reference appropriate?

Yes.

10.- Should simple and consistent measure(s) of leverage in funds be developed before consideration of more risk-based measures, or would it be more appropriate to proceed in a different manner, e.g. should both types of measure be developed simultaneously?

The first step would be to establish simple, coherent measures in line with those contained currently in the UCITS regulations and the AIFMD⁴.

11.- Are there any particular simple and consistent measures of leverage or risk-based measures that IOSCO should consider?

In the framework of both the UCITS Directive and AIFMD, the European Union has established systems for measuring fund leverage, albeit with different goals. In the scope of the UCITS Directive, the purpose of measurement is to test whether the maximum leverage limit is being complied with⁵. In the AIFMD, which does not set a maximum limit, the measurement is for information purposes and for determining whether certain AIFs are subject to disclosure

⁴ The form of measuring leverage has already been harmonised in Europe legislation. In the case of the UCITS Directive, CESR's (now ESMA's) Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS, dated 19 April 2010, and in the case of AIFMD, Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

⁵ For UCITS, leverage using derivatives is limited to the total net portfolio value.

requirements⁶. To that end, all AIF managers must calculate exposure using two methods: the gross method and the commitment method.

Since the methodologies for measuring leverage are set out in those Directives, IOSCO should take them into account in its recommendations.

12.- What are the benefits and challenges associated with methodologies for measuring leverage that are currently in place in one or more jurisdictions?

The methodologies established by the UCITS Directive and the AIFMD have worked properly and they are generally applicable throughout the European market, which represents about 40% of total world AUM; accordingly, it would be advisable for IOSCO to take them into account when establishing its leverage metric.

13.- Do you have any views on how IOSCO's collection of national/regional aggregated data on leverage across its member jurisdictions should be structured (e.g. scope, frequency)?

In the European Union, AIFs that resort to leverage on a substantial basis and, therefore, pose more of a systemic risk must report on their leverage to the ESMA. Based on the data compilation already performed by ESMA, the proper approach would be to:

- Confine the compilation of leverage information to those vehicles which actually pose systemic risk because of the degree to which they resort to leverage. In Europe, that would be just the AIFs that use leverage systematically.
- Minimise the burden of reporting this information. In Europe, ESMA should be the body entrusted with providing this leverage information to IOSCO, since ESMA receives it from funds subject to the AIFMD; ideally no new reporting requirements should be created apart from those that already exist vis-à-vis national supervisors, the ESMA and the European Central Bank. Moreover, the frequency and format of data compilation should be the same, taking advantage of reporting forms that are already in place throughout Europe.

14.- Do the proposed policy recommendations on liquidity and leverage adequately address any interactions between leverage and liquidity risk? Should the policy recommendations be modified in any way to address these interactions? If so, in what ways should they be modified and why?

Yes, they are appropriate.

D) OPERATIONAL RISK AND CHALLENGES IN TRANSFERRING INVESTMENT MANDATES OR CLIENT ACCOUNTS (RECOMMENDATION 13)

Recommendation 13: Authorities should have requirements or guidance for asset managers that are large, complex, and/or provide critical services to have comprehensive and robust risk management frameworks and practices, especially with regards to business continuity plans and transition plans, to enable orderly transfer of their clients' accounts and investment mandates in stressed conditions.

15.-The proposed recommendation to address the residual risks associated with operational risk and challenges in transferring investment mandates or client accounts would apply to asset managers that are large, complex, and/or provide critical services. Should the proposed recommendation apply more broadly

⁶ AIFMD does not establish restrictions on the use of leverage but does impose special disclosure requirements on funds that resort to leverage on a substantial basis; that information is shared with the ESMA (European supervisor) and the supervisor may even impose restrictions on leverage if it considers that the stability and integrity of the financial system may be in jeopardy.

(e.g. proportionally to all asset managers), or more narrowly as defined in Recommendation 13? If so, please explain the potential scope of application that you believe is appropriate and its rationales.

Considering that these recommendations seek to reduce systemic risk, they should apply only to asset managers that are large or complex and/or provide critical services. Nevertheless, from the standpoint of investor protection, which falls outside the scope of the FSB document, all fund managers should be required to perform proper risk management; this is already the case in Spanish law⁷.

E) SECURITIES LENDING ACTIVITIES OF ASSET MANAGERS (RECOMMENDATIONS 14 AND 15)

The contribution that **securities lending** makes to systemic risk should be considered from two standpoints; although it can lead to a number of risks, as analysed in the consultative document, securities lending is an essential tool for overcoming settlement failures and, as such, it is a significant mitigant of systemic risk.

That being said, no asset managers in Spain engage in securities lending, since it is not permitted; consequently, since there is no practical experience in this area, no answers are given to the questions in this section.

Madrid, 8 September 2016

⁷ Circular 6/2009, of 9 December, of the Comisión Nacional del Mercado de Valores, on internal controls at managers of collective investment institutions and investment companies.