ASPIM ASSOCIATION FRANÇAISE DES SOCIÉTÉS DE PLACEMENT IMMOBILIER

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ASPIM's contribution to the European Commission's consultation on assessing the adequacy of macroprudential policies for NBFIs

Founded in 1975, ASPIM is a non-profit association representing 110 France-based AIFMs who oversee real estate assets with a value of €313 billion (2023) across Europe. Real estate fund managers are a key component of the French and European economy as they directly manage "real" long-term assets, which host a wide range of economic activities including offices, shops, maternity wards, student and retirement homes, hotels and hospitals.

KEY VULNERABILITIES AND RISKS STEMMING FROM NBFI

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 ASPIM fully supports an ambitious approach to retail participation in capital markets and the Commission's objective of ensuring financial stability with a pragmatic approach that reflects the nature of the assets under management. In this context, we welcome the opportunity to comment on the Commission's consultation on assessing the adequacy of macroprudential policies for non-bank financial institutions (NBFIs).

We do not identify any systemic risk for regulated NBFIs: regulators are aware of and monitor asset management companies and their funds through authorisation files and ongoing controls, enforcement measures and sanctions in the event of non-compliance with regulations, both at European and national level.

We believe it should be a priority to intervene in unregulated NBFIs (e.g. the Archegos/Crédit Suisse case), which escape the supervision of regulators in the absence of prior regulation.

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

Question 3. To what extent could the failure of an NBFI 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 NBFI 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.

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

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

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

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.

Potential unmitigated liquidity mismatches and tools to mitigate systemic risks in 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? Please explain.

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?

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?

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

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

Liquidity and short-term instruments

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.

Potential unmitigated liquidity mismatches and tools to mitigate systemic risks in 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?

Regulated OEFs are subject to mandatory supervision by the NCAs, with strict monitoring of the liquidity profile via the UCITS and AIFM directives, which have recently been strengthened. These directives require checks to be carried out when funds are launched (overall consistency of all OEF parameters such as asset type, investor type, investment strategy, redemption frequency, LMTs etc.). The NCA regularly receives reports on the UCITS and AIFs, enabling these funds to carry out this monitoring during their lifetime.

The case of the H2o Asset Management funds exposed to illiquid assets from the galaxy of German financier Windhorst concerns a breach of regulations and fund documentation on concentration risk. It may be the result of inadequate supervision, but it is not the result of a regulatory loophole.

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?

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

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**?**

For regulated OEFs, liquidity risk is monitored at the fund design stage, which is submitted to the NCA for authorisation, and in the regular fund reports recently improved by the revision of the UCITS and AIFM Directives (Article 16). When the fund is launched, liquidity risk is monitored using data that takes into account the overall consistency of all the fund's parameters including: type of assets, type of investors, investment strategy, redemption frequency, LMTs listed in the AIFM Directive.

The authorities already have a general power of control over the fact that the asset management company is acting in the best interests of its unitholders, and this power is sufficient to enable each NCA to ensure that the asset management company sets up and maintains operational LMTs in line with the level of liquidity proposed by the fund.

While we fully support the Commission's position that the activation of an LMT should remain entirely the responsibility of the AIFM, we strongly oppose the Commission's suggestion to allow NCAs or ESMA to oblige AIFM to choose a specific LMT for a fund or group of funds, as fund managers remain in a better position to use the adequate tool, at the adequate moment.

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

The provisions currently required by the UCITS and AIFM Directives guarantee this measurement and monitoring through the liquidity management tools offered by these two regulations. In particular, stress tests and scenario analysis are highly effective tools. They allow for the assessment of a fund's resilience to adverse market conditions by simulating various liquidity shocks. These exercises help identify weaknesses in portfolios and enable managers to adjust strategies accordingly.

Additionally, the integration of advanced indicators, such as redemption timelines, and evaluations of investor behavior during stress periods, significantly enhances the ability to monitor and manage these risks.

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

Our members have no difficulty in measuring and monitoring the liquidity risks of OEFs invested in real estate. The forthcoming update of the AIFM directive on liquidity management tools will strengthen the monitoring and treatment of liquidity risk.

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

Redemptions:

Sharing information on end clients would make it possible to anticipate the risks associated with redemptions even more effectively. At present, our members do not have direct access to this information, particularly for retail clients. However, regular exchanges are organised with financial intermediaries - such as insurers, banks and other institutions - to obtain data on their clients' behaviour. However, fund distributors may be reluctant to share information about their end clients, even in the form of an anonymised typology.

It is essential that the European Commission impose an obligation on fund distributors to share their client data free of charge - even in an anonymised format - with the asset managers of the funds they distribute, including for bearer securities vis-à-vis account holders.

Margin calls:

Real estate FIAs make very limited use of derivatives, mainly for currency or interest rate hedging, and therefore have little exposure to margin calls.

Stress testing

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 [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?

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 NBFI sector(s) you refer to in your answer?

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

Pension Funds

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

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?

Short-term funding markets

Question 30. What would be the benefits and costs of creating a framework or a label in EU legislation for certain money market instruments (such as commercial papers) to increase transparency and standardisation? Should the scope of eligible instruments to such framework/label be aligned with Article 3 of Directive 2007/16/EC ? If not, please suggest what criteria would you consider for identification of eligible instruments.

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 organised trading facilities) for such instruments?

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 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.

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? Can you provide concrete examples?

EXCESSIVE LEVERAGE

Open ended funds (OEFs)

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

No additional tools are needed, as the current framework for revising UCITS and AIFM Directives is already complete. Funds managed by our members are generally not substantially leveraged. And, again, they have to comply with the strict rules of the AIFMD on leverage, as well as any additional regulation applicable at national level on the funds themselves.

More specifically, article 25 of the AIFMD includes tools to deal with leverage and restricts the use of leverage. In addition, the Directive includes reporting requirements which provide supervisory authorities with a comprehensive view of the leverage used in AIFs.

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

The use of yield buffers is not useful for regulated funds under AIFMD. Article 25 of the AIFMD includes tools to deal with leverage and restricts the use of 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.

We do not perceive there is a risk of significant pockets of excessive leverage that cannot be managed using the existing framework outlined above. Real estate open-ended funds managed by our members are typically not significantly leveraged.

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

Provided that the necessary information is provided, a management company will be able to take into account the leverage effects of the assets in which the fund is invested.

Due diligence includes an acceptable leverage limit in the prospectus.

Other NBFIs and markets

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

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

Question 49 [To NCAs and EU bodies:] Are you able to timely identify (financial and synthetic) leverage pockets of other NBFIs (such as pension funds, insurance companies and so on),

especially when they are taken via third parties or complex derivative transactions? Please elaborate on how this timely detection of leverage could be obtained?

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

Commodities markets

Question 51: What role do concentrated intraday positions have in triggering high volatility and heightening risks of liquidity dry-ups? Please justify your response and suggest how the regulatory framework and the functioning of these markets could be further improved?

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?

The Archegos case (a family office) involving Crédit Suisse is a notable example. It generated a systemic risk, ultimately leading to the bankruptcy of Crédit Suisse.

A similar Archegos scenario could occur within the European Union because family offices are not subject to regulation under European legislation. As a result, no supervisory authority or regulator has the capacity to monitor their activities or their use of leverage. Family offices, particularly those involving banking intermediaries and operating on a large scale, have the potential to be systemic in nature.

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?

Current reporting and data-sharing arrangements are sufficient to enable regulators and supervisors to carry out their tasks - provided that regulators and supervisors cooperate with each other.

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

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. [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)**?**

Yes, regulated asset managers managing regulated funds regularly carry out stress tests as part of the current requirements of the UCITS and AIFM Directives. Following these tests, an additional analysis is carried out to study the interconnections between the funds, without any additional stress test being applied. The purpose of this analysis is to examine the links between funds, particularly in cases where a fund is invested in another fund, or where several funds share a common client base.

SUPERVISORY COORDINATION AND CONSISTENCY AT EU LEVEL

Open-ended funds (OEFs)

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

EU regulated asset managers already provide reports to NCAs as well as to NCBs where their funds are domiciled in the EU. The issue of better coordination should be addressed across NCAs, across NCBs and between NCAs and NCBs in order to obtain a better central view.

Enhanced coordination mechanism (implementation and adoption of NMMs)

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

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

In any event, any enhanced coordination mechanism should not imply new costs for regulated NBFIs, which would ultimately have to be borne either by the end-customers of EU-based NBFIs or by the regulated NBFIs themselves - thereby undermining the global competitiveness of EU-based NBFIs.

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 NBFI sectors or only for a specific one.

Supervisory powers of EU bodies

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

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.

Given the specific nature of real estate as an asset class, ASPIM wish to warn against the unforeseen consequences that could result from a one-size-fits-all approach. The specificities of real estate AIFs need to be taken into consideration, as well as the existing microprudential European and local regulatory framework.

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)?

NCAs are already granted powers of direct intervention under EU regulations applicable to EU OEFs and their managers.

Other NBFIs and markets

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 NBFI sectors?

ESAs and ESRB's powers during emergency 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.

Integrated supervision for commodities markets

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

International coordination

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

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