Response of the CNMV Advisory Committee to the Public Consultation on the Market Integration Package

Madrid, 11.2.2026

0. Background

This response is submitted by the Advisory Committee of the Comisión Nacional del Mercado de Valores (CNMV) in the context of the public consultation on the Market Integration Package.

The Market Integration Package consists of three legislative proposals:

- Proposal for a Regulation on the Savings and Investments Union, aimed at promoting EU market integration and efficient supervision (Master Regulation, covered in Section 1 of this document);
- Proposal for a Directive on the Savings and Investments Union, laying down EU rules to foster market integration and more efficient supervision (Master Directive, covered in Section 2); and
- Proposal for a Regulation on the EU financial system, updating the rules on settlement finality (covered in Section 3).

We strongly support the overall objectives of the Market Integration Package, namely the removal of barriers to cross-border activity, the strengthening of supervisory convergence and the enhancement of the competitiveness of EU capital markets, as explicitly set out in the explanatory memorandum and recitals of the proposals. A more integrated, efficient and digitally enabled financial ecosystem is essential for Europe to remain competitive at global level and to ensure better access to finance for companies and investors.

Section 1.- Master Regulation

1.1. Introduction

The current geopolitical context underscores the importance of strengthening the EU's competitiveness. Efficient and integrated capital markets are essential to enable companies to raise capital, scale up and remain listed within the EU. In this

regard, deeper and more liquid secondary markets play a crucial role in supporting growth and innovation.

From this perspective, key priorities should include strengthening price formation, addressing liquidity fragmentation and supporting IPO activity, which remains one of the most effective channels for large-scale fundraising. The fragmentation of liquidity, partly driven by the expansion of less transparent trading mechanisms under MiFID II, has undermined the role of multilateral markets and diluted effective price formation. Reinforcing the central role of transparent multilateral venues should therefore be a strategic objective.

Primary and secondary markets are closely interconnected. Strong secondary market liquidity underpins credible valuations, reduces spreads and lowers the cost of capital, thereby supporting IPO activity and making EU markets more attractive as listing venues. Consolidating liquidity around transparent markets would create a positive feedback loop, improving market quality and funding conditions.

Achieving these objectives requires targeted measures, including stronger pre- and post-trade transparency obligations for Systematic Internalisers, a more coherent waiver framework, and regulatory adjustments to enhance market efficiency and investor protection. At the same time, consistent authorisation, supervision and enforcement are essential to ensure a level playing field and preserve market integrity.

1.2. Supervision of Market Infrastructures by ESMA

The Advisory Committee broadly supports the approach set out in the Master Regulation regarding the supervision of market infrastructures, in particular the decision to entrust ESMA with direct supervisory powers over infrastructures that are significant and have a clear cross-border or systemic relevance. Here it is key for the Advisory Committee that any transfer of direct supervisory powers to ESMA is strictly limited to infrastructures that are genuinely pan-European and systemically relevant.

The Committee welcomes the selective and proportionate nature of the proposed framework, which focuses EU-level supervision on the most significant infrastructures while preserving a strong role for national competent authorities in other cases. This calibrated approach is consistent with the preferred policy option identified in the impact assessment and avoids the risks associated with excessive or premature centralisation.

In this context, the Advisory Committee welcomes the possibility for certain market infrastructures that are not initially classified as significant to voluntarily request to fall under ESMA's direct supervision, subject to an appropriate assessment and close cooperation with the relevant national competent authority. This opt-in mechanism introduces a valuable degree of flexibility into the supervisory framework and allows it to better reflect the dynamic evolution of market structures, business models and cross-border activity.

At the same time, it is essential that ESMA's enhanced role is supported by robust governance and cooperation arrangements. The duty of cooperation introduced by Article 8a of the ESMA Regulation, including the possibility of joint supervisory teams and structured information-sharing, will be critical to ensure supervisory continuity, proportionality and effectiveness.

Finally, clear allocation of responsibilities between ESMA and national competent authorities is essential in order to preserve legal certainty, avoid supervisory duplication and prevent unintended effects on domestic market infrastructures.

1.3. PEMO proposal

The proposal concerning the Pan European Market Operator, a single authorization to a legal person to operate more than one trading venue in more than one Member State, based on a single authorization granted by ESMA (Recital 32 of the Regulation), represents, overall, a positive development, although further refinement and future adjustments may be required to ensure its full effectiveness.

It is important to highlight the fact that the surveillance of the trading venues affected will be allocated to the NCA where the trading venue is located.

In this regard, it should be clarified that the single authorization to the Market Operator to operate a trading venue is not equivalent to the setup of a trading venue.. To this extent, is should not be the decision of the PEMO the Member State in which the territory is to be considered to be situated or operated. This belongs to the setup of a trading venue and it should belong to the NCA. The wording of article 2ze.2 should be modified accordingly.

1.4. Cooperation arrangements

Effective cooperation arrangements between ESMA and national competent authorities, as envisaged in Recital 9 of the Regulation, are essential. These arrangements should be flexible and proportionate, supporting information sharing,

coordination and transitional solutions in areas where responsibilities remain at national level.

Further clarification is needed for certain financial market infrastructures, notably CCPs. Where supervision is centralised but resolution remains largely national, there is a risk of misaligned incentives. It should therefore be assessed whether a more coherent, potentially common, resolution framework for significant CCPs is required.

1.5. Supervisory fees

The proposal implies an increase in supervisory costs, through both higher contributions from supervised entities and additional funding from Member States.

In this context, it is important to clarify whether national competent authorities would continue to levy supervisory fees when providing support to ESMA, and to establish safeguards to prevent double charging and disproportionate cost increases. Supervisory fees should be designed in a way that does not undermine the competitiveness objectives of the reform.

The regular publication by ESMA of applicable fees and the biennial reporting to the European Commission is in any case welcomed as these measures improve predictability.

In addition, the Committee supports strengthening the role of European Securities and Markets Authority (ESMA) in promoting supervisory convergence, particularly through the issuance of common guidelines that prevent gold-plating and ensure consistent application of EU legislation across Member States. However, granting ESMA direct supervisory powers over large cross-border groups would be disproportionate and may create significant duplication with national competent authorities, increasing compliance burdens without clear added value.

In parallel, any reinforcement of ESMA's role should be accompanied by a coordinated review of supervisory fees at both European and national levels, in order to avoid double charging and ensure a balanced, efficient and proportionate supervisory framework.

1.6. Scope and limits of the new Article 17aa of ESMA Regulation

Article 17aa, introduced through the amendment of the ESMA Regulation (1095/2010) in the Master Regulation, establishes an enhanced mechanism allowing ESMA to intervene where serious deficiencies in national supervision are identified,

including through peer reviews, investigations or systemic risk situations. ESMA may require prior consultations with national authorities, issue binding opinions and, ultimately, impose corrective measures or suspend cross-border activities.

This intervention mechanism should remain strictly limited to its original prudential and systemic purpose. In its current wording, Article 17aa includes "investor protection" as a ground for intervention. This reference unduly broadens ESMA's mandate and risks creating legal uncertainty and overlap with other EU frameworks, particularly the Retail Investment Strategy (RIS), which already comprehensively regulates market conduct and retail investor protection.

Given that the RIS reflects carefully balanced legislative compromises and is at a more advanced stage, it would be inappropriate to extend ESMA's extraordinary intervention powers into this area. Moreover, the concept of investor protection is inherently broad and evolving, and therefore ill-suited to trigger exceptional supervisory action at EU level.

For these reasons, Article 17aa should be limited to cases strictly related to financial stability, market integrity and structural or systemic supervisory failures. The reference to "investor protection" should be removed in order to preserve legal certainty, avoid duplication with the RIS, respect the allocation of competences between ESMA and national authorities, and ensure the proportionality of the mechanism.

1.7. ESMA-managed data platform (Article 19a of ESMA Regulation)

Any EU-wide data platform managed by ESMA should be technically robust, interoperable with national systems and designed to enhance supervisory efficiency without imposing disproportionate technological or reporting burdens. Clear and proportionate access rights must be ensured, in full respect of confidentiality, data protection and the allocation of supervisory competences.

The platform should aim to eliminate duplication in reporting and information requests, reduce administrative burdens and improve supervisory consistency across the EU. Its development should involve industry stakeholders to ensure operational feasibility. Above all, it must deliver genuine simplification and efficiency, rather than adding new layers of reporting or overlapping controls.

Any reinforcement of ESMA's role should also be guided by the principle of efficiency and proportionality in reporting obligations. To the greatest extent possible, existing information already submitted to national competent authorities (NCAs) should be reused, avoiding the creation of additional reporting channels directly to the European Securities and Markets Authority where equivalent data is already available at national level.

1.8. Participation of national experts in ESMA

The amended Article 68 of the ESMA Regulation provides for the possibility of seconding national experts from Member States to the Authority. This is a welcome development, as it can strengthen cooperation with the private sector and ESMA and enhance the exchange of supervisory and industry expertise at EU level.

It is advisable to continue advancing towards structured mechanisms that ensure effective cooperation between the private sector and supervisors, so that regulatory and supervisory initiatives can benefit from market experience.

1.9. Supervision of Crypto-Asset Service Providers (CASPs)

The Advisory Committee acknowledges that the transfer of direct supervisory powers over crypto-asset service providers (CASPs) to ESMA is well aligned with the digital, scalable and frequently cross-border nature of crypto-asset services. In this context, EU-level supervision can contribute to a more consistent application of MiCA, enhance legal certainty and support the development of a genuine single market for crypto-asset services.

At the same time, the Advisory Committee considers that a more differentiated and risk-based approach could better serve the objectives of proportionality, efficiency and competitiveness.

The CASP landscape across the EU is heterogeneous. While some providers are clearly pan-European or global in scope, others remain primarily focused on a single Member State, with limited cross-border activity and business models closely linked to local market conditions. For these entities, supervision by the national competent authority may in practice be more effective, given its proximity to the market, customers and operational realities of the provider.

Moreover, transferring all CASPs to direct ESMA authorization and supervision from the outset may raise practical challenges in terms of supervisory capacity, resource allocation and potential bottlenecks. These risks are relevant in light of the

Commission’s own impact assessment, which highlights that more far-reaching centralisation options would entail higher costs for both supervisors and market participants, potentially outweighing the benefits.

If the co-legislators ultimately decide to maintain a model of full direct supervision of CASPs by ESMA, it will be crucial to ensure that the governance and cooperation mechanisms envisaged in the proposal are robustly implemented in practice. In particular, national competent authorities should be able to participate meaningfully in the supervisory process, including through structured cooperation arrangements, joint supervisory teams or other mechanisms that allow ESMA to fully leverage local market knowledge and supervisory expertise.

The Advisory Committee also wishes to highlight that the proposed supervisory regime for CASPs constitutes a highly significant precedent. In the current EU policy context — characterised by a strong push towards cross-border provision of financial services, digitalisation and the scaling-up of financial firms — similar arguments could in the future be made for other categories of financial service providers, including investment firms and asset managers.

For this reason, the design and implementation of the CASP supervisory framework deserve particularly careful consideration, not only from the perspective of the crypto-asset sector, but also in terms of its longer-term implications for the overall EU supervisory architecture.

It should be noted that a number of larger CASPs are simultaneously seeking, or already holding, additional authorisations, for example as investment firms or as operators. This raises important questions regarding the supervision of multiple regulated activities within the same group and the need for coherent, well-coordinated supervisory arrangements across sectors and authorities.

Finally, the proposed allocation of responsibilities for market abuse supervision raises concerns. While market abuse supervision would remain with national competent authorities in the traditional financial sector, the proposal envisages that ESMA would assume this role in the crypto-asset sector. Given the interconnections between markets and the high level of specialisation required, this split approach risks creating duplication and inconsistencies. A more coherent and streamlined model would therefore be desirable, applying a consistent allocation of responsibilities across sectors.

1.10. Amendments to the DLT Pilot Regime

The Advisory Committee welcomes the proposed amendments to the DLT Pilot Regime, which represent a necessary evolution of the EU framework for DLT-based market infrastructures. While the Pilot Regime has provided a useful experimental environment, experience has shown that its current design entails significant limitations, particularly in terms of scale and scope.

The expansion of thresholds, increased operational flexibility and improved interaction with the standard regulatory framework are essential to enable DLT-based solutions to move beyond purely experimental use cases. These changes enhance legal certainty, support innovation and improve the EU's ability to retain and scale DLT-based market initiatives.

The Committee also considers it important to provide greater clarity regarding the transition from the Pilot Regime to the ordinary regulatory framework, in order to incentivise long-term investment and sustainable deployment of DLT-based solutions within the EU.

While strongly supporting the strategic direction of the reform, the Committee underlines the importance of:

- Carefully assessing certain technical elements during the legislative process, including settlement schemes and the roles of DLT notary and DLT account keeper, in order to ensure operational robustness and legal certainty.
- Avoiding creating an asymmetric competitive environment: Entities different than the current authorized ones will be allowed to provide CSD services and can apply for a specific permission to provide on an individual basis DLT notary service, DLT central maintenance and non- banking type ancillary services. This would allow new entities to perform CSD activities in DLT with significantly fewer regulatory constraints (CSDR/MiFID requirements), less demanding than the regulatory requirements imposed on existing FMIs, creating an asymmetric competitive environment.
- Carefully consider how investor compensation schemes (ICS) will operate under the Pilot Regime and in relation to the new entities performing functions traditionally associated with custody.

1.11. Supervisory Convergence Tools

The Advisory Committee supports the objective of strengthening supervisory convergence across the Union. Divergent supervisory practices continue to represent a significant barrier to cross-border activity and undermine the effective functioning of the single rulebook.

Enhanced supervisory convergence should primarily be achieved through harmonised standards, guidance and coordinated supervisory practices led by ESMA, rather than through the creation of additional supervisory layers that could increase costs and complexity for market participants.

Enhancing the effectiveness and practical use of ESMA's supervisory convergence tools can deliver tangible benefits without necessarily resorting to full centralisation.

Their success will depend on consistent application in practice and on close cooperation with national competent authorities, ensuring that convergence contributes to legal certainty and competitiveness rather than additional procedural complexity.

1.12. Market Data and Consolidated Tapes

The Committee considers that strengthening price formation and liquidity on transparent multilateral venues should remain a strategic priority. However revisiting the scope of the equity consolidated tape at this stage would be premature. The equity consolidated tape is not yet operational, and introducing significant changes now would add complexity and risk without being grounded in practical experience. Any such review should therefore be based on a dedicated, data-driven ex post impact assessment once the current framework has been implemented.

The agreed design, based on anonymised top-of-book and post-trade data, is sufficient to enhance transparency and support effective market functioning. By contrast, proposals such as venue attribution or increased pre-trade depth could further weaken lit liquidity and exacerbate existing market fragmentation.

If discussions on the scope of the equity consolidated tape are reopened in the future, they should form part of a broader reassessment of the Level 1 framework, including the revenue-distribution and reasonable commercial basis model, the framework for value-added services and safeguards to prevent arbitrage.

At the same time, the inclusion of Systematic Internalisers (SIs) in the consolidated tape can contribute to greater transparency in bilateral trading. For this inclusion to

be effective, it should be accompanied by appropriate safeguards, including the individual identification of SIs in post-trade data, strengthened SI quoting obligations through a revised definition of liquid markets and aligned pre-trade transparency thresholds, as well as clear requirements for timely updates of public quotes prior to execution.

1.13. Post-trading

The proposal introduces a hub-and-spoke model for central securities depositories (CSDs), based on mandatory minimum bilateral links between CSD hubs and non-hub CSDs. Hub status would be determined by ESMA on the basis of quantitative thresholds, requiring hubs to interconnect with each other and obliging non-hub CSDs to establish links with a hub.

While this approach aims to facilitate cross-border access, it risks reinforcing the concentration of cross-border activity in a small number of large international CSDs. CSDs should not be required to establish a predefined number of links with specific counterparts. Decisions on link creation should remain business-driven and reflect the ability of each CSD to provide relevant services in specific markets, taking into account national legal and operational specificities, such as tax processing requirements.

Further clarification is also needed regarding the scope of hub obligations, including whether hubs would be required to offer access to all securities held at hub level and whether the envisaged links refer to T2S links or external links. In addition, the thresholds proposed for hub designation appear to leave limited scope for local CSDs to qualify as hubs, potentially weakening their ability to compete and market their services.

With respect to the authorisation of interoperable links, the proposal to require ESMA approval aims to ensure a level playing field. However, the conditions governing relayed links and access requests should be applied strictly on the basis of risk considerations, without allowing market-share arguments to restrict access.

Finally, while the proposal sets strict deadlines for the establishment of CSD links, the technical and operational complexity of such links may require greater flexibility. Fixed timelines of up to 12 months may not be realistic in all cases and should therefore be reconsidered. By contrast, the simplification of the CSD passporting regime, through the introduction of an ex post notification requirement, is a welcome improvement that reduces administrative burden.

1.14. Harmonizations of Information Obligations for Cross-Border Marketed Vehicles[1]

From the perspective of the Spanish asset management industry, achieving effective and comprehensive harmonization of information and reporting obligations applicable to vehicles marketed cross-border represents one of the most impactful measures to remove remaining barriers to cross-border activity.

Harmonization should be coherent and substantive, **ensuring that obligations linked to the management and marketing of products are equivalent across Member States**. **Limiting harmonization solely to investor disclosures would be insufficient. National reporting or notification requirements of a different nature may continue to operate as *de facto* barriers to cross-border distribution.**

In practice, the persistence of specific national obligations — such as bespoke derivative reporting or "material event" notifications for foreign collective investment schemes (CIS) that are neither clearly defined nor required in the home Member State — increases operational complexity, raises compliance costs and undermines consistent application of the single rulebook.

Moreover, a pure home Member State approach does not automatically eliminate distortions. In the absence of genuine harmonization, products domiciled in jurisdictions with more demanding regulatory frameworks remain structurally at a disadvantage in cross-border marketing compared to those established in less stringent regimes, thereby distorting the level playing field.

Accordingly, harmonization should extent to both investor disclosures and supervisory reporting obligations, avoiding duplication and ensuring a genuinely balanced cross-border framework. In this context, certain national specificities should be reviewed or repealed in light of the evolving cross-border regime.

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[1] Modifications to *Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (Text with EEA relevance.)*

Section 2 .- Master Directive

2.1. Introduction

Regarding the Master Directive amending Directives 2009/65/EC (UCITS), 2011/61/EU and 2014/65/EU (MiFID) as regards further development of capital market integration and supervision within the Union, the Committee broadly welcomes the objectives of the proposal, in particular its focus on enhancing the competitiveness, efficiency and cross-border integration of the EU asset management industry, in line with the Savings and Investments Union (SIU) strategy. Many of the proposed amendments address long-standing sources of fragmentation and unnecessary regulatory burden.

- excessive regulatory fragmentation and gold-plating;
- insufficient recognition of cross-border group structures and economies of scale; and
- limited effectiveness of supervisory convergence tools at EU level.

At the same time, the Committee considers it essential to preserve the high level of investor protection that characterises the EU funds framework, especially for UCITS. While most proposals strike an appropriate balance between competitiveness and protection, some elements like the depositary passport raise concerns from an investor protection perspective and should be reconsidered.

An effective Single Market for CIS requires openness combined with reciprocity. Spain exemplifies market openness, with foreign CIS representing approximately 44% of the domestic market, thereby enhancing competition and investor choice. However, this is not matched by a comparable outward presence: Spanish CIS held by non-resident investors account for only 1.80% of total national CIUs (around EUR 7.853 billion) compared to more than EUR 436 billion in domestic fund assets.

This asymmetry reflects persisting national regulatory, operational and tax frictions. A targeted review of national specialties will remove unnecessary barriers, strengthen the level playing field and support a more balanced development of the Single Market.

2.2. Harmonisation of authorisation procedures

The harmonisation of authorisation and change-of-control procedures for UCITS management companies and AIFMs is a clear positive step.

Under the current framework, divergent national interpretations of authorisation requirements and material change notifications create legal uncertainty, delay market entry, and disproportionately affect smaller managers and cross-border operators. The proposed amendments, including:

- clearer rules on the notification and assessment of material changes; and
- the empowerment of ESMA to develop RTS on procedures, timelines, templates and IT standards,

will significantly reduce administrative friction and time-to-market, while improving legal certainty across Member States.

2.3. UCITS authorisation

The proposed Article 5(8) of the UCITS Directive empowers ESMA to develop regulatory technical standards (RTS) specifying in detail the information, procedures, timelines and technical arrangements applicable to the authorisation of UCITS.

In practice, this means that ESMA will define:

- the exact content and level of detail of the information to be submitted as part of an authorisation application;
- the procedural steps and timelines governing the authorisation process; and
- the formats, templates, data standards and electronic means through which such information must be provided, including EU-level IT solutions.

These RTS will be adopted by the European Commission as delegated acts and will be directly applicable across all Member States, without national transposition.

The main implication of this amendment is a significant increase in harmonisation and procedural consistency in the authorisation of UCITS throughout the EU. NCAs will continue to grant authorisations, but their discretion to impose additional procedural requirements, request non-standard information or apply divergent timelines will be substantially reduced.

The amendment entails a shift of procedural design from national authorities to ESMA, reinforcing EU-level supervisory convergence and limiting national interpretative divergence.

2.4. Single rulebook

Equally important, from a competitiveness standpoint, is the proposal to limit the ability of NCAs to issue divergent guidelines, interpretations or additional requirements in areas harmonised at EU level.

The Committee supports this approach. Divergent national supervisory interpretations have been a major driver of fragmentation, often undermining the effectiveness of harmonised EU legislation. Reinforcing the primacy of EU-level rules and convergence mechanisms contributes directly to a level playing field and reduces compliance complexity for cross-border groups.

Reducing gold-plating is positive, as it limits regulatory fragmentation. However, it also removes the possibility for Member States to apply higher protection standards, particularly in areas such as costs, marketing and local supervision.

For this reason, the ban on additional national requirements should be accompanied by clear ESMA guidelines to ensure consistent and adequate investor protection across the EU.

2.5. Use of Regulations instead of Directives

The proposal includes a structural change by transferring certain provisions currently contained in UCITS and AIFMD into directly applicable EU Regulations, notably:

- rules on cross-border marketing and distribution of funds, which are moved to Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings; and
- certain supervisory powers and mechanisms applicable to host Member States, which are aligned with the regulatory framework.

The Committee strongly supports the preferential use of Regulations instead of Directives for these matters and for all areas covered in the Market Integration Package as they are an effective tool to avoid goldplating and ensuring harmonised application of EU law.

2.6. Recognition of EU asset management groups and intra-group resource sharing

The introduction of the concept of an EU asset management group is one of the most competitiveness-enhancing elements of the proposal.

The current treatment of intra-group arrangements as full “delegation” has led to:

- unnecessary duplication of human and technical resources;
- higher fixed costs; and
- incentives to concentrate fund domiciliation in a limited number of Member States.

By clarifying that the use of resources within an EU group does not constitute delegation, and by removing the associated delegation compliance burden (while maintaining notification and supervisory transparency), the proposal enables genuine economies of scale and more efficient operating models across borders.

This change is particularly important for improving the competitiveness of EU managers vis-à-vis large third-country asset managers, which already operate under more integrated group structures.

In this context, the Committee considers that the explicit recognition of the possibility for UCITS management companies and AIFMs to rely on the human and technical resources of other entities within the same EU group — including other management companies, credit institutions and investment firms — should be accompanied by a broader and more coherent adjustment of the regulatory framework.

In particular, this recognition should be reflected in a relaxation of other provisions that continue to require each regulated entity to maintain own resources on a stand-alone basis, irrespective of the availability of equivalent resources within the group. Likewise, the Committee considers that this approach should be consistently extended to other sectoral frameworks (AML/CFT, DORA and the GDPR, as well as with the EBA Guidelines on delegation applicable to management companies within banking groups), through a review and, where appropriate, an adaptation of delegation-related requirements that currently apply in parallel under different pieces of EU financial legislation.

Without such further alignment, there is a risk that the benefits of recognising EU asset management groups and intra-group resource sharing will remain only partially effective, as managers would continue to face duplicative organisational and delegation obligations that do not fully reflect the economic reality of integrated group structures.

2.7. EU-wide depositary passport

The Committee does not support the introduction of an EU-wide depositary passport, as proposed through the amendments to Article 21(5) of AIFMD and Article 23(1) of UCITS.

In the absence of harmonised insolvency and bankruptcy regimes across the EU, allowing UCITS and AIFs to appoint a depositary established in another Member State would create significant legal uncertainty and could weaken investor protection. Differences in national property and insolvency laws may affect asset segregation, rights in rem and asset recovery in stress or insolvency scenarios, particularly if changes in the depositary's domicile result in changes to the applicable law governing fund assets.

Moreover, depositary activity remains closely linked to national legal, accounting and operational frameworks and requires close interaction with domestic competent authorities and market participants. A cross-border depositary passport would therefore introduce additional regulatory and supervisory complexity, especially where the fund, its manager and its depositary are established in different Member States.

The Committee also notes that Directive (EU) 2024/927 already introduced a very limited and exceptional possibility for cross-border provision of depositary services, subject to strict safeguards, limitation to AIFs and a mandatory impact assessment. In the absence of that assessment and of broader harmonisation, there is no sufficient justification for introducing a full depositary passport at this stage.

For these reasons, the Committee considers that the depositary passport should not be introduced, particularly for UCITS. If explored in the future, it should be strictly limited to AIFs and only considered after a thorough assessment confirms that investor protection would not be adversely affected.

2.8. Functions included in the activity of UCITS collective portfolio management

Although the revised Annex II largely reproduces the existing list of functions, by explicitly identifying portfolio management and risk management as the minimum core functions, the Master Directive clarifies the functional perimeter of UCITS management companies, strengthens the letter-box test and supports the new group-based operating model.

2.9. Targeted adjustments to UCITS investment limits

From a legal and regulatory perspective, the proposed amendments to the UCITS Directive should be reconsidered in relation to certain concentration and diversification limits which, in their current form, may create operational distortions without delivering a proportionate benefit in terms of investor protection.

Although the proposal introduces some flexibility regarding the 20% concentration limit for index-referencing collective investment schemes, the rigid application of this limit to UCITS that replicate indices remains problematic. Certain index methodologies may temporarily or structurally exceed the 20% threshold. Requiring managers to deviate from index composition solely to comply formally with the limit would distort investment strategy, increase tracking error and potentially disadvantage investors. This outcome does not appear consistent with proportionality or with an investor protection model based on transparency and accurate index replication.

The review should also address specific Level I issues, including:

> (i) a more flexible approach to the 10% aggregate exposure limit under Article 50(2)(a) of the UCITS Directive; and
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> (ii) the removal of the requirement to diversify across at least six issues where more than 35% of assets are invested in public debt of a single issuer.

These adjustments would reduce purely formal breaches and align the framework more closely with market practice.

With regard to UCITS referencing an index recognised by ESMA (Article 53(1) of the proposal), the text should clarify whether the reference is limited to the ESMA register under Article 36 of the Benchmark Regulation (BMR), or whether a separate recognition regime is intended for UCITS purposes. This clarification is particularly important given the recent narrowing of the BMR's scope under Regulation (EU) 2025/914.

Absent such clarification, there is a risk of unintended restrictive effects, potentially forcing UCITS to modify or abandon widely used indices despite no prohibition under the BMR. Clear drafting is therefore essential to preserve legal certainty, avoid duplication and prevent regulatory fragmentation.

2.10. Removal of duplicative disclosure requirements

The removal of the UCITS Key Investor Information (KII), in light of the PRIIPs KID, is a welcome simplification.

Maintaining parallel disclosure regimes for substantially similar information has imposed unnecessary costs on managers and created confusion for investors. Eliminating this duplication improves regulatory coherence and reduces operational burden.

2.11. Strengthening ESMA's role in supervisory convergence

Enhanced ESMA powers to identify large cross-border asset management groups or large groups, conduct annual reviews of supervisory practices, and intervene where national authorities diverge materially from EU law may ease the single market.

However, assigning ESMA annual direct supervision over large groups may be disproportionate and risks duplicating the role of national competent authorities. This could create inefficiencies, increase administrative burdens and add uncertainty, ultimately weakening the competitiveness of the European market.

Before moving towards a more centralised supervision, it is essential to first ensure genuine harmonisation of rules, eliminate gold-plating and remove remaining national barriers. Only on the basis of a truly uniform regulatory framework can any expansion of ESMA's supervisory role be justified and proportionate.

Clear criteria for determining whether an entity falls under ESMA's annual direct supervision are essential to ensure legal certainty and predictability. In addition, appropriate mechanisms should be established to mitigate potential adverse effects arising from a change in supervisory model from one year to another. Transitional arrangements or other safeguards may be required to ensure continuity, stability and regulatory consistency.

2.12. Amendments to MiFID II

The Master Directive amends MiFID II mainly by:

- transferring key provisions on the authorisation and operation of trading venues to MiFIR, deleting Articles 18 to 20,
- clarifying the passporting regime for MTFs and OTFs through amendments to Articles 34 and 35, and
- removing duplicated "open access" rules in Articles 36 to 38.

The Committee supports these changes as they will help strengthen the single rulebook, reduce national divergence and improve the integration of EU capital markets.

Section 3.- Settlement finality Regulation

3.1. Introduction

The CNMV Advisory Committee welcomes the European Commission's proposal to convert Directive 98/26/EC on settlement finality into a directly applicable Regulation. In general terms and as already mentioned, the Committee supports the preferential use of Regulations instead of Directives as they are an effective tool to avoid gold-plating and ensuring harmonised application of EU law.

The Committee agrees that divergences resulting from national transposition of the Settlement Finality Directive may, in certain Member States, have given rise to legal uncertainty, additional compliance costs and operational risks, especially in cross-border contexts. Nevertheless, it is important to underline the sound functioning of Law 41/1999, 12 November, the Spanish law implementing the Directive 98/26/EC, also in the context of insolvency proceedings with impact on participants located in different Member States. This recognition should not, however, obscure the desirability of clarifying the interpretation of certain provisions in respect of which the Spanish legislator has exceeded the requirements laid down in the Directive.

In this regard, the choice of a Regulation appears to be an appropriate and proportionate means of achieving a more consistent and harmonised framework across the Union, provided that the substance on the rule remains unchanged or, where amended, it does not undermine the objective pursued by the legislation: namely, to reduce systemic risk in payment and securities settlement systems, particularly in the event of insolvency proceedings against a participant.

3.2. Legal certainty, harmonisation and systemic risk

The Committee supports the clarification and harmonisation of key concepts such as system, participant, transfer order, moment of entry, irrevocability and final settlement. A clearer and more uniform determination of settlement finality moments is essential to reduce systemic risk and facilitate interoperability between systems, particularly in cross-border arrangements.

The proposal appropriately reinforces the protection of transfer orders and netting arrangements against the effects of insolvency proceedings, thereby preserving the integrity and resilience of payment, clearing and settlement systems. The Committee considers that these measures are consistent with international standards applicable to financial market infrastructures and contribute positively to financial stability.

3.4. Technological neutrality and digital innovation

The Committee welcomes the effort to ensure technological neutrality and to explicitly accommodate systems and assets based on distributed ledger technology (DLT). Clarifying that settlement finality protections apply irrespective of the underlying technology, provided that the regulatory requirements are met, is a positive development that supports innovation while preserving legal certainty.

At the same time, the Committee underlines the importance of ensuring that the recognition of DLT-based systems does not weaken settlement finality safeguards. The empowerment of ESMA and EBA to further specify, through regulatory technical standards, the determination of finality moments for DLT-based systems is therefore considered appropriate.

3.5. Designation of systems and supervisory convergence

The Committee notes the significant variation of the designation process that would entail additional procedural and compliance costs to currently designated systems. The proposal sets a fully fledged application process that, in most cases, will be redundant for CSDs and CCPs already authorized under CSDR and EMIR, respectively.

In addition, the among the requirements established for the designation of a system, there is no reference to the systemic importance of the system. Given that the protections afforded by the finality regime constitute an exception to the par conditio creditorum principle, the potential recognition of non-systemic systems appears insufficiently justified.

The Committee supports the enhanced transparency resulting from the publication of information on designated systems at Union level. These measures are expected to reduce information asymmetries, strengthen market confidence and facilitate supervisory convergence.

The Committee considers that the involvement of ESMA, EBA and the ESCB in the designation and withdrawal processes, while preserving the role of national competent authorities, strikes an appropriate balance between national responsibility and EU-level coordination.

3.6. Participation of EU entities in third-country systems

The Committee welcomes the establishment of a harmonised framework for the registration of third-country systems and the extension of settlement finality protections to EU entities participating in such systems. The current diversity of national approaches has led to an uneven playing field and legal uncertainty, which the proposed framework seeks to address.

The Committee notes positively the coordination role assigned to ESMA, EBA and the ESCB to promote convergent registration practices, while acknowledging the continued involvement of Member States. This approach appears proportionate and consistent with the principle of subsidiarity.

3.7. Interaction with other EU legislation

The Committee considers that the proposed amendments to Directive 2002/47/EC on financial collateral arrangements are necessary to ensure consistency with the new Settlement Finality Regulation, particularly as regards DLT-issued or recorded assets.

The Committee wishes to draw attention to the need for a careful preparation of the future migration from a Directive to a Regulation, once the latter is approved. This is particularly important given the interaction of the new framework with national insolvency laws. A thorough preparatory process is essential to ensure the continuity of all protective effects associated with the finality of transfer orders and collateral arrangements, including the envisaged changes to the default law applicable to such arrangements.