CNMV responses to the questionnaire on CMU

1. Could you provide us with an analysis of deep trends and developments (such as digital and artificial intelligence transformation, ageing, climate change, the UK's decision to leave the EU) relevant for the future of the Capital Markets Union? What is the impact of these trends on capital markets in Europe, its products and services? (Please provide data).

   While we agree with the fact that digital and artificial intelligence transformation, ageing, climate change, the UK's decision to leave the EU are all relevant deep trends that may impact the future of European capital markets and the Capital Markets Union, we would like to emphasise the growing importance of private equity and venture capital initiatives. This area is key to complete and develop the set of available alternatives to finance companies. Private equity fundraising and investments have been increasing in Europe since 2009, although the figures are lower than those observed for the US industry. In 2018 total fundraising reached €150bn in the US and €97.3bn in Europe (€21bn in 2009). In Spain, fundraising reached €5.8bn in 2018 and a record high of €4bn in the first half of 2019.

2. From a forward-looking perspective, how do you view the strengths and weaknesses of the Capital Markets Union in its current state and when made up of 27 Member States? From the perspective of companies (all sizes and at each stage of their growth), consumers, (wholesale and retail) investors and other market players? How do you view the role of EU and national supervisors? How does Brexit change the prospect for financial integration in the EU?

   One of the main weaknesses of the Capital Markets Union in its current state is related to the lack of tax harmonisation across Member States. These differences exert a significant influence on financial investment decisions, the different distribution models, and distort cross-border capital flows. Examples of fiscal differences that generate different market structures and investment cultures across European countries are: (i) fiscal treatment on markets and SME investments, (ii) different distribution models for financial assets emerging from fiscal divergence and (iii) fiscal treatment on certain income (e.g. "carried interest" in the context of venture capital firms).

   Regarding the role of EU and national supervisors, we strongly believe that the supervision model should avoid the so-called "race to the bottom". Our preferred supervision model should: (i) improve the role of ESMA in coordinating supervision at the NCA level, as well as in using all available tools such as supervisor networks, guidance and opinions, Q&A, etc. and (ii) establish a supervisory model that promotes efficient supervision of cross-border financial services. In this regard, it is especially important to ensure minimum levels of oversight of entities with cross-border operations under the freedom to provide services. It would be positive for the host authority to have a minimum amount of information on their activity in its territory and to establish formulas for cooperation between the home and host authorities. This architecture would be particularly helpful from the point of view of consumer protection.

3. Is European SME financing satisfactory beyond bank finance? Why is access to capital markets (debt and equity) so difficult? Are there relevant differences between national financial markets in this respect? How could access to market financing facilities be improved for all sized companies at each stage of their growth?

   European SMEs are still mainly financed through banks. Small firms cannot face the significant costs that are related to market-based finance (equity or fixed income) and only have partial access to alternative markets that are less demanding. There are other potential sources of capital such as venture capital, crowdfunding or debt funds that are increasing their relevance in corporate finance.

   Thus, we propose two sets of measures aimed at improving SME financing through markets: (i) remove or amend those regulations that in practice establish certain specific thresholds and generate costly processes of corporate growth (ii) adopt measures to incentivise investment on assets issued by small companies (for example, tax incentives).

4. Home bias in investments still characterises the EU landscape. What would you say are the main issues limiting cross-border flows and what steps could be taken to encourage more cross-border activity?

   We definitely do not think this is a significant problem or bias in Europe. From our point of view, there may be some barriers limiting cross-border flows in some European countries but this is definitely not the case of Spain. We are a completely open economy where: more than 35% of mutual fund assets sold to investors are foreign CIS, holdings of domestic equity by Spanish mutual funds account for 4% of their total assets (and 2% of market capitalisation), non-residents own more than 50% of Spanish stocks and are responsible for more than 80% of equity trading. We have completed an ambitious privatisation process during recent years in which there has been nothing to impede foreign investors from making investment decisions.

   In this sense, we are completely in favour of adopting a process to develop one true and unique corporate control market starting with a renewed impulse of the Takeover Bids Directive.

5. Are there obstacles for households to invest their long-term savings in capital market instruments (directly or through dedicated financial vehicles, like investment firms, pension funds, insurers, etc.)? What can be done to overcome these impediments? Who should take such measures?

   We do not observe significant impediments for households to invest their savings in capital market instruments. However, limitations related to tax regimes and financial literacy are still present and must be addressed.

6. Digital transformation and artificial intelligence are both causes for disruption and opportunities for innovation. How should the Capital Markets Union develop to provide a welcoming environment for start-ups and scale-ups? And in the financial sector for FinTech? How can a dynamic ecosystem of financial innovation be developed? Do you find the "sandboxes" and related initiatives useful? How can new technology support an efficient and sustainable functioning of Europe's capital markets? What are best practices?

   There are useful tools to improve innovation that NCAs could implement and that are welcome for both start-ups and incumbents: Q&A documents with criteria to clarify regulatory issues would be most useful; moreover, innovation hubs where the NCA provides regulatory advice or a sandbox where promoters can test the project in a controlled space close to the NCA. These tools, among many others, are very useful, but the NCA also needs flexibility to adopt a neutral approach to technology, to ensure that similar activities and assets are subject to the same or very similar regulation regardless of their form.

   Innovation technology makes financial services more accessible to consumers connecting them to a global financial world and enhancing their experiences in a more efficient environment. Best practices should be improved to protect consumers from the risks that new activities and new players are bringing to European capital markets.

7. How should capital markets play a role in relation to climate change and ageing? How can this be organised in such a way that capital markets grow themselves as well and become more stable? How can the Union's capacity be bolstered to finance its sustainable growth and job creation?

   It is extremely important to highlight the work done during recent months (e.g.: adoption of homogeneous taxonomy at the EU level) and the relevance of transparency when referring to climate change and ageing developments. The EU approach should be proactive and make sure that all relevant information (about the sustainability of underlying investments and the potential sustainability costs) is available to potential investors and to all market participants, as a general rule.

8. What are crucial elements for a well-functioning deep and liquid financial market within the EU27? How should the EU27 Capital Markets Union be structured to be a globally competitive and attractive financial market? How should the relations with financial markets in third countries be strategically shaped?

   The most important elements to achieve a well-functioning deep and liquid financial market within the EU 27 are related to open economies and to suitable equivalence regimes with third countries. In this sense, the classical UK approach was a good example.

   Moreover, we think that CMU should not weaken domestic financial markets: we must work to preserve (transparent) European liquidity pools that are the basis for price discovery and, consequently, for efficient markets. One of the objectives of the MiFID II regulation, in relation to the decrease in trading in OTC markets, has not been achieved after almost two years from the adoption of this regulation. We can observe some softening in the implementation of certain rules (waivers) and also a significant increase in systematic internalisers trading.

9. What should be the 3 key priorities for the next phase of the Capital Markets Union?

   We need to foster the Capital Markets Union project given that most of the objectives related to previous phases of the CMU have been achieved and considering challenges arising from Brexit. This is also an opportunity in the context of the recent MiFID II regulation and, in general, all post-crisis regulations in place and ESAs reform implementation.

   From our point of view, the top three priorities for the next phase of the Capital Markets Union are the following:

   1. Fostering market based finance for companies, especially through equity markets. Being public should be an attractive option for companies. During the crisis, other positive alternatives such as private equity have expanded significantly and at the same time have diminished incentives for companies to be listed (or postponed the decision). In general, listed firms benefit from more opportunities to raise money, transparency, accountability, reputation, brand recognition, professional management and a "democratic perception". For these reasons, we strongly suggest encouraging the work to remove restrictions on firms' growth and accessing capital markets. Many limitations are related to tax and labour regulations. And we would definitely encourage legislators not to impose any extra restrictions or conditions on companies associated with the fact of being listed.

   2. There is a need to make progress on tax harmonisation. Current different regulations distort financial decisions, reduce efficiency in capital markets and influence cross-border capital flows. There are big differences in the treatment of financial markets and SME investment, heterogeneous financial instruments distribution models resulted from fiscal divergence and also the tax regime differences of certain income.

   3. Finally, on supervision schemes we support a model where NCAs are responsible for supervisory tasks with the appropriate exchange of information across agencies and between agencies and European institutions. The establishment of formulas for cooperation between home and host authorities is important with the aim of avoiding the "race to the bottom" (especially for supervised entities with cross-border activities). The EU needs homogenous regulation and homogeneous implementation by NCAs.