Question 1: Do you consider the degree of coordination between the different authorities in the current framework (*i.e.*, ESRB, national macro-prudential authorities, Commission, Council, etc.) appropriate? [Please rank your answer from 1 (fully appropriate) to 5 (not appropriate at all) and explain your scoring.]

Rank: 4

At present, the central bank-dominated ESRB does not coordinate to a meaningful degree with regulatory bodies outside of banking, despite the fact that the European Securities Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) have been assigned financial stability roles and powers.[1] Ensuring better coordination with ESMA and EIOPA, as well as with national securities and insurance regulators, is a prerequisite to improving the ESRB's ability to monitor across the financial system and identify potential areas of systemic risk. In our view, reconstituting the ESRB as we recommend in response to questions 30-32 below would facilitate such coordination.

Question 2: Would you consider appropriate to expand the macro-prudential framework beyond banking? [Please rank your answer from 1 (fully appropriate) to 5 (fully inappropriate) and explain your scoring.] If deemed appropriate, what kind of systemic risks should be targeted and how?

Rank: 5

ICI Global members, as both issuers of securities and investors in the capital markets, understand the importance of efforts to ensure a strong and resilient financial system for the EU. We support regulatory efforts to monitor across the financial system and identify potential risks that, if not appropriately addressed, could cause significant harm to financial market participants, savers and investors, and the real economy.

We concur with the Commission's observation that the growth of market-based financing, as envisioned in its plan to develop a single EU capital market, "needs to be complemented by a robust monitoring framework of potential systemic risks at the EU level."[2] We likewise agree with the Commission's suggestion that a "broadening and deepening" of the ESRB's analytical resources thus would be helpful in areas "where there is . . . less pre-existing knowledge and/or expertise (*e.g.*, systemic risks outside the

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[1] *See* European Commission, Report from the Commission to the European Parliament and the Council on the operation of the European Supervisory Agencies (ESAs) and the European System of Financial Supervision (ESFS), 8 Aug. 2014 at 3, available at http://ec.europa.eu/finance/general-policy/docs/committees/140808-esfs-review_en.pdf.

[2] Consultation at 31.

banking sector)."[3] This is one of the reasons that ICI Global is urging the Commission to reform the ESRB by providing a greater role for non-bank regulatory bodies such as ESMA and national securities regulators.

Developing a "robust monitoring framework" that would cover non-bank sectors, including asset management, is an altogether different proposition from expanding the EU's existing macroprudential framework beyond banking. To be clear, ICI Global supports the former and strongly opposes the latter. This is because, in our experience, macroprudential policy is firmly rooted in banking and bank regulation. It takes the notion of regulators protecting the "safety and soundness" of individual banks and extends it to the banking system as a whole. We express no views on whether that approach is appropriate for banking. But we affirm it is wholly inappropriate for the capital markets and asset management, where a fundamental underlying premise is that a diverse range of participants—including fund managers, individual investors, and institutions—make their own calculations about the level of investment risk they are willing to bear.

And if this monitoring should reveal potential risks to EU financial stability outside the banking sector? The ESRB—ideally, one that has been reconstituted to give a greater role to securities and insurance regulatory bodies—may make recommendations on how to address those risks. It then should be up to the relevant ESA in coordination with national regulators or up to regulators in each Member State, using their existing toolkits, or developing new regulatory tools, to "operationalise" the recommendations.

Indeed, ESMA has been granted a number of powers and responsibilities with regard to systemic risk.[4] And, securities regulators in EU Member States, following International Organization of Securities Commissions (IOSCO) common principles, seek through their regulation to achieve three objectives: protecting investors; ensuring fair, efficient and transparent markets; and reducing systemic risk.[5] Regulations adopted by each Member State in implementation of EU directives including, but not only, the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive, Alternative Investment Fund Managers Directive (AIFMD), and Markets in Financial Instruments

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[3] *Id.*

[4] *See, e.g.*, Article 22 to 24 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

[5] IOSCO, Objectives and Principles of Securities Regulation, June 2010, available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf. Principle 6, for example, states: "The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate."

Directive (MiFID) together establish a robust regulatory framework having the effect of preventing or mitigating system-wide risk.

Having securities regulators act to evaluate identified areas of potential risk and consider what action or additional regulation may be warranted is precisely the approach being taken by the Financial Stability Board in its current review of potential vulnerabilities in asset management activities.[6] And it is consistent with the Commission's view that "[i]f this monitoring indicates emerging risks in the non-banking sectors, measures to address these risks should be consistent with international developments."[7]

Question 29: Do you think that the ESRB's mandate and tasks are appropriately formulated to ensure efficient coordination of macro-prudential policies in the EU? [Please rank your answer from 1 (fully appropriate) to 5 (not appropriate at all).] If not deemed fully appropriate, what changes would you suggest to ensure such efficient coordination?

Rank: 4

As the consultation acknowledges, the ESRB was established in 2010, right after the banking sector "highlighted the most severe macro-prudential vulnerabilities during the global financial crisis."[8] It is not surprising, therefore, that the ESRB's mandate was set forth largely in banking terms and that its existing policy instruments are "primarily geared towards the banking sector."[9]

Presently, the EU is focusing on diversifying and deepening its capital markets. The consultation makes reference to the growing importance of market-based financing outside the banking sector, noting that the Commission's Capital Markets Union project "aims to foster that alternative source of financing to the economy." We fully support this project. In the United States, for example, banks and capital markets have existed alongside one another for centuries, with parallel bodies of regulation and oversight. The US financial system and the US economy at large have thrived on the benefits that both banks and capital markets provide.

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[6] FSB, Consultative Document, *Proposed Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities* (22 June 2016), available at http://www.fsb.org/wp-content/uploads/FSB-Asset-Management-Consultative-Document.pdf.

[7] Consultation at 12.

[8] Consultation at 3, 5, 11.

[9] Consultation at 11.

Looking ahead to this broader EU financial system, we urge the Commission to restate the mandate of the ESRB. Rather than having responsibility for "macro-prudential oversight"—terminology that implies a bank-oriented approach—the ESRB should be tasked with bringing a "macro-*financial* perspective" to the EU regulatory scheme. Indeed, the consultation itself uses the term "macro-financial" to describe how the broad perspective of the ESRB could best complement the sector-specific perspective of the three ESAs "in order to foster a holistic understanding of the financial system."[10] Although the ESRB already appears to have a remit that is broader than macroprudential oversight,[11] we recommend that the Commission take this opportunity to emphasize that the ESRB should advance the dual objectives of identifying potential risks to the EU financial system, while also contributing to the promotion of vibrant capital markets and economic growth.

Question 30: How do you assess the current capacities of the ESRB to deliver on its mandate for conducting system-wide risk analysis, including its access to relevant data? [Please rank your answer from 1 (fully adequate) to 5 (not adequate) and explain your scoring.]

Rank: 4

We support the concept of establishing public bodies or mechanisms that allow financial regulators to monitor and analyze risks across the financial system. We are concerned, however, that the ESRB—through its current structure and leadership—has such strong ties to central bankers and central banking that it lacks the capacity and appropriate expertise to conduct *system-wide* risk analysis in a thorough and balanced manner. We likewise are concerned about central bankers' tendency to presuppose the appropriateness of bank-oriented regulatory solutions outside the banking context.

For these reasons, we are wary of the suggestions in the consultation that "there would be merit in keeping the strong link between the ESRB and the central bank community" and that "[c]entral banks are . . . well placed to offer considerable analytical capability about the non-bank financial system."

To enhance the ESRB's capacity to conduct system-wide risk analysis—and to avoid approaching the analysis of non-bank financial entities and activities with a banking bias—we recommend that the EU undertake reforms to the ESRB's composition,

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[10] Consultation at 31.

[11] For example, the regulation outlining the ESRB's mission and objectives requires in part that the ESRB "contribute to the smooth functioning of the internal market and thereby ensure a sustainable contribution of the financial sector to economic growth." Article 3, paragraph 1 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

mandate and resources. Such reforms should include providing equal roles for all major sectors of the financial system: capital markets, banking and insurance.

Question 31: In particular, do you consider that the resources of the ESRB Secretariat are adequate in this context? [Please rank your answer from 1 (fully adequate) to 5 (not adequate) and explain your scoring.]

Rank: 4

The consultation indicates that the ESRB "has neither legal personality nor its own budget." Rather, it "receives analytical, logistical, statistical and administrative support from the ECB, which bears the associated budgetary cost. The ECB notably ensures the support of human and financial resources necessary for the fulfilment of the ESRB Secretariat's tasks."[12] Given this close relationship with the ECB, it is not surprising that the ESRB has a strong banking orientation.

But with a mandate that extends to the entire financial system, the ESRB should have its own, separate legal identity. With its own personality, the ESRB would not been seen anymore as central bankers seeking to export their views on financial stability but as an EU authoritative mechanism for detection of systemic risks across the financial system and for recommending appropriate actions by the relevant regulators. The ESRB likewise should have the resources necessary to support a broader orientation and its independence. We strongly agree with the consultation's acknowledgement that "the ESRB could benefit from additional own analytical resources to complement its analysis especially in those areas, where there is a) less pre-existing knowledge and/or expertise (e.g. systemic risks outside the banking sector). . . ." This would allow the ESRB, for example, to hire experts in securities and insurance.

Question 32: What do you consider to be the best ways to ensure that the macro-prudential perspective is sufficiently reflected in EU policy making where systemic risk considerations are involved?

We wish to reiterate our concern that the "macro-prudential perspective"—*i.e.*, the perspective of central bankers—dominates the ESRB's work to the exclusion of other, potentially more relevant perspectives. Recasting the ESRB's mandate to refer instead to a "macro-financial" perspective and reconstituting the ESRB to provide equal participation for banking, capital markets and insurance should help to ensure that EU policymaking is informed by a full and accurate understanding of the EU financial system and possible areas of systemic risk. Please also see our responses to Q29-Q31.

Question 33: How do you assess the instruments and powers of the ESRB? In particular, do you see the need for the ESRB's powers to explicitly include 'soft power' tools with a view to fulfill its mandate?

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[12] Consultation at 5.

As noted in our responses to Q2 and Q30, we firmly believe that the appropriate role for the ESRB is one of monitoring across the financial system and identifying potential risks to EU financial stability. To this end, it may make sense to modify the ESRB toolkit in favor of less formal mechanisms for referring identified areas to competent regulators at the EU or national level. These mechanisms could, as the consultation notes, "enhance the impact of the ESRB action, allow engaging in a constructive dialogue with potential addressees at an early stage and enhance the flexibility of the early warning function."[13]

Allowing the ESRB greater flexibility in flagging areas of potential concern, however, underscores the importance of developing the ESRB into an organization with capabilities to have "a thorough understanding of the underlying risks," so that its pronouncements about possible areas of risk are informed ones. Providing a greater role for ESMA and EIOPA, as discussed in our response to Question 35, should help in this regard, because both regulatory bodies already have monitoring and coordinating roles in respect of financial stability.

Question 35: Would you consider the two-tier managerial structure along the lines proposed above an appropriate way to improve the governance structure of the ESRB? [Please rank your answer from 1 (fully agree) to 5 (fully disagree) and explain your scoring.]

In discussing the need to enhance the ESRB's organizational identity, the consultation suggests the creation of two possible positions: a full-time Managing Director in charge of day-to-day activities, and a Research Director/Chief Economist to "strengthen the analytical side." We believe that both suggestions are worthy of further consideration. It would be important, however, to ensure that individuals appointed to these positions would take a broad approach (as opposed to a bank-centric one) to the ESRB's mandate. Selection by a reconstituted General Board (as discussed in our response to Q36) could help in this regard.

As discussed in our responses to Q29-30, ICI Global believes that the ESRB should bring a "macro-financial" perspective to the EU regulatory scheme and that, to do so effectively, the ESRB should be reconstituted to provide equal roles for all major sectors of the financial system—banking, capital markets and insurance. One possible approach would be to appoint the ECB President as the permanent ESRB Chair, with each of the three ESA Chairs serving as ESRB Vice Chairs. This structure, in our view, would facilitate the transition from an ESRB with "institutional link with the ECB" to a more independent and authoritative entity whose "tone at the top" is set jointly by the ECB and the three ESAs. It also is in keeping with the ESAs' existing role in regard to financial stability, which the Commission viewed favorably in its 2014 report on operation of the ESAs.[14]

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[13] Consultation at 32.

[14] *See* European Commission, Report from the Commission to the European Parliament and the Council on the operation of the European Supervisory Agencies (ESAs) and the

Question 36: How does the current size of the General Board affect the exchange of confidential and sensitive information and smooth decision making? Do you see merit in reducing its size and/or shifting some of its tasks to the Steering Committee? [Please rank your answer from 1 (fully agree) to 5 (fully disagree) and explain your scoring.]

Noting the complexity of the ESRB's current structure and governance, the consultation suggests that "there is scope for improving the efficiency of the ESRB's decision-making." One option that the consultation raises is reducing the size of the General Board.

More fundamental, we believe, is the need to improve the ESRB's ability to make informed judgments about potential risks to EU financial stability—or the lack of such risks—outside the banking sector. As we have noted, this will require expanding the ESRB's resources to include expertise in non-bank sectors and reconstituting the ESRB to provide equal roles for all three major financial sectors (banking, capital markets and insurance).

In our view, reconstituting the General Board will entail changes in three significant respects. First, the current participation of central bank governors from each Member State reinforces a bank-centric viewpoint. Second, the concentration of voting power in the ECB and national central bank governors ensures bank-centric outcomes. And third, Member States in practice often send their banking supervisors to General Board meetings, regardless of the matters to be discussed. The consultation acknowledges as much, noting that "a more open approach as regards the national authorities represented" may be warranted to "accommodat[e] the ESRB's system-wide remit." It suggests in a footnote that "if a discussion on risks or mitigating measures stemming from the non-bank financial sector is tabled, it could be opportune for Member States to be represented by the relevant national supervisory authority responsible for that sector or the country's macro-prudential authority." This already is possible in theory[15] under the current Regulation but does not work in practice. That is why we recommend that the Commission go further and designate a proportionate number of voting seats on the General Board for national regulators in securities and insurance.

Banking interests likewise dominate the ESRB Steering Committee, which "assists in the [General Board's] decision-making process." Just like the General Board, the Steering Committee should be reconstituted to provide equal roles for regulatory bodies expert in capital markets, insurance and banking. Ensuring a more balanced representation on the Steering Committee is particularly important should the Commission confer responsibility for certain decision-making to that Committee.

European System of Financial Supervision (ESFS), 8 Aug. 2014, available at http://ec.europa.eu/finance/general-policy/docs/committees/140808-esfs-review_en.pdf.

[15] *See* paragraph 3 of Article 6 of Regulation (EU) No 1092/2010.

Question 37: (a) How do you suggest accommodating the establishment of macro-prudential authorities at the national level, and the SSM and SRB, in the General Board's membership? (b) Do you consider it warranted to require Member States to designate a single national representative, with representation possibly varying in accordance with the concrete issues for discussion and decision? [Please rank your answer from 1 (fully agree) to 5 (fully disagree) and explain your scoring.]

Please see our response to Q36.

Question 38: How do you assess the work of the two ESRB advisory committees (ATC and ASC)? In particular, would you suggest any changes in their role and/or composition?

We recommend that the Commission fully review the composition and role of the ESRB advisory committees. The consultation notes that the 64-member Advisory Technical Committee (ATC) "mirrors the General Board" and is responsible for advising and assisting the work of the General Board. This means, therefore, that the orientation of the ATC is decidedly bank-focused. For its part, the Advisory Scientific Committee has 15 expert members "chosen on the basis of their general competence and their diverse experience in particular in academic fields or other sectors."[16] The ASC "provides advice and assistance on issues relevant to the work of the ESRB at the request of the Chair of the General Board"—presently, the ECB President—and its work is subject to strict confidentiality rules.[17]

As with the General Board and Steering Committee, the composition and role of these ESRB advisory committees going forward should be revised to reflect a "macro-financial" perspective and an equal role for banking, capital markets and insurance experts. Determining the precise scope of these revisions, however, should be deferred until after the Commission settles upon more fundamental changes for the ESRB, including reconstitution of the General Board and greater, more diverse resources for the ESRB Secretariat.

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[16] *See* https://www.esrb.europa.eu/about/orga/asc/html/index.en.html.

[17] *See* Mandate of the Advisory Scientific Committee of the ESRB (20 Jan. 2011), available at https://www.esrb.europa.eu/pub/pdf/ASC-mandate.pdf.