AFME Spanish Capital Markets Conference

RODRIGO BUENAVENTURA, THE CNMV CHAIRMAN
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Thank you Adam for your introduction, and good morning to everyone.

Thanks also to AFME and AEB for inviting me to participate in this 13th Annual Spanish Capital Markets Conference at a very relevant moment for the Spanish economy and the Spanish securities market.

CMU and the importance of securities markets

I use "relevant" as an expression to define the economic situation in Europe and Spain because we are facing a time of uncertainty. The Ukraine war has added to some previous underlying trends and the fact is that we are living a macroeconomic and markets environment that few anticipated 12 months ago.

Before the war scenario began, I have repeatedly and publicly stated that stock markets must be one of the bedrocks of economic recovery. I have made these statements in connection with the investment needs arising from the transformation of European economic models into others that are more respectful of the environment and social criteria. According to the European Commission's own estimates, which put the investment needed in this decade for sustainability at 350 billion euros each year, this means that, in the Spanish market alone, around 30 billion euros per year will have to be invested in addition to the normal investment over the next eight years. This is an extraordinary and historic figure that cannot be financed in a traditional pattern and in particular through bank financing. Today, in addition to sustainability and digitalisation, we must add to the equation the consequences of the macroeconomic scenario in which we find ourselves. And, interestingly, the Ukraine conflict has strengthened some of the investment needs

that our economies will require: a faster path towards sustainable energy transformation, new defense expenditure needs and certain strategic investments. All that will only increase the need for deep and liquid capital markets.

The European Commission understood this trend long ago, launching the Capital Markets Union project.

The CMU focuses on the achievement of three objectives. Firstly, to facilitate access to stock and capital markets for new companies with innovative business models so that the market allows them to accelerate their growth and thus the renewal of the European business fabric. Secondly, to bring the market closer to the retail investor and thereby improve the long-term profitability of savings for increasingly ageing European citizens. And thirdly and finally, to allow companies to modify their financing structure and thereby accelerate a process of diversification of sources of financing so as to reduce dependence on bank credit, as is the case in other geographical areas such as the United States.

It is a fact that the Spanish stock market should develop faster, at least in terms of the number of listed companies. Our main, regulated market, the one with the most stringent requirements and regulations, has around 130 listed companies. In contrast, the Growth market, which specialises in growing and expanding companies and has much lower regulatory requirements, has 50 companies. In this figure I am leaving out SOCIMIs (the Spanish REITS, listed real estate investment companies) with a very specific sectoral exposure.

Our stock market is therefore shaped like an inverted pyramid, with many more companies in the main regulated market than in the “entry” category. This should probably be the other way around. But this natural process is not taking place quickly enough: it’s true that more companies join the Growth market than the main market every year (9 vs 4 in 2021), but we need both of those two figures to increase significantly.

And it is a fact that other member states in the EU have more vibrant growth markets. The reasons for a larger success in attracting new companies to public markets are not, I believe, mainly related to the cost or the requirements of going public - certainly not in my opinion in the MTFs-, but rather to other reasons. These may be due to different corporate cultures, a more active sector of investment firms, a different tradition of institutional and pension fund investment in domestic markets. Maybe some specific aspects are also relevant, like tax incentives, mechanisms that favour continued liquidity, the intervention of more local financial intermediaries and the widespread presence of market-making contracts.

Key elements in the current regulatory debate

Talking broadly about EU regulation of capital markets, we are clearly in one of those moments in the history of regulation when the pendulum changes direction. I would say that it actually changed a couple of years ago and we are at the bottom of the pendulum movement. For those in my generation, we have seen it several times in the last 25 years. And we know that the pendulum will come back, no doubt, when the next crisis strikes.

The current mantra, and it's the right one, is to foster EU capital markets, so that EU companies use them to finance their huge investment needs and to obtain sounder balance structures. That means lower listing requirements, shorter times to access markets and fewer information requirements towards investors. The direction of the movement is a delicate one since we might be moving towards weaker investor protection rules. This needs to be very, very carefully balanced to avoid that the pendulum leads us to another deregulation like the one which preceded the great financial crisis. I think it is doable and worth doing, but we need to have exquisite precision and a wide dialogue with all stakeholders when doing so. I will just give two examples. For instance, when we promote measures to bring millions of new individual investors into capital markets, I have always thought that collective investment, professionally managed and properly diversified, can be an ideal tool to serve the interests of those investors, compared to individual stock picking. Another example would be the rules to prevent insider trading, which should be the last ones to be dismantled when searching for areas in which to reduce the regulatory burden.

The Listing Act, which aims at measures to make capital markets more attractive to companies in the European Union and to facilitate SMEs' access to capital, is a key piece of this effort. The consultation included different blocks that affect very relevant rules for our market such as the Prospectus Regulation, the Market Abuse Regulation, MiFID II or the transparency and admission to trading directives, as well as issues related to SPAC vehicles. I hope that we reach the sweet spot on these reforms, so that markets are stimulated without putting too much at risk market integrity and investor protection.

We also need to fine-tune some aspects of market structure and transparency within MIFID, namely the regulation of dark trading, the transparency regime and the best execution rules. Of these, I would like to signal out the last one, the best execution dimension. Although the regime has been here for a while, the recent discussions around Payment for Order Flow illustrate the need to fix it.

As you know, some brokers offer low or zero commissions to their retail clients by charging commissions instead to the venues to which they channel those orders. This practice, according to several supervisors, including CNMV, often provides the worse possible execution prices. Other national supervisors, when assessing this very same practice, obtain very different results. This shows that we are interpreting the Law

quite differently and the reason for that is simple: the law governing execution for retail clients (article 27 of MiFID) is too loosely worded and allows for completely opposite interpretations. This illustrates the need to close down the definition of best execution, at least when PFOF is used, to avoid two effects: 1) that clients get worse terms for their trades and 2) a really divergent market across Member States, the opposite of a single one, let alone a "united" one, as the CMU proposes.

Some propose as a solution better information to clients about the implicit costs in which they incur and about the distance from the best execution prices available at every moment in time. That is positive, especially for sophisticated clients, but I am afraid will not do the trick by itself. We need also clarity on the interpretation of MiFID which would allow in turn clarity on supervisory convergence.

DEBRA

But for the set of measures, both present and future, to be truly effective, there is a chapter that does not depend on the market regulation or supervision but on the incentives that taxation creates as to the way European companies obtain financing.

In this respect, I would like to highlight the very recent proposal by the European Commission for a Directive called DEBRA (Debt Equity Reduction Allowance).

Equity financing has traditionally suffered from a taxation asymmetry with respect to debt financing, insofar as the interest on debt is deductible - with certain limits - as a tax expense on the company's profit generation, while equity does not benefit from that. The objective of the DEBRA initiative is to establish similar tax incentives for raising equity than for contracting debt. The goal is to reduce the equity-debt bias and thereby to make equity financing more accessible, in particular for start-ups and SMEs. In order to make this common framework also sustainable in the short term for Member States' budgets, DEBRA sets an additional limit to the tax deductibility of debt interest paid.

The debt-equity bias and its different fiscal configuration is a common problem in all EU member states. Only six member states (Belgium, Portugal, Poland, Cyprus, Malta and Italy) have taken national measures, but with significant differences in their design. An EU-wide initiative in the form of a binding legislative proposal is therefore needed to address the problem in a coordinated way.

I think that this initiative, which is by the way open for comments until July, is probably the most significant measure in the pursuit of a true CMU.

Regulatory architecture and supervisory mandates

As you see, these rules, both national and international, are aimed, firstly, at strengthening markets and, secondly, at making them more competitive. But this dimension, competitiveness, has open recently a debate on whether regulators and supervisors should have the additional mandate to boost the competitiveness of securities markets or pursue market development.

We have seen this in the UK wholesale markets review but also at national and EU level. My take on this matter is clear and hinges on the difference between regulation and supervision, two words we frequently mix, while they have very different meanings.

I firmly believe that a supervisor, when authorising a firm, a product or a venue or when inspecting and enforcing compliance with the law, should have nowhere near the concept of competitiveness or market development. We should apply the law to specific persons with legal and technical considerations only and we should not have any mandate on market development. That is obvious at national level within the internal market (otherwise some countries might apply the laws differently, which is the opposite of convergence). But it is clear also at EU level, when for instance ESMA acts as a supervisor of CRAs, TRs, critical benchmark providers and alike.

On the contrary, when we act as regulators, this is drafting, consulting and interpreting Circulars, Guidelines and Technical Standards, of course we should keep an eye on the development of the market and its competitiveness !! We have been doing so since 2011 at ESMA and since we were born as institutions at national level. The same goes, of course, for the national treasuries and the European Commission. The very objective of the process of consultation and cost and benefit analysis is to achieve the right balance between costs and benefits, being market competitiveness one of the key benefits. I think nobody questions this.

The issue is that, when an institution is both a supervisor and a regulator, like ESMA, CNMV or the FCA, this issue needs to be tackled separately, depending on which role the institution is handling in each procedure or dossier. That should be easily achievable without attaching a new mandate to the whole institution, like I think has been achieved in the history of CNMV and of ESMA. I will give some examples later on.

Let me just refer briefly to the institutional structure of European supervision. As Adam said I worked at ESMA as Head of Markets for the first 6 years of the authority, and I have served at CNMV for another 10 years, so both ESMA and CNMV are quite close to my heart. The debate of where certain powers should be exercised, at the center or locally, is a never-ending one. My take on that is quite pragmatic: it depends. For some supervisory competences only regulated by EU Regulations and where few providers account for a big share of the EU market, I

think it does make sense to attribute them to ESMA. For industries with thousands of providers, most of them local, for matters deeply embedded in corporate and national law, or for market abuse investigation and enforcement, I truly think that centralizing those would result in less effective and more expensive supervision.

But let me point at another aspect of the debate that is less frequently heard. Most of the discussion is on the relative attribution of powers between NCA and ESMA. But there is another important and often forgotten angle: the power attribution between, on the one hand, EU co-legislators and the Commission, and, on the other, ESMA. Recently I saw a table comparing the "MIFID-like" rule changes in the EU and in the UK market reform. What stroke me the most were not the differences on the policy choices for the double volume cap, open access or tick sizes. What was truly staggering was the difference in the number of times you can find in that table the words "empower the FCA" compared to the way ESMA's role is envisaged, which is mostly "ESMA will draft technical standards" or "ESMA will advise the Parliament". Probably, the legislative setting and the political culture in the EU does not trust our supervisory agencies enough even for the competences that are already attributed to them.

The US supervisors can issue no-action letters (ESMA cannot); the UK supervisor will be entrusted with "monitoring and limiting dark trading" (in the EU we write that in a Level-1 Regulation); in the US or the UK, the supervisors issue Q&As on how to apply the equivalent of Level-1 law (in Europe we leave that to the Commission). In the US, the CFTC (not the US Treasury) negotiates substituted compliance of CCPs (in the EU it is the Commission). In the same vein we have the unfortunate Meroni doctrine, which has acted for decades as a Damocles sword, curbing the powers of EU agencies, and that fortunately has been watered down in the last rulings of the ECJ.

In a nutshell, we should probably pause and think whether, after 11 years, EU agencies like ESMA are mature and resourced enough to start exercising powers that are currently kept at EU political or parliamentary level. I think they are and we should walk that path, including the necessary legal changes to achieve that. In other words, the idea is not to ask only what powers Member States or NCAs can assign to the Union, but what powers currently held by the Union Institutions can be assigned to ESMA, at least if we want to be as agile, sophisticated and reliable as the UK and the US on this.

Regulatory action at national level

Besides EU measures, there is also room for regulatory action at national level to promote CMU. In the case of Spain, the CNMV has adopted in the past and continues to propose regulatory measures within its power to promote our securities markets. We, securities supervisors, love disintermediated markets. We were born to facilitate and supervise those. It's at the core of our DNA. By the way, maybe because of that, we are not at all afraid of the ultimate disintermediation: decentralized finance. We

just think that the least interesting and the least valuable part of all that is investment on empty cryptocurrencies.

Returning at the measures taken in Spain, I think CNMV has been very active in promoting disintermediation and access of companies to capital markets.

To conclude my address to you today, I will mention just four specific initiatives of CNMV related to the fixed income market.

First, we made some proposals to amend the Spanish Securities Markets Act and the Regulation on admission to trading, that were well received by the Government. One of them was to scrap completely CNMV's powers to register the admission to trading of fixed income securities when those have been issued following a base prospectus initially registered by CNMV. Admission to trading will be verified in those cases only by the market operator. This is one of the rare cases I know in which a competent authority proposes to lose a competence and defer it to the market operator. The aim is clear though: to save costs and time for issuers, while keeping a reasonable level of investor protection through the verification of the base prospectus.

Secondly, we have proposed an amendment to the Law on the fees charged by CNMV for fixed income primary market transactions, which was also embraced by the Spanish government. This will reduce significantly the fees paid by issuers of bonds, securitisation and commercial paper, lowering the cost of issuing fixed income by Spanish companies. It will also make those fees simpler and more predictable for those obliged to pay them, and finally, to reconcile the fees with the cost of the service offered by the CNMV.

Thirdly, we suggested to eliminate the need to prepare prospectuses for issues of commercial paper shorter than 365 days, also removing the obligation for issuers to deposit a copy of the issue document and its amendments with the CNMV.

Lastly, we committed in 2017 to review and provide comments on fixed income prospectuses in specific timframes (ranging from 2 to 5 days). We measure that commitment every year and in 2021 we met it in 99,1% of the prospectuses that we verified.

In Spain we have a saying: *"obras son amores y no buenas razones".* This is more or less the English saying "actions speak louder than words". As you can see, we have proposed legal reforms to reduce our powers and our income and we have adopted commitments in order to promote fixed income markets in Spain. I hope the future of our market proves us right.

Thank you very much.