

19 June 2015

ALFI response to the EBA Consultation Paper (EBA/CP/2015/06) on Draft EBA guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para.2 Regulation (EU) No. 575/2013

Q. 1. Do you agree with the approach the EBA has proposed for the purposes of defining shadow banking entities? In particular:

Do you consider that this approach is workable in practice? If not, please explain why and present possible alternatives.

Do you agree with the proposed approach to the exclusion of certain undertakings, including the approach to the treatment of funds? In particular, do you see any risks stemming from the exclusion of non-MMF UCITS given the size of the industry? If you do not agree with the proposed approach, please explain why not and present the rationale for the alternative approach(es) (e.g. on the basis of specific prudential requirements, redemption limits, maximum liquidity mismatch and leverage etc).

We welcome the opportunity to respond to the EBA Consultation Paper (EBA/CP/2015/06) on Draft EBA guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(2) of Regulation (EU) No. 575/2013.

We strongly disagree with EBA proposal to include all AIF's and all MMF's (including UCITS) under the definition of shadow banking entities which carry out banking activities outside a regulated framework.

Definition of "outside a regulated framework"

Both the UCITS and AIFMD directives (including their implementing acts and ESMA guidelines) have introduced a robust regulatory framework, ensuring prudential supervision, in a manner adapted to the specificities of investment funds. Such framework includes aspects discussed in the consultation such as own funds, initial capital requirements, internal controls, conflicts of interest, risk management, including liquidity requirements and leverage, extensive transparency and reporting (to regulators and investors).

EBA concerns

AIFMD and UCITS framework addresses all of the concerns raised in the consultation, as illustrated in the table below:

EBA concerns	Provisions addressing these concerns	AIFMD	UCITS Directive	MMF specific	Upcoming regulation
<i>Run risk and/or liquidity problems</i>	Risk management, liquidity management requirement, gates and liquidity fees,	Article 16 of AFMD (2011/61/EU), Section 4 of Regulation 231/2013	Directive 2010/43/UE	CESR/ESMA guidelines on MMF: WAM and WAL requirements (ESMA/2014/110 and CESR 10-049)	MMF regulation that will bring the ESMA guidelines into a regulation
<i>Interconnectivity and spillovers</i>	Counterparty limits, risk management requirements	Article 15 of AFMD (2011/61/EU), Section 3 of Regulation 231/2013	Directive 2009/65, Directive 2010/43/UE		MMF regulation
<i>Excessive leverage and procyclicality</i>	Limits on leverage, disclosure on leverage,	Article 22 to 25 of AFMD (2011/61/EU)	Directive 2009/65 Directive 2010/43/UE CESR guidelines 10-788	Limits of use of derivatives in CESR/ESMA guidelines on MMF (ESMA/2014/110 and CESR 10-049)	MMF regulation that will bring the ESMA guidelines into a regulation
<i>Opaqueness and complexity</i>	Reporting to investors, reporting to regulators, supervision of managers and depositaries	Article 22 to 24 and article 26 of AFMD (2011/61/EU)	RÈGLEMENT (UE) No 583/2010 DE LA COMMISSION du 1er juillet 2010		MMF regulation that will bring the ESMA guidelines into a regulation

Moreover, the CESR guidelines on MMF (applicable to UCITS and AIF) issued in 2010 already impose strict limits in term of liquidity, risk and leverage to all MMF's in Europe. The money market regulation, as adopted by the EU parliament in April 2015, will also expend on these rules.

Definition of credit intermediation activities

We also disagree with the definition as per page 18 of the consultation that extend the definition of shadow banking to trading for own account in securities as this goes far beyond the definition of shadow banking: such activities are excluded from the definition of shadow banking as per the FSB 2014 monitoring report (equity funds and real estate funds are deducted from the MUNFI's to estimate size of shadow banking – FSB also mentions that further exclusions could be considered but were not done just because the data were not easily available).

We therefore urge EBA to revisit their analysis, taking due care of all the legislations that were introduced/implemented in Europe in the Asset Management sector (UCITS, AIF and MMF) since the shadow banking discussion arose and which fully address the concerns typically associated with the shadow banking activities.

Impact on banking sector and capital market in Europe

Whilst the consultation paper does not specifically define the term “exposure”, we are deeply concerned with the potential implications of limiting European credit institution interaction with AIF’s and MMF’s.

Many fund sponsors are part of banking group and it is therefore market practice to “seed” new fund launch – this is even a requirement to access certain market which impose minimum size and track records for distribution. If such possibility was withdrawn (or significantly limited) for AIF’s and MMF’s, it would have a severe negative impact on fund launch in Europe and thus capital market in Europe. This appears to be in contradiction with the EU ambitions for the Capital Markets Union.

UCITS and AIFMD directive require AIF’s and UCITS to interact with banks (depository requirements, requirements to have credit institution as counterparties...). We see therefore a contradiction between the EBA proposal and the existing regulations. Moreover, if European Institution were restricted in their ability to act as a counterparty or prime broker of AIF, we fear that such activities would move outside of Europe or to less regulated counterparty. Such a move would increase the operational and financial risks of the AIF depository, whose liability towards AIF’s/MMF’s investors would remain unchanged.

Last but not least, restricting access of AIF’s to bank financing might have the perverse effect to force private equity or real estate projects outside the sphere of regulated entities, increasing lending risks, decreasing investors protection and being counterproductive in term of capital market union.

We therefore urge EBA to revisit their analysis, taking due care of all the legislations that were introduced/implemented in Europe in the Investment Fund sector (UCITS, AIF and MMF) since the shadow banking discussion arose and which fully address the concerns typically associated with the shadow banking activities. As illustrated above, the inclusion of these regulated structures in the definition of shadow banking activities would have significant negative impact on the banking and capital market in Europe. AIF’s and all UCITS should therefore be excluded from the definition.
