



**RICS response to the
European Banking Authority Consultation on
Limits on exposures to shadow banking (EBA/CP/2015/06)**

19 June 2015

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EU Transparency Register: 12309911354-39

Harmonising treatment of UCITS and AIFs. Considering the specific role of real estate investment

RICS agrees with the general aim of the European Union to increase access to capital, e.g. through a Capital Markets Union or by diversifying capital availability. Whilst the term ‘shadow banking’ is somewhat regrettable, we support the aim to complement financing by banks.

Whilst we agree that it is appropriate to impose requirements on shadow banking entities which carry out bank-like activities outside a regulated framework, nonetheless, we have a number of concerns about the approach proposed by the EBA, especially in relation to the AIFM Directive as well as the potential impact on real estate investment.

We believe that the approach put forward in the consultation paper in relation to UCITS funds – namely that they should be excluded from scope unless they are MMFs – should also be adopted in relation to AIFs. By not applying similar principles to both UCITS funds and AIFs, there is risk of distorting the European financial services industry.

In the absence of a definition in the CRR of the terms ‘shadow banking entities’, ‘banking activities’ and ‘regulated framework’, we are pleased the EBA has proposed a definition for shadow banking entities for the purposes of the Guidelines. The decision to include in the definition entities that: a) are carrying out credit intermediation activities, defined as bank-like activities involving maturity transformation, liquidity transformation, leverage, credit risk transfer or similar activities; and b) are not within the scope of prudential consolidation nor subject to solo prudential requirements under specified EU legislation (or equivalent third country legal frameworks), in the first instance, has our overall support.

However, our concerns revolve around the determination of what entities are not subject to “an appropriate and sufficiently robust prudential framework” under the second part of the definition of shadow banking entities. It cannot be the case that the Alternative Investment Fund Managers Directive, which is now fully in effect and covers the vast majority of real estate and other alternative investment funds, is not “an appropriate and sufficiently robust prudential framework”.

The consultation paper specifically cites the EU UCITS directive (Directive 2009/65/EC) and states that it prescribes a robust set of requirements under which undertakings for collective

investment in transferable securities, and their managers, operate. As a result, UCITS funds (other than MMFs, which are dealt with differently for specific reasons) are specifically excluded from the proposed scope of coverage of the Shadow Banking Guidelines. We agree with both the consultation paper's reasoning and conclusion in this regard. However, we are of the opinion that the same approach should be applied to alternative investment funds and the AIFMD. UCITS served as the model for AIFMD.

Like UCITS funds, Real Estate AIFs:

- Within the scope of AIFMD have requirements on the asset manager including initial capital, own funds and internal control and reporting requirements, and AIFs themselves are subject to requirements related to leverage.
- Do not pose the same level of risk to institutions in terms of credit and step-in/bail-out risk (e.g. due to reputational, franchise and other risks) as unregulated funds.

Therefore real estate AIFs within the scope of AIFMD (other than MMFs) should be specifically excluded from the proposed scope of coverage of the Shadow Banking Guidelines.

We would like to draw the EBA's attention to the Financial Stability Board's (FSB) Global Shadow Banking Monitoring Report 2014, which contains a section specifically discussing real estate funds. It notes that most real estate funds invest in and own physical properties so that their revenues are derived directly from rental income, while some others invest in debt, deriving most of their income from real estate loans.

The FSB notes that real estate funds that invest in and own physical properties are "typically not part of the credit intermediation process, as they neither lend directly to other financial entities nor do they hold fixed income products in any significant way in their investment portfolio". In almost all cases, real estate funds are not part of the credit intermediation process.

The EBA should reconsider its view, or at the very least set out its reasoning and identify the principles whose applications to funds should determine which AIFs, in particular, should be treated as shadow banking entities. The currently different approach to UCITS funds and AIFs should be addressed.

We hope the above is of use and remain at your disposal if further clarification is needed.

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We accredit 118,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers valuation and commercial property practice; property finance and investment; project management, planning & development; quantity surveying as well as facilities management.

From environmental assessments to real estate transactions, if our members are involved, the same professional standards and ethics apply.

We believe that standards underpin effective markets. With up to seventy per cent of the world's wealth bound up in land and real estate, our sector is vital to economic development, helping to support stable, sustainable investment and growth around the globe.

With offices covering the major political and financial centres in the world, we are ideally placed to influence policy and embed professional standards. We work at a cross-governmental level, delivering international standards that will support a safe and vibrant marketplace in land, real estate, construction and infrastructure, for the benefit of all.

We are proud of our reputation and sustain it, so clients who work with an RICS professional can have confidence in the quality and ethics of the services provided.