

## **BVI's<sup>1</sup> position on EBAs Consultation on revised Guidelines on limits on exposures to shadow banking | European Banking Authority**

Q1: Do you experience any difficulties in your identification process of SBEs, especially regarding whether the SBE definition as specified in Commission Delegated Regulation (EU) 2023/2779 is clear enough or do you see room for improvement or need for an update (please explain/provide clear examples)?

From our point of view, the definition should be revised, as the current identification process of SBEs in the context of alternative investment funds (AIFs) becomes excessively burdensome.

According to the current definition in the Delegated Regulation, the exclusion of lending and loan acquisition applies regardless of whether these activities are actually an active part of the AIF's investment strategy.

Following the tradition of the German fund market and in line with fund supervisory practices of BaFin, investment terms are typically described using a positive list of permissible investments. The current definition of SBEs, however, implies that there must be an explicit exclusion of lending and loan acquisition activities, which is conceptually alien to German market practice. So, even though the fund manager does not intend to invest in loans in practice, and this activity has not been positively agreed upon anyway, for an unambiguous identification it would be necessary to explicitly exclude such activities by amending the fund's investment documents which, due to civil law contractual requirements, requires the consent of all investors.

The situation has worsened due to the revised approach to AIF lending exposures under AIFMD II, insofar as practically every second investment fund in Germany - including highly regulated and transparent "Special AIFs" - might, on paper, now be classified as a SBE. This is not just a technical inconvenience - it means that vast parts of the regulated fund market in Germany are at risk of being unjustifiably stigmatised as "shadow banks", a categorisation that does not reflect their high regulatory standards, transparency, or genuine risk profile.

Therefore, and because the issue of lending by AIFs has been taken into account in AIFMD II, we propose a revision of the definition of SBEs by making reference to the term of „loan-originating AIF" according to Article 4(1)(at) of AIFMD II.

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<sup>1</sup> BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 113 members manage assets of EUR 4.9 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 26%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit [www.bvi.de/en](http://www.bvi.de/en).



Proposal:

COMMISSION DELEGATED REGULATION (EU) 2023/2779

Article 1

(c) any alternative investment fund as defined in Article 4(1), point (a), of Directive 2011/61/EU, where any of the following applies:

- (i) the alternative investment fund is authorised as a money market fund as referred to in Article 4 of Regulation (EU) 2017/1131;
- (ii) the alternative investment fund employs leverage on a substantial basis as set out in Article 111(1) of Commission Delegated Regulation (EU) No 231/2013 (9);
- (iii) the alternative investment fund is ~~not prohibited from originating loans in the ordinary course of its business or from purchasing third-party lending exposures for its own account on the basis of its rules or instruments of incorporation~~ authorised as a loan-originating AIF as referred to in Article 4 of Directive 2011/61/EU.