Consultation Response

AFME response to EBA consultation on revised Guidelines on limits on exposures to shadow banking entities

9 July 2026

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the European Banking Authority's (EBA) consultation on draft revised Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(2) and (2a) of Regulation (EU) No 575/2013. AFME is the voice of the leading banks in Europe's financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent over 150 leading global and European banks and other significant market players. Our members play a vital role in Europe's financial ecosystem, underwriting around 90% of European corporate and sovereign debt, and 85% of European listed equity capital issuances. Importantly, AFME members are market makers, providing liquidity, which is essential for ensuring financial markets can function efficiently. We also represent law firms and other associate members which advise market participants and support AFME's legal and regulatory initiatives.

AFME is registered on the EU Transparency Register, registration number 65110063986-76. We summarise below our high-level response to the consultation, followed by answers to the individual questions raised.

Executive summary

AFME welcomes the EBA's consultation and the objective of ensuring a harmonised framework.

However, we strongly object to the removal of the threshold of 0.25% of the eligible capital for recognising exposures falling under the Guidelines. Removal is neither mandated by Delegated Regulation (EU) 2023/2779, nor by the amendments introduced by Regulation (EU) 2024/1623. The Delegated Regulation contains a new definition of "shadow banking entities", but not of "exposures to shadow banking entities", which are only defined in the Guidelines, and solely for purposes of the Guidelines. Removal of the threshold is at odds with repeated communications from the EBA on the important justification for a materiality threshold and would have a significant negative impact on firms, with very limited benefit. We urge the EBA to retain the materiality threshold to ensure that supervisory concerns and institutional resources remain focused on exposures that are genuinely relevant from a prudential and financial stability standpoint.

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More widely, the updates to the Guidelines provide an important opportunity to ensure consistent and appropriate application of the framework, in particular for the identification of shadow banking entities (SBEs). While overly detailed and prescriptive definitions should be avoided, we consider that there is significant scope to improve the clarity of definitions and to ensure that identification criteria allow institutions to distinguish between entities that genuinely engage in shadow banking-type activities and those that do not. Currently, entities risk being classified as SBEs despite their business models and risk profiles not being aligned with the original policy rationale underpinning the shadow banking framework. Our response identifies specific areas where further clarity from the EBA would support industry and the quality of data reported.

Greater clarity on the purpose of specific internal aggregate and individual limits would also be welcome, as would further engagement with industry, to inform the upcoming EBA analytical report due by December 2027. We emphasise the importance of sufficient flexibility to ensure limits are appropriate and that limits remain subject to each institution's risk appetite. Given the intention to integrate SBEs in the Large Exposures framework, exposures to SBEs or to a group of connected SBEs should be treated in the same way as the exposure to any other client, and not be subject to sectoral caps that are arbitrary from a risk perspective.

We would welcome further engagement with the EBA on the issues raised in our response.

Consultation questions

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)?

While overly detailed and prescriptive definitions should be avoided, we emphasise the importance of clear definitions to enable consistency in banks' identification of SBEs and reliable reporting. Furthermore, it is crucial that the criteria for the identification of SBEs allow institutions to distinguish between entities that genuinely engage in shadow banking-type activities and those that do not. Currently, lack of clarity may lead to entities being classified as SBEs despite their business models and risk profiles not being aligned with the original policy rationale underpinning the shadow banking framework. This could impact the quality of data reported. It also provides all the more reason to retain the 0.25% threshold, as we outline in response to Question 6.

AFME members would welcome clarification and additional measures from the EBA in the following areas to support consistent and appropriate classification of SBEs:

- **Official reference list for the application of the SBE criterion based on the "Basel Core Principles" (BCP):** the SBE identification criterion prescribed by the RTS with regard to entities established in third countries relies on the concept of compliance with the "BCP", namely where "*the entity has been authorised and is supervised by a third-country supervisory authority in accordance with the Basel Core Principles for effective banking supervision*".

We strongly encourage the EBA to publish and maintain an official reference list of third countries considered compliant with the BCP for the purpose of SBE identification. The list should comprehensively cover banking frameworks worldwide, ensuring that institutions with different international footprints are subject to a level playing field and preventing unintended asymmetries resulting solely from differences in institutions' geographical presence. Such a reference list would be instrumental in ensuring a consistent, harmonised and operationally workable application of the framework across institutions within the Union. The need for such an official list was already raised by industry during the consultation phase of the RTS. However, to date, the issue remains unresolved, creating persistent uncertainty and a risk of divergent interpretations and supervisory practices across institutions and jurisdictions, not least given the lack of examples of what is deemed to be in accordance with the BCP. A harmonised reference mechanism would significantly contribute to legal certainty, supervisory convergence and proportionate implementation of the framework. We welcome the EBA's acknowledgement of this industry request during the public hearing held on 25 June 2026 and the indication that such information could be made readily available and well visible.

If the EBA cannot publish a reference list, we would encourage the EBA to clarify which of the Base Core Principles are most relevant and should be prioritised.

- **Third country regimes:** in addition to providing the list requested above, we recommend that the EBA confirms that assessments of third country regimes under the SBE framework should be principles-based assessments, allowing banks to consider the overall comparability of a regime rather than relying solely on formal equivalence determinations. This would provide legal certainty and ensure a consistent and proportionate application of the framework.

  We also encourage the EBA to communicate official lists of regulations deemed to be equivalent for all the regulatory texts listed in the Annex of Delegated Regulation (EU) 2023/2779. Currently, there is only limited information available from the European Commission which impedes banks' application Article 1(2)f(ii) of Delegated Regulation (EU) 2023/2779.

- **Central banks and public entities:** in light of the exclusion criteria set out in Article 1(2)(b) of Delegated Regulation (EU) 2023/2779, which exempts entities excluded from the scope of Directive 2013/36/EU (CRD) from the definition of SBEs, clarification is needed on the exact treatment of third-country central banks and public sector banks. Specifically, Article 2(5) of the CRD explicitly excludes "central banks" from its scope. **We encourage the EBA to confirm whether this exclusion applies universally to all third-country central banks, and to multilateral development banks,** thereby exempting them from the SBE definition regardless of the existence of a formal equivalence decision under Article 391 CRR.

  Furthermore, for third-country public credit institutions or state-owned banks that do not qualify as central banks, and are located in jurisdictions without a formal equivalence decision (for example, Panama), it would be helpful for the **EBA to confirm that such entities should not be identified as SBEs** provided that the reporting institution verifies that they are authorised and supervised by a third-country supervisory authority that applies banking regulation and supervision based on at least the BCP for Effective Banking Supervision, in accordance with Article 1(2)(f)(i) of Delegated Regulation (EU) 2023/2779.

Given the state-owned nature of sovereign wealth funds, and their objective to manage and grow public financial resources over the long term, we also encourage the EBA to confirm that sovereign wealth funds (located worldwide) should not be identified as SBEs.

- **Collective Investment Undertakings (CIUs) other than MMFs – absence of an equivalence framework for third country funds:** the absence of any formal "equivalence" recognition regime for CIUs[1] established in third countries leads to important practical uncertainties arise regarding their treatment.

  For example, this may give rise to the question of how open-ended public investment funds governed under the US Investment Company Act of 1940 should be treated. From an economic perspective, one could reasonably argue that those funds do not necessarily exhibit the structural vulnerabilities generally associated with the prudential concerns underlying the SBE framework, such as significant maturity transformation, complex chains of credit intermediation, excessive leverage or structurally leveraged financing models. Such funds operate as publicly distributed investment vehicles subject to comprehensive supervisory requirements, including rules relating to liquidity risk management, diversification and disclosure obligations. In practice, those funds are generally invested in marketable securities within defined liquidity, diversification and leverage constraints.

- **CIUs – operational challenges in the application of the AIF-related criteria for SBE identification:** further operational concerns arise in relation to the application of the RTS criteria applicable to AIFs (other than MMFs), including those established in third countries, namely where *"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".*

  In practice, the assessment is expected to rely on the fund's constitutional or incorporation documents, and more specifically on whether such documents explicitly prohibit loan origination or the purchase of third-party lending exposures. However, in many cases, the relevant fund's actual investment strategy does not involve lending activities and, in practice, no loan origination activity is effectively conducted. In addition, many such funds are not intended to operate as credit intermediaries and do not actually perform activities that would ordinarily be associated with shadow banking functions.

  Nevertheless, a question may rise as to how such funds should be treated where their constitutional documents do not contain an explicit prohibition against such activities, given that the SBE criteria is based solely on the legal capacity of the fund, irrespective of their effective activities or actual risk profile. In other words, under a strict or conservative reading of the criteria for SBE identification, banks may not be allowed to meaningfully distinguish between AIFs genuinely engaged in shadow banking-type activities and those

[1] We acknowledge the equivalence framework for money market funds (MMFs).

whose legal capacity merely does not explicitly prohibit such activities on a theoretical basis, without those activities having any practical relevance in terms of their effective operations. **As a result, the treatment of a very broad range of AIFs (other than MMFs) may become an issue, despite their materially different business models and risk characteristics.** This may give rise to disproportionate classifications that are not fully aligned with the underlying economic reality and prudential risk of the funds concerned.

We encourage the EBA to provide further clarification of the distinction between AIFs genuinely engaged in shadow banking-type activities and those whose legal capacity merely does not explicitly prohibit such activities on a theoretical basis in order to preserve legal certainty, supervisory consistency and proportionality in implementation where needed. In particular, we recommend that AIFs are excluded unless they are specifically involved in buying or originating loans (rather than considering that all AIFs should be captured as SBEs unless explicitly prohibited from such activities). In addition, regarding situations where an AIF occasionally grants shareholder loans to its portfolio companies, the assumption is that this should not be treated as being "genuinely engaged in shadow banking-type activities".

- **Articulation between 'non-bank financial intermediation' and SBE:** at global (e.g. FSB, BCBS) and European (e.g. ECB) level, the concept of 'non-bank financial intermediation' (NBFI) is referred to when addressing financial stability concerns and the interconnectedness between banks and non-bank financial institutions.[2] In contrast, the prudential requirements applicable to institutions under the CRR and the related RTS rely on the more specific and narrower term of 'SBE'.

  At present, the concept of NBFI lacks a harmonised prudential definition within the banking regulatory framework. This may create uncertainty regarding the intended scope of supervisory expectations and the relationship between broader discussions relating to NBFI and the existing prudential framework governing SBE identification.

  In particular, institutions may face significant challenges in ensuring a coherent, proportionate and risk-sensitive implementation of the framework, where supervisory expectations potentially extend, across highly heterogeneous categories of investment funds and financial intermediaries pursuing fundamentally different business models and risk profiles.

  We encourage the EBA to provide further clarification regarding the articulation between these two concepts, in order to preserve legal certainty, supervisory consistency and proportionality in implementation where needed.

- **Insurance undertakings:** the absence of additional equivalence criteria for insurance companies established in third countries (such as the Basel Core Principles for the Institutions) leads to most non-EU insurance firms being considered as SBEs. During the consultation phase of the RTS, it was noted by the EBA that IAIS Insurance Core Principles constitute too high-level standards and are applicable to all insurers, hence it is not a good alternative. It was also noted that the current approach, if needed, would be reassessed when the

[2] For example, see Financial Stability Board Global Monitoring Report on Non-bank Financial Intermediation 2018, Box 1-1 on 'Change in terminology', available at: https://www.fsb.org/uploads/P040219.pdf#page=8

ongoing international principles (ComFrame, ICS) are finalised and in place. As both ICS and ComFrame came into effect in 1st January 2025, we encourage the EBA to reassess the equivalence approach.

More generally, we note the importance of reviewing the definition of SBEs to account for developments in other parts of the regulatory framework. For example, the European Commission has recently published guidance, in the form of Frequently Asked Questions, on the interpretation and implementation of certain legal provisions of the Money Market Funds Regulation, in order to enhance the resilience of the sector. As a result, we encourage the EBA to consider if the unqualified categorisation of money market funds as SBEs remains appropriate.

Q2: Does the current guidelines' framework for setting internal aggregate and individual limits on exposures to shadow banking entities (as described in the principal and fallback approaches) provide sufficient flexibility and clarity for your institution's risk management practices? Are there specific aspects of the approach that you find challenging or would suggest improving?

We welcome acknowledgement of the importance of ensuring sufficient flexibility in the framework. Within the existing framework, institutions apply stringent risk management practices. For example, institutions may assign responsibility for credit risk management, including individual limit setting of SBE exposures, by nature of the underlying risk to specialized credit teams (such as hedge funds; banks; corporates) that have the relevant tools, frameworks and product expertise to align credit decisions and risk appetite.

Q3: Do you encounter challenges in obtaining sufficient data on SBEs (e.g., leverage, liquidity profile, interconnectedness, portfolio quality) to apply the principal approach? If so, please describe the main obstacles and how they affect your ability to comply with the Guidelines.

Data (for example regarding leverage, liquidity profile, interconnectedness, and portfolio quality) is typically collected as part of the standard credit risk assessment and ongoing monitoring process for exposures exceeding the currently applicable thresholds. That said, challenges may arise in the following cases:

- **Smaller counterparties and low-exposure relationships (below the 0.25% threshold):** for these counterparties and exposures, the depth and granularity of available financial and risk data may be proportionate to the size and risk profile of the exposure; and for subsidiaries within larger groups, the risk assessment predominantly relies on the financial strength and support of the parent entity or group. In these situations, a proportionality-based approach is applied in line with established credit risk practices. Removal of the 0.25% threshold would require full data collection and monitoring on exposures that are not risk-relevant. Please see our response to Question 6 for further details.

- **Data availability for AIFs:** obtaining timely and accurate information on the leverage, liquidity profiles, and underlying portfolio quality of AIFs is highly complex. In many cases, this information is not publicly available, is subject to confidentiality constraints, or is only disclosed with a significant time lag (e.g., through annual reports). This lack of transparency may hinder institutions in their ability to perform the continuous and detailed credit analysis expected under the principal approach.

- **Monitoring aggregate interconnectedness:** assessing and measuring interconnectedness represents a clear challenge for a large, highly diversified, and international banking group. The public information by entity does not allow in many cases to clearly have the interconnectedness between different sectors, entities, countries and activities.

These data constraints and operational hurdles may complicate full compliance with the principal approach for certain portfolios, potentially forcing institutions to overly rely on conservative proxies or to default to the fallback approach for exposures where data collection is materially unfeasible.

The Guidelines mention that certain requirements are only relevant ‘as applicable’ and refer to ‘available information’. It would be helpful for the Guidelines to more precisely define in which situations such a detailed analysis is warranted to avoid defaulting to the fallback approach or requiring overly conservative proxies.

Q4: Under what circumstances does your institution apply the fallback approach, and what challenges have you faced in determining when it should apply? Do you see need for further clarification regarding the trigger conditions for the fallback approach?

The fallback approach applies when individual limits are not defined. Individual limits for exposures to SBEs should be capped at a specified percentage of Tier 1 capital. This approach would enhance both flexibility and clarity.

Overall, AFME members emphasise the need for proportionality and question the requirement to use the fallback approach in situations where institutions have the vast majority of necessary data. A review of the requirement to ensure more proportionality would also support competitiveness.

Q5: Did your institution experience operational challenges in integrating the binding SBE definition of the Delegated Regulation (EU) 2023/2779 into your internal limit framework?

We reiterate the concerns highlighted in response to Question 1 and note that regarding operational challenges specifically, institutions have had to dedicate increased operational effort in relation to reporting and entity identification.

Q6: Being part of the removed SBE definition, the previous threshold of 0.25% of the eligible capital for recognising exposures falling under the EBA/GL/2015/20 is deleted in the draft updated GL. Will there be any impact (costs, time required, etc.) for your institution? Please elaborate.

<u>Objections to the removal of the materiality threshold</u>

We strongly object to the removal of the 0.25% threshold. In our view, the deletion of the threshold is neither mandated by the Commission Delegated Regulation (EU) 2023/2779 nor by the amendments introduced by the CRR 3 with regards to SBEs.

In the EBA's Final report on Draft Regulatory Technical Standards on criteria for the identification of shadow banking entities under Article 394(4) of Regulation (EU) No 575/2013 of 23 May 2022, the EBA explicitly stated that the immateriality threshold will continue to apply for purposes of the Guidelines: *"The threshold set out by the EBA guidelines (EBA/GL/2015/20) will continue to apply for the purpose of setting internal limits according to Article 395(2) of the CRR"*. [3]

The Commission Delegated Regulation (EU) 2023/2779 contains a new definition of "shadow banking entities", but not of "exposures to shadow banking entities", which are only defined in the Guidelines, and solely for purposes of the Guidelines.

As the EBA explained in its final report on the Guidelines of 14 December 2015, there are important reasons for the threshold, given it reduces the burden of application of the guidelines. The EBA noted that the data collection accompanying the Guidelines had shown that the number of exposures below the materiality threshold is very significant for most institutions and represent around 97% of the total number of exposures for the overall sample of institutions in the data collection.

This justification for the threshold still applies, especially given neither the Commission Delegated Regulation (EU) 2023/2779, nor any changes to the CRR triggered by CRR 3, have altered the underlying situation.[4]

Furthermore, we do not consider there to be any added value to removing the threshold. As indicated in the recitals of Delegated Regulation (EU) 2023/2779, the regulation aims at ensuring financial stability. The risk to financial stability is very limited if exposure is very limited. In this context, a de minimis rule is warranted.

<u>Impact on institutions of the removal of the materiality threshold</u>

If the removal of the threshold is not reversed, it will have important operational impacts on institutions. Any threshold removal will result in additional effort and time required to reassess counterparties and exposures that were previously excluded based on the threshold, including updates to internal identification and analysis processes, systems, and controls. Current due diligence requirements would need to allow a proportionate approach (see response to Q3).

Impacts have been identified across the following areas:

- **IT development and system costs:** capturing, tagging, and systematically aggregating every single exposure to an SBE, without a minimum materiality floor, requires significant investments in IT infrastructure, to ensure no exposure is overlooked.

[3] See p.51 of the report, available here: https://www.eba.europa.eu/sites/default/files/document_library/Publications/Draft%20Technical%20Standards/2022/EBA-RTS-2022-06%20RTS%20on%20shadow%20banking/1033406/Draft%20RTS%20on%20Shadow%20Banking%20Entities.pdf

[4] See paragraph 30, pp.12-13 of the final report on the Guidelines of 14 December 2015 available here: https://www.eba.europa.eu/sites/default/files/documents/10180/1310259/f7e7ce6b-7075-44b5-9547-5534c8c39a37/EBA-GL-2015-20%20Final%20report%20on%20GL%20on%20Shadow%20Banking%20Entities.pdf

- **Time and resource allocation:** substantial time and effort from Risk, IT, and Front Office teams must be continuously invested to adapt internal processes, perform data quality checks, and maintain reporting frameworks for a significantly larger perimeter of clients.

- **Burden of identifying marginal exposures:** the most disproportionate impact comes from the obligation to identify, assess, and monitor entities with strictly marginal or immaterial exposures. Applying the principal approach (which requires granular due diligence on the SBE's leverage, liquidity, and portfolio quality) to negligible exposures is highly inefficient.

- **Ongoing operational burden:** in addition to significant implementation costs across these areas, the removal of the threshold will lead to significant ongoing operational burden.

Feedback from AFME members indicates that, based on the typical distribution of FI clients, the number of entities considered to be SBEs if the threshold is removed would increase very significantly. The burden will be further compounded by the proposed rules on individual limits included in paragraph 19 of the draft Guidelines, which significantly increase the workload for each individual SBE.

As a result, we reiterate our comments that the 0.25% threshold should be retained. It serves an important proportionality function, ensuring that supervisory concerns and institutional resources remain focused on exposures that are genuinely relevant from a prudential and financial stability standpoint. We welcome the indication from the EBA during the public hearing on 25 June 2026 that options would be reviewed to avoid unnecessary burden.

If the EBA decides not to retain the materiality threshold, we emphasise that sufficient lead time will need to be given to industry to adapt to the significant additional burden.

Q7: How does your institution determine the appropriate risk tolerance level for exposures to shadow banking entities within your overall business model and risk management framework? Which quantitative internal limits – either at the individual or aggregate level – do you apply on exposures to SBEs? Please describe the criteria, methodologies, or governance processes used to set these limits, and share any challenges or best practices you have encountered in their implementation.

AFME will not provide a detailed answer to this question. Firms determine the appropriate risk tolerance level for exposures to SBEs in accordance with their bank-specific business model and risk appetite.

Q8: How do the internal aggregate and individual limits on exposures to shadow banking entities interact with the SREP process (as framed by Article 97 and Article 98 of Directive 2013/36/EU) and the competent authorities' assessment under Pillar 2? Are there any aspects of the guidelines or the SREP process that you believe require further clarification or adjustment to ensure effective supervisory review?

Internal aggregate and individual limits on exposures to SBEs are embedded within institutions' broader risk management and governance framework and therefore form part of the overall assessment.

Q9: How might the introduction of specific individual or aggregate limits on exposures to shadow banking entities affect your institution's willingness or ability to engage in activities giving rise to exposures to SBEs (e.g., lending, investment, intermediation, SFTs)? Please explain any potential impacts – positive or negative – on credit provision, market liquidity, or risk sharing, and provide examples or evidence from your institution's experience.

We question the utility and appropriateness of specific limits, and consider that limits should remain institution specific. The breadth of the SBE definition means an aggregate limit would apply to a wide range of entities and activities that, in practice, are very different and not interlinked from a risk perspective. It is unclear what such a limit could therefore seek to achieve. We also note the risk of unintended consequences, for example, removing diversification benefits and requiring reductions in exposures without decreasing overall risks (as exposures would be expected to be taken over by non-EU banking groups).

Furthermore, given the intention to integrate SBEs in the Large Exposures framework, exposures to SBEs should be treated in the same way as the exposure to any other client i.e. an aggregate limit should only apply to several SBEs if they form a group of connected clients, and not be subject to sectoral caps that are arbitrary from a risk perspective.

Overall, the introduction of specific limits would be expected to impact risk appetite calibration. However, we emphasise that further information regarding the objective of introducing such limits (such as whether they are intended to be a fallback or to constrain levels of activities), and additional detail on the limits themselves, is needed to enable comprehensive feedback.

We acknowledge the need for the EBA to consider the issue (as mandated by CRR 3) and would welcome a more thorough exchange with the EBA to really inform the EBA's analytical report to the Commission and to enable a robust and focused assessment. In addition to the concerns highlighted above, consideration would need to be given to whether the SBE sector is so different to other sectors that it merits separate treatment. Industry is of the view that the regulatory community needs to be better at articulating the risk it sees before imposing any new requirements and it is not clear to industry that there is such a justification in this case. Any assessment that the SBE sector is so interconnected that it should be seen as a single connected group of counterparties would also be expected to have significant implications for the SBE definition, which would need to be reviewed to ensure that only SBEs that cause real contagion risk across the whole of the sector are captured.