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**COMMISSION DELEGATED REGULATION (EU) 2023/2779**

**of 6 September 2023**

**supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) of Regulation (EU) No 575/2013**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 <sup>(1)</sup>, and in particular Article 394(4), fourth subparagraph, thereof,

Whereas:

- (1) Shadow banking can lead to increased risks for financial stability. Authorisation and supervision in accordance with Union law mitigates that risk. It is, therefore, appropriate to lay down that entities that are subject to such authorisation and supervision are not to be considered shadow banking entities. For that purpose, it is necessary to specify that Union law.
- (2) During the recent Covid-19 crisis, money market funds faced severe liquidity issues. This highlighted that risks associated with money market funds, particularly in stressed market conditions, are not fully mitigated by the existing prudential requirements in the Union and hence, can lead to an increased risk for financial stability. For that reason, exposures to money market funds should be regarded as exposures to shadow banking entities.
- (3) Alternative investment funds employing leverage on a substantial basis entail additional risks that are not deemed to be adequately mitigated from a prudential perspective by the requirements imposed to their asset managers under Directive 2011/61/EU of the European Parliament and of the Council <sup>(2)</sup>. It is therefore necessary to ensure that institutions regard alternative investment funds as shadow banking entities where those undertakings employ leverage on a substantial basis, originate loans in the ordinary course of their business, or purchase third-party lending exposures for their own account.
- (4) Institutions should not consider as shadow banking entities financial institutions that are treated as institutions for the calculation of risk-weighted assets under the standardised approach set out in Article 119(5) of Regulation (EU) No 575/2013, as those financial institutions are authorised and supervised by the competent authorities and subject to prudential requirements comparable, in terms of robustness, to those applied to institutions.
- (5) Due to their public or semi-public nature or their cooperative status, certain entities are explicitly excluded from the scope of Directive 2013/36/EU of the European Parliament and of the Council <sup>(3)</sup>, Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(4)</sup> and Regulation (EU) No 575/2013. For that reason, institutions should not regard those entities as shadow banking entities.

<sup>(1)</sup> OJ L 176, 27.6.2013, p. 1.

<sup>(2)</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

<sup>(3)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>(4)</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

- (6) Article 4 of Directive 2009/138/EC of the European Parliament and of the Council <sup>(5)</sup> excludes certain insurance and re-insurance undertakings from the scope of that Directive, due to their size. Since those undertakings are small, they do not pose significant risk to financial stability. For that reason, institutions should not regard those undertakings as shadow banking entities.
- (7) Credit intermediation activities of entities that are part of a non-financial group, carried out on behalf of other entities within that non-financial group, are limited in scope. For that reason, they do not pose significant risk to financial stability and should therefore neither be identified as shadow banking entities.
- (8) Entities that are included in the supervision on a consolidated basis of institutions that are subject to the prudential requirements laid down in Regulation (EU) No 575/2013 should not be identified as shadow banking entities, as risks of those entities are captured at consolidated level.
- (9) The Basel Core Principles for effective banking supervision represent internationally agreed principles and a sound foundation for the regulation, supervision, governance, and risk management of a country's banking sector. A third country institution that has been authorised and is supervised by a supervisory authority that applies those Basel Core Principles should therefore not pose a significant risk to financial stability and should not be identified as a shadow banking entity.
- (10) For the same reason, subsidiaries of a parent undertaking that is authorised and supervised in accordance with the Basel Core Principles and that are included in the prudential consolidation and supervision on a consolidated basis of that parent undertaking should not be considered as shadow banking entities.
- (11) Points 1, 2, 3, 6, 7, 8 and 10 of Annex I to Directive 2013/36/EU lists certain services and activities as banking services and activities. However, there are other services and activities carried out by certain entities that are very similar to those banking services and activities, where they involve maturity transformation, liquidity transformation, leverage, or credit risk transfer. Those services and activities should, for that reason, be regarded as banking services and activities for the identification of shadow banking entities.
- (12) This Regulation is based on the draft regulatory technical standards submitted to the Commission by European Banking Authority.
- (13) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(6)</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

### **Criteria for identifying shadow banking entities**

1. Institutions shall identify as a shadow banking entity:
  - (a) any entity that offers banking services or performs banking activities as set out in Article 2 and is not authorised and supervised in accordance with any of the Union acts listed in the Annex to this Regulation;

<sup>(5)</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

<sup>(6)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

- (b) any undertaking for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council <sup>(7)</sup> where those undertakings are authorised as money market funds as referred to in Article 4 of Regulation (EU) 2017/1131 of the European Parliament and of the Council <sup>(8)</sup>;
- (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 <sup>(9)</sup>;
  - (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.

2. By way of derogation from paragraph 1, institutions shall not identify the following entities as shadow banking entities:

- (a) financial institutions the exposures of which are treated in accordance with Article 119(5) of Regulation (EU) No 575/2013;
- (b) any entity that is excluded from the scope of any of the following:
  - (i) Directive 2013/36/EU;
  - (ii) Regulation (EU) No 648/2012;
  - (iii) Directive 2009/138/EC;
  - (iv) Regulation (EU) No 575/2013;
- (c) any entity that is exempted from the application of any of the following:
  - (i) Directive 2013/36/EU;
  - (ii) Regulation (EU) No 648/2012;
  - (iii) Directive 2009/138/EC;
  - (iv) Regulation (EU) No 575/2013;
- (d) any entity that is part of a non-financial group whose principal activity is to carry out credit intermediation activities for its parent undertaking or its subsidiaries or other subsidiaries of its parent undertaking;
- (e) any entity that is included in the supervision of an institution on a consolidated basis;
- (f) any entity established in a third-country that meets any of the following criteria:
  - (i) 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;
  - (ii) the third country's regulatory regime, in accordance with which the entity has been authorised and is supervised, has been recognised as equivalent to the one applied in the Union for such entities in accordance with the equivalence provisions of the applicable Union legal act referred to in the Annex;
  - (iii) the entity is included in the supervision on a consolidated basis of an institution that has been authorised and is supervised by a third-country supervisory authority that applies banking regulation and supervision based on the Basel Core Principles for effective banking supervision.

<sup>(7)</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

<sup>(8)</sup> Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

<sup>(9)</sup> Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

*Article 2***Banking services and activities**

1. For the purposes of Article 1, the following shall constitute banking services and activities:
  - (a) the activities referred to in points 1, 2, 3, 6, 7, 8 and 10 of Annex I to Directive 2013/36/EU;
  - (b) any other service or activity involving maturity transformation, liquidity transformation, leverage or credit risk transfer.
2. By way of derogation from paragraph 1, activities and services consisting of clearing as defined in Article 2, point (3), of Regulation (EU) No 648/2012 shall not constitute banking services and activities.

*Article 3***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 September 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

**Union legislation referred to in Article 1(1), point (a) and Article 1(2), point (f)(ii)**

1. Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(1)</sup>
2. Directive 2013/36/EU of the European Parliament and of the Council <sup>(2)</sup>
3. Regulation (EU) 2019/2033 of the European Parliament and of the Council <sup>(3)</sup>
4. Directive (EU) 2019/2034 of the European Parliament and of the Council <sup>(4)</sup>
5. Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>(5)</sup>
6. Directive 2014/65/EU of the European Parliament and of the Council <sup>(6)</sup>
7. Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(7)</sup>
8. Directive (EU) 2015/2366 of the European Parliament and of the Council <sup>(8)</sup>
9. Directive 2009/110/EC of the European Parliament and of the Council <sup>(9)</sup>
10. Directive 2009/138/EC of the European Parliament and of the Council <sup>(10)</sup>
11. Directive (EU) 2016/2341 of the European Parliament and of the Council <sup>(11)</sup>
12. Directive 2014/59/EU of the European Parliament and of the Council <sup>(12)</sup>
13. Directive 2009/65/EC of the European Parliament and of the Council <sup>(13)</sup>

<sup>(1)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>(2)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>(3)</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

<sup>(4)</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

<sup>(5)</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>(6)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>(7)</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

<sup>(8)</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

<sup>(9)</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

<sup>(10)</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

<sup>(11)</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

<sup>(12)</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

<sup>(13)</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

14. Directive 2011/61/EU of the European Parliament and of the Council <sup>(14)</sup>
  15. Regulation (EU) 2015/760 of the European Parliament and of the Council <sup>(15)</sup>
  16. Regulation (EU) No 346/2013 of the European Parliament and of the Council <sup>(16)</sup>
  17. Regulation (EU) No 345/2013 of the European Parliament and of the Council <sup>(17)</sup>
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<sup>(14)</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

<sup>(15)</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

<sup>(16)</sup> Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

<sup>(17)</sup> Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).