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EBA European Banking Authority

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Berlin, 19 June 2015

ZIA's response to EBA's "Draft 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"

Dear European Banking Authority,

ZIA, the German Property Federation (Zentraler Immobilien Ausschuss e.V.), represents German real estate business in its entirety, including real estate funds and real estate fund managers as well as the listed sector of the industry. ZIA speaks on behalf of individual member firms and 25 member associations, thus representing 37,000 branch members.

ZIA welcomes the opportunity to respond to the consultation on shadow banking. The real estate industry is interested in contributing to the work on how to handle systemic risks on the EU-level. The financial crises of the past have taught that the economic and financial system depends on the abundance of collateral provided by the real estate industry. The availability of collateral is crucial for the functioning of the modern financial system. The well-functioning of the real estate industry thus is of utmost importance to the world economy. ZIA represents the German real estate market, which is the largest in Europe.

Particularly, the real estate industry is an industry that depends on the availability of capital. Especially in those parts of the industry where profit is low, the industry is also very sensitive to deteriorations of the capital supply, even when such deterioration is minor in scale.

General remarks

We would like to point out some general remarks: (1) the strong connection between the crucial function of the real estate industry for the functioning of modern capital markets and the financial system generally and (2) the contri-

butions of the industry to the real economy and the society. For many regulators, it seems that real estate and its availability is a given, maybe because the industry seems to lack appeal due to its long-term nature. This, however, is a view that is not in line with the sophisticated nature of modern real estate financing and the diverse types of funding of real estate investments contemporarily used.

With regard to the German market, we would like to stress that it acts as a role model: German real estate is financed most conservatively. Especially, loans with variable interest are used rarely, effectively bringing the time horizons of financing and investing in line. This helps to keep risks stemming from credit intermediation in check.

EBA´s proposal on exposures to shadow banking entities threatens AIF and causes a higher risk for the German real estate market.

Please note that we strongly support INREVs comments and give only additional comments for the German markets.

The general approach proposed by the EBA is to exclude from the scope of the definition of 'shadow banking entities' entities that are subject to an appropriate prudential framework either as a result of prudential consolidation or, where entities are not within the scope of consolidation, certain sector-specific prudential frameworks which are deemed to cover for the risks posed by the bank-like activities of the entity. With regard to funds nevertheless, non-MMFs UCITS established in the EU (and those established in third countries where equivalent supervisory requirements apply) would be excluded. Said differently, all funds would be considered as falling in the scope of the definition of shadow banking entities except if they are non-MMF UCITS (and third country firms subject to equivalent requirements). All MMFs (being UCITS or AIFs), all AIFs and all unregulated funds would fall in the scope.

Q1: 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?

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, is not objectionable.

Together with other associations like INREV we specifically disagree with the consultation paper approach in its determination of whch entities are not subject to "an appropriate and sufficiently robust prudential framework" under the second limb of the definition of shadow banking entities. It is a gross slight to the efforts of the European Parliament, European Commission, European Se-

curities Markets Authority and national financial regulators of the EU Members States to so casually determine 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". We therefore strongly support INREVs comments.

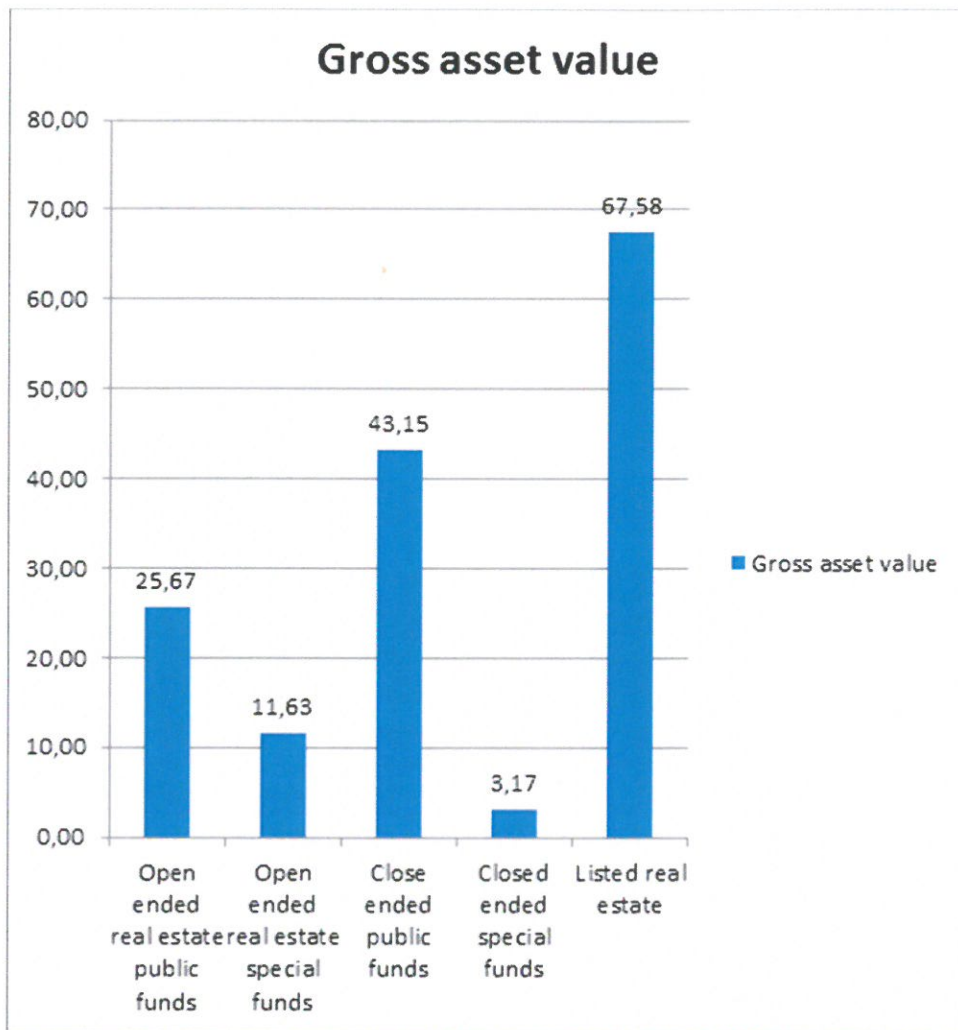
In addition to that we would like to point out, that the regulation of AIF in Germany through the German KAGB (Kapitalanlagengesetzbuch) comprises additional regulation of the product e.g. leverage ratios. That's why, generally speaking, AIF in Germany act more as a borrower and the run risk in these funds is limited. We therefore suggest a more distinguished and granular approach for AIF.

Even debt funds, which invest in real estate loans or originate loans have a very limited systemic risk. Firstly, their impact on the market is relatively small – approximately 2 billion Euros are invested in such debt funds. Secondly, the run risk in those funds is nearly zero because there are closed ended funds or specialised open ended funds only for institutional investors which don´t risk the funds default by using a redemption right.

Taking into account, in particular, the fact that the 25% limit is consistent with the current limit in the large exposures framework, do you agree it is an adequate limit for the fallback approach? If not, why? What would the impact of such a limit be?

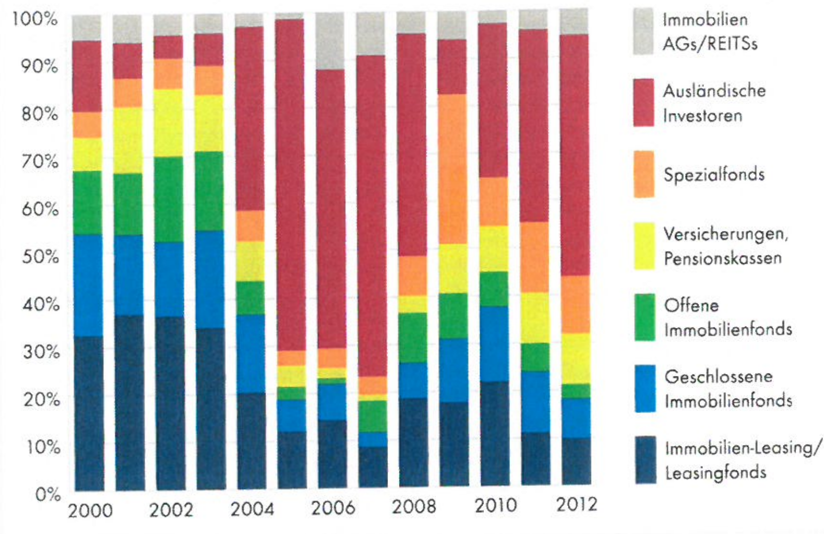
The proposal goes far beyond the existing provisions to manage the credit concentration risk in CRD IV with regard to limiting the exposure caused by large loans. Only the largest loans have to be taken into account while the fall back approach of this shadow banking proposal includes every loan into the basis for the calculation of the limit of 25 %. Additionally it must be taken into account that the proposed 25 % overall limit would constitute just 1/32 of the overall limit for large loans in the former CRD II or just as much as one single exposure in accordance with article 395 par. 1 Regulation (EU) No. 575/2013. We are very concerned that the credit supply to AIFs could be interrupted. The interruption itself could cause a high risk for financial stability and the real estate markets.

If real estate AIFs cannot finance their properties, major stakeholders could disappear from the real estate markets. A study on the interactions between the different kinds of vehicles in the German real estate market shows strong negative correlations, thus underlining the great importance and necessity of a greater variety of vehicles. Diminishing the variety of vehicles – be it inadvertently by any kind of regulatory measures – would have a strong negative impact on the German real estate market.



The funds (Open ended and closed ended real estate funds) are important stakeholders in the market and they comprise approximately 30 to 40 % of the transaction markets.

Abbildung 3.9: Prozentuale Verteilung der Investorengruppen für Gewerbeimmobilien von 2000 bis 2012



Quelle: BulwienGesa 2013

Real estate is the most important real asset class in the economy with over 80 % of the gross fixed assets with an amount of 14 trillion Euros. Stable real estate markets are therefore very important for the stability of the German economy.

Given the real estate market's share of German GDP of roughly 20 %, there would be strong negative consequences for the German real economy.

With kind regards,

Roland Franke	Sabine Georgi
Head Tax and Finance Department	Director Economy