

EPRA Response to CP13/9 – Implementation of the AIFM Directive

Introduction

The European Public Real Estate Association (EPRA) is the voice of the European publicly quoted real estate sector. EPRA represents listed property companies, (including ‘REITs’) who own, manage, acquire, sell, develop, refurbish, and operate commercial property.

Between them our 200 members own, manage and operate over €250bn of commercial and residential real estate. Appendix I includes a list of our top 20 member companies, including their country of origin, market cap and other details. We are very grateful for the opportunity to comment on the FCA’s consultation paper on the implementation of the AIFM Directive.

With respect to the individual questions in the CP, EPRA fully endorse and support the detailed comments submitted by the British Property Federation (BPF) and refer you to that response. Accordingly we have only responded with our key points to the ‘General comments’ questions below.

Q1. General comments

EPRA broadly support the approach outlined in the CP and believe that the proposed PERG guidance is in line with ESMA’s Draft ‘key concepts’ Guidelines.

Case by case approach is appropriate - We support the FCA’s ‘case by case’ approach for determining whether an undertaking falls within the scope of the Directive. We believe that this approach is the only way to ensure a sensible outcome, including an appropriate level of harmonisation across EU Member States and an acceptable level of certainty for businesses regarding the scope of the Directive. A ‘one size fits all’ approach to scope setting, or one that relies on simple criteria such as the activities carried out by the undertaking or its legal/tax status, is not suitable for distinguishing between funds and non-funds.

‘REIT’ label should not be decisive factor in determination of an AIF - As EPRA have monitored the evolving discussions on AIFMD scope and engaged with national regulators around Europe, we have observed references to the term ‘REIT’ and how such vehicles should be interpreted for the purposes of AIFMD scope. We are very concerned that the approach taken by some regulators will not take into account the fact that ‘REIT’ term is actually used to refer to many different types of businesses structure around Europe and worldwide. The ‘REIT’ term does not represent a particular business structure and, although it generally refers to a business with a special tax treatment for property rental income and gains, it is often used to describe listed property companies more generally.

By way of illustrating this important point, Appendix I shows the top 30 listed property companies that are all constituents of the FTSE EPRA/NAREIT European index - the leading benchmark index of the publicly listed property companies for global investors. The list includes a mix of property companies with and without REIT tax status. Out of the 30 companies 57% have some form of 'REIT' tax status and 43% do not.

The 'REIT' label is a very good example where a 'one size fits all' approach does not make sense and would be counterproductive. We therefore particularly welcome the clarification by the FCA that there is no presumption either way as to whether a REIT is or not a CIU or an AIF.

Contradictory approaches by Member States may threaten a case by case approach - Although we note that PERG guidance refers specifically to UK-REITs, we think it important that the FCA also seek to promote a similar case by case approach across other EU Member States. We are very concerned that, in the interest of 'harmonisation', an approach to treat commercial property businesses as in or out of the scope of the AIFMD, based either on (i) REIT status or (ii) by viewing a real estate businesses per say as fund activity, if adopted by a material number of member states, will ultimately make it difficult for the FCA and other member states to adopt a more sensible case-by-case approach. We would therefore encourage the FCA to engage with other national regulators and ESMA to try and ensure that a similar approach is followed by other Member States, particularly those where the 'REIT' market is less prominent and well understood.

EPRA are very happy to meet with the FCA to further discuss any of the points raised above and more generally in relation to the European listed property sector.

Kind regards



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Top 30 companies in the FTSE EPRA/NAREIT European Index

REITs – 43%

Non-REITs – 57%

Company	Country	REIT status	National market index inclusions
1 Unibail - Rodamco	France	REIT	CAC 40 + AEX
2 Land Securities Group	United Kingdom	REIT	FTSE 100
3 British Land	United Kingdom	REIT	FTSE 100
4 Hammerson	United Kingdom	REIT	FTSE 100
5 Swiss Prime Site	Switzerland	Non-REIT	SMI Mid
6 Klépierre	France	REIT	CAC Next 20
7 PSP Swiss Property	Switzerland	Non-REIT	SMI Mid
8 Derwent London	United Kingdom	REIT	FTSE 250
9 Capital & Counties Properties	United Kingdom	Non-REIT	FTSE 250
10 Segro	United Kingdom	REIT	FTSE 250
11 Intu Properties	United Kingdom	REIT	FTSE 100
12 Corio	The Netherlands	REIT	AEX
13 Deutsche Wohnen AG	Germany	Non-REIT	MDAX
14 Great Portland Estates	United Kingdom	REIT	FTSE 250
15 Foncière Des Régions	France	REIT	CAC Mid 60
16 Castellum	Sweden	Non-REIT	OMX Stockholm 30 Next
17 Shaftesbury	United Kingdom	REIT	FTSE 250
18 Gecina	France	REIT	CAC Mid 60
19 Icade	France	REIT	CAC Mid 60
20 GSW Immobilien AG	Germany	Non-REIT	MDAX
21 Deutsche EuroShop	Germany	Non-REIT	MDAX
22 Cofinimmo	Belgium	REIT	BEL 20
23 Wereldhave	The Netherlands	REIT	AMX
24 TAG Immobilien AG	Germany	Non-REIT	MDAX
25 Hufvudstaden A	Sweden	Non-REIT	OMX Stockholm PI
26 LEG Immobilien AG	Germany	Non-REIT	CDAX
27 Wallenstam AB	Sweden	Non-REIT	OMX Stockholm PI
28 EuroCommercial Property	The Netherlands	REIT	AMX
29 Allreal Holding	Switzerland	Non-REIT	SPI
30 FABEGE	Sweden	Non-REIT	OMX Stockholm 30 Next