



Vereniging van
Institutionele Beleggers
in Vastgoed, Nederland

Huize Middenburg
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ESMA
103 Rue de Grenelle
75007 Paris
France

Our corresponding number: 2012.071

Voorburg, The Netherlands, March 22th 2012

Concerning: **AIFMD**

Dear Sir, Madam,

*The **Association of Institutional Property Investors in the Netherlands (IVBN)** was established in 1995 to promote the interests of its members, to provide a platform for institutional property investors and to further professionalism in the sector. To this end IVBN focuses on direct and indirect investment in property, concentrating on the actual bricks and mortar. The members of IVBN are real estate funds and companies (which may or may not be listed) who invest in real estate on behalf of predominantly pension funds, insurance companies and banks (institutional investors). On January 2012 IVBN had 31 members who jointly represent more than €60 billion investment in Dutch property and another € 50 billion abroad. The organisations affiliated to IVBN invest - both directly and indirectly - mainly in housing, offices, retail, industrial objects and other property, including car parks.*

IVBN welcomes the opportunity to respond to question 11 of the ESMA Discussion Paper on Key concepts of the AIFMD and types of AIFM (ESMA / 2012/117.)

IV Definition of AIF

Question 11:

Do you agree with the proposed definition of open-ended funds in paragraph 41? In particular, do you agree that funds offering the ability to repurchase or redeem their units at less than an annual frequency should be considered as closed-ended?

IVBN agrees with the proposed definition of open-ended funds in paragraph 41 and **only partly agrees with the proposed definition of closed-ended funds** in Question 11. The proposal to consider funds with less than annual redemption rights as closed-ended, irrespective of any other conditions for repurchase or redemption, does not match with the actual situation among members of the IVBN or with current policies of the Dutch Financial Markets Authority (AFM).

Non listed real estate funds which are managed by members of IVBN are usually of the closed-ended type, while on the other hand they bear some characteristics of open-ended funds. As the investors of these funds are institutional clients which need to be able to amend their investment portfolio, possibilities to redeem units are required. The conditions for redemption as well as their frequency may however vary. Redemption or repurchase may for instance be maximised to a percentage of share capital, be allowed quarterly or annually, be subject to approval of other investors or be suspended in certain circumstances.

Therefore IVBN proposes to amend the definition of closed-ended funds to ensure that **a less than annual frequency of repurchase or redemption is not alone decisive for being considered as closed-ended. Limitation of redemption or repurchase rights should also be allowed otherwise, while a more than annual frequency of redemption or repurchase should not automatically mean that a fund is considered as open-ended.**

The wording of paragraph 41 implies that the given definition of closed-ended funds is not only relevant for the purpose of Article 16 and Article 19 (3) of the Directive, but will be applied for AIFMD as a whole. Therefore IVBN wants to point out that for real estate funds the definition of closed-ended funds is important for the possibility to appoint an “alternative” depositary as mentioned in Article 21 (3) (c). According to this Article, an “alternative” depositary may be allowed for real estate AIFs which have no redemption rights exercisable during the period of 5 years from the date of the initial investments. As mentioned above, institutional investors in non-listed real estate funds in The Netherlands usually require some possibility to redeem (often required by their regulators). As a consequence, such funds cannot be completely closed during a period of 5 years.

We therefore **recommend to clarify the wording “no redemption rights exercisable”** in Article 21 (3) (c). In our view this should not mean that there are no redemption possibilities at all, but that there are **no unconditional rights for full redemption. For non-listed closed-ended real estate funds it is essential to be able to appoint an “alternative” depositary, which is most suitable for real estate as asset class.**

IVBN welcomes any questions on our comments. We hope ESMA will provide solutions to the specific issues raised.

Kind regards,
IVBN

A handwritten signature in black ink, appearing to be 'F. van Blokland', written over a horizontal line.

Frank van Blokland
Managing director IVBN