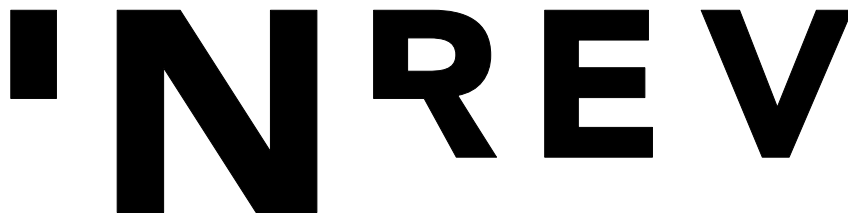


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Letter

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SUBJECT
INREV response to ESMA's
consultation paper
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Dear Mr Stobo and Mr Boidard,

INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance and information in relation to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property funds industry across Europe. In addition, INREV undertakes research and surveys of the industry and constructs the INREV Index which covers the performance of institutional non-listed real estate funds investing in Europe.

INREV has over 355 members. Our member base includes institutional investors, fund of funds managers, fund managers, investment banks and advisors representing all facets of investing into the non-listed real estate industry. These members have a representation in the European non-listed real estate investment market totalling 474 funds with a Gross Asset Value (GAV) of EUR 259.4 billion. INREV's members represent almost all jurisdictions of the European Union's internal market and their underlying investment vehicle structures.

INREV has since its inception worked to achieve a more transparent, efficient and competitive internal market through promoting industry best practices at an EU level. Progress has been made against a background of an industry regulated at the Member State level, resulting in a juxtaposition of various national regulations. While most institutional investment managers and investors have managed to roll-out cross border business models to the satisfaction of their customers, INREV clearly recognises that the current challenge taken up, in light of the principle of subsidiarity, by the Commission and ESMA is a first significant regulatory step in what may become a major step toward a bigger, more professional and high quality property investment industry in line with INREV's own objectives.



Please find attached INREV's response to the consultation paper on ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive.

We hope to provide a meaningful contribution to your work to support the development of a sound EU regulatory framework and remain available should you have any specific questions about the non-listed real estate fund industry.

Kind regards,

A handwritten signature in blue ink that reads "Matthias Thomas". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Matthias Thomas
Chief Executive INREV

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Attachments:

- INREV response to ESMA's consultation paper
- List of INREV members

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General remarks

INREV generally welcomes the advice put forward by ESMA where it recognises the unique characteristics of non-listed real estate investment funds and is either aligned or compatible with well established market practices and the INREV Guidelines. With regard to the advice set out in the chapter on General Operating Conditions for example, the INREV Guidelines already provide direction to managers of non-listed real estate funds in a broad range of areas. The INREV Guidelines include standards on conflicts of interests, fair treatment of investors and reporting practices, for instance. We support ESMA's approach in areas where it is principle based and hence remains sufficiently flexible, as generally in these areas, non-listed real estate fund managers that comply with the INREV Guidelines will also satisfy the principles put forward by ESMA.

In other areas, however, ESMA's advice would require fund managers to adapt current practices or introduce new procedures. INREV recognises that specific rules may be necessary in some areas covered by the AIFMD in order to reduce systemic risks and prevent market distortions through regulatory arbitrage. However, INREV regrets that while ESMA seems to recognise that different types of AIFs require a differentiated approach to regulation, on many topics ESMA has not consistently taken such differences into account when developing its advice.

While INREV supports the objectives and principles of the AIFMD, and indeed there is an increased demand by investors for regulated funds, we highlight that in many areas, the unique characteristics of non-listed real estate funds, including the fact that they own and operate commercial properties often with large numbers of tenants and leases, require adapted regulations. The market forces, risk dynamics and operational practices that real estate funds are subject to are frequently very different from AIFs that hold financial instruments and transferable securities.

We therefore urge ESMA to take a proportionate approach tailored to the unique characteristics of the real estate sector. Institutional investors typically invest in real estate funds not for speculative purposes, but as a long-term investment. Interests in non-listed real estate funds are only infrequently transferred and the returns of these funds are generally quite stable. In addition, investment in real estate is fundamental to the general economy in terms of providing homes and offices, employment, and economic growth. A regulatory approach tailored to non-listed real estate investment is therefore not only appropriate but also economically justifiable in terms of its added value to the European economy.

Moreover, INREV notes further that ESMA's advice remains ambiguous in some cases and it is therefore unclear how the advice would either apply to or be implemented by managers of non-listed real estate funds. An example of this concern is how the broad range of investments in securitisation would impact property loan funds. These areas require clarification in order to enable INREV to adequately assess ESMA's advice.

INREV recognises that ESMA has a difficult balance to strike between reconciling diverging national standards to avoid regulatory arbitrage and market distortions, while at the same time providing sufficient flexibility to fund managers to avoid unnecessarily complex and costly disruptions to well established practices. In general, however, INREV believes that ESMA should preferably take a principle based approach where such an approach does not risk distorting the market through regulatory arbitrage between different jurisdictions. Alternatively, where ESMA deems it to be necessary to provide specific requirements, the advice should be tailored as much as possible to the specific characteristics of different AIF types and recognise that different regulation related standards among the Member States, for example accounting principles, have the potential to indirectly result in different regulatory outcomes, which could also risk distorting the market through regulatory arbitrage between different jurisdictions.

Focusing more specifically on the language of the proposal, for non-listed real estate funds one of the single most controversial issues that arises from ESMA's advice is whether the requirements apply to the top level fund

only or whether they apply on a look-through basis to all subsidiary entities within the fund structure on a consolidated basis.

INREV's response to the consultation was drafted under the assumption that, generally, a look-through approach is not required. In many cases, as explained in more detail below, applying a look-through approach to non-listed real estate funds would be impossible to implement, or disproportionately onerous, without adding added value to investors or to the objectives of the AIFMD.

With regard to cash-flow monitoring for instance, INREV believes that it would not be justified by the Level 1 text or, indeed, practicable for the depositary to seek to monitor the cash flows of the real estate operating and investment businesses of the companies, partnerships or other entities in which the fund invests, any more than the depositary of a private equity fund would be expected to monitor the cash flows of such a fund's portfolio companies. Attempting to do so would put an unnecessary burden on depositaries, ultimately at the expense of investors and in our view is unlikely either to increase investor protection or reduce systemic risk. Clearly, there is no added benefit to investors or from a macroeconomic perspective, for example from a requirement to monitor small cash flows for repairing a broken window in a multimillion fund invested in thousands of properties.

Regarding risk management, INREV believes that applying a look-through approach to the functional and hierarchical separation of the risk management function in non-listed real estate is unworkable for the same reason as outlined above. A complete separation of operation and risk management is not possible due to the nature of real estate investment which requires that risks are managed at all levels of operation by the risk owners themselves, ranging across the entire spectrum of property and fund operations. INREV believes that if a look-through approach is applied, a requirement that risk be controlled rather than managed should be sufficient for non-listed real estate fund managers, so that risk which is managed through the fund structure is controlled at the higher AIF level through risk managers interacting with risk owners.

INREV accepts, however, that for some specific aspects, such as the calculation of leverage and net asset value of assets under management, a look-through approach is preferable. Failing to do so would ignore a potential source of systemic risk and could lead to market distortions. AIFs that hold assets directly would appear to have higher leverage than AIFs that hold assets indirectly through subsidiary SPV entities; leverage in the latter case would not be reported. Currently, non-listed real estate funds typically report leverage on a consolidated basis, which leads to a clearer and more directly comparable disclosure of risk associated with such leverage.

Finally, INREV would like to draw your attention to the Business Impact Analysis it has prepared to assess to the extent possible the costs ESMA's proposals would impose on non-listed real estate funds and fund managers. Although the wide range of structures and organisation of non-listed real estate funds would result in a considerable variation of the costs linked to AIFMD implementation, they would nevertheless need to be compared to the only marginal benefits the passporting rights for the non-listed real estate funds industry are estimated to yield, given the different investment cultures and the lack of common tax treatment among Member States.

III. Article 3 exemptions

III.I. Identification of the portfolio of AIF under management by a particular AIFM and calculation of the value of assets under management

Page 20

Box 1

Calculation of the total value of assets under management

INREV has no comments at this stage.

Q1

Does the requirement that net asset value prices for underlying AIFs must be produced within 12 months of the threshold calculation cause any difficulty for AIFMs, particularly those in start-up situations?

INREV has no comments at this stage.

Q2

Do you think there is merit in ESMA specifying a single date, for example 31 December 2011 for the calculation of the threshold?

INREV does not believe that there is value in specifying a single date for the calculation of the threshold. More flexibility would be favourable as it would allow fund managers to choose a date closer to valuation as suggested in paragraph 2 of Box 1.

Q3

Do you consider that using the annual net asset value calculation is an appropriate measure for all types of AIF, for example private equity or real estate? If you disagree with this proposal please specify an alternative approach.

INREV believes that leverage rules for determining exemptions should be consistent throughout the EU and would like to point out that for non-listed real estate funds, NAV is dependent on the accounting principles (GAAP or IFRS) applied by the fund. At present, account standards across the EU are gradually converging but are not yet standardised. In order to address this issue so that uniformity of NAV calculation can be achieved for non-listed real estate funds, INREV has issued guidelines about the calculation of an "INREV NAV". These are publically available on www.inrev.org. ESMA should clarify what is meant by "NAV" in this context in order to avoid differences across Member States as the proposal could otherwise result in market distortions and lead to regulatory arbitrage.

Q4

Can you provide examples of situations identified by the AIFM in monitoring the total value of assets under management which would and would not necessitate a recalculation of the threshold?

INREV has no comments at this stage.

Q5

Do you agree that AIFs which are exempt under Article 61 of the Directive should be included when calculating the threshold?

INREV has no comments at this stage.

III.II. Influence of leverage on the assets under management

Page 24

Box 2

Calculation of Leverage

Please refer to INREV's comments with regard to leverage in Box 93.

Q6

Do you agree that AIFMs should include the gross exposure in the calculation of the value of assets under management when the gross exposure is higher than the AIF's net asset value?

INREV has no comments at this stage.

Q7

Do you consider that valid foreign exchange and interest rate hedging positions should be excluded when taking into account leverage for the purposes of calculating the total value of assets under management?

INREV has no comments at this stage.

Q8

Do you consider that the proposed requirements for calculating the total value of assets under management set out in Boxes 1 and 2 are clear? Will this approach produce accurate results?

INREV has no comments at this stage.

III.III. Content of the obligation to register with national competent authorities and suitable mechanisms for gathering information

Page 25

Box 3

Information to be provided as part of registration

INREV has no comments at this stage.

III.IV. Opt-in procedure

Page 27

Box 4

Opt-in procedures

INREV has no comments at this stage.

Page 27

Box 5

AIFMs falling below the threshold

INREV has no comments at this stage.

IV. General Operating Conditions

IV.I. Possible Implementing Measures on Additional Own Funds and Professional Indemnity Insurance

Page 33

Box 6

Potential risks arising from professional negligence to be covered by additional own funds or professional indemnity insurance

INREV believes that specific guidance about the risks that managers of non-listed real estate funds are liable for

would be helpful in order to reduce uncertainty and reduce the burden on fund managers.

Q9

The risk to be covered according to paragraph 2 (b)(iv) of Box 6 (the improper valuation) would also include valuation performed by an appointed external valuer. Do you consider this as feasible and practicable?

INREV considers that the valuation of real estate assets typically result in subjective opinions of their value. External valuers tend to base their calculation on their knowledge of current market conditions, they are not transaction-based as stock-market prices are. INREV therefore considers that fund managers cannot be held liable for the valuation carried out by an external valuer, provided that the manager has fulfilled its obligations with regard to the appointing process of the external valuer.

Page 34

Box 7

Qualitative Requirements (based on Annex X Directive Part 3 2006/48/EC)

INREV has no specific concerns at this stage about the advice given by ESMA.

Page 36

Box 8

Quantitative Requirements

With regard to paragraph 1 of Box 8, INREV believes that option 1 is preferable. However, it must be guaranteed that the liability risk of 0.01 % remains fixed and should not be increased over time.

With regard to the two options put forward by ESMA in paragraph 4 of Box 8, INREV is concerned that the possibility for Member States to either increase or decrease the percentage may result in regulatory arbitrage and market distortion between Member States.

Q10

Please note that the term ‘relevant income’ used in Box 8 includes performance fees received. Do you consider this as feasible and practicable?

INREV does not believe that performance fees should be included in the notion of relevant income. While it is feasible, as performance fees are typically recorded, the approach is not at all practical. It would give misleading impression of volatility in relevant income, as performance fees are not typically paid out on an annual basis but are carried over. Income and specifically performance fees are not reliable proxies for risk in the operation of non-listed real estate funds.

Q11

Please note that the term ‘relevant income’ used in Box 8 does not include the sum of commission and fees payable in relation to collective portfolio management activities. Do you consider this as practicable or should additional own funds requirements rather be based on income including such commissions and fees (‘gross income’)?

Please refer to INREV’s answer to question 10.

Q12

Please provide empirical evidence for liability risk figures, consequent own funds calculation and the implication of the two suggested methods for your business. When suggesting different number, please provide evidence for this suggestion.

INREV does not have empirical evidence regarding the amount of such liabilities. However, it appears that the

incidence of such claims in the non-listed real estate funds industry is infrequent.

Q13

Do you see a practical need to allow for the ‘Advanced Measurement Approach’ outlined in Directive 2006/48/EC as an optional framework for the AIFM?

INREV has no comments at this stage.

Q14

Paragraph 4 of Box 8 provides that the competent authority of the AIFM may authorise the AIFM to lower the percentage if the AIFM can demonstrate that the lower amount adequately covers the liabilities based on historical loss data of five years. Do you consider this five-year period as appropriate or should the period be extended?

INREV does not consider it justifiable that the period of five-years should be extended.

Page 38

Box 9

Professional Indemnity Insurance

INREV has no comments at this stage.

Q15

Would you consider it more appropriate to set lower minimum amounts for single claims, but higher amounts for claims in aggregate per year for AIFs with many investors (e.g. requiring paragraph 2 of Box 9 only for AIFs with fewer than 30 investors)? Where there are more than 30 investors, the amount in paragraph 3 (b) would be increased e.g. to €3.5 m, while for more than 100 investors, the amount in paragraph 3 (b) would be increased e.g. to €4 m.

This issue does not seem likely to arise for non-listed real estate funds for non-listed real estate funds. INREV has no comments at this stage.

IV.II. Possible Implementing Measures on General Principles

Page 43

Box 10

Duty to act in the best interests of the AIF or the investors of the AIF and the integrity of the market

The INREV Guidelines (copy available at www.inrev.org) include many provisions relating to fair treatment of non-listed real estate fund investors. However, it is important to note that different treatment is not necessarily unfair treatment. For example, initial investors in closed-end funds typically get preferential treatment in some regards. However, this is not generally considered to be unfair to other investors that joined the fund later. While the existence and general features of side letter agreements are typically disclosed, as recommended in the INREV Guidelines, we believe that the specifics of this agreement, which are essentially a business arrangement between the fund manager and a specific investor, should not have to be disclosed. It is more important that, within the fund structure, there is fair treatment to all investors. Preferential treatment should be permitted provided that it has been disclosed to other investors prior to investment in the fund. MFN clauses are becoming more prevalent, but have not currently been established uniformly across all AIFs or indeed all Member States. Where investors enter a fund at different dates, application of newly negotiated provisions applicable to a new investor retrospective to all existing investors may have adverse consequences for the AIF.

Page 43

Box 11

Due Diligence requirements

In our view, these requirements, which generally reflect the standard due diligence procedures used by non-listed real estate funds and have proven to be sufficient over time, provide adequate protection. However, many non-listed real estate fund managers do not formally document all investment opportunities presented to them or keep formal minutes of all internal and external meetings, but we believe that only significant investment, financing and risk management decisions should be formally documented. We believe that no additional tailoring is required. ESMA's advice does not raise specific concerns for INREV.

Q16

Paragraphs 4 and 5 of Box 11 set out additional due diligence requirements with which AIFMs must comply when investing on behalf of AIFs in specific types of asset e.g. real estate or partnership interests. In this context, paragraph 4(a) requires AIFMs to set out a 'business plan'. Do you agree with the term 'business plan' or should another term be used?

INREV does not believe that the term 'business plan' is a suitable concept in many non-listed real estate funds, and is particularly unsuitable for open-end real estate funds. While a document setting out the fund's investment strategy may be relevant when a fund is initiated or at the investment stage for instance, it should be more flexible than a business plan and should be able to accommodate changes over time.

Page 46

Box 12

Reporting obligations in respect of execution of subscription and redemption orders

Practices within Europe vary for non-listed real estate funds. The recording of subscription and redemption orders and commitments may be processed internally by the AIFM, or by a third party such as a registrar or transfer agent, and are documented by a subscription or commitment agreement. Most non-listed real estate funds are closed-end, however, and frequent subscriptions and redemptions are not usual.

Page 46

Box 13

Selection and appointment of counterparties and prime brokers

While INREV has no specific concerns about the content of Box 13, we would like to point out that the use of counterparties and prime brokers is relatively uncommon in non-listed real estate funds, except in the case of interest rate hedging. We agree that, in general, the selection of these counterparties and prime brokers should be based on a basic due diligence inquiry. Typically, the bank providing the loan requires the hedge to be placed with a specific broker that acts as the counterparty, so the fund actually has little discretion in selecting a counterparties or prime broker. Nevertheless, these are always established, credited counterparties. Joint-Ventures are commonly used in non-listed real estate funds, but for the purposes of these requirements, joint-venture partners would not normally be considered counterparties.

Page 47

Box 14

Execution of decisions to deal on behalf of the managed AIF

INREV has no comments at this stage.

Page 48

Box 15

Placing orders to deal on behalf of AIFs with other entities for execution

Box 15 does not appear to be relevant for non-listed real estate funds. INREV has no comments at this stage.

Page 49

Box 16

Handling of orders – general principles

Box 16 does not appear to be relevant for non-listed real estate funds. INREV has no comments at this stage.

Page 50

Box 17

Aggregation and allocation of trading order

Box 17 does not appear to be relevant for non-listed real estate funds. INREV has no comments at this stage.

Page 51

Box 18

Inducements

INREV has no comments at this stage.

Box 19

Fair treatment by an AIFM

As noted in our comments to Box 10, the INREV Guidelines (copy available at www.inrev.org) include many provisions relating to fair treatment of non-listed real estate fund investors. However, it is important to note that different treatment is not necessarily unfair treatment. For example, initial investors in closed-end funds typically get preferential treatment in some regards. However, this is not generally considered to be unfair to other investors that joined the fund later.

While the existence and general features of side letter agreements are typically disclosed, as recommended in the INREV Guidelines, we believe that the specifics of this agreement, which are essentially a business arrangement between the fund manager and a specific investor, should not have to be disclosed. It is more important that, within the fund structure, there is fair treatment to all investors. Preferential treatment should be permitted provided that it has been disclosed to other investors prior to their making an investment decision. MFN clauses are becoming more prevalent, but have not currently been established uniformly across all AIFs or indeed all Member States. Where investors enter a fund at different dates, application of newly negotiated provisions applicable to a new investor retrospective to all existing investors may have adverse consequences for the AIF

Q17

Do you agree with Option 1 or Option 2 in Box 19? Please provide reasons for your view.

With reference to INREV's comments to Box 19, INREV favours Option 2.

IV.III. Possible Implementing Measures on Conflicts of Interest

Page 55

Box 20

Types of conflicts of interest between the various actors as referred to in Article 14(1)

The INREV Guidelines already address many of the issues put forward on this topic, so they do not raise specific concerns for our industry. INREV has no comments at this stage.

Page 58

Box 21

Conflicts of interest policy

The INREV guidelines already address many of the issues put forward on this topic, so they do not raise specific concerns for our industry. INREV has no comments at this stage.

Page 59

Box 22

Independence in conflicts management

The INREV guidelines already address many of the issues put forward on this topic, so they do not raise specific

concerns for our industry. INREV has no comments at this stage.

Page 60

Box 23

Record keeping of activities giving rise to detrimental conflicts of interest and way of disclosure of conflicts of interest

The INREV guidelines already address many of the issues put forward on this topic, so they do not raise specific concerns for our industry. INREV has no comments at this stage.

Page 61

Box 24

Strategies for the exercise of voting rights

Such measures are standard in non-listed real estate funds. However, such events arise infrequently in non-listed real estate funds, and thus would be normally dealt with on a case-by-case basis, rather than on the basis of pre-defined policies and procedures. Application of such provisions should be proportionate to their likely frequency and impact.

IV.IV Possible Implementing Measures on Risk Management

Page 66

Box 25

Permanent Risk Management Function

INREV has no comments at this stage.

Page 68

Box 26

Risk Management Policy

Although INREV supports the principle based approach reflected in Box 26, most of the provisions appear to reflect an AIF that holds financial instruments rather than physical property.

In particular INREV notes with regard to paragraph (3)(e) that in non-listed real estate funds, investment decisions are made through an investment committee or similar committees or advisory boards that consider the risk involved prior to investment. We believe that this leads to good risk management as well.

Risk management in non-listed real estate is engrained in processes established at all levels of portfolio and asset management.

Page 69

Box 27

Assessment, monitoring and review of the risk management policy

INREV has no comments at this stage.

Page 70

Box 28

Measurement and Management of Risk

INREV understands that this requirement applies to the top level fund only and not on a consolidated basis through a tiered SPV-like fund structure. However, should a look-through be applied, INREV notes with regard to stress testing that in non-listed real estate AIFs timely data is typically less available than in other types of AIFs. Therefore, requirements in Box 28 (3)(c) that stress tests be conducted on the basis of reliable and up to date information, should take into consideration the delay in obtaining reliable information in non-listed real estate funds.

Box 29**Risk Limits**

INREV understands that this requirement applies to the top level fund only and not on a consolidated basis through a tired SPV-like fund structure. Therefore, INREV has no comments at this stage.

However, as discussed in INREV's introductory comments, INREV notes that it is unclear whether the reference "...in respect of each AIF it manages..." is also meant to include those AIFs managed by an AIFM that do not fall within the scope of the AIFMD.

Box 30**Functional and Hierarchical Separation of the Risk Management Function**

As touched upon in the introductory observations, INREV notes that these requirements are only workable if they apply to the top level fund and not on a consolidated basis through a tired SPV-like fund structure. Applying a look-through approach to the functional and hierarchical separation of the risk management function in non-listed real estate is unworkable. For instance INREV notes that the requirement in (1)(c) that those engaged in the performance of the risk management function be compensated in accordance with the achievement of their objectives linked to that function is not achievable.

As highlighted also in our answer to question 19, a complete separation of operation and risk management is not possible due to the nature of real estate investment which requires that risks are managed at all levels of operation. INREV believes that if a look-through approach is applied, a requirement that risk be controlled rather than managed should be sufficient for non-listed real estate fund managers, so that risk which is managed through the fund structure is controlled at the higher AIF level.

Q18

ESMA has provided advice as to the safeguards that it considers AIFM may apply so as to achieve the objective of an independent risk management function. What additional safeguards should AIFM employ and will there be any specific difficulties applying the safeguards for specific types of AIFM?

INREV does not believe that any additional safeguards are necessary. However, if a look-through approach is applied, non-listed real estate fund managers will have difficulties applying safeguards where a complete separation of operation and risk management is required as noted in Box 30.

In addition, INREV notes all investment decisions are made through investment committees or similar committees or advisory boards that consider the risk involved prior to investment. These are not supervised by anyone with conflicting functions.

Q19

ESMA would like to know which types of AIFM will have most difficulty in demonstrating that they have an independent risk management function? Specifically what additional proportionality criteria should be included when competent authorities are making their assessment of functional and hierarchical independence in accordance with the proposed advice and in consideration of the safeguards listed?

Much of the risk in non-listed real estate funds is embodied in the management of the underlying property assets. However, non-listed real estate funds are organised in such a way that a process driven risk management approach is employed at all levels to achieve the goals of functionally and hierarchically separated risk management.

IV.V Possible Implementing Measures on Liquidity Management

Page 77

Box 31

Liquidity Management Definitions

INREV has no comments at this stage, as special arrangements are uncommon in non-listed real estate funds.

Page 78

Box 32

Liquidity Management Policies and Procedures

Typically, closed end non-listed real estate funds do not have redemption rights. Open end funds generally do. However, they can suspend redemption rights and as a result manage liquidity of the AIF. Therefore, non-listed real estate funds should not be required to maintain cash liquidity above the amounts needed to cover immediate costs, such as payroll and taxes. It would be problematic for non-listed real estate funds to comply with higher minimum cash liquidity requirements and it would not be in the interest of investors.

In addition funds can generally call on investors to contribute additional equity to address liquidity needs when they arise.

Page 82

Box 33

Liquidity Management Limits and Stress Tests

This issue is not of particular relevance or burdensome for non-listed real estate funds as a result of the redemption and capital call comments made by INREV to Box 32. INREV has no comments at this stage.

Page 84

Box 34

Alignment of investment strategy, liquidity profile and redemption policy

Typically the requirements set out by ESMA are already provided in the fund documentation, as required under the INREV Guidelines. INREV has no comments at this stage.

Q20

It has been suggested that special arrangements such as gates and side pockets should be considered only in exceptional circumstances where the liquidity management process has failed. Do you agree with this hypothesis or do you believe that these may form part of normal liquidity management in relation to some AIFs?

INREV has no comments at this stage, as special arrangements are uncommon in non-listed real estate funds.

Q21

AIFMs which manage AIFs which are not closed ended (whether leveraged or not) are required to consider and put into effect any necessary tools and arrangements to manage such liquidity risks. ESMA's advice in relation to the use of tools and arrangements in both normal and exceptional circumstances combines a principles based approach with disclosure. Will this approach cause difficulties in practice which could impact the fair treatment of investors?

INREV does not believe that this will cause difficulties as long as investors are treated in the same way unless there are objective reasons for differential treatment. Please see also INREV's comments to Box 10 regarding fair treatment.

Q22

Do you agree with ESMA's proposed advice in relation to the alignment of investment strategy, liquidity profile and redemption policy?

Please see INREV's comments to Box 34.

IV.VI. Possible Implementing Measures on Investment in Securitisation Positions

Page 87

Box 35

Requirements for retained interest

INREV seeks clarification about the possible implications of this chapter for non-listed real estate fund managers. It is unclear for example whether real estate loan funds that purchase real estate loans or parts of real estate loans such as junior real estate loans from banks would be required to retain a 5% net economic interest. Typically real estate loan funds are funded by investors through issuing non-listed bonds, preferred equity certificates or participations.

We believe real estate loan funds should be exempt from this requirement when the fund is transparent to its investors because the fund management informs the investors on a regular basis about the assets, the funding instruments are non-listed, and there are no more than two risk classes of funding.

Page 93

Box 36

Requirements for sponsors and originator credit institutions

INREV has no comments at this stage.

Page 95

Box 37

Requirements for transparency and disclosure of retention

INREV has no comments at this stage.

Page 96

Box 38

Requirements for risk and liquidity management

INREV has no comments at this stage.

Page 97

Box 39

Requirements for monitoring procedures

INREV has no comments at this stage.

Page 98

Box 40

Requirements for stress tests

INREV has no comments at this stage.

Page 99

Box 41

Requirements for formal policies, procedures and reporting

INREV has no comments at this stage.

Box 42	<i>Page 99</i>
Introduction of new underlying exposures to existing securitisations	
INREV has no comments at this stage.	
Box 43	<i>Page 100</i>
Investments by UCITS	
INREV has no comments at this stage.	
<u>IV.VII. Possible Implementing Measures on Organisational Requirements</u>	
Box 44	<i>Page 102</i>
General requirements on procedures and organisation	
Box 45	<i>Page 103</i>
Resources	
Box 46	<i>Page 103</i>
Electronic data processing	
Box 47	<i>Page 103</i>
Accounting procedures	
Box 48	<i>Page 104</i>
Control by senior management and supervisory function	
Box 49	<i>Page 105</i>
Permanent compliance function	
Box 50	<i>Page 107</i>
Permanent internal audit function	
Box 51	<i>Page 107</i>
Personal transactions	
Box 52	<i>Page 109</i>
Recording of portfolio transactions	
Box 53	<i>Page 110</i>
Recording of subscription and redemption orders	
Box 54	<i>Page 111</i>
Recordkeeping requirements	
Q23	
Should a requirement for complaints handling be included for situations where an individual portfolio	

manager invests in an AIF on behalf of a retail client?

General remarks on Chapter IV.VII

INREV has no comments at this stage, as the advice put forward by ESMA is largely consistent with the INREV Guidelines and industry practices.

IV.VIII. Possible Implementing Measures on Valuation

Page 114

Box 55

Policies and procedures for the valuation of the assets of the AIF

ESMA proposes general principles that should guide AIFMs in developing and implementing policies and procedures for a proper and independent valuation. In non-listed real estate funds valuation is normally done according to IAS40 and supplemental national accounting standards. INREV has no specific concerns about ESMA's advice as long as it remains sufficiently flexible to take into account the specificities of non-listed real estate funds as well as variations in national practices of valuing the real estate of these AIFs.

Page 115

Box 56

Models used to value assets

INREV has no comments at this stage.

Page 116

Box 57

Consistent application of the valuation methodologies

Applying the same policies and procedures and the designated methodologies consistently to assets of a single AIF is reasonable, but AIFMs may have good reasons to apply slight variations of these methodologies across different non-listed real estate funds. We assume however that ESMA is referring to methodology as meaning overarching principles rather than the technical details of valuation techniques. Where circumstances necessitate adaptation of valuation methods, such as different accounting standards and RICs standards, for example, and provided that such variations are disclosed to investors, variations should be allowed.

Page 116

Box 58

Periodic review of the appropriateness of the policies and procedures including the valuation methodologies

INREV has no comments at this stage.

Page 117

Box 59

Review of individual values

INREV has no comments at this stage.

Page 118

Box 60

Calculation of net asset value per unit or share

INREV has no comments at this stage.

Page 120

Box 61

Professional guarantees

It is common practice in non-listed real estate to ensure external valuers have adequate professional

qualifications to carry out their task. INREV has no specific concerns with ESMA's advice, provided that requirements are kept sufficiently flexible to ensure that existing practices and documentation continue to be sufficient to fulfil these requirements.

Page 121

Box 62

Frequency of valuation carried out by open-ended funds

INREV has no comments at this stage.

IV.IX. Possible Implementing Measures on Delegation

Page 125

Box 63

Delegation

INREV has no comments at this stage.

Page 126

Box 64

General principles

While the advice by ESMA in Box 64 does not raise specific concerns, INREV would expect that delegation of certain aspects of its activities, such as regulatory and risk management that master KAGs use in Germany under the UCITS Directive and that similar structures use in other Member States would continue to be allowed under the proposed AIFMD measures.

INREV also points out that non-listed real estate funds use delegation quite extensively, compared to other types of funds. Non-listed real estate fund managers manage physical properties, which is labour intensive and requires local knowledge and presence, necessitating delegation of many activities.

Page 127

Box 65

Objective Reasons

See answer to Question 24

Q24

Do you prefer Option 1 or Option 2 in Box 65? Please provide reasons for your view.

INREV favours option 1 as it is principle based and reflects the approach taken in the UCITS Directive.

Page 129

Box 66

Sufficient resources and experience and sufficiently good repute of the delegate

INREV has no comments at this stage.

Page 130

Box 67

Types of institution that should be considered to be authorised or registered for asset management and subject to supervision

It appears to INREV that ESMA uses the terms 'asset management' and 'portfolio management' interchangeably. INREV would like to highlight that both terms imply different activities at different levels of an AIF. In our view portfolio management relates to assets of the fund as a whole from a strategic perspective, while asset management relates to the management of the underlying real estate assets. We further note that Article 20(1) (c) refers to portfolio management and not to asset management.

Consistent with INREV's overall comments about the applicability of the AIFMD generally to the top level fund

only, we point out that requirements for delegation should equally only apply to the top level fund and that a look through approach should not be applied. As stated in Box 64, because of the different nature of managing physical real estate assets, non-listed real estate fund managers have to delegate on a large scale. Applying the requirements of Box 67 to all delegated acts, especially regarding authorisation, registration and supervision of delegates would be unnecessarily onerous without creating value added for investors.

Page 131

Box 68

A delegation would prevent the effective supervision of the AIFM, or the AIFM from acting, or the AIF from being managed, in the best interest of its investors in particular under the following circumstances:

In line with INREV's comments to Box 67, the advice does not raise specific concerns for non-listed real estate fund managers, as long as the requirements apply to the top level fund only and not on a consolidated basis through a tired SPV-like fund structure.

Page 132

Box 69

Sub-delegation – General principles

INREV has no comments at this stage.

Page 132

Box 70

Type of evidence necessary for an AIFM to demonstrate its consent to sub-delegation

INREV understands that these requirements would apply to the top level fund only and not on a consolidated basis through a tired SPV-like fund structure and hence has no comments at this stage.

Page 132

Box 71

Criteria to be taken into account when considering whether a delegation/ sub-delegation would result in a material conflict of interest with the AIFM or the investors of the AIF; and for ensuring that portfolio or risk management tasks haven been functionally and hierarchically separated from any other potentially conflicting tasks within the delegate/ sub-delegate; and that potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF

INREV agrees with the advice in Box 71, highlighting however that only 'material' conflicts of interests should be required to be disclosed.

Page 134

Box 72

Form and content of notification under Article 20(4)(b) of the AIFMD

INREV has no comments at this stage.

Page 134

Box 73

Letter-box entity

INREV has no comments at this stage.

V. Depositaries

V.I. Appointment of a depositary

Page 139

Box 74

Particulars to be included in the written agreement evidencing the appointment of a single depositary and regulating the flow of information deemed necessary to allow the depositary to perform its functions

pursuant to Article 21 (2) of the AIFMD.

INREV has no comments at this stage.

V.III. Depositary functions

Page 147

Box 75

Cash flow monitoring – General information requirements

In responding to the proposals regarding cash flow monitoring, INREV assumes that the requirements would apply only at the top fund level and not on a consolidated basis through a tired SPV-like fund structure since Box 75 correctly refers to accounts in the name of the AIF (or of the AIFM acting for the AIF). It would not in our view be justified by the Level 1 text or, indeed, practicable for the depositary to seek to monitor the cash flows of the real estate operating and investment businesses of the companies, partnerships or other entities in which the fund invests, any more than the depositary of a private equity fund would be expected to monitor the cash flows of such a fund's portfolio companies. Attempting to do so would put an impossible burden on depositaries, at great expense for investors, and in our view is unlikely either to increase investor protection or reduce systemic risk.

Our view that the depositary would not be expected to look below the entity in which the fund invests seems also to be shared by various national regulators. Consequently there should not be any form of look-through monitoring at the level of the underlying assets, save possibly where the depositary is concerned that a structure has been set up in order to avoid the depositary obligations as mentioned in paragraph 39 of ESMA explanatory text on page 161.

We note that the second bullet point at paragraph 3 on page 147 states that “there can be no transfer without [the depositary's] knowledge **or consent** (emphasis added). We assume that this is only a descriptive statement contrasting accounts opened with a third party in the name of the depositary with other permitted types of account since neither Article 21(7) AIFMD nor ESMA advice at page 147 Box 75 state or imply that the consent of the depositary is required to a transfer. Any implication that ex ante consent is required to any transfers is not supported by the Level 1 text or the draft advice.

ESMA goes on in paragraph 4 to suggest that it follows that the depositary needs to have a “clear overview of all cash inflows and outflows in all instances ... and ... access to all information related to all cash flows”. This is also indicated in Box 75 which requires “access to all information”... and ... “clear overview of all the AIF’s cash flows”. As well as supporting ESMA's Option 2 in Box 76, and making it clear that the proper interpretation of the AIF's cash flows is indeed limited to the AIF's own cash flows, not those of the real estate operating and investment businesses of the companies, partnerships or other entities in which the AIF invests, the type of information about accounts needed by the depositaries should be limited to that required to enable it to carry out ex post monitoring in the way envisaged by Option 2.

We appreciate ESMA’s recognition that cash accounts with third parties are permitted under the Directive and that the depositary therefore only requires a means of obtaining relevant information. We query whether it is essential for ESMA’s advice to specify that information must be provided directly from the relevant third party at which the account is held provided that the depositary is satisfied with the procedures established in order to enable it to have access to the relevant information. Indeed the explanatory text at paragraph 2 confirms, contrary to what seems indicated in Box 75 that information may be provided directly from the AIF, AIFM or another entity appointed to perform relevant tasks.

We also suggest that it may be appropriate for the advice to refer to all material information, rather than to all information since, particularly for a fund investing directly in real estate, there are likely to be a large number of small payments which the depositary might only need to access if a question arose.

In this context we note that ESMA indicates that it is taking a “more conservative approach” than the

Commission to cash booking requirements to apply to "all cash" rather than just to subscriptions and redemptions. Particularly in the context of real estate, where there can be a large number of small operational cash flows, it is considered more appropriate for the key cash flows, for which the depositary should check receipt and review the accounts into which they are booked, to be limited to subscriptions and redemptions by investors as seems to be indicated by Article 21(7) of the Directive. In relation to other cash flows of the AIF, the depositary's responsibility under Article 21(7) appears to be to see that they are properly monitored rather than necessarily doing so itself in detail. Accordingly the Commission's view may be more appropriate in context.

Page 149

Box 76

Proper monitoring of all AIF's cash flows

As noted above we welcome ESMA's recognition in its draft advice that cash may be held in third party accounts.

Option 1 is extremely difficult to implement because it would mean that the depositary would become part of the primary process of payment and, in the case of a fund investing directly in real estate, would involve the depositary being obliged to keep track of, and potentially intervene in, every operating expense that related to the property held, however minor.

Option 2 is strongly preferred, although clearly it would only be workable at the top fund level and not on a consolidated basis through a tired SPV-like fund structure, since it would be impossible for a depositary to keep track of every operating expense in relation to the underlying property held (such as maintenance, cleaning and landlord consent fees) that arises in the context of an operational property management business. In practice most property funds invest in companies which themselves hold real estate so that, like private equity funds, the depositary would not be required to monitor cash flows relating to the operating business, but only the cash flows of the fund itself as it acquires an investment entity, receives payments from, or makes payments to, it and disposes of it. It is not realistic to seek to place the depositary in the heart of the property management business with constant operating income and expenses needing to be monitored.

The proposal would of course impose new costs on fund managers in the form of extra time needed to negotiate with the depositary and to set up the contract and monitoring arrangements. Other costs would be incurred due to necessary redrafting of existing business process descriptions to introduce the depositary in the fund operations (daily, weekly, monthly, quarterly or annually as the case may be) and thereafter to implement them. Monitoring of compliance and ICT costs related to reconciliations would entail additional costs on an ongoing basis. These will be significant costs even for Option 2 and would be quite unmanageable with Option 1. A cost estimate is provided in the attached Business Impact Analysis.

Option 2 is strongly preferred and could be made practically workable in a way that we believe would be impossible for Option 1.

We should note that although we consider it more appropriate for the depositary to monitor and check the booking of subscription and redemption cash flows than all cash flows we agree with ESMA on the appropriate process for the depositary to follow in relation to reconciliations conducted for subscriptions and redemptions.

Page 152

Box 77

Ensuring the AIF's cash is properly booked

As noted above, while ESMA indicates that it is taking a "more conservative approach" than the Commission to cash booking requirements and plans to apply them to "all cash", in the context of real estate it is considered more appropriate for the cash flows for which the depositary is required to review the accounts into which they are booked to be limited to subscriptions and redemptions by investors – this is also consistent with treating the cash as belonging to the fund itself and not requiring the depositary to enquire further as to cash belonging to

underlying entities.

While we do not believe that ESMA's advice intends to prevent to following, INREV would like to point out that in real property funds, particularly those investing directly in real property, it may, following receipt of cash for the AIF and its booking into an account of the AIF (or of the AIFM or depositary on behalf of the AIF), be necessary for payments to be made out to property managers, lawyers or others in advance of expenses to be discharged by them or the completion of a transaction.

Q25

How difficult would it be to comply with a requirement by which the general operating account and the subscription / redemption account would have to be opened at the depositary? Would that be feasible?

As indicated above, it would be possible for the subscription and redemption account to have to be opened at the depositary, where the depositary is a bank (although this will not always be the case) but it is not operationally feasible for the general operating account to be opened at the depositary.

For example, it is not unusual for some large non-listed real estate funds to have 40 to 50 SPVs within its structure, each of which has its own operating account, or more than one such account which is necessitated when the funds' properties and/or businesses are spread over a number of European countries. The accounts deal with rent and service charge receipts and a variety of expense payments and not all transactions conform to a standard. It would not be possible to combine this into one operating account, and depositary banks as they are now set up could simply not manage such bank clearing processes and are in general not able to operate in several different countries.

Furthermore, although depositaries or institutions performing similar roles are commonly used by real estate funds in many countries, many are not even financial institutions as such and do not have the ability to open accounts. The Directive recognises this and expressly states in Article 21(3) that Member States may allow the depositary for an AIF whose core investment policy is not to invest in financial instruments which are subject to the paragraph 21(8)(a) custody obligation to be a different type of entity. Shifting the depositary function solely to one of the permitted types of financial institutions in order to meet this requirement would be disruptive to the depositaries' role in real estate fund activities and result in additional costs, without related benefits.

Q26

At what frequency is the reconciliation of cash flows performed in practice? Is there a distinction to be made depending on the type of assets in which the AIF invests?

In general, reconciliations of cash flows for subscriptions and redemptions are performed by depositaries daily or at such frequency as subscriptions and redemptions occur in the relevant fund. Reconciliations of cash flows for operating accounts are generally performed by depositaries monthly or quarterly on a post facto basis, although they can also occur at different intervals.

Q27

Are there any practical problems with the requirement to refer to Article 18 of Mi-FID?

This reference is not actually to MiFID but to the MIFID implementing directives, under which article 18(1) refers to:

- a) Central Banks
- b) EU Credit Institutions
- c) Authorised Third Country Banks
- d) Qualifying Money Market Funds

Since third country banks are already referred to in Article 18(1)(c) it is not clear to us why paragraph 2 of the

draft advice finds it necessary to refer separately to banks or credit institutions in non-EU countries where the AIFM/AIF is "compelled" to open an account in relation to an investment transaction. We do not believe that the Level 1 Directive text requires the element of compulsion if there are simply practical reasons why the relevant account is required. Moreover, in the case of real estate, an account may be necessary or desirable not to implement the specific investment decision but to undertake ongoing management of the property after acquisition. We also do not see why the relevant entities "of the same nature" as those referred to in 18(1)(a)(b) and (c) should be narrowed to credit institutions so defined, although we agree it is hard to see what other type of entity would be of the same nature as those listed.

While cash held at the subscription and redemption stage will usually be held with a bank, thus falling into 18(1)(b) or (c), wherever the bank may be located, as noted, cash may for practical purposes need to be held with other parties (e.g. lawyers) at certain stages in a transaction in order to enable the transaction to be completed or management to be carried on. Accordingly while we do not object to subscription and redemption monies being booked to an entity mentioned in Article 18(1) of the Directive, there does need to be some flexibility to cover ongoing transactional and operational payments of this kind. We do not believe that Box 77 is intended to exclude this but it would be helpful to say so expressly.

Q28

Does the advice present any particular difficulty regarding accounts opened at prime brokers?

This question is not applicable to non-listed real estate funds as prime brokers are rarely used. INREV has no comments at this stage.

Q29

Do you prefer option 1 or option 2 in Box 76? Please provide reasons for your view.

We have a strong preference for Option 2 for the reasons given above in relation to Box 76.

Option 1 which requires that the depositary "act as a central hub" would not be possible to meet in most cases. At the least, it would be extremely difficult for real estate funds to implement because it would mean that the depositary would become part of the primary process of monitoring all cash payments, which would be extremely complex and entail significant costs related to reorganisation and expansion of the scope of depositaries' operations.

Cash settlements in real estate assets are much more complex than those in traditional financial instruments. Cash flows are not limited to the cash settlements at purchase or sale of a real estate asset. Real estate assets require a continuous stream of cash flows (e.g. for maintenance, refurbishment etc.) Under the Option 1 approach, this complexity will in our view be impracticable and, even if a depositary attempted to address it, we would expect it to lead to undue delays in processing of cash movements because a lack of industry expertise available at the depositary.

Furthermore, we also have a strong preference for Option 2 as a correct mirroring the Level 1 requirements relating to the monitoring obligations of depositaries because it would result in lower cost of implementation for investors than Option 1. Regardless of the option followed, fund managers will either directly or indirectly need to charge the costs of implementation to the investors. By monitoring cash flows internally in compliance with established policies and procedures, implementation costs could be kept relatively low while providing better protection for investors, because of higher level of real estate expertise available internally.

With regard to Option 2, external review regarding compliance with the AIFMD will ensure compliance without creating excessive dependence of fund managers on the quality of services provided by the external depositary or seeking to draw the depositary inappropriately into the operational property business.

Q30**What would be the estimated costs related to the implementation of option 1 or option 2 of Box 76?**

Option 1 is not possible for [non-listed] real estate funds to meet in most cases and, in the rare cases where it is technically possible, would entail very major upfront and ongoing costs with little corresponding benefits. Option 2 is strongly preferable even though it would still impose significant additional costs as summarised above in relation to Box 76.

Q31**What would be the estimated costs related to the implementation of cash mirroring as required under option 1 of Box 76?**

As stated in response to Question 30, Option 1 is not possible for non-listed real estate funds to meet in most cases and the related costs if they attempted to do so would be great.

Box 78**Definition of financial instruments to be held in custody – Article 21 (8) (a)**

INREV has no comments at this stage.

Q32**Do you prefer option 1 or option 2 in Box 78? Please provide reasons for your view.**

INREV has no comments at this stage.

Q33**Under current market practice, which kinds of financial instrument are held in custody (according to current interpretations of this notion) in the various Member States?**

INREV has no comments at this stage.

Box 79**Treatment of collateral – Article 21 (8) (a)**

INREV has no comments at this stage.

Q34**How easy is it in practice to differentiate the types of collateral defined in the Collateral Directive (title transfer / security transfer)? Is there a need for further clarification of option 2 in Box 79?**

INREV has no comments at this stage.

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Box 80**Safekeeping duties for financial instruments that can be held in custody**

INREV notes that non-listed real estate funds do not typically hold financial instruments that can be held in custody. However, some funds may include such investments in their investment policy and thus could benefit from these provisions.

Page 160

Box 81**Safekeeping duties related to ‘other assets’- Ownership verification and record keeping**

INREV believes that several problems arise from Box 81.

First, Item 3(a) in Box 81 (the depositary registers assets in its name), while providing obvious control benefits, will be unworkable if Option 1 of Box 78 is retained (assets registered in the name of the depositary are

automatically held in custody).

INREV believes that Item 3 should not distinguish between 3(a) (registered in the depositary's name) and 3(b) (held directly by the AIF). Both options have a valid place in real estate funds in different situations.

In addition, INREV believes that Option 1 is preferable, since it respects more closely current market practice.

Imposing Option 2 as a requirement for the depositary to mirror all transactions will inevitably lead to duplication and delay without bringing commensurate benefits to investors.

INREV believes that it is beneficial to require documentary evidence upon every acquisition or sale of a significant asset, and upon every significant corporate action. This requirement should however be proportionate and should be required only for assets that have a significant impact on the investment portfolio. Ancillary assets, such as fixtures and fittings in a property, would not be material in this regard.

It is not common industry practice to renew legal, real estate title or corporate certification on an annual basis, as such documentation is not easily or quickly attainable in many countries, and may require legal counsel to carry out further investigations. INREV believes that a depositary should be allowed to adopt a risk-based approach to such documentation, to focus on significant transactions and to agree a rolling multi-year programme of documentation refreshment where appropriate.

INREV proposes that Item 3 be amended as follows:

3. Maintain a record of those **significant** assets for which it is satisfied the AIF or the AIFM acting on behalf of the AIF holds the ownership of those assets. The depositary should be required to ensure that it is able to provide within **a reasonable timeframe** a comprehensive and up to date inventory of the AIF's **significant** assets.

To that end, the depositary should:

- i) ensure there are procedures in place so that **significant** assets cannot be assigned, transferred, exchanged or delivered without the depositary or its delegate having been informed of such transactions; **and**
- ii) have access to documentary evidence of each **significant** transaction from the relevant third party on a timely basis

Q35

How do you see the delegation of safekeeping duties other than custody tasks operating in practice?

In those jurisdictions which require depositaries for real estate funds, current market practice is for depositaries to generally execute their duties without reliance on external third parties. However, given the extension of the depositary duty envisaged under AIFMD, INREV believes that a variety of third parties may be used, including:

- Notaries,
- Lawyers,
- Property managers,
- Domiciliation agents,
- External accountants,
- Affiliates of the AIFM,
- Title insurers,
- Auditors and
- Lending banks

Such entities may hold original documents related to title and detailed records of assets, and may be responsible for providing any updates to ownership status. In the future, depositaries may need to contract with such entities

directly to provide local support for the safekeeping process.

Page 159

Q36

Could you elaborate on the differences notably in terms of control by the depositary when the assets are registered directly with an issuer or a registrar (i) in the name of the AIF directly, (ii) in the name of the depositary on behalf of the AIF and (iii) in the name of the depositary on behalf of a group of unidentified clients?

- i) When assets are registered directly with a registrar in the name of the AIF, the depositary must rely on its contract with the AIF to receive the necessary information about statements, corporate actions and transactions. In some cases, the registrar may refuse to recognise the standing of the depositary in requesting information directly on the status of the assets, requiring the depositary to make any such requests via the AIFM. The depositary is not generally in the instruction chain and may learn about transactions and cash proceeds significantly after a transaction has taken place.

This is usually the case in real estate funds, and is efficient and common practice. It also addresses other concerns related to ultimate liability for environmental or civil responsibility that usually attaches to registered property title, which a depositary will not normally accept, or where local legal or tax regulations require local entities to be the registered owner of property.

- ii) In some cases, typically in the case of a fund of funds investment, the asset may be registered in the name of the depositary, on behalf of a specific AIF. This allows the depositary to control the execution of the investment and to specify the mailing address and bank accounts that must be used in relation to the assets. At the same time, the underlying registrar is notified that the depositary is acting as an agent of the AIF, which assists in segregating assets from the depositary's proprietary assets and between the depositary's clients.
- iii) In cases where larger volumes of transactions are made on behalf of a number of clients into liquid fund platforms, the depositary may operate an 'omnibus' registration with the registrar, which provides control and segregation from proprietary assets, while offering greater efficiency and automation, which can lower transaction costs for all investors. This scenario is rarely the case in real estate funds.

All three scenarios have an appropriate place in the wide spectrum of Alternative Investment Funds, and INREV believes that ESMA should not favour one approach over another.

Q37

To what extent would it be possible / desirable to require prime brokers to provide daily reports as requested under the current FSA rules?

This question is not applicable to non-listed real estate investment funds because prime brokers do not play a role in the sector. INREV has no comments at this stage.

Q38

What would be the estimated costs related to the implementation of option 1 or option 2 of Box 81 Please provide an estimate of the costs and benefits related to the requirement for the depositary to mirror all transactions in a position keeping record?

Option 1 reflects to some degree the best practice in those Member States which currently require depositaries for real estate funds. INREV has provided some drafting suggestions in our response to Box 81 which would align the proposal more closely with current practices. However, INREV also notes that this requirement will entail significant new costs in those Member States which do not currently require depositaries, and thus an approach which is proportionate to the risks being controlled and which minimises duplication is essential.

Option 2 would differ significantly from current practices and could not in any practical sense be implemented for non-listed real estate funds, as the real estate fund industry today typically uses multiple cash banks across many investment countries, in a non-automated manner, for a variety of valid reasons. It would entail significantly higher costs in the form of added personnel and centralised IT systems to establish and mirror all transactions in a centralised position keeping record, which would ultimately also duplicate the records held by local AIFM affiliates, accountants and property managers.

Q39

To what extent does / should the depositary look at underlying assets to verify ownership over the assets?

In non-listed real estate funds, INREV believes that depositaries do and should look at underlying assets to verify ownership, but do so in different ways depending on the way the assets are held.

Real estate funds typically hold real estate assets in one of two ways

- i) through subsidiary companies (SPVs) or
- ii) through direct property ownership.

Therefore the depositaries role should be:

- i) verifying share certificates / registers of SPVs or
- ii) verifying title to real estate.

Depositaries should be allowed to inspect documents themselves, but should also be able to rely on external reports from lawyers, notaries and other professionals. Where available, depositaries may also refer to contracts to purchase and/or land registry extracts. In certain jurisdictions (e.g. UK), such reports take the form of a standardised “certificate of title” from a law firm. Such certificates focus on summarising material issues relating to title, and in particular identifying any risk elements.

If a risk element is significant, title indemnity insurance is sometimes arranged as a risk mitigation solution. When a property is being acquired with debt finance, the debt financier will often be involved in verifying title, and would look to also have the benefit of any certificates of title and (if appropriate) title indemnity insurance. This could also provide a solution if the depositary is not satisfied with title risks being accepted by the Fund Manager. This has some parallels with title insurance that may be available for some emerging securities markets. However, such insurance is not widely available in all property markets, and thus cannot be mandatory.

Depositaries should review the Fund Manager’s transaction procedures and seek regular (annual) assurance from the Fund Manager that these procedures have been followed. Such assurance could be obtained from the Fund Manager’s independent risk management function and/or independent auditors.

INREV suggests there should be guidelines on the formal document certifying the fund’s right over a real estate asset and appropriate verification. The guidelines should take into account current market practice for certifying good and marketable title and verification by way of relevant Land Registry documentation (e.g. certificate of title as described above). Such formal documents should be delivered to the depositary in either the language of the depositary’s home Member State, or a language customary in the spheres of international finance, to promote transparency and efficiency.

It is worth considering what will constitute a transaction for the purposes of this duty. INREV believes that not all activity or assets at property portfolio level should fall under this duty (e.g. leases, developments, capital expenditure, fixtures and assets ancillary to real estate. etc), and that supervisors should be given the discretion to consider alternatives when the nature of the assets demands this.

For example, while it is conceivable for a depositary to review documents related to a fund’s purchase of a portfolio containing 10,000 apartments, it is less viable for the depositary to review individual sales documents

for each of those apartments as they are sold off. In such circumstances, the Fund Manager would normally delegate authority to one or more sales managers to perform the sales within certain criteria, and the depositary's ongoing review would revolve around a regular reconciliation of records maintained by the sales managers of the outstanding inventory of apartments and the proceeds received by the fund.

Where differences of opinion exist between the Fund Manager and the depositary on title issues, care is required to avoid the depositary being put in the position of making an investment management decision on the value or risk of a particular title imperfection. In some circumstances, fund managers may seek to invest at a low price because certain title issues have been over-discounted by the market, or because they believe that a solution can be found for the issue. Current practice for a depositary in such circumstances is to verify that the legal opinions highlighting the issue have been made available to the decision-making body of the fund, so that any investment decision is taken in full knowledge of the issue.

INREV also believes that it would be unnecessary for the depositary to be involved in the internal fund structure, including issuance of subsidiary shares as equity is contributed by the fund, or the definition and creation of inter-company loans or hybrid debt instruments that are commonly used for internal financing.

It would however be reasonable for the depositary to be informed of any external mortgages or financing instruments as they are entered into.

While current practice for regulated funds in some jurisdictions is for depositaries to receive details of purchase and sale transactions at the time of the transaction, it will be a significant additional requirement for annual re-certification of property ownership, given the cost and time required to engage lawyers and/or notaries to re-perform property title searches etc. Some countries do not have centralised land registries available to public enquiry, requiring re-examination of original title documentation. INREV believes that a risk-based approach is more appropriate, linked to the scale or size of the portfolio, for example using a sample of randomly selected and/or high title risk properties to be selected for re-certification annually. In some countries where extracts from the central government land registry are easily available (e.g. UK), annual re-certification based on such extracts may be more feasible.

In some countries, it may be possible to formally restrict transfer of property without the consent of the depositary, for example in Germany with the restriction notice in the land register (*Depotbanksperrvermerk*), or in the UK with a charge in favour of the depositary entered into the land register. However, such mechanisms do not exist in all member states and third countries, and a mandatory requirement for this would be difficult or impossible to fulfil.

In conclusion, INREV believes it is desirable, for consistency between varying national property law regimes, to rely on contractual controls as established between the fund manager, the fund and the depositary.

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Box 82

Oversight duties – General requirements

INREV agrees with the advice in Box 82, and the explanatory text in paragraphs 47-51. INREV notes that assurance about the existence and effectiveness of procedures and controls is frequently provided by third-party assurance reports, such as SAS-70, SASE-16, ISAE-3402, ISAE-3000, or national equivalents such as AAF 01/06 in the UK. If such assurance reports exist, the AIFM should ensure that the depositary receives a copy on a timely basis.

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Box 83

Clarifications of the depositary's oversight duties

Subscriptions / redemptions

INREV agrees with the advice in Box 83, and the explanatory text in paragraphs 52-56. INREV notes that

eligibility for entry into an AIF is usually defined on a contractual basis, and that the responsibility lies primarily with the investor to respect such rules of the AIF in this regard. INREV agrees that the depositary should not be required to confirm such eligibility, as this would duplicate the efforts of the investor and the AIFM.

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Box 84

Clarifications of the depositary's oversight duties

Valuation of shares / units

INREV believes that in Box 84, ESMA goes beyond the requirements of the Level 1 text. The Level 1 Article 21.9(b) requires that the depositary “...ensure that the value of the units or shares of the AIF are calculated in accordance with the applicable national law, the AIF rules or instruments of incorporation and the procedures laid down in Article 19...”. This does not require the depositary to directly oversee the valuation of assets. Accordingly, we believe that item in paragraph 1 of Box 84 should be deleted.

For the avoidance of confusion, INREV also proposes to amend item in paragraph 2 as follows: “*The depositary should ensure that the policies and procedures for the calculation of the value of the units or shares of the AIF are effectively implemented and periodically reviewed.*”

Item in paragraph 3 should also be amended to replace “*valuation policy*” with “*policy for the calculation of the value of the units or shares of the AIF*”.

As the depositary is not required to oversee the valuations of assets or the decision to appoint an external valuer, INREV also believes that item in paragraph 5 should be deleted. The decision over internal or external valuation is the responsibility of the AIFM, and the AIFM must ensure compliance with the requirements of Article 19 in this regard.

In the explanatory text in paragraph 58, INREV believes that the depositary should be expected “... to take reasonable steps to ensure that the procedures for the calculation of the value of the units or shares of the AIF are appropriate ...”. The sentence “*When setting up its oversight procedures, the depositary should ensure that it has a clear understanding of the valuation methodologies used by the AIFM or the external valuer to value the assets of the fund.*” should be deleted, as this is outside the direct remit of the depositary.

INREV agrees with the explanatory text in paragraphs 57 and 59.

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Box 85

Clarifications of the depositary's oversight duties

Carrying out the AIFM's instructions

See response to Question 40.

Page 169

Box 86

Clarifications of the depositary's oversight duties

Timely settlement of transactions

INREV agrees that further clarification is welcomed in the case of real estate funds, as “*usual time limits*” do not normally apply, as each transaction is individually negotiated with the counterparty, and may take a wide variety of forms. For this reason, INREV believes that Option 2 in Box 86 is preferable.

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Box 87

Clarifications of the depositary's oversight duties

Income distribution

INREV notes that with regard to real estate funds, a depositary's oversight duties related to the AIF's income distribution can only be interpreted as an obligation to oversee the allocation of a distribution to investors

according to the rules of the AIF, once a decision has been made by the AIFM to distribute.

Distributions take many forms and are usually declared after the AIFM has decided on their working capital requirements and other strategic issues. Reasons for distributions may include, for example, income, capital gains, a return of capital or repayment of a shareholder loan.

Under Box 87 (1) calculation of the net income for fund operations would require the depositary to enquire into the portfolio management decision regarding available cash, and possibly to duplicate the entire accounting process for all fund debits and credits to ensure their correct calculation under AIF rules, instruments of incorporation and applicable national law. This would not be possible to meet in most cases, may interfere unreasonably with management discretion or in any event would only be possible by incurring significant duplication and thus higher costs. INREV proposes to amend item paragraph 1 in Box 87 as follows: "Ensure that net income, **once declared by the AIFM**, is applied ..."

Q40

To what extent do you expect the advice on oversight will impact the depositary's relationship with funds, managers and their service providers? Is there a need for additional clarity in that regard?

In countries where real estate funds already use depositaries with roles that are similar to the role envisaged in the proposal, such as Luxembourg or Germany, the impact would be fairly minimal, although some adjustments would nevertheless still have to be made. In other countries, however, the impact on the industry could be quite significant. For example, in the UK, the use of depositaries is currently fairly uncommon, and therefore formalisation of an oversight role that does not currently exist, this will entail the establishment of new procedures with significant added costs. This would be the case in many other EU countries as well.

Additional clarity would be helpful concerning the scope of the proposed depositary obligation in Box 85. While INREV does not believe that the explanation appearing in Box 85 is objectionable, Explanatory Paragraph 62 introduces the idea that the depositary should check whether "the AIF's investments are consistent with its investment strategy...to ensure it does not breach its investment restrictions." While a depositary should and does check to ensure that investment restrictions are not violated, we believe that introducing an obligation for a depositary to ensure that a real estate fund's investments "are consistent with its investment strategy" would not be possible to meet in most cases and would involve an unacceptable level of subjectivity in the execution of the depositary function.

Q41

Could potential conflicts of interest arise when the depositary is designated to issue shares of the AIF?

Potential conflicts could arise when the depositary is designated to issue shares of the AIF. INREV notes various provisions of the AIFMD Level 1 which contain measures to limit conflicts of interest, which require that the depositary:

"has functionally and hierarchically separated the performance of its depositary functions from its tasks as [prime broker/external valuer/etc] and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF".

Similar provisions are contained in Article 20.2(b), covering delegation. INREV believes that these provisions are sufficient to manage such potential conflicts of interest.

Q42

As regards the requirement for the depositary to ensure the sale, issue, repurchase, redemption and cancellation of shares or units of the AIF is compliant with the applicable national law and the AIF rules and / or instruments of incorporation, what is the current practice with respect to the reconciliation of subscription orders with subscription proceeds?

In general, with respect to the reconciliation of subscription orders with subscription proceeds, it is not currently the role of the depositary to ensure that the sale, issue, repurchase, redemption and cancellation of shares or units of the AIF is compliant with the applicable national law and the AIF rules and / or instruments of incorporation. In view of the complexity of the investor process for real estate funds, as outlined below, in INREV's view, it would impose a significant burden on depositaries if they are required to reconcile such investor transactions.

Many real estate funds operate on a commitment and draw-down basis, where the Fund Manager only issues capital calls when investments or expenses are anticipated, thus limiting the amount of cash sitting uninvested in the fund. This means that a contractual commitment agreement is initially established between fund and investors, but payments may then be drawn down across a number of events and years, at the discretion of the manager.

A significant number of real estate funds, particularly LPs and KGs, are not unitised and thus no shares or units can be issued. Instead, investors receive an interest in the partnership that is in proportion to their capital commitments and drawn capital as a part of the whole investor base.

Real estate funds may also issue partly-paid shares or interests, such that no further shares are issued when capital is drawn down, but the partly-paid proportion of the existing shares increases over time.

In closed-ended real estate funds, multiple closings with investors over the closing period may require that interests are "equalised", so that at the end of the closing period, all investors are considered to have pro-rata interests which are treated as having existed from the initial closing date. There are a variety of equalisation methods, some of which may require payments from a late investor to an early investor outside of the fund accounts.

Current practices vary across jurisdictions. For unregulated funds, the Fund Manager is frequently responsible for updating the record of investors' interests, and for reconciling cash received with the interests issued to investors in return. In contrast, for regulated funds, maintenance of the investor register is frequently a regulated activity provided by an external transfer agent or registrar.

A practice in some jurisdictions is to establish a separate investor subscription / redemption / distribution account at the depositary, which allows the investor cash transactions to be more easily identified. Net balances are transferred from this account to the fund's main account once investor amounts have been reconciled. This structure works well given real estate funds industry practices, for example, in some cases payments to investors are actually a return of funds called in during capital calls which were ultimately not needed. It is also an example of how a simple reconciliation of subscription orders with subscription proceeds can be significantly more complicated.

In the real state funds industry, current practice is that the depositary verifies that the fund manager / fund administrator has a procedure for reconciling cash with investor interests; due diligence checks are generally done by the depositary at least annually, and any material failures in the process are generally notified by the fund manager / fund administrator to the depositary on an ongoing basis. Full reconciliation is therefore generally done on an ongoing basis.

INREV believes that requiring the depositary to directly oversee these types of operations will duplicate processes that are already the responsibility of other parties and will lead to additional costs without significant added benefits in terms of investor protection.

Q43

Regarding the requirement set out in §2 of Box 83 corresponding to Article 21 (9) (a) and the assumption that the requirement may extend beyond the sales of units or shares by the AIF or the AIFM, how could industry practitioners meet that obligation?

Reconciliation of the balances of cash proceeds and related share issuance or redemptions is already standard

practice in the real estate funds industry.

INREV notes that eligibility for entry into an AIF is usually defined on a contractual basis, and that the responsibility lies primarily with the investor to respect such rules of the AIF in this regard. INREV agrees that the depositary should not be required to confirm such eligibility, as this would duplicate the efforts of the investor and the AIFM.

This could in practice only be met by depositaries requiring that investors declare their eligibility at the time of their initial investment in a fund, and by ensuring that the AIFs rules or instruments of incorporation require that the eligibility requirements should be met on entry and transferred between investors on any subsequent transfer.

Q44

With regards to the depositary's duties related to the carrying out of the AIFM's instructions, do you consider the scope of the duties set out in paragraph 1 of Box 85 to be appropriate? Please provide reasons for your view.

INREV does consider the scope of the depositary's duties related to the carrying out of the AIFM's instructions set out in paragraph 1 of Box 85 to be appropriate in general.

We would repeat the point raised in question 40, however, which notes that Explanatory Paragraph 62 introduces the idea that the depositary should check whether "the AIF's investments are consistent with its investment strategy...to ensure it does not breach its investment restrictions." While a depositary should and does check to ensure that investment restrictions are not violated, we believe that introducing an obligation for a depositary to ensure that a real estate fund's investments "are consistent with its investment strategy" would not be possible to meet in most cases and would involve an unacceptable level of subjectivity in the execution of the depositary function.

Q45

Do you prefer option 1 or option 2 in Box 86? Please give reasons for your view.

INREV prefers option 2 in Box 86. We prefer this option because while clearly establishing the depositary's duties to set up procedures related to the timely settlement of transactions, it recognises that the usual time limits for investments in real estate should be assessed with regard to the conditions attached to the transactions.

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Box 88

Due Diligence Requirements

INREV has no comments at this stage.

Page 175

Box 89

Segregation obligation for third parties to which depositaries have delegated part or all of their safekeeping functions (based on Article 16 of Directive 2006/73/EC implementing the MiFID Directive)

INREV has no comments at this stage.

Q46

What alternative or additional measures to segregation could be put in place to ensure the assets are 'insolvency-proof' when the effects of segregation requirements which would be imposed pursuant to this advice are not recognised in a specific 177 market? What specific safeguards do depositaries currently put in place when holding assets in jurisdictions that do not recognise effects of segregation? In which countries would this be the case? Please specify the estimated percentage of assets in custody that could be concerned.

INREV has no comments at this stage.

V.IV. The depositary's liability regime

Page 180

Box 90

Definition of loss

INREV has no comments at this stage.

Page 182

Box 91

Definition of 'external event beyond the depositary's reasonable control, the consequences of which were unavailable despite all reasonable efforts to the contrary'

INREV has no comments at this stage.

Page 187

Box 92

Objective reasons for the depositary to contract a discharge

INREV has no comments at this stage.

Page 188

Q47

What are the estimated costs and consequences related to the liability regime as set out in the proposed advice? What could be the implications of the depositary's liability regime with regard to prudential regulation, in particular capital charges?

INREV has no comments at this stage.

Page 188

Q48

Please provide a typology of events which could be qualified as a loss in accordance with the suggested definition in Box 90.

INREV has no comments at this stage.

Page 188

Q49

Do you see any difficulty with the suggestion to consider as an external event the fact that local legislation may not recognise the effects of the segregation requirements imposed by the AIFMD?

INREV has no comments at this stage.

Page 188

Q50

Are there other events which should specifically be defined/presumed as 'external'?

INREV has no comments at this stage.

Page 188

Q51

What type of event would be difficult to qualify as either 'internal' or 'external' with regard to the proposed advice? How could the 'external event beyond reasonable control' be further clarified to address those concerns?

INREV has no comments at this stage.

Page 188

Q52

To what extent do you believe the transfer of liability will / could be implemented in practice? Why? Do you intend to make use of that provision? What are the main difficulties that you foresee? Would it make a difference when the sub-custodian is inside the depositary's group or outside its group?

INREV has no comments at this stage.

Q53

Is the framework set out in the draft advice considered workable for non-bank depositaries which would be appointed for funds investing mainly in private equity or physical real estate assets in line with the exemption provided for in Article 21? Why? What amendments should be made?

INREV has no comments at this stage.

Q54

Is there a need for further tailoring of the requirements set out in the draft advice to take into account the different types of AIF? What amendments should be made?

INREV has no comments at this stage.

VI. Possible Implementing Measures on Methods for Calculating the Leverage of an AIF and the Methods for Calculating the Exposure of an AIF

Box 93**General Provisions on Calculating the Exposure of an AIF**

Non-listed real estate funds, especially closed end funds, typically measure leverage in terms of GAV rather than NAV. Although calculating leverage in terms of NAV does not raise special problems, it does result in inflating the appearance of leverage used in a fund. National regulators setting limits in terms of NAV should be aware of this effect.

INREV believes that maximum leverage rules should be consistent throughout the EU and would like to point out that for non-listed real estate funds, NAV is dependent on the accounting principles (GAAP or IFRS) applied by the fund. At present, account standards across the EU are gradually converging but are not yet standardised. In order to address this issue so that uniformity of NAV calculation can be achieved for non-listed real estate funds, INREV has issued guidelines about the calculation of an “INREV NAV”. These are publically available on www.inrev.org. ESMA should clarify what is meant by “NAV” in this context in order to avoid differences across Member States as the proposal could otherwise result in market distortions and lead to regulatory arbitrage.

Box 94**Exposure Related Definitions**

INREV has no comments at this stage on the exposure related definitions.

Box 95**Gross Method of Calculating the Exposure of the AIF**

Please refer to INREV’s answer to Q60 for our views on leverage.

In addition, INREV believes that the term ‘absolute values’ (Box 95 (1)) requires clarification, as it is not clear whether it captures both positive and negative values, and hence whether it captures the full exposure without any netting off.

In addition INREV would point out that some AIF, in common with Private Equity funds, issue loan stock/debt instruments to investors alongside their equity. An example would be a limited partnership where the capital issued would be small but the partners’ loans would be large. INREV requests clarification regarding how this should be treated under the Gross Method and the Commitment Method.

Box 96**Commitment Method of Calculating the Exposure of an AIF**

The situations set out in describing the commitment method do not typically arise in the context of non-listed real estate funds. INREV has no comments at this stage.

Page 203

Box 97

Advanced Method of Calculating the Exposure of an AIF

INREV has no comments at this stage on the Advanced Method of Calculating the Exposure of an AIF.

Page 204

Box 98

Methods of Increasing the Exposure of an AIF

INREV has no comment at this stage on the Methods of Increasing the Exposure of an AIF.

Page 207

Box 99

Exposures involving third party legal structures

See answer to Question 59.

Q55

ESMA has set out a list of methods by which an AIF may increase its exposure. Are there any additional methods which should be included?

INREV does not have any additional suggestions of methods by which an AIF may increase its exposure.

Q56

ESMA has aimed to set out a robust framework for the calculation of exposure while allowing flexibility to take account of the wide variety of AIFs. Should any additional specificities be included within the Advanced Method to assist in its application?

INREV does not have any additional suggestions of specifics to be included in the Advanced Method of Calculating the Exposure of an AIF to assist in its application.

Q57

Is further clarification needed in relation to the treatment of contingent liabilities or credit based instruments?

As noted by INREV in Box 93, NAV is dependent on the accounting principles (GAAP or IFRS) applied by the fund. This would affect calculation of contingent liabilities and the results would therefore vary in different Member States.

Q58

Do you agree that when an AIFM calculates the exposure according to the gross method as described in Box 95, cash and cash-equivalent positions which provide a return at the risk-free rate and are held in the base currency of the AIF should be excluded?

INREV agrees that when an AIFM calculates the exposure according to the gross method as described in Box 95, cash and cash-equivalent positions that provide a return at the risk-free rate and are held in the base currency of the AIF should be excluded.

Q59

Which of the three options in Box 99 do you prefer? Please provide reasons for your view.

Exposure involving third party legal structures is generally limited to funds below the top fund level. INREV understands that this requirement applies to the top level fund only and not on a consolidated basis through a tired SPV-like fund structure. However, if a look-through approach to leverage calculation is applied, INREV

believes that Option 3 is preferable. Option 3 is more specific and suggests that in general the exposure obtained by investing in ordinary shares, shares of a target company and shares in investment funds will not go beyond the market value of those shares unless the AIF has provided guarantees to entities within that structure. Exposure is therefore limited to the amount of the investment unless recourse in the form of cross-collateralisation of guarantees is included.

Q60

Notwithstanding the wording of recital 78 of the Directive, do you consider that leverage at the level of a third party financial or legal structure controlled by the AIF should always be included in the calculation of the leverage of the AIF?

In non-listed real estate funds, financial and/or legal structures involving other entities controlled by the relevant AIF are common; however, they are not set up specifically to directly or indirectly create leverage at the level of the AIF. Nevertheless, even though it does not appear to be required under the advice given by ESMA, INREV agrees that the leverage reported by the AIF “should represent the extent to which the AIF may be impacted by market risks attributable to its positions,” as stated in paragraph 3 of Box 93. Therefore, leverage at the level of a third party financial or legal structure controlled by the AIF should be included in the calculation of the leverage of the AIF on a consolidated basis where material, particularly in the case of real estate funds which prepare their financial statements on a consolidated basis.

Failing to require the disclosure of such leverage under AIFMD, where material, would ignore a potential source of systemic risk and could lead to market distortions. AIFs that hold assets directly would appear to have higher leverage than AIFs that hold assets indirectly through subsidiary SPV entities; leverage in the latter case would not be reported. Currently, non-listed real estate funds typically report leverage on a consolidated basis, which leads to a clearer and more directly comparable disclosure of risk associated with such leverage.

VII. Possible Implementing Measures on Limits to Leverage or other Restrictions on the Management of AIF

Page 211

Box 100

Principles specifying the circumstances under which competent authorities will exercise the powers to impose leverage limits or other restrictions on AIFM

INREV does not support adoption of limits on leverage. However, if such limits are adopted, INREV believes that limits on leverage for different varieties of funds should be consistent within the EU and not left to the discretion of the national regulators. Consistency in such limits between Member States would reduce systemic risk and regulatory arbitrage likely to arise in the search for higher leverage limits in some countries.

Q61

Do you agree with ESMA’s advice on the circumstances and criteria to guide competent authorities in undertaking an assessment of the extent to which they should impose limits to the leverage than an AIFM may employ or other restrictions on the management of AIF to ensure the stability and integrity of the financial system? If not, what additional circumstances and criteria should be considered and what should be the timing of such measures? Please provide reasons for your view.

See comment to Box 100.

Q62

What additional factors should be taken into account in determining the timing of measures to limit leverage or other restrictions on the management of AIF before these are employed by competent

authorities?

See comment to Box 100.

VIII. Transparency Requirements

VIII.I. Possible Implementing Measures on Annual Reporting

Page 218

Box 101

Annual Report Definitions

For the purpose of defining the term “material” under Article 22(2) (a) & (b), INREV believes that reference should be made to the practitioner’s Framework for the Preparation and Presentation of Financial Statements, approved by the IASC in 1989 and adopted by the IASB in 2001.

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Box 102

General Principles for the Annual Report

INREV welcomes ESMA’s proposal to effectively apply relevant accounting standards and the accounting rules set out in the AIF rules or instruments of incorporation rather than seeking to introduce new rules.

Page 220

Box 103

Reporting Material Changes for the Annual Report

We agree with the approach. Many of these items have long been embodied in the principles and recommendations of the INREV Guidelines (available at www.inrev.org). We do not believe that it will cause issues for particular GAAPs.

It is our understanding, however, that material changes and how they have been addressed and communicated to investors could be summarised in the report if they were communicated earlier in another form or forum.

Page 221

Box 104

Primary Financial Statements required under Article 22 (2) (a) and (b) of Directive 2011/61/EU

INREV believes that the advice presented by ESMA does not pose specific difficulties for non-listed real estate fund managers, as the text is widely drawn and does not conflict with the INREV Guidelines.

Page 225

Box 105

Content and Format of the Report on Activities for the Financial Year

Based on our understanding that the information must be disclosed annually, and that there is no obligation to disclose the information more often, unless the accounting standards of the AIF account rules provide otherwise, INREV has no further comments at this stage.

Page 226

Box 106

Content and Format of Remuneration Disclosure

Subject to our comments in Q64, INREV agrees with ESMA’s proposed approach of disclosing remuneration information on the AIFM’s staff in the annual report of either the AIFM or the AIF.

Q63

Do you agree with the approach in relation to the format and content of the financial statements and the annual report? Will this cause issues for particular GAAPs?

INREV does not see specific problems with the format and content of the financial statements and the annual

report. Whilst the wording seeks to bring some definitions to assets and liabilities to be included in the balance sheet and income and expenditure to be included in the income and expenditure account, each of the primary statements also includes a section in paragraphs 2 and 8 respectively to allow for line items and presentation to be adapted to bring it into line with local GAAP and local legislation.

Q64

In general, do you agree with the approach presented by ESMA in relation to remuneration? Will this cause issues for any particular types of AIF and how much cost is it likely to add to the annual report process?

Whereas the requirements in paragraphs 1, 2 and 3 require a breakdown by AIFs, we understand that paragraph 4 of Box 106 requires an AIFM to disclose only aggregate amounts of remuneration and provide a breakdown by senior management, but that it is not required to assign it to the specific funds it manages.

In this context INREV would like to point out that the disclosure of total remuneration in relation to staff involved in the operations of the AIF is nearly impossible in the case of at least larger non-listed real estate funds because fund managers generally do not split out their time spent on the various funds they manage. Requiring managers of non-listed real estate funds to provide a breakdown of remuneration according to each fund it manages would be impracticable because typically senior investment professionals in larger AIFMs support a number of different AIFs, which makes allocation difficult and, in any case, only an estimate.

Subject to our understanding of the above and given that the AIFM has a choice in relation to the disclosure requirements under Articles 22(2) (e) and (f) insofar as it can decide whether to include the information in the AIFM or AIF's annual report, and although disclosure of remuneration is not standard practice in the non-listed real estate funds industry, we agree with the approach and do not believe that it will cause particular issues for non-listed real estate funds and their managers.

We note, however, that the proposed approach does not include co-investments of individuals, which in some circumstances can be a form of remuneration (e.g. with sponsored loans). This form of remuneration can involve (partly) recourse loans which impose a risk on the individual and consequently could influence the risk profile of the AIF.

In addition INREV would like to highlight that under no circumstances should the information provided be made publicly available.

VIII.II Possible Implementing Measures on Disclosure to Investors

Page 229

Box 107

Periodic Disclosure to Investors

Percentage of Assets Subject to Special Arrangements

Special arrangements are very rare in non-listed real estate funds and ESMA's advice does not appear to raise specific concerns for INREV's membership.

New arrangements for managing the liquidity of the AIF

ESMA's advice is in line with current market practices. INREV has no further comments at this stage.

Risk Profile of the AIF

INREV notes that it is business practice for fund managers to disclose the AIFM's risk management policies, procedures, tools and techniques. It is equally common practice to disclose material changes in risk to which the AIF is exposed either through investor communication such as written correspondence or conference calls, investor committee meetings, or investor reporting.

INREV believes that Option 1 is preferable. Option 1 provides more flexibility and, in particular, it would allow the market to develop best practice in relation to the disclosure. INREV welcomes ESMA's proposal to allow managers to make a self-assessment of the risk profile, rather than providing prescriptive guidelines.

Risk management systems employed by the AIF

The disclosure requirements in relation to risk management systems reflect common practice in the non-listed real estate funds industry and should therefore not pose significant issues for the industry. INREV has no further comments at this stage.

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Box 108

Regular Disclosure to Investors

INREV has no comments at this stage.

Q65

Does ESMA's proposed approach in relation to the disclosure of 1) new arrangements for managing liquidity and 2) the risk profile impose additional liability obligations on the AIFM?

INREV believes that ESMA's proposal does not fundamentally change what is already best practice for non-listed real estate funds.

Q66

Do you agree with ESMA's proposed definition of special arrangements? What would this not capture?

These types of special arrangements are very uncommon in non-listed real estate funds, so INREV does not take a position on the proposed definition. In general, however, the definition should capture arrangements that "negatively impact the risk/return profile of other investors in the fund".

Q67

Which option for periodic disclosure of risk profile under Box 107 do you support? Please provide reasons for your view.

As noted above, INREV is in favour of Option 1 proposed by ESMA as it would allow for more flexibility and allow the market to develop and adopt a "best practice" approach.

Q68

Do you think ESMA should be more specific on the how the risk management system should be disclosed to investors? If yes, please provide suggestions.

INREV does not believe that ESMA should provide more specific requirements on how risk management systems should be disclosed to investors. INREV welcomes ESMA's approach to provide high level guidance, as the disclosure of the above information is already common practice in the real estate fund industry.

VIII.III. Possible Implementing Measures on Reporting to Competent Authorities

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Box 109

Format and Content of Reporting to Competent Authorities

INREV notes that some of the provisions of Box 109 do not typically apply to non-listed real estate funds, notably 1 (a) and (b), as those funds generally do not trade in financial instruments.

Therefore, INREV believes that quarterly reporting for closed end real estate funds which do not trade and which hold their investments long term according to their investment strategy is considered unnecessary to achieve the objectives of the AIFMD. Instead it is suggested that the frequency of the reporting obligation is phrased in a

more flexible way so that funds that do not typically trade in accordance with their investment strategy should be obliged to report annually only. INREV recognises the desire for standardisation of the reporting process, including the frequency of reporting, but believes that greater flexibility would better reflect the diverse range of funds covered by the AIFMD and should not increase the level of risk. For further comments, see Q69 below.

Clarification is sought in relation to the scope of 1 (b). Paragraph 1 requires disclosure of activities at the AIF level. However, the first half sentence of 1 (b) seems to be asking for information on the geographical focus of the AIFM – it is unclear who “it” is in this part of the sentence. Only the AIFM can obtain a passport. The second half sentence of 1 (b) then seems to be directed again at the AIF. INREV does not believe that the geographical focus of the AIFM is relevant in a report for the AIF it manages.

For specific comments regarding the frequency of disclosure under Article 2, please see our answer to Question 71.

In general, INREV does not have specific concerns about the provisions of Article 3, as most of the provisions are already common practice in our industry. However, we have serious concerns about the requirement under Article 3 (d) (ii). This information, in particular regarding the terms of financing provided by counterparties, is confidential. From a non-listed real estate fund perspective, it would only be possible to disclose very basic information on such terms. We consider it therefore essential that clear guidance be provided as to what level of detail the industry would be requested to disclose.

For comments regarding item 4, please see answer to Question 69.

INREV has no comments at this stage on Paragraphs 5, 6, 7 and 8.

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Box 110

Use of Leverage on a ‘Substantial Basis’

INREV agrees with ESMA’s suggestion to use a self-assessment approach and has no further comments at this stage.

Q69

Do you agree with the proposed frequency of disclosure? If not, please provide alternative suggestions.

INREV believes that more flexibility should be provided regarding the frequency of disclosure. When determining the frequency of disclosure INREV believes that the specifics of the fund in question should be taken into account: the stage in which the fund is currently at, its investment strategy and liquidity of the fund. The requirement to report on a quarterly basis for a closed end fund for instance may be impractical and would not add any value nor reduce risk.

Q70

What costs do you expect completion of the reporting template to incur, both initially and on an ongoing basis? Please provide a detailed analysis of cost and other implications for different sizes and types of fund.

The envisaged reporting requirements to national supervisors are new to most managers in Europe. They would trigger one-off costs, additional operational costs as well as an increase in the administrative burden. Further estimates can be found in the Business Impact Analysis.

Q71

Do you agree with the proposed reporting deadline i.e. information to be provided to the competent authorities one month after the end of the reporting period?

It is not practical, and in some cases may be impossible, for non-listed real estate funds to comply with the 30

day deadline. For those non-listed real estate funds that do report on a quarterly basis, the final report is also the fund's annual report. Annual reports must be audited. It would be impossible for these funds as well as all those funds that prepare quarterly reports to comply with the 30 day deadline for the final report. The minimum time required should be 90 and in some cases 120 days. However, instead of prescribing a specific timeline, INREV suggests that for non-listed real estate funds the reporting deadline should be aligned with the AIF's accounting rules and accounting standards.

INREV further notes that while the 30 days deadline might be achievable for the first three quarterly reports, we would favour an extended period to reduce the burden on fund managers. INREV believes that in line with the approach taken by ESMA to the AIFM's reporting obligations in general, the reporting deadline should be adaptable and take into account the AIF's accounting rules on reporting, if different from the above.

Q72

Does ESMA's proposed advice in relation to the assessment of whether leverage is employed on a substantial basis provide sufficient clarity to AIFMs to enable them to prepare such an assessment?

INREV has no comments at this stage.

INREV BUSINESS IMPACT ANALYSIS

General remarks:

- The findings below are based on company internal interviews with relevant experts based on INREV's understanding of the AIFMD requirements.
- Different approaches by fund managers have led, after the methodologies have been reconciled, to very similar results.
- Fund managers have independently identified the same items that would trigger material costs.
- The figures derived in the Business Impact Analysis are based on an assumption of a non-listed real estate fund with an average size (GAV) of EUR 500mln, and with an average leverage of 50%. For estimating corporate-level costs, a fund manager with 10 funds under management was assumed. This means that corporate costs were allocated over 10 funds. Consequently, the business impact might be considerably higher for those managers that have only three funds to cover for these corporate costs or, by contrast, 20 funds might incur lower one off costs due to economies of scale.
- The findings below should not be interpreted as representative for the entire non-listed real estate funds industry in Europe. Different fund structures, different existing national regulations and different practices make it impossible to develop a single representative figure for our industry. In general those countries already highly regulated will experience lower costs than those figures identified below.
- Given that fund management fees in the industry are on average 60 bps, the estimated business impact is material for the operating profit of investment managers.

REGISTRATION**Assumption: cost at corporate level, 1 overall license (EU passport)**

Box 3	One off / Set up Cost	Annual / Recurring Cost	Comment
Employee costs	EUR 400,000 initial cost	EUR 60,000	Authorisation will cost EUR 200,000 the first time and then EUR 20,000 per fund. This leads to EUR 200,000 + EUR 20,000 *10 funds = EUR 400,000 initial cost * EUR 60,000 yearly costs (assumed: average of 3 fund launches a year)
Advisory costs	EUR 200,000	N/A	
ICT costs	N/A	N/A	
Legal costs	N/A	N/A	
Auditing-review-monitoring costs	N/A	N/A	
TOTALS	1 bp	0.1 bp	

GENERAL OPERATING CONDITIONS – OWN FUNDS OR PROFESSIONAL INDEMNITY INSURANCE & LUMP SUM FOR ALL SMALLER ADJUSTMENTS**Assumption: own funds at corporate level**

Box 6 -9	One off / Set up Cost	Annual / Recurring Cost	Comment
Overall costs	EUR 500,000 (lump sum) 1 bp	EUR 100,000 0.2 bp	Lump sum: in general it seems that the operational requirements codify existing institutional practice and will not impact our business operations fundamentally. Still, a lump sum of EUR 500,000 as one-off cost seems justified in terms of some costs to be made in archiving and documenting for 5 years, internet sites to investors, validation of valuation models, adaptation of asset and fund management software etc.
ICT costs	N/A	N/A	
Legal costs	N/A	N/A	
Auditing-review-monitoring costs	N/A	N/A	
Additional capital	N/A	0.3 bp	Capital requirements will cost 2bp (above EUR 250mln) * internal return requirements of 15% = 0.3 bp
TOTALS	1 bp	0.5 bp	

RISK MANAGEMENT – PERMANENT RISK MANAGEMENT FUNCTION

Assumption: risk management at corporate level

Box 25-30	One off / Set up Cost	Annual / Recurring Cost	Comment
Employee costs		EUR 720,000 (3 additional fte)	Risk Management requirements will cost 3 additional fte (we assume that (a) these colleagues shall also work on stress tests and reporting requirements and that (b) the costs for upgrading our processes are covered under our cost assumptions for setting up a working relationship with the Depositary): EUR 450,000/year
ICT costs			
Legal costs			
Auditing-review-monitoring costs			
TOTALS		1.5 bp	

DELEGATION**Assumption: applicable to top level fund only**

Box 64 sub 1d	One off / Set up Cost	Annual / Recurring Cost	Comment
Employee costs		EUR 300,000	We assume that delegation requirements lead to increasing bureaucratisation of outsourcing-controlling. We assume that this costs 2 fte on a yearly basis equalling EUR 300,000. We thus do not take into account that our outsourcing-partners also have additional costs based on e.g. review of their processes, ICT, audits etc., and might push these costs back to the investment manager.
ICT costs			
Legal costs			
Auditing-review- monitoring costs			
TOTALS		0.5 bp	

SECURITISATION**[Difficult to quantify cost impact of securitisation]**

Box 35	One off / Set up Cost	Annual / Recurring Cost	Comment
Employee costs			We require clarification whether real estate loan funds would fall under the 5% economic interest requirement. We assume this is not the case as it would be asymmetrical compared to the equity funds. If there were included, however, the cost would be for 1bn in loan funds *5% *15% = EUR 7.5mln (minus return on investment)
ICT costs			
Legal costs			
Auditing-review- monitoring costs			
TOTALS			

GENERAL REMARKS ON DEPOSITARIES AND LEVERAGE

Art 21	Soft cost
Product level impact AIF	Higher costs for fund manager and client mean lower returns Push for standardisation
Business strategy impact AIFM	Push for bureaucracy and administration Push for core fund and core managers Consolidation of the industry and fall-out of smaller players Service platforms / Substance to share costs like in Master KAG's or Master OPCI's
European Industry impact AIFMD	Questionable whether the requirements will actually decrease risk levels or whether it will lead to legal engineering Politicisation of industry, with much more time being required from senior managers to deal with legislators

DEPOSITARIES – APPLICABLE TO TOP LEVEL FUND ONLY

Cost elements: contract depositary, depositary fee, reviewing processes, audits, oversight, cash flow monitoring.

Assumption: cost per fund with an average size (GAV) of EUR 500mln, with an average leverage of 50%.

Art 21 (2)	One off / Set up Costs	Annual / Recurring Costs	Remarks
Employee costs	1/12 fte = EUR 20,000 (setting up the standard contract with depositary)	1/12 fte = EUR 20,000	Yearly: Workshop + execution Discuss operations with the depot bank One off reports to be defined, viewing rights
ICT costs	EUR 25,000 Adapting IT systems and interfaces	EUR 5,000 EUR 10,000 (min.)	Virtual data room ownership docs (for verification) XPRL-standard. Depending on data exchange and frequency. Interface with Depositary
Advisor costs	EUR 30,000	N/A	
Legal costs	EUR 10,000 (legal set up cost contract with depositary)	EUR 25,000	= verification of all legal titles (includes also employee cost) NB1: set up and recurring costs would be much higher in multi-country structures NB2: Option 1 of Box 81
Auditing / review / monitoring costs	N/A	EUR 10,000-20,000	Ex-Post monitoring via e.g. In Control statements
Fee payable to depositary	EUR 50,000	EUR 75,000-125,000	Annual: liability insurance + basis fee Assumption 1.5-2.5 bp
TOTALS	EUR 135,000 = 2.5bp	EUR 145,000-205,000 = 3 bp – 4 bp	

DEPOSITARIES – APPLICABLE TO THE WHOLE FUND STRUCTURE

Cost elements: contract depositary, depositary fee, reviewing processes, audits, oversight, cash flow monitoring.

Assumption: cost per fund with an average size (GAV) of EUR 500mln, with an average leverage of 50%.

Art 21 (2)	One off / Set up Cost	Annual / Recurring Cost	Comment
Employee costs	2/12 fte = EUR 40,000 (setting up the standard contract with depositary)	2/12 fte = EUR 40,000	Yearly: Workshop + execution Discuss operations with the depot bank One off reports to be defined, viewing rights
ICT costs	EUR 25,000 Adapting IT systems and interfaces	EUR 5,000 EUR 10,000 (min.)	Virtual data room ownership docs (for verification) XPRL-standard. Depending on data exchange and frequency. Interface with Depositary
Advisors cost	EUR 50,000	N/A	
Legal costs	EUR 10,000 (legal set up cost contract with depositary)	EUR 25,000	= verification of all legal titles (includes also employee cost) NB1: set up and recurring costs would be much higher in multi-country structures NB2: Option 1 of Box 81
Auditing-review-monitoring costs	N/A	EUR 40,000	Ex-Post monitoring via e.g. In control statements
Fee payable to depositary	EUR 75,000	EUR 75,000 – 125,000	Annual: liability insurance + basis fee Assumption 1.5 - 2.5 bp
TOTALS	EUR 200,000 = 4 bp	EUR 195,000 – 245,000 = 4 bp-5 bp	

LEVERAGE

3 methods, communication to investors and supervisor every quarter, documentation and archiving, valuation 1 year

Assumption: cost at fund level

Art 21 (2)	One off / Set up Cost	Annual / Recurring Cost	Comment
Employee costs	1/24 fte - 1/12 fte = EUR 10,000 - 20,000	4Q x 1-2days = EUR 5,000 - 10,000	We assume a backward looking model only. A forward looking model would be much more complex and imply significantly more costs.
ICT costs	N/A	N/A	Via standard reporting (hard copy)
Legal costs	N/A	N/A	
Auditing-review-monitoring costs	N/A	N/A	
Fee payable to depositary	N/A	N/A	
TOTALS	0.2 bp-0.4 bp	0.1bp-0.2 bp	

TRANSPARENCY – (ANNUAL) REPORTING AND DISCLOSURES**Assumption: cost at corporate level**

Box 102-106	One off / Set up Cost	Annual / Recurring Cost	Comment
Employee costs	3/12 FTE = EUR 60,000	EUR 40,000	“Disclosures” will require 6 man/days a year: EUR 83 *8 hours/day*6 days* 10 funds equals= EUR 39,840 per year; additionally it will ask senior management attention to build relationships with regulators which one could qualify as a soft cost/expansion of required scope and skill (see under soft costs)
ICT costs	N/A	N/A	
Legal costs	N/A	N/A	
Lump sum	N/A	N/A	
TOTALS	0.15 bp	0.1 bp	Economy of scale

SUMMARY of 'BUSINESS IMPACT ANALYSIS' AIFM**Cost in % over AuM and effect on investor returns**

	Set up cost TOP LEVEL	Set up cost WHOLE STR	Annual Cost TOP LEVEL	Annual Cost WHOLE STR
DEPOSITARIES – TOP LEVEL	2.5 bp	-	3-4 bp	-
DEPOSITARIES – WHOLE STRUCTURE	-	4 bp	-	4-5 bp
LEVERAGE	0.2-0.4 bp	0.2-0.4 bp	0.1-0.2 bp	0.1-0.2 bp
REGISTRATION	1 bp	1 bp	0.1 bp	0.1 bp
REPORTING & DISCLOSURES	0.15 bp	0.15 bp	0.1 bp	0.1 bp
REGISTRATION	1 bp	1 bp	0.1 bp	0.1 bp
RISK MANAGEMENT & COMPLIANCE	-	-	1.5 bp	1.5 bp
OWN FUNDS or INDEMNITY INSURANCE	1 bp	1 bp	0.5 bp	0.5 bp
DELEGATION	-	-	0.5 bp	0.5 bp
PM: SECURITISATION	-	-	-	-
TOTALS in % over AuM (GAV)	6 bp	7.5 bp	6-7 bp	7-8 bp
TOTAL effect on return (50% LTV)	-/- 12 bp	-/- 15 bp	-/- 12-14 bp	-/- 14-16 bp

List of INREV members

Institutional investors

Member	Country of registration
Anthos Asset Management	The Netherlands
APG Asset Management	The Netherlands
Blue Sky Group (KLM)	The Netherlands
BNP Paribas Investment Partners	The Netherlands
Bouwinvest	The Netherlands
Doctors Pension Funds	The Netherlands
Grontmij Capital Consultants B.V.	The Netherlands
ING Insurance Benelux	The Netherlands
Mn Services Vermogensbeheer	The Netherlands
Pensioenfonds Stork	The Netherlands
PGGM N.V.	The Netherlands
Shell Asset Management co	The Netherlands
SPF Beheer B.V.	The Netherlands
Stichting Pensioenfonds Unilever Nederland "Progress"	The Netherlands
Stichting Pensioenfonds van de Koninklijke Nedlloyd	The Netherlands
Stichting Pensioenfonds voor de Grafische Bedrijven	The Netherlands
Stichting Philips Pensioenfonds	The Netherlands
Allianz Real Estate GmbH	Germany
AM alpha GmbH	Germany
ampegaGerling	Germany
Ärzteversorgung Niedersachsen	Germany
E.ON AG	Germany
Generali Deutschland Immobilien GmbH	Germany
Gothaer Asset Management AG	Germany
MEAG Munich ERGO Asset Management	Germany
Nordrheinische Ärzteversorgung	Germany
R+V Lebensversicherung	Germany
VersAM Versicherungs Asset Management	Germany
Versicherungskammer Bayern	Germany
Ilmarinen Mutual Pension Insurance Company	Finland
Pension Fennia	Finland
Tapiola Real Estate Ltd.	Finland
The Local Government Pensions Institution	Finland
The State Pension Fund	Finland
ATP Real Estate	Denmark
Industriens Pensionsforsikring A/S	Denmark
Kommunernes Pensionsforsikring	Denmark
Realdania	Denmark
Mitsui Fudosan UK Ltd	United Kingdom

QIC	United Kingdom
The Church Commissioners for England	United Kingdom
The Crown Estate	United Kingdom
Abu Dhabi Investment Authority	Arab Emirates (Unit.)
Abu Dhabi Investment Council	Arab Emirates (Unit.)
Caisse des Dépôts et Consignations	France
Caisse des Dépôts-Fonds d'Epargne	France
Storebrand Eiendom	Norway
Vital Eiendom AS	Norway
AP4	Sweden
Länsförsäkringar AB	Sweden
Tredje AP-fonden	Sweden
Adimmo AG	Switzerland
Pensimo Management	Switzerland
GIC Real Estate	Singapore
CPP Investment Board	Canada
National Treasury Management Agency	Ireland
NLI International INC.	USA

Fund of Funds managers

Member	Country of registration
Franklin Templeton Real Estate Advisors	USA
Russell Investment Group	USA
Morgan Stanley Investment Management	USA
Clerestory Capital Partners	USA
Mesirow Financial Institutional Real Estate	USA
Syntrus Achmea Vastgoed	The Netherlands
Composition Capital Partners	The Netherlands
ING Real Estate Select	The Netherlands
TKP Pensioen Real Estate Fonds	The Netherlands
Sal. Oppenheim jr. & Cie. Corporate Finance (Schweiz) AG	Switzerland
4IP Management AG	Switzerland
Stauffenberg Capital	United Kingdom
Aviva Investors Real Estate Multi Manager (REMM)	United Kingdom
Sparinvest Property Investors A/S	Denmark
CB Richard Ellis Investors	France
Nomura Real Estate	Japan
Aberdeen Asset Management	Sweden

Fund Managers

Member	Country of registration
AREA Property Partners	United Kingdom
BlackRock	United Kingdom
Cambridge Place Limited	United Kingdom
Canada Life Limited	United Kingdom
Brookfield Asset Management	United Kingdom
Cordea Savills	United Kingdom
Cushman & Wakefield Investors	United Kingdom
DTZ	United Kingdom
Europa Capital	United Kingdom
F&C REIT Asset Management	United Kingdom
FIL Investments International	United Kingdom
Heitman Real Estate Investment Management	United Kingdom
Hermes Real Estate Investment Management Limited	United Kingdom
Hines	United Kingdom
INVESCO Real Estate Europe	United Kingdom
JER Partners	United Kingdom
JP Morgan	United Kingdom
Lothbury Investment Management Ltd	United Kingdom
LaSalle Investment Management	United Kingdom
Lend Lease Investment Management	United Kingdom
M3 Capital Partners	United Kingdom
MGPA	United Kingdom
Aviva Investors Global Services Ltd	United Kingdom
Pradera Europe	United Kingdom
Pramerica Real Estate Investors	United Kingdom
Cornerstone Real Estate Advisers	United Kingdom
PRUPIM (Prudential Property Investment Managers Ltd.)	United Kingdom
Rockspring Property Investment Managers LLP	United Kingdom
Schroders Property Investment Management	United Kingdom
Scottish Widows Investment Partnership	United Kingdom
Standard Life Investments Limited	United Kingdom
Valad Property Group	United Kingdom
The Blackstone Group International Partners LLP	United Kingdom
Tishman Speyer Properties	United Kingdom
UBS Global Asset Management	United Kingdom
AEGON Asset Management	United Kingdom
Catalyst Capital LLP	United Kingdom
Doughty Hanson & Co Real Estate Partnership Incorporations Limited	United Kingdom
Unite UK student Accommodation Fund	United Kingdom
AERIUM	United Kingdom

Internos Real Investors	United Kingdom
Palatium Investment Management Limited	United Kingdom
Perella Weinberg Real Estate Fund I LP	United Kingdom
Meyer Bergman Europe Retail Partners	United Kingdom
Capita Financial Group	United Kingdom
Threadneedle Property Investments Limited	United Kingdom
Natixis Capital Partners Limited	United Kingdom
Legal & General Property	United Kingdom
Palmer Capital Partners	United Kingdom
Tristan Capital Partners	United Kingdom
Frogmore Real Estate Partners Investment Managers Limited	United Kingdom
NEP Partners	United Kingdom
Cedar Capital Partners	United Kingdom
Mare Nostrum Capital Partners (Drago)	United Kingdom
Harbert Management Corporation (Europe) LLC	United Kingdom
Fortress Investment Group (UK) Ltd.	United Kingdom
British Land	United Kingdom
Cadena Group Ltd.	United Kingdom
First Property Asset Management Ltd	United Kingdom
AllianceBernstein	United Kingdom
Orchard Street Investment Management	United Kingdom
Hunter Property Fund Management	United Kingdom
Stenham Property Finance Limited	United Kingdom
Rynda Property Investors	United Kingdom
Duet Group	United Kingdom
Garbe Logistics AG	Germany
Commerz Real AG	Germany
Deka Immobilien Investment GmbH	Germany
RREEF	Germany
Henderson Global Investors Ltd.	Germany
IVG Funds	Germany
Morgan Stanley	Germany
PATRIZIA Immobilien AG	Germany
SEB Asset Management	Germany
Union Investment Real Estate GmbH	Germany
Warburg-Henderson	Germany
iii-investments	Germany
GLL Real Estate Partners GmbH	Germany
Quantum Immobilien AG	Germany
HAHN Fonds Management GmbH	Germany
SIGNA-RECAP Germany AG	Germany
Metzler Real Estate GmbH	Germany
Feldberg Capital GmbH	Germany
Jamestown US - Immobilien GmbH	Germany

Capital Dynamics GmbH	Germany
Art-Invest Real Estate	Germany
BEOS GmbH	Germany
Real I.S. AG - Gesellschaft für Immobilien Asset Management	Germany
MPC Muenchmeyer Petersen Real Estate Consulting GmbH	Germany
KGAL GmbH & Co. KG	Germany
ASR Real Estate Investment Management	The Netherlands
Altera Vastgoed N.V.	The Netherlands
Amvest	The Netherlands
Archstone B.V.	The Netherlands
Bouwfonds Real Estate Investment Management (REIM)	The Netherlands
Delta Lloyd Vastgoed	The Netherlands
Equity Estate	The Netherlands
Eurindustrial N.V.	The Netherlands
Goodman	The Netherlands
ING Real Estate Investment Management	The Netherlands
NIBC	The Netherlands
Prologis	The Netherlands
Q-Park	The Netherlands
REDEVCO B.V.	The Netherlands
The IBUS Company	The Netherlands
Vasloc Beheer	The Netherlands
Vesteda Groep	The Netherlands
Breevast B.V.	The Netherlands
Westmont Services BV	The Netherlands
OVG Real Estate	The Netherlands
Prologis	USA
Forum Partners Limited	USA
Starwood Capital Group	USA
EII (European Investors Inc)	USA
Landmark Partners	USA
Paramount Group INC	USA
GTIS Partners	USA
Apollo Global Real Estate Management	USA
Beacon Capital Partners	USA
MacFarlane Partners	USA
Sentinel Real Estate Corporation	USA
IDI- Industrial Developments International	USA
Rockwood Capital, LCC	USA
Rockpoint Group, LLC	USA
Morgan Stanley Real Estate Investing (MSREI)	USA
Rockefeller Group Investment Management, Corp.	USA
TIAA-CREF Asset Management	USA
Westplan Investors	USA

AXA Real Estate	France
Colony Capital Group	France
GE Real Estate Investment Management	France
Grosvenor Fund Management	France
AEW Europe LLP	France
OFI REIM	France
Orion Capital Managers	France
STAM Europe	France
Amundi Asset Management	France
UFG REM	France
UFFI REAM	France
Horizon Investment Management	Luxembourg
Orco Property Group - The Endurance Fund	Luxembourg
FREO Investment Management Sarl	Luxembourg
Corpus Sireo Investment Management Sarl	Luxembourg
OROX Capital Investment	Luxembourg
Arminius Funds Management S.à r.l	Luxembourg
IS European Services SARL	Luxembourg
Almacantar	Luxembourg
AltaFund	Luxembourg
BNP Paribas REIM	Italy
Generali Immobiliare Italia SGR SPA	Italy
Prelios S.p.A.	Italy
Zero SGR SPA	Italy
First Atlantic Real Estate SGR Spa	Italy
Fimit SGR- Fondi Immobiliari Italiani	Italy
AREIM AB	Sweden
Sveafastigheter AB	Sweden
Stronghold Invest AB	Sweden
Genesta	Sweden
REG AB	Sweden
Nordic Real Estate Partners	Denmark
Kristensen Properties	Denmark
BPT Asset Management A/S	Denmark
Saxo Properties A/S	Denmark
Capman Real Estate	Finland
Evli Property Investments Ltd	Finland
Pohjola Property Management	Finland
Sponda Plc	Finland
ARCH Capital Management Company Limited	Hong Kong
TAN-EU Capital LLP	Hong Kong
Gaw Capital Advisors Ltd	Hong Kong
Corestate Capital AG	Switzerland
Even Capital SA	Switzerland

Zurich Financial Services	Switzerland
Altan Capital S.G.I.I.C, S.A.	Spain
Neinver S.A.	Spain
INVERSEGUROS GESTIÓN,S.A. S.G.I.I.C. Sociedad Unipersonal	Spain
AIB Investment Managers Ltd	Ireland
IPUT	Ireland
Caixagest	Portugal
Sonae Sierra SGPS	Portugal
Codic Real Estate Asset Management S.A.	Belgium
Northam Realty Advisors Limited	Canada
Bluehouse Capital Advisors	Cyprus
CEE Asset Management sro	Czech Rep.
GILD Property Asset Management	Estonia
Global Finance SA	Greece
Peaksides Capital	Jersey
EPG Global Property Invest Ltd.	Liechtenstein
Realkapital Partners AS	Norway
KREA REAL ESTATE	Turkey

Investment bank

Member

Lazard & Co Limited
 HSBC Global Asset Management (UK) Limited
 Macquarie Capital (Europe) Ltd
 Monument Group
 Greenhill & Co
 ABN AMRO Group N.V.
 ING Real Estate Finance
 Kempen & Co N.V.
 Catella Property Group
 LEIMDÖRFER
 Société Générale
 Selinus Capital GmbH
 Brown Brothers Harriman
 Credit Suisse
 Eastdil Secured

Country of registration

United Kingdom
 United Kingdom
 United Kingdom
 United Kingdom
 United Kingdom
 The Netherlands
 The Netherlands
 The Netherlands
 Sweden
 Sweden
 France
 Germany
 Luxembourg
 Switzerland
 USA

Advisor

Member

Berwin Leighton Paisner LLP
 Clifford Chance LLP
 Colliers International UK plc

Country of registration

United Kingdom
 United Kingdom
 United Kingdom

First Avenue Partners LLP	United Kingdom
Jones Lang LaSalle	United Kingdom
Langham Hall	United Kingdom
Linklaters	United Kingdom
Hogan Lovells	United Kingdom
Nabarro	United Kingdom
State Street Alternative Investment Solutions	United Kingdom
Park Hill Real Estate Group	United Kingdom
PwC	United Kingdom
SJ Berwin LLP	United Kingdom
Mercer	United Kingdom
Towers Watson Limited	United Kingdom
Addleshaw Goddard	United Kingdom
O' Melveny & Meyers LLP	United Kingdom
Savills Capital Advisors Limited	United Kingdom
Cushman & Wakefield Corporate Finance	United Kingdom
Threadmark	United Kingdom
MVision Private Equity Advisers	United Kingdom
Spearhead Capital Partners	United Kingdom
Norton Rose LLP	United Kingdom
CB Richard Ellis	The Netherlands
Citco	The Netherlands
Deloitte	The Netherlands
Ernst & Young	The Netherlands
Houthoff Buruma	The Netherlands
KPMG Europe	The Netherlands
Loyens & Loeff	The Netherlands
NautaDutilh	The Netherlands
CB Richard Ellis EMEA Debt Advisory	The Netherlands
Stibbe	The Netherlands
HIH Hamburgische Immobilien Handlung GmbH	Germany
IMC	Germany
Clifford Chance Partnerschaftsgesellschaft	Germany
CMS	Germany
Scope Analysis GmbH	Germany
Terranus Real Estate GmbH	Germany
Atoz SA	Luxembourg
RBC Dexia Investor Services Bank	Luxembourg
ALTER DOMUS S.à r.l.	Luxembourg
TMF Group	Luxembourg
Arendt & Medernach	Luxembourg
Institutional Real Estate, Inc	USA
Madison International Realty LLC	USA
Presidio Partners LLC	USA

Eaton Partners LLC
The Townsend Group
SCM Strategic Capital Management AG
Palomar Private Equity Limited
Bech-Bruun Law Firm
Gide Loyrette Nouel
Sanne Trust Company Limited
Arctic Capital Partners

USA
USA
Switzerland
Switzerland
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Norway

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University of Reading Business School Whiteknights
University of Cambridge
University of Ulster
Aalto University School of Science and Technology
KTI
RAKLI
CUREM / University of Zurich
EURO Institute of Real Estate Management
Lucerne University of Applied Sciences and Arts
European Business School Real Estate Management Institute
IREBS Immobilienakademie GmbH
AICI
IEIF
ISEG - Instituto Superior de Economia e Gestão
KTH/ Royal Institute of Technology
Amsterdam School of Real Estate
University of Chicago Booth School of Business

Country of registration

United Kingdom
United Kingdom
United Kingdom
United Kingdom
United Kingdom
Finland
Finland
Finland
Switzerland
Switzerland
Switzerland
Germany
Germany
Italy
France
Portugal
Sweden
The Netherlands
USA