
PRESS RELEASE

EPRA welcomes ESMA approach to providing AIFMD regulatory clarity for real estate

Brussels, February 13 – The European Public Real Estate Association (EPRA), has broadly welcomed the approach taken by ESMA in its recent consultation covering key concepts of the Alternative Investment Fund Managers Directive (AIFMD).

In its response to the ESMA consultation paper on the key concepts for the AIFMD, EPRA was particularly supportive of the introduction of the concept that the Directive will not apply to an “*ordinary company with general commercial purpose.*”

EPRA Finance Director Gareth Lewis said in his written submission to ESMA: “In order to have a framework that allows businesses, investors and regulators to make a reasoned assessment of whether they fall within the scope of the AIFMD, without a process whereby decisions are made after the event by regulatory intervention or court action, it is first necessary to have a clear understanding of how ordinary companies (or any forms of ordinary business enterprise), which are not funds, are outside of the AIF definition.”

The AIFMD aims to harmonise the regulation and supervision of managers of vehicles with alternative investment strategies, notably real estate funds, hedge funds and private equity funds, across the European Union, as a response to the global financial crisis. The European Parliament adopted AIFMD in November 2010 and ESMA is consulting on the next phase of its implementation, which is currently scheduled to take effect from July 2013. EPRA’s strong view is that listed property companies and REITs are commercial operating businesses, not funds, and should therefore fall outside of the scope of the AIFMD.

EPRA welcomed the key principles proposed by ESMA as being at the heart of identifying a ‘fund’ for the purposes of the Directive; namely the existence of a “Collective Investment Undertaking” and a “Defined Investment Policy”.

As the body representing European publicly listed real estate companies with EUR 250 billion of assets EPRA did however, raise concerns that national regulators could inadvertently confuse listed property companies and ‘REITs’ with real estate funds – because the underlying business activities of real estate funds are similar to those undertaken by property companies and REITs.

"Listed property companies and REITs differ from real estate funds because they are perpetual businesses and have flexibility in their business strategy. In contrast, funds have a clearly defined fixed investment policy and operate within a specific investment horizon," EPRA’s Lewis said.

According to EPRA's submission, the industry term 'REIT' is misleading because commercial property companies that have this status, which exempts them from paying corporation tax in return for making regular distributions to shareholders, are not ‘investment trusts’ as the terminology implies. In fact they are everyday commercial operating businesses, like

Siemens or Google. REITs engage in the same commercial real estate activities as property companies without REIT status.

Lewis concluded: “An assessment of whether real estate businesses are AIFs, or not, should focus on whether the entity is a collective investment undertaking with a defined investment policy, rather than on its taxation status. The key identifier of a fund is precisely how it behaves in its relationship with an investor – as an intermediary in providing investment exposure to the underlying activity or asset.”

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Note to editors:

About EPRA

The European Public Real Estate Association – is the voice of the publicly traded European real estate sector. With more than 200 active members, EPRA represents over EUR 250 billion of real estate assets and 90% of the market capitalisation of the FTSE EPRA/NAREIT Europe Index. Through the provision of better information to investors, improvement of the general operating environment, encouragement of best practices and the cohesion and strengthening of the industry, EPRA works to encourage greater investment in listed real estate companies in Europe.

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