Review of EU rules on alternative investment fund managers

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Review of EU rules on alternative investment fund managers – call for feedback

INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance, research and information related to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property funds industry across Europe.

INREV currently has approximately 480 members. Our member base includes institutional investors from around the globe including pension funds, insurance companies and sovereign wealth funds, as well as investment banks, fund managers, fund of funds managers and advisors representing all facets of investing into non-listed real estate vehicles in the UK and the rest of Europe. Our fund manager members manage more than 500 non-listed real estate investment funds, as well as joint ventures, club deals and separate accounts for institutional investors.

Statement of principles

INREV welcomes the opportunity to provide feedback on the European Commission's (Commission) Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU ('AIFMD') and 2009/65/EC ('UCITS directive') as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds.

The non-listed real estate investment industry has adapted to the requirements of AIFMD, which is generally working well. INREV therefore supports the Commission's targeted approach in reviewing the existing AIFMD framework. We believe that the current rules should be neither diluted nor unnecessarily augmented without careful consideration of the potential impact on managing non-listed real estate funds.

Detailed explanation of position

In response to the legislative proposal, INREV would like to make the following comments on delegation and loan originating funds which we hope will make a constructive contribution to consideration of and potential modifications to the proposal:

Delegation: INREV supports the fact that delegation has been explicitly recognised as a key contributor to the success of the EU fund and manager labels. Delegation "allows for the efficient management of investment portfolios and for sourcing the necessary expertise in a particular geographic market or asset class".

While there has been a desire among regulators for increased transparency regarding delegation arrangements, we note that there has been increased transparency following the introduction of the new annual notification mechanism from NCAs to ESMA focusing on certain delegations to entities located in third countries. In our view, this should not lead to a situation where ESMA would systematically review delegation arrangements with delegates domiciled in third countries, in a way similar to a proposal related to Article 31a that was considered and rejected in the context of the 2017 ESA review.

Loan originating funds: Experience shows that loan originating funds are an important diversification from sole reliance on bank lending and offer alternative financing options for entities. In INREV's view, the proposed new requirements imposed on loan originating AIFs should be limited and coherent from a business perspective. In particular, product-level regulations are not in the spirit of AIFMD and should be avoided.

Further, although we understand the purpose of the proposed risk retention requirement, which is to address potential moral hazards and promote sound credit underwriting and due diligence practices, we do not support the 5% risk retention and believe there are other less intrusive means to achieve those objectives. We would support a more general prohibition on the originating of loans with the sole purpose of transferring those loans to third parties related to the AIFM, its AIFs and associated SPEs and its clients.

Regarding the proposed 60% threshold, although many loan funds are closed-ended, a considerable percentage of loan funds are open-ended, including loan funds sponsored by government entities as part of their pension system or to finance the economy. There is robust institutional investor appetite for open-end real estate loan origination funds. These evergreen funds are less costly for investors as they do not need to be repeatedly launched and closed and, at the same time, institutional investors are aware of and able to invest in funds adequately address their liquidity management concerns.

This 60% threshold is likely to unnecessarily burden open-ended real estate loan origination funds and we therefore do not support this restriction. If a 60% or other threshold is adopted, we would urge that funds that are already established and operating should be grandfathered form having to comply with this limitation.