

Date: 4 August 2015

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## Subject: INREV response to public consultation on Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories

### **About INREV: the voice of the European non-listed real estate investment industry**

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 375 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 Europe.

### **INREV response to 1.2(b) and 2.3:**

Our response to this consultation relates to the use of OTC derivatives by non-financial firms in the commercial real estate investment sector, primarily interest rate and foreign exchange rate swaps used by non-listed real estate fund managers.

While we do not dispute the need for trade reporting for financial firms, we believe that EMIR has created a disproportionate operational and regulatory burden on non-financial firms that enter into derivative contracts for sound risk management purposes. The level of complexity that has been created by EMIR makes it very difficult for small fund managers to understand and comply with the regulation.

In addition, our fund manager members report that the costs involved in checking trade repository data when the reporting obligation has been delegated and the difficulties of understanding the format of the reported data are significant issues. This is especially true for smaller firms trying to comply with the obligation to ensure the accuracy of the data reported by a party to which the obligation has been delegated.

Given the European Commission's Better Regulation Package, which is aimed at designing EU policies and laws so that they achieve their objectives at minimum cost, INREV believes the Commission should seriously consider introducing single-sided reporting for NFCs, at least. Single-sided reporting would lift this burden from non-financial firms, while still allowing regulators to capture the data from these trades from the reports of the counterparty.

If the Commission decides that single-sided reporting is not appropriate, as an alternative we would propose that the Commission consider providing an exemption to the trade reporting requirements under Article 9 for NFC- firms' trades below the ESMA clearing thresholds.

If neither of the changes proposed above is adopted and the Commission continues to require smaller, less sophisticated firms to reporting as now, the measures listed below should be considered to give such firms a realistic chance of complying with in the Article 9 requirements:

- Trade repository data should be made freely available (via login) so that counterparties can check the accuracy of the data that has been reported on their behalf.
- A panel should review the ease of access to trade repositories (including on-boarding and reviewing trade data) and report on whether they are sufficient for smaller NFC- clients.
- Trade repositories should offer simplified position reports so that all firms can easily reconcile the details held at the repository with their own records.

(Relating only to INREV response to 2.3) Many or even most NFC- firms in our industry that use OTC derivatives for hedging purposes delegate their trade reporting to their counterparty (the bank). However, banks rarely make the data submitted available to their clients and ongoing portfolio reconciliations do not include trade repository data. Under Article 9, of course these NFC- firms remain liable for the accuracy of this data, regardless of any delegated trade reporting agreements they may have entered into. This means that these firms still need to register and 'on-board' with the nominated trade repository to get access to the data and be compliant with Article 9.

However, we understand that very few actually do this because of the cost and complexity involved. Many struggle with the application form required to request a LEI and the application forms to on-board with a trade repository. Furthermore, when access to the data is obtained, it is not presented in a form that is easily understandable for most NFC- firms.

Against this backdrop of complexity and cost, we believe the Commission should consider the insignificant level of systemic risk caused by small, retail firms (as per the definition under MiFID) conducting derivative transactions that are linked to commercial activity or treasury financing.