<table>
<tr><td colspan="2">Comments Template on
Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation</td><td>Deadline
31 August 2017
23:59 CET</td></tr>
<tr><td>Name of Company:</td><td colspan="2">EPRA - European Public Real Estate Association</td></tr>
<tr><td>Disclosure of comments:</td><td>Please indicate if your comments should be treated as confidential:</td><td>Public</td></tr>
<tr><td></td><td colspan="2">Please follow the following instructions for filling in the template:
⇨ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool
⇨ Leave the last column empty.
⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty.
⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.
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The numbering of the reference refers to the sections of the consultation paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation. Please indicate to which paragraph(s) your comment refers to.</td></tr>
<tr><td>Reference</td><td colspan="2">Comment</td></tr>
<tr><td>General Comment</td><td>About EPRA
EPRA, the European Public Real Estate Association, is the voice of the publicly traded European real estate sector. With more than 240 members, covering the whole spectrum of the listed real estate industry, EPRA represents listed property companies, Real Estate Investment Trusts (REITs), investment institutions and the firms and individuals who advise and service those businesses. Between them our European members represent over EUR 430 billion of real estate assets and 86% of the market capitalisation of the FTSE EPRA/NAREIT Europe Index.</td><td></td></tr>
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Our core membership consists of listed property investment companies (including REITs) who are in the business of owning and operating portfolios of investment property. As a consequence, our further comments will be limited to the Solvency II treatment of investments in listed real estate.

The Index Ground Rules – last updated in July 2017 – are available at http://www.epra.com/media/FTSE_EPRA_NAREIT_Global_Real_Estate_Index_Series_-_Ground_Rules_v7_1500884129701.8.pdf. **Relevant real estate activities** are defined as the ownership, trading and development of income-producing real estate. **Real estate companies** must be listed on an official stock exchange listed in Appendix 6 of the Index Ground Rules. At the same time, the Index requires constituents to derive **at least 75 percent** of their total earnings before interest, tax, depreciation and amortisation (EBITDA) **from relevant real estate activities** to qualify for index includion, and therefore this index series provides purer real estate exposure. To add more on the activities of our members, we also list below what is not considered to be relevant real estate activity for the purposes of the index eligibility under point 4.7 of the Index Ground Rules (at p. 10):

- The financing of real estate.
- The provision of construction management, general contracting and project management services.
- The provision of property management, facilities management, insurance, power supply, brokerage, investment management funds and services.
- Holding companies are excluded from the index. Holding companies are defined as companies that have more than 50 percent of their net assets invested in the securities of other listed companies.
- Storage caverns/units for commodities such as oil & gas.
- Companies for which the ownership of real property is incidental to the primary revenue generating activities, including those companies in the gaming, theme park and other entertainment businesses.
- Infrastructure assets, including transportation assets (roads, bridges, tunnels, airports, etc.), energy and utilities assets (power generation, fuels, etc.), water and waste management assets and communication assets (line-based

networks, air-based networks, etc.) and prisons.

- Timberland and farmland.
- Outdoor advertising.
- Data center revenues labelled colocation will be considered real estate revenues for the purpose of the EBITDA screen only if the information is provided in sufficient detail to ensure that revenues from ineligible activities are not included.

About the publicly listed property companies

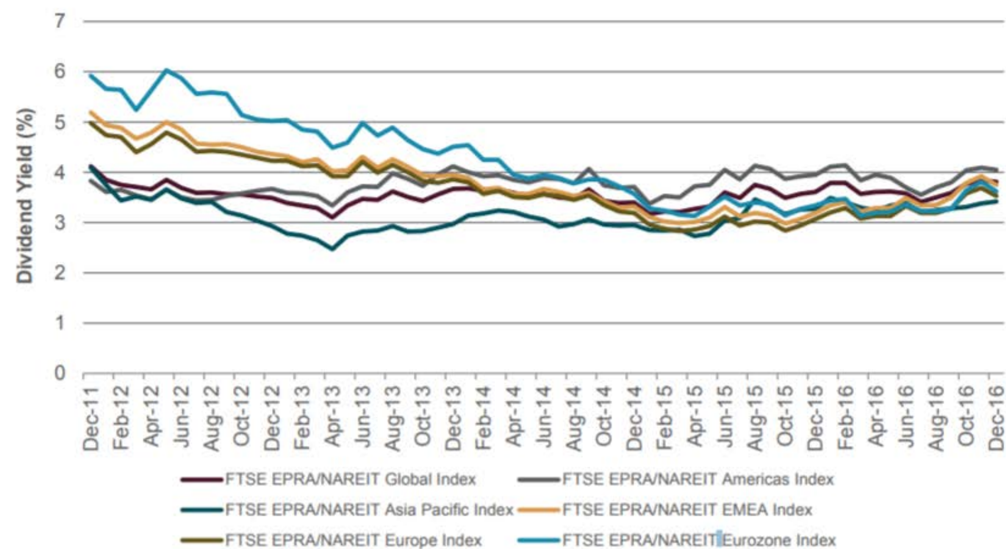
Investors in publicly listed property companies are able to access the income and capital returns generated by commercial property in a form which is transparent, well and internally governed and liquid. For investors in REITs, which generally include an obligation to distribute the majority (typically 90%) of income to investors each year, the close relationship to direct property returns is enhanced further due to the tax transparency of the REIT investment vehicle. The liquidity provided by listed property companies and REITs through stock market quotation does not change the property return profile over the medium to long term. In fact, the REITs market is more quick and efficient in terms of the response to changes in fundamentals affecting property, than the direct property market (EPRA Research /2009/ Cohen & Steers on Listed Property Performance as a predictor of direct real estate performance is available here; see also EPRA Research /2012/ The use of listed real estate securities in asset management by Alex Moss and Andrew Baum – available at here).

Benefits of investing in real estate via listed property undertakings

While insurance companies can invest in real estate via their related undertakings, we would like to strongly emphasize the advantages of investing in real estate via listed collective property investment companies, including REITs, where for example the

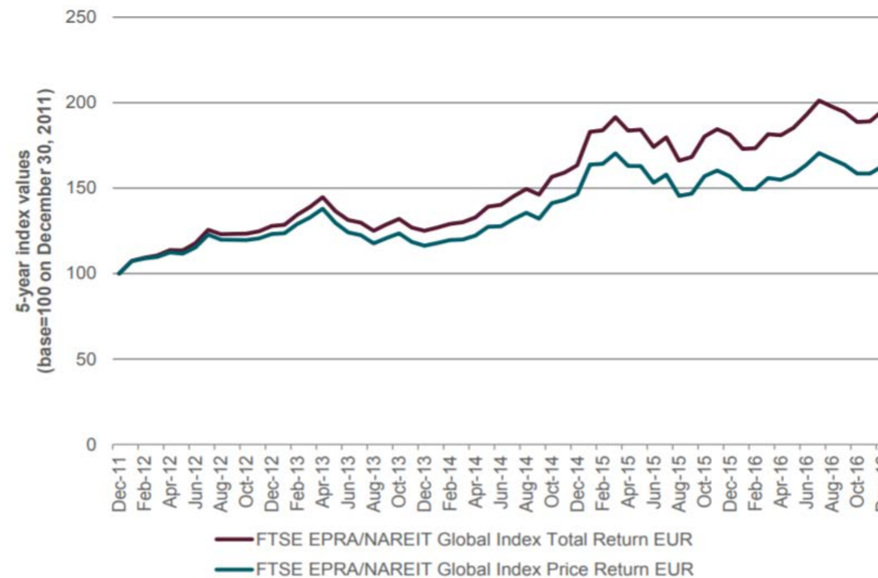
	levels of **diversification** are much more adequate. Shares of listed real estate are readily converted into cash because they are traded ib the major stock exchanges, hence they offer investors an extra buffer of **liquidity** permitting market participants to buy and sell on demand (without being forced to suspend redemption as was the case of a number of pooled UK commercial property funds in June/July 2016 in the aftermath of the Brexit vote; more here). In addition, listed real estate companies offer **an extra layer of governance to investors**: • They operate under company law; • As well as having to meet accounting standards and stock exchange rules and various reposting requirements, including the recent non-financial information reporting. The income stream generated by commercial real estate is traditionally seen as one of the primary attributes of this asset class (Exhibit 3).	

Exhibit 3. FTSE EPRA/NAREIT Global Real Estate Index Series yields



Sources: FTSE Russell, data as of December 30, 2016. Past performance is no guarantee of future results. Please see the disclaimer for important legal disclosures.

Over the five-year period to December 30, 2016, the difference between price and total return indexes, shown in Exhibit 4, illustrates the positive contribution of dividends to the performance of the FTSE EPRA/NAREIT Global Index.



As shown in Exhibit 5, over the three-year period ended December 30, 2016, the FTSE EPRA/NAREIT Global index's correlation with the broad FTSE All-World Index was 70%. On a sector-by-sector basis, correlations between equities and the FTSE EPRA/NAREIT Global Index were lower: at 38%, the Oil & Gas sector was significantly less correlated than the overall FTSE All-World Index with global listed real estate. The correlations of the Financials, Basic Materials and Technology sectors of the FTSE All-World Index with global listed real estate stocks ranged from 52% to 58% over the same period. These correlation figures demonstrate the potential of global listed real

estate securities to act as a diversifier in a broader equity portfolio.

For any investor with a diversified portfolio, a global listed real estate index series represents a valuable addition to the asset allocation toolkit. Representing 4.6% of the global equity market as of the end of 2014, eight listed real estate securities represent a substantial proportion of the investment opportunity set. And the characteristic features of real estate as an asset class – an often relatively predictable income stream and the frequent inflation-linking of rents, offering the prospect of long-term real returns, together with a relatively uncorrelated return stream by comparison with other equity market sectors – make this category of investment a natural consideration for investors looking **to diversify portfolios with long-term savings goals.**

More in the FTSE Russell Diversification, liquidity and transparency in global-listed real estate paper which is available here.

Why EPRA comments on the EIOPA draft advice?

We believe that it is important to create a solid level playing field for property investment vehicles to ensure that insurance companies are able to sufficiently diversify their real estate investments.

Our comments below, while limited to the listed real estate sector, are in line with the Commission's request to EIOPA for technical advice on the review of specific items in the Solvency II Delegated Regulation. More precisely, we would like to help EIOPA to **increase consistency for insurance companies investing in listed real estate across the EU member states**. This may require removing unintended technical

inconsistencies which could possibly lead to constraints to financing listed (liquid) real estate. While looking at the look-through approach, we would like to help EIOPA to address investments in real estate in its Guidelines in a more holistic way.

In addition, we will comment on the look-through approach and investments in related undertakings. While it is important to define clearly what an investment related undertaking is, it is equally important to make distinctions between the collective investment undertakings (under the look-through), insurance investment undertakings, investment related undertakings and last but not least investments in related undertakings. For the purpose of the Solvency II look-through approach application, those terms are distinct and have different Solvency II treatment. Below, we comment on those terms in more details.

Please note that our intention is to help improve the current consistencies, or the lack of it, of the application of the Solvency II rules on the listed property sector. The benefits of this asset class are very well researched and demonstrated. It is our belief that the role of the regulation at the EU level is to help treat a single asset equaly across all 28 member states; and unfortunately this is not at the moment guaranteed for listed property investment companies, including REITs. As a consequence, investments flow in real estate, but through more opaque and more liquid real estate funds (via the the look-through approach), rather than through listed, transparent and liquid real estate which has been proven to perform similarly as direct real estate in the medium and long-term (the MSCI study of the drivers of European listed real estate performance which can be downloaded from here).

More about the sector can be also found in the EPRA report on the stock exchange listed property companies: Buiding a Stronger Europe (2013) which is accessible here.

Application of the look-through approach: Inconsistent treatment of listed property companies and REITs

In summary, it is our strongly held view that listed property companies should be treated as their underlying assets, i.e. property, (following the look-through approach) under the framework of the Solvency II Delegated Regulation. This categorisation supports clear evidence showing that listed real estate is more closely related to direct property than to equities and corresponds to the EIOPA's "substance over form" principle.

However, there are considerable inconsistencies in the application of Solvency II as far as the listed property companies, including REITs, are concerned as they are sometimes categorised as equity, sometimes as strategic equity and sometimes as property via the look-though approach. These inconsistencies and uncertainty about treatment of the listed property companies have a significant impact on the ability for insurance companies to own a liquid form of real estate. And we strongly argue that an equity classification is not be accurate because it would result in an excessive level of "stress test" for the listed property sector which is not appropriate for this class of asset.

Our view, which is supported by market evidence from the developed listed property markets, is that listed property companies would be more appropriately treated as their underlying assets (property) in by applying the look-through approach.

We also refer to **the EIOPA Guidelines on the look-through approach** under which investments in real estate are cathegorised as follows:

Guideline 3 – Investments in real estate

1.11 Undertakings should cover the following investments in the property risk submodule:

a) Land, buildings and immovable property rights;

b) Property investment held for the own use of the undertaking.

1.12. For equity investments in a company exclusively engaged in facility management, real estate administration, real estate project development or similar activities, undertakings whould applu the equity risk sub-module.

1.13 Where undertakings invest in real estate through collective investment undertakings or other investment packaged as funds they should apply the look-through approach.

The problem we are experiencing across the industry is that the national prudential regulators have diverse interpretations on the EIOPA Guidelines. And as you can see from the Guildelines above, there is no excplicit reference to the listed investment property companies which might have been causing a confusion between both the regulators and the market participants. We would therefore like to invite EIOPA to look at the Guidelines as part of this review and consider to specify that where

	undertakings invest in real estate through listed property investment companies, including REITs (which as any other collective investment undertaking – not a fund - collectively invest in an income producing commercial real estate), the they should apply **the look through approach**.	
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6.1	**Legal certainty** EU policy makers and legislators face a particular challenge in EU law-making when establishing a common usage of technical terminology. This might be even more so in the EU legislation on financial services. Nevertheless, it is absolutely necessary to have clarity of what certain terms mean to provide legal certainty for market participants and to enable a harmonious implementation and application of EU rules. Hence, we would like to have a greater clarity the meaning of: ▪ a collective investment undertaking (including listed property investment companies and REITs) ▪ other investments packaged as funds (AIFs – real estate funds) ▪ investment related undertaking ➔ property investment companies in which insurance company holds a minimum of 25% participation ▪ investment to related undertakings ➔ investments to equities – to companies which are not investment companies and therefore the 'substance over form'	

principle would not justify the application of the look-through

- Insurance investment undertakings→ insurance subsidiaries created for the investment purposes but without the licence to conduct the insurance business and not collective investment undertakings as they invest via those vehicles alone

Besides, it is important to stress that we very much appreciate the „substance over form" principle. That is the main reason why we elaborate on what in ‚substance' will happen in the real estate investment world if we limit the review of the look-through approach to investment related vehicles (see below).

The question is whether the Solvency II rules limit the application of the look-though approach to property investments packaged as funds or extend it to real estate investment undertakings? In practice, we often see the stakeholder's view is too narrow and limits the scope of the look-through to those investments that are packaged as funds.

However, the rules are as follows:

Article 84 (1) The Solvency Capital Requirement shall be calculated on the basis of each of the underlying assets of **collective investment undertakings** and other investments packaged as funds (look-through approach).
....

Article 84(4) Paragraph (2) shall not apply to **investments in related undertakings** within the meaning of Article 212(1)(b) and (2) of Directive 2009/138/EC.

This is what the Solvency II Delegated Regulation's provision currently says. What is being discussed in the EIOPA draft advice is how to increase the certainty of the application on the look-through and also extend it to include certain (but not all) investments in related undertakings which are currently excluded.

While we understand that the EIOPA's objective with this proposed measures is based on the „substance", the discussion in the draft advice is mostly around „the form" of the investment related undertakings. While the form, especially to ensure legal certainty, is very important, we would like to highlight the fact that the look-through was designed to look at the substance – i.e. the underlying assets – of all collective investment undertakings (no matter of their non-corporate or corporate form). The law restricted its application not to collective investment undertakings but to the investments in related undertakings and our comments below are to help explain that **investment related undertakings and investments in related undertakings are not the same matter**.

In summary, we believe that extending the look-through application to include certain **investment related undertakings,** it includes those undertakings which are already covered in the look-through approach, but limiting them by requiring at least 25% of the insurance companies' participation.

If we, however, understand correctly that the purpose of this discussion is to:

1) Determine the application of the look-through approach to the insurance companies' subsidiaries created for the investment purposes; and to
2) Ensure its consistent application across the EU Member States,

then we need to work together on defining the following two terms to ensure their correct legal application in all EU member states:

1) **Collective investment undertakings**
2) **Related/Insurance investment undertakings**

Therefore, we highlight the current definition of **collective investment undertakings** by ESMA (not the same as alternative investment funds – AIFs – yet).

In ESMA's guidelines released on 13 August 2013, ESMA sought to define the key

elements of the Directive definition of an AIF, noting that an entity will only be considered an AIF **where all of the elements are present**. One of the requirements is that an AIF has to be at the same time a collective investment undertaking and therefore ESMA looked at what a collective investment undertaking is.

It is important to stress that not all collective investment undertakings (for example listed property investment companies, including REITs) are also alternative investment funds – AIFs. But all AIFs are at the same time collective investment undertakings.

Collective investment undertaking - pooling and other criteria

The term "collective investment undertaking" is not defined either in the AIFMD Directive or under European law, and is per se **a very broad concept**. ESMA has specified that one of the characteristics of a collective investment undertaking is **that it "pools together capital raised from investors for the purpose of investment with a view to generating a pooled return for those investors".** ESMA notes that for the purpose of determining whether a pooled return is generated, no consideration should be given to whether investors in such undertaking are provided with different returns, such as under a tailored dividend policy.

The key difference between the listed property investment companies, including REITs, is therefore not the performance of the underlying assets, but the way such undertaking is being managed (the „substance over form" principle):

- They pool together capital – raised from investors (via financial markets)
- The purpose is to invest them to real estate (at least 75% of EBITDA has to come from the relevant real estate activities (see in general comments)
- They invest with a view to generate a pooled return for the investors (REITs have a legal obligation to distribute the majority of its income to investors)
- But they are also subject to more stringent company rules, corporate governance rules, accounting standards, audit requirements or even non-

	finantial information reporting obligations – as these are in the form of a listed operational company • They have internal & professional management • They have business strategies • They are not limited in time (closed-ended) • They are transparent entities, not opaque • They invest in the income-generating commercial real estate etc. Having said that, the look-through approach should not (and it is not under the Article 84(1) of the Solvency II Delegated Regulation) be restricted to those investments which are packaged as funds. Instead, investments in listed property investment undertakings, including REITs, should also apply the look-through approach as they also invest in real estate collectively. The importance of this point is that there is currently no sufficient level playing field between the real estate market participants. The „substance over form" principle can help address this issue and ensure that **investments in real estate can be:** 1. Done directly 2. Via illiquid and opaque funds (investments packaged as funds via the look-through approach) 3. Via transparent and liquid listed property investment companies (all collective investment undertakings – not just funds – via the look-through approach) **are treated equally for the purpose of the solvency capital requirements.**	
6.2	We believe that as part of this particular discussion article 84(1) of the Solvency II Delegated Regulation should be extended rather than limited. Article 84(1) includes all **collective investment undertakings** (including those where insurance company has a participation).	

	Article 84(4) refers to **investments in related undertakings** (which are not investment undertakings and hence equity SCR – 39%/49% or potentially strategic equity – 22%) The intention here should be to **extend** the look-through approach, currently granted to **all collective investment undertakings** (where listed property investment companies should be considered) to include those investment undertakings, which are not collective but controlled/owned by insurance companies for the same purpose, i.e. investment in the underlying assets. We should therefore refer to insurance investment undertakings and either extend article 84(1) or create a new category e.g. 84(2)(d). We believe that this approach would be more consistent and clearer as Article 84(4) is intended to exclude those undertakings which are not designed for the purpose of investments. Article 84(4) should be therefore kept as it is, limited to those companies which are not investment companies.	
6.3	**Conditions under which it would be appropriate to allow look-through for investment related vehicles** **In your assessment,** you currently consider to limit the extension of the application of the look through to **investment vehicles which meet the definition of "related undertakings"** of the Solvency II regulation. These investment schemes might be considered as **"hybrid cases"** because they are "formally" investments in equity structures, but substantially are **similar to investments in collective investment undertakings.** Even though the Delegated regulation does not strictly require the application of the look through, some undertakings may have already considered them as "investments packaged as funds" and hence performed the look-through to calculate the SCR. But there is no certainty that the look through approach is being	

applied by default by all European undertakings.

At this point, we would like to reiterate that it is our legal understanding that the look-through approach had never been intended to be limited to „investments packaged as funds" but apply to **all collective investment undertakings** and **other investments packaged as funds**. In fact, we would like to refer to the extract CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: Structure and Design of Market Risk Module (Section 6.4.).

> ***Investment funds***
>
> *4.183 In order to properly assess the market risk inherent in* ***collective investment vehicles***, *and other investments packaged as funds, it shall be necessary to examine their economic substance.* ***Wherever possible, this shall be achieved by applying a look-through approach in order to assess the risks applying to the assets underlying the investment vehicle.*** *Each of the underlying assets would then be subjected to the relevant sub-module stresses and capital charges calculated accordingly.*
>
> *4.184 The look through approach shall also be applied for other indirect exposures.*
>
> *4.185 Where a number of iterations of the look-through approach is required (e.g. where an investment fund is invested in other investment funds), the number of iterations shall be sufficient to ensure that all material market risk is captured.*
>
> *4.186 The above recommendations can be applied to both passive and actively managed funds except for investments in funds that track a well-*

diversified index including only listed equity from developed markets.

As mentioned above, we strongly believe that there is a difference between **investment related undertakings** and **investments in related undertakings** (which are investments of insurance companies to their related undertakings that are not investment undertakings and hence apply equity SCR).

We also believe that the intention of these proposals on the look-through approach is to expand its application to **insurance investment undertakings** (their subsidiaries) which are investment undertakings but are not collective **(as they don't "pool together capital raised from a number of investor).** Instead, these investment vehicles have no purpose other than holding assets on behalf of the parent (insurance) undertaking. It means that the targeted investment vehicles are generally established with a distinct goal which supports the operations of the insurance undertaking.

As a result, we strongly advice that the EIOPA defines that:

1) **All collective investment undertakings**, including listed property investment companies and REITs, and other investments packaged as funds, are under the look-through approach; and then extends such application to;
2) **Certain insurance investment undertakings** (as defined – by limiting the scope to those were they are controlled/owned (>50%) by insurance companies and where they have been established for the investment purpose
3) **Investments in related undertakings** (those that are not established for the investment purpose and used for investment activities) are kept outside of the look-through approach under the Article 84(4). Under the EIOPA guidelines, it would cover investments in a company exclusively engaged in facility management, real estate administration, real estate project development or

	similar activities. Such undertakings should apply the equity risk sub-modul. **Such an approach, would ensure a better level playing field in the real estate investment landscape; and also enable insurance companies to better diversify their real estate asset allocation.**	
6.4	See above in 6.3.	
6.4.1		
6.4.2	See above. The Questionnaire to NSAs seems to be addressing 'related undertakings' which represent 'investment vehicles' for holding assets or have been established with the predominant purpose of holding assets on behalf of the parent insurance company. You also mentioned that that these investment vehicles are generally alternative investments funds (AIFs) following dedicated mandates, private equity participations or subsidiaries established for investment purpose. Hence, it is confirming our understanding that the intention here is to tackle Insurance investment undertakings (extension of 84(1), rather than limit application of 84(4)). Under the point 366 of the draft advice, it is mentioned that in some markets the application of the equity risk capital requirement for property holding related undertakings has been considered by local supervisors not to reflect the actual risk. If the investments are treated as strategic equity investments, the capital requirement may be relatively similar to the capital requirement for property investments. Otherwise the capital requirement for equity apply, whic may overstate the risk. We agree with that statement of national regulators and believe that we should be	

looking at the substance (property) over form (equity) by applying the look-through approach.

This is even more visible and more urgent to be addressed in the listed property investments sector (listed property investment companies and REITs), for which there is a number of studies demonstrating their correlation with direct property (see more above in the General Comment section).

Investments in listed property investment companies and REITs should apply the look-through approach, too.

> As outlined in the draft advice, the benefits identified for extending the look-through approach to such cases outweigh the cons. In particular, it appears that there are several situations in the EEA where applying the equity shock for type 2 overestimates the risks as the "investment related undertaking" has an investment portfolio which is either more diversified or **specialised in real estate**. Moreover, not applying the look-through may lead to a higher market risk concentration, which does not reflect the reality of the underlying risks.

We fully agreed that the regulatory framework could do more to enable insurance companies to diversify their real estate allocation. We would like to highlight that to do so by investing in transparent, liquid and professionally managed listed real estate investment companies (and REITs) guarantees a more adequate diversification benefits (to mention just one of the benefits).

We should not only be looking at the "investment related undertaking" with an investment portfolio which is either more diversified or **specialised in real estate**.

We should be looking at the whole real estate investment landscape, and more urgently at the uncertanties the listed real estate investment companies currently face under the look-through approach.

	This may help to decrease considerable the market concentration risk of the more opaque vehicles.	
6.4.3	As above.	
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	Comments Template on Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation	Deadline **31 August 2017** 23:59 CET
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9.8	**Policy issue number 1** While looking at option 1.1 – we would like to reiterate that all collective investment undertakings (including where an insurance company holds a participation, as long as they are still collective) should be viewed as eligible for the application of the look-through. Therefore, it seems to be important to **firstly** define that the look-through approach applies to those collective investment undertakings where an insurance company holds a participation together with a number of other investors; and thus collectively invest in the underlying assets. This would also be the case of listed REITs, e.g. Cofinimmo in Belgium (5.08% participation of Crédit Agricole Group as at 2017 – for source click here at p. 12) **Secondly,** we would propose that a new category of the insurance investment undertakings (e.g. by adding a 84(2)(d)) is proposed for the Solvency II Delegated Regulation and the look-through approach. The Option 1.1. should then be slightly rephrased (looking at the same goal) to the following: extension to all insurance investment undertakings (=subsidiaries)	
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