

ADVISORY | INDUSTRY INFORMATION

ESMA publishes its final report on the ELTIF Regulatory Technical Standards

On 19 December 2023, in a very welcome development the European Securities and Markets Authority ("ESMA") published its [final report](#) setting out the draft Regulatory Technical Standards ("RTS") under the European Long-Term Investment Funds Regulation (EU) 2015/760 as amended by Regulation 2023/606/EU (the "ELTIF Regulation"). The RTS address the following:

- the circumstances in which the life of an European Long-term Investment Fund ("ELTIF") is considered compatible with the life cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
- the circumstances for the use of the matching mechanism, i.e. the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors; and
- the costs disclosure.

ESMA's public [consultation](#) on the draft RTS which ran until 24 August 2023 elicited feedback from 23 stakeholders (including Irish Funds). ESMA has agreed certain amendments to the RTS taking into account feedback received through the consultation process.

A number of the key characteristics of ELTIFs are outlined in ESMA's report such as the minimum holding period and maximum redemption frequency, choice of liquidity management tools, notice periods and the maximum percentage of liquid assets that can be redeemed.

Minimum holding period

ESMA has proposed allowing the ELTIF manager to select the minimum holding period that is best adjusted to an individual ELTIF, based on criteria set in the RTS, and where adequately justified to the competent authority of the ELTIF.

Maximum redemption frequency

ESMA has proposed a common standard (maximum quarterly redemption frequency), while allowing the ELTIF manager to deviate from this common standard, where detailed justifications are provided to the competent authority of the ELTIF (on the basis of the individual features of the ELTIF and a reliable, sound and updated valuation of the assets of the ELTIF). In this regard ESMA notes it has decided upon an option in which the level of prescriptiveness of the measures related to the redemption policy and the liquidity features of the ELTIF is high enough to ensure an adequate level of investor protection, in the context of the requirements set in the ELTIF Regulation, while also taking into account the variety of investment strategies that may be chosen by ELTIF managers, and the corresponding variety of assets in which ELTIFs may invest.

Choice of liquidity management tools

ESMA proposes to mandate the implementation of at least one anti-dilution mechanism, which could be anti-dilution levies, swing pricing or redemption fees (in addition to the notice period), as well as redemption gates (in exceptional circumstances only), while allowing the ELTIF manager to deviate, in specific circumstances, and upon justifications provided to the ELTIF's competent authority.

Liquidity matching mechanism

On the ELTIF liquidity matching mechanism (the possibility of full or partial matching of transfer requests of fund units by existing ELTIF investors with transfer requests by potential investors), ESMA has determined that the specifications of the matching mechanism in the RTS should be principle-based, given in particular there has not been precedent in the EU regulatory fund space on the application of any similar matching mechanism.

Notice period and maximum percentage of liquid assets that can be redeemed

In addition to applying varying lengths of the notice period (from 12 months to less one month) calibrated depending on the minimum percentages of liquid assets, different percentages of maximum amount of liquid assets that can be redeemed are also applied. The final RTS seeks to reach a balance by proposing prescriptive rules, while allowing ELTIF managers to deviate from these under specific circumstances.

Next steps

ESMA has submitted the draft RTS to the European Commission (the "Commission") for endorsement and final approval. From the date of submission, the Commission shall take a decision on whether to adopt the RTS within three months. The Commission may extend that period by one month.

ESMA has stressed that it is necessary that the Commission Delegated Regulation which contain the RTS would enter into force on the day following its publication, given the importance of it becoming effective as soon as possible after the date when the ELTIF Regulation enters into force.

Conclusion

The timely publication by ESMA of the final report provides further welcome clarity for the funds industry on the specific ELTIF rules to be applied. The ELTIF represents one of the most important developments in private markets in EU in recent years and is a significant opportunity for the Irish asset management and investment funds industry.

Recently the Central Bank's Consultation Paper 155 on the proposed new ELTIF chapter in its AIF Rulebook has clarified that the Irish ELTIF will be a standalone regulated AIF product and therefore, it will not need to be separately authorised as a qualifying investor alternative investment funds ("QIAIF") or a retail investor alternative investment funds ("RIAIF").

ESMA's proposed RTS, which remain subject to final approval by the Commission now provide a detailed framework for aspects of the operation of the ELTIF as well as the tools and options available for ELTIF managers to draw on when designing their products in accordance with the ELTIF Regulation.

Interest in the new and improved ELTIF product has been very strong. If you have any queries on enhancements to the ELTIF framework contained in the ELTIF Regulation and/or to obtain additional materials on the RTS, please speak to your usual contact in the Walkers Asset Management and Investment Funds team or any of the contacts listed below.

Further information

We practice Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Irish and Jersey law from an international network of ten offices across Europe, the Americas, Asia and the Middle East. For more information, please get in touch with your usual contact at Walkers or any of the contacts in your region listed below.



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