

MEMO# 29256

August 13, 2015

Esma Consultation On Draft RTS Under The European Long Term Investment Fund (ELTIF) Regulation

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TO: ICI GLOBAL REGULATED FUNDS COMMITTEE No. 48-15 RE: ESMA CONSULTATION ON DRAFT RTS UNDER THE EUROPEAN LONG TERM INVESTMENT FUND (ELTIF) REGULATION

On 31 July 2015 ESMA launched a [consultation](#) on draft regulatory technical standards (RTS) under the European Long Term Investment Fund (ELTIF) Regulation.

Background

The ELTIF Regulation was published in the Official Journal on 19 May 2015 and entered into force on 9 June. [\[1\]](#) It shall apply [\[2\]](#) in Member States from 9 December 2015.

This regulation, marking an inflexion point in the former Commissioner Barnier's approach to financial services regulation, is aimed at increasing the pool of capital available for long-term investment in the EU economy by creating a new form of fund vehicle. ELTIFs will be subject to rules requiring them, inter alia, to invest at least 70% of their capital in clearly-defined categories of eligible assets that fall within a defined category of long-term asset classes whose successful development requires a long-term commitment from investors, including non-listed undertakings that issue equity; debt instruments for which there is no readily identifiable buyer; real assets that require significant up-front capital expenditure; SMEs admitted to trading on a regulated market or on a multilateral trading facility; etc.

Only EU alternative investment funds (AIFs) that are managed by EU alternative investment fund managers [\[3\]](#) (AIFMs), authorised in accordance with directive AIFM, [\[4\]](#) will be eligible to market themselves as ELTIFs.

ELTIFs generally do not offer redemption rights before their end of life. This must be clearly indicated as a specific date in the ELTIF rules or instruments of incorporation and disclosed to investors.

With an unintended but positive consequence of opening the European AIF passport to non-professional investors, ELTIF regulation permits ELTIFs distribution to retail investors under strict conditions. The fund manager or distributor must ensure that a retail investor with a

portfolio of up to €500,000 doesn't invest an aggregate amount exceeding 10% of his/her portfolio in ELTIFs, provided that the initial amount invested in one or more ELTIFs is not less than €10,000. Moreover, where the lifecycle of an ELTIF exceeds ten years, the fund manager or distributor must issue a written alert that it may not be suitable for retail investors unable to sustain such a long-term and illiquid commitment.

Proposals

Articles 9(3), 18(7), 21(3), 25(3) and 26(2) of the ELTIF Regulation provide that ESMA shall develop draft RTS on various subjects that are critical for the functioning of the Regulation. The RTS should determine:

- i. the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes;
- ii. the circumstances in which the life of an ELTIF is considered sufficient in length;
- iii. the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets;
- iv. the costs disclosure; and
- v. the facilities available to retail investors.

Next Steps

The consultation is open for comments until 14 October 2015. There are parts of the draft RTS and the ELTIF Regulation of potential interest for regulated funds and their managers:

- ESMA inspires several of its draft RTS from UCITS rules, in particular with regard to:
 - definition of hedging;
 - calculation and disclosure of costs for which the UCITS KID would be a template;
 - facilities available for subscriptions, making payments to redeeming shareholders and disclosing required information when the ELTIF is intended to be marketed to retail investors
- ELTIF managers must appropriately manage liquidity at the end of the ELTIF's life or all along the ELTIF's life when offering the possibility of redemptions before the end of the life of the ELTIF;
- ESMA refers to the International Financial Reporting Standards (IFRS) for some aspects of the rules applying to ELTIFs in relation to the valuation of assets to be divested;
- Specific provisions concerning the depositary of an ELTIF marketed to retail investors, aligned to UCITS V;
- No later than 9 June 2019, the European Commission must issue an assessment of the contribution of this Regulation and of ELTIFs to the completion of the Capital Markets Union;
- As AIFs, ELTIFs are eligible UCITS investments.

We do not intend to respond to this ESMA consultation. However, we are following the ELTIF Regulation with respect to issues that may be of interest to regulated funds and their managers. If you have any questions regarding this, please feel free to contact us.

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endnotes

[1] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds. See:
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0760>.

[2] Article 38 of ELTIF Regulation.

[3] Article 6 Conditions for granting authorisation as an ELTIF.

[4] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

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