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ESMA Publishes Consultation Paper on ELTIF Draft Regulatory Technical Standards



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On 23 May 2023, the European Securities and Markets Authority ("ESMA") published a consultation paper (ESMA34-13000232-124) on draft regulatory technical standards ("RTS") under the Regulation on European Long-Term Investment Funds ((EU) 2015/760) ("ELTIF Regulation") as amended by Regulation (EU) 2023/606, which comes into force in its amended form on 10 January 2024.

The ELTIF Regulation established a type of investment fund called an ELTIF, which is a regime applied to EU alternative investment fund managers and EU alternative investment funds to allow both professional and retail investors to invest in companies, debt and real assets. The original regulation was too restrictive in scope, and not a great success in terms of product launches, and the revised formulation coming into force in January makes or clarifies certain important amendments to the regime to allow greater product flexibility, including:

- ELTIFs may now clearly have a worldwide mandate. Certain spread and concentration limits are relaxed (with more ability to have substantial holdings in cash and non-eligible assets), especially for professional investor-only funds and the latter has a revised 100% leverage limit.
- Broader scope of eligible investments: simple securitizations, EU green bonds, simplified definition of real assets (removal of the minimum threshold for individual value of real estate assets).
- Greater scope for indirect investments, co-investments, master-feeders and fund-of-funds.
- Retail distribution restrictions have been relaxed to align suitability with MIFID requirements.

Another major problem with the original ELTIF is considered to be the closed-ended nature of the product with little ability to incorporate hybrid liquidity options, which the amending regulation seeks to address by enabling the introduction of periodic redemption and matched trading options. The thrust of this consultation is to seek views on proposed new RTS which will specify the way new requirements of the revised ELTIF Regulation, and specifically the provisions on the redemption policy and matching mechanism, will apply.

In particular, ESMA is seeking views on:

- The circumstances in which the life of an ELTIF may be 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 using a trade matching mechanism (*i.e.*, full or partial matching of transfer requests of units or shares in the ELTIF with transfer requests by potential investors).
- Costs disclosure.

The deadline for responding is 24 August 2023. ESMA will consider feedback received in the autumn and expects to publish a final report and submit the final draft RTS to the European Commission for endorsement by 10 January 2024.
