30 May 2023

ESMA issues consultation paper outlining proposed measures to give further effect to the revised ELTIF regime

Background

As readers will be aware, <u>Regulation (EU) 2023/606</u>, which amends the existing EU ELTIF regime (**Amending ELTIF Regulation**), entered into force on 9 April 2023 and will apply from 10 January 2024.

The revisions to the existing ELTIF framework introduced under the Amending ELTIF Regulation are intended to redesign the regulatory framework and make ELTIFs a more attractive option for asset managers who want to offer long-term investment opportunities, such as infrastructure projects, to institutional and private investors across the EU. For an overview of these changes, please refer to our previous briefing on the topic.

On 23 May 2023, ESMA issued a public consultation paper (<u>Consultation Paper</u>) on the draft regulatory technical standards (**RTS**) which it is empowered to prepare for the European Commission in order to give further effect to the Amending ELTIF Regulation.

The Consultation Paper

The draft RTS contained within the Consultation Paper set down ESMA's proposed provisions on certain elements of the ELTIF regime, including the following:

- criteria for establishing the circumstances in which the use of financial derivative instruments (**FDIs**) solely serves hedging purposes. In this regard, ESMA specifies, *inter alia*, that the use of FDIs to provide a return for an ELTIF shall not be deemed as serving a hedging purpose;
- factors to consider in determining whether the life of an ELTIF is consistent with the life-cycle of the ELTIF's underling assets;

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- criteria to determine the minimum holding period for an ELTIF. ESMA suggests that this should include taking account of the liquidity profile and long-term nature of the underlying assets of the ELTIF, along with whether such assets can be readily and reliably valued, whether the ELTIF is marketed to retail or professional investors only, and the redemption policy of the relevant ELTIF;
- required elements to be included in the redemption policy of the ELTIF as well as an obligation that the redemption policy of the ELTIF be aligned with the ELTIF's portfolio, its liquidity profile and life;
- requirements in relation to the liquidity management tools to be utilised, including a proposal that the manager of an ELTIF must implement at least one anti-dilution liquidity management tool, among anti-dilution levies, swing pricing and redemption fees in order to allocate the cost of liquidity accordingly and protect remaining investors. ESMA also outlines the exceptional circumstances in which the manager of an ELTIF should be obliged to implement redemption gates;
- circumstances for the use of the "matching" mechanism under which transfer requests by existing ELTIF investors could be matched with transfer requests by potential investors. This includes the process, the role of the manager / administrator of the ELTIF in conducting such transfers, the execution price, costs and charges and the nature of the disclosures to be provided to investors;
- criteria for both the assessment of the market for potential buyers for each asset in which the ELTIF invests and the valuation of assets to be divested by the ELTIF; and
- the calculation methodologies for costs borne by investors, as well as the presentation of cost disclosures.

Next Steps

Responses to the Consultation Paper must be submitted to ESMA on or before 24 August 2023. ESMA will consider all feedback received from external stakeholders in the second half of 2023 and has indicated that it expects to publish a final report and submit the draft RTS to the European Commission for its endorsement by 10 January 2024.

It is hoped that the revisions of the ELTIF framework at an EU level and ESMA's work in developing RTS to provide further effect to the Amending ELTIF Regulation will provide an impetus for the Irish domestic framework to accommodate ELTIFs within Irish domiciled funds.

If you would like to discuss the revised ELTIF framework in more detail, please contact ross.canning@dilloneustace.com or your usual contact in Dillon Eustace.

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