



Legal Update

ESMA Releases RTS for ELTIF II

In December 2023 the European Securities and Markets Authority (“ESMA”), the European securities regulatory authority, issued a final report (the “Final Report”) containing draft regulatory technical standards (“RTS”) pertaining to the revised European Long Term Investment Fund (“ELTIF II”).

Background

The revised ELTIF Regulation provides that ESMA shall develop RTS to determine details pertaining to certain key aspects of the revised regime relating to ELTIFs, which regime becomes effective in January 2024. ESMA published a Consultation Paper (“CP”) on the proposed draft RTS in May 2023 which consultation closed on 24 August 2023. The Final Report includes the revised RTS developed in light of this consultation.

The RTS

The Final Report includes details pertaining to six RTS addressing various aspects of the new ELTIF Regime. These consist of criteria for establishing:

- the circumstances in which financial derivative instrument use is solely deemed to be for hedging purposes.
- the circumstances in which the span of an ELTIF is considered compatible with the its assets’ lifespan, as well as different features of the ELTIF’s redemption policy;
- the circumstances for the use of a matching mechanism, i.e. the possibility of

full or partial matching during the span of the ELTIF of transfer requests by exiting ELTIF investors with transfer requests by potential new investors.

- the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets; and
- appropriate disclosure of costs.

Next Steps

The Final Report with the draft RTS has been submitted to the European Commission for adoption. The European Commission shall take a decision on whether to adopt the RTS within three months (it may extend this period by one month). It is not anticipated that any significant amendments will be made to the version of the RTS contained in the Final Report on adoption.

How Clerkin Lynch can Help

The asset management team at Clerkin Lynch LLP provides timely regulatory updates and aids firms in launching fund products. Our team can assist in advising on any new ELTIF initiatives.



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