EFAMA

European Fund and Asset Management Association

CONSULTATION RESPONSE

Brussels, 11 August 2023

EFAMA RESPONSE TO THE ESMA CONSULTATION PAPER ON THE DRAFT REGULATORY TECHNICAL STANDARDS UNDER THE REVISED ELTIF REGULATION

GENERAL COMMENTS

From only 20 ELTIFs at the start of the review of the ELTIF Regulation in late 2021 to 95 as of August 2023, the launch of ELTIF products has significantly increased over the last three years, with further market growth expected in the years to come.

We strongly encourage ESMA to uphold the positive momentum of reforms initiated at Level 1 and guarantee that the requirements established by the draft RTS are conducive to the ongoing success of the ELTIF product.

As such, we recommend ESMA consider the following aspects attentively:

- **Redemption policy**

  Although we agree with the criteria to determine a minimum holding period, we believe that setting a *compulsory* minimum holding period of three years is arbitrary and inconsistent with market practice, given ELTIFs' variety of fund terms, asset classes and investment strategies. Such mandatory requirements may seriously jeopardise the viability of ELTIF offerings to retail investors, thereby limiting retail investors' access to illiquid asset classes with attractive returns. In addition, such a proposal also clearly exceeds the mandate given to ESMA by the legislators under ELTIF Level 1 as ESMA's mandate is limited to only setting out the criteria to determine the minimum holding period.

  At the same time, a mandatory maximum redemption frequency set every quarter would not be able to accommodate the wide spectrum of investors' needs, as well as all ELTIF investment strategies. It should be noted that the liquidity risk management of a fund is tied to its asset, liability, and redemption policies and to the correct articulation of all these three variables. Consequently, the redemption frequency should not be evaluated in isolation without knowledge of the ELTIF's liquidity profile and the available LMTs as described in the fund documentation.

  Regarding liquidity management tools (LMTs), we note that the EU regulatory framework provides the possibility to choose between different types of LMTs to better tailor the liquidity management of the fund to each specific case. Therefore, managers should be able to choose the most appropriate LMT, in both normal as well as stressed market conditions, depending on the fund's structure and on a case-by-case basis.

While we recognise that a minimum notice period could be an option alongside the remaining LMTs, the ESMA's suggestion of a 12 month notice period seems excessively lengthy, given that funds already have a comprehensive list of tools in the framework of the current review of AIFMD to manage their liquidity without relying on a long notice period.

For all the reasons above, when defining the criteria of the ELTIF redemption policy, we believe that ESMA should focus on common standards that are based on qualitative, rather than on quantitative criteria.

- **Matching mechanism**

Given the absence of existing similar matching mechanisms at the EU level, ESMA suggests at this stage adopting a principle-based approach to provide a certain level of flexibility for the industry when designing their matching policy. As the impact of the use of the matching mechanisms is still unknown, we firmly support ESMA's principle-based approach.

- **Cost Disclosure**

To guarantee consistency across several regulatory frameworks, we suggest ESMA take into account the broader discussions on costs currently held under the Retail Investment Strategy and the debates on due/undue costs held under the AIFMD review.

In addition, we would strongly recommend that the recently implemented PRIIPs disclosure regime be given sufficient time to bed down and that any “lessons“ be applied consistently to the costs regulatory framework.

Finally, we would encourage ESMA to do its part in achieving a common approach to cost disclosures in the future, instead of the current “piecemeal” approach regarding, notably, the PRIIPs Regulation, the ELTIF Regulation, MiFID II and the PEPP Regulation.

- **Use of financial derivative instruments solely serves hedging purpose**

EFAMA agrees with ESMA’s views on the conditions under which the use of financial derivative instruments shall be considered solely serving hedging purposes. However, we consider that the wording “*verifiable and objectively measurable reduction*” of the risk used under Article 1(2) can be problematic due to lack of clarity.

In comparison to the language used in the RTS, we observe that when defining such conditions, the language of Article 11 on the efficient portfolio management of the UCITS eligible assets Directive may be appropriate as such wording is well understood by managers who operate in the UCITS space, compared to the wording used in the RTS.

In the coming months, as our discussion on the proposed regulatory technical standards progresses, we anticipate providing ESMA with additional analysis and input on the issues raised in the consultation paper.

QUESTIONS AND ANSWERS

➢ **Existing ESMA empowerments under Articles 9(3), 21(3) and 26(2)**

Question 1: Do you agree with the proposed approach in relation to the RTS under the abovementioned Articles 9(3), 21, and 26(2) of the ELTIF Regulation?

EFAMA agrees with the ESMA's approach related to Articles 21 and 26(2) of the ELTIF Regulation.

Regarding the ESMA's views on the conditions under which the use of financial derivative instruments shall be considered as solely serving hedging purposes (as per Article 9(3) of the ELTIF Regulation) we consider that the wording "*verifiable and objectively measurable reduction*" of the risk used under Article 1(2) can be problematic due to lack of clarity.

We note that when setting such circumstances, the wording of Article 11 on the efficient portfolio management of the UCITS eligible assets Directive would be more appropriate, as it clearly establishes the following criteria for the use of derivatives:

a) they are economically appropriate in that they are realised in a cost-effective way; and

b) they are entered into for one or more of the following specific aims:

   (i) reduction of risks;

   (ii) reduction of cost;

   (iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules laid down in Article 22 of Directive 85/611/EEC.

➢ **ESMA empowerment under Article 25(3) on cost disclosure**

Question 2: Do you agree that the abovementioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIF Regulation?

Which other pieces of legislation and regulatory material do you consider relevant for that purpose)?

The list of legislative and regulatory materials mentioned in the ESMA consultation is relevant.

However, in addition to the pieces of legislation mentioned, the MiFID II ex-ante and ex-post cost disclosures and AIFMD investor disclosures (Article 23) are also of relevance. We also note that many other pieces of legislation pertaining to cost disclosure are currently under discussion and review at the European level. As a result, we recommend ESMA consider the broader discussions held under the Retail Investment Strategy and the discussions on due/undue costs held under the AIFMD review.

According to paragraph 18 of the consultation paper, the PRIIPs Delegated Regulation was published in December 2021 and entered into application in January 2023. We would strongly recommend that the PRIIPs disclosure regime be given sufficient time to bed down and that any lessons learned be applied consistently to the costs regulatory framework.

As we reiterated in the 2019 EFAMA response to the ESMA consultation on Article 25 of the ELTIF Regulation[1], we would encourage ESMA to do its part in achieving a common approach to cost disclosures in the future. This would be in the greater interest of investors instead of the current "piecemeal" approach regarding, notably, the PRIIPs Regulation, the ELTIF Regulation, MiFID II and the PEPP Regulation.

Question 3: Do you agree with the abovementioned assumptions?

In relation to the ELTIF cost ratio figures to be expressed as yearly percentages (of the capital of the ELTIF), would you see merit in expressing it instead in terms of maximum percentages (and, in the prospectus, only refer to the corresponding yearly figures included in the KID, or in the annual report of the ELTIF)?

We do not agree with the proposal in Article 12(20) which requires managers to explain in the prospectus the differences between the PRIIPs overall RIY figure and the ELTIF overall cost ratio figure explanation. These differences would, in reality, involve explaining the different regulatory approaches taken between ELTIFs and PRIIPs. We doubt whether these explanations will be of added value. This again highlights the necessity of a common approach to cost disclosures and calculations as expressed previously.

Question 4: Do you agree that the types of cost mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital? What are your views on the list of "other costs" referred to above in paragraph 32(b) which are suggested to be added, as compared to the list of "other costs" referred to in Article 25(1)(e) of the ELTIF Regulation?

Management fees, performance fees and other costs (including administrative, regulatory, depositary, custodial, professional and audit costs) are indeed annual costs that can be expressed as a percentage of the fund's capital. It should be clarified, though, that it is ex-ante cost disclosure and that ex-post costs are disclosed in ELTIF annual report and accounts.

However, the understanding of "other costs" for ELTIFs and other funds investing in real assets is not sufficiently clear. In the context of PRIIPs disclosures, it is still contested among industry participants whether (1) operating costs incurred at the level of the asset and (2) interest payments for debt financing shall be considered cost and thus, included in the summary cost indicator.

Since real assets are part of the eligible investments by ELTIFs, we believe that the technical standards under the ELTIF Regulation offer an opportunity for ESMA to clarify these issues.

In this regard, we urge ESMA to take the following into account:

(1) Treatment of operating costs relating real assets

Non-apportionable operating costs of real assets such as incidental expenses (including payments for water and waste disposal, road cleaning, other cleaning services, energy supply, real estate tax and insurance coverage) and maintenance costs (including maintenance work and inspection performance, renovation and repair measures) are incurred by any person holding real estate or other real assets.

[1] https://www.efama.org/sites/default/files/publications/19-4049_0.pdf

They are not specific to the management of investment funds nor related to property management or similar services, and thus should not be relevant for the purpose of recurring cost calculation.

In order to ensure comparability of cost information to investors, the same approach should apply to funds investing in real assets. If the basis for cost calculation were different, e.g. for equity and real estate funds (by including costs incurred at the level of individual assets in the latter case), this would discourage prospective investors from entering ELTIFs at the point of sale.

(2) Interest payments for the debt financing of real assets

Financing costs in relation to real estate or other real assets are inherent to any economically viable investment in these asset classes. They are not specific to the management of investment funds and thus should not be taken into account in the recurring cost calculation. Debt financing of real assets serves the purpose of optimising the return on equity with a view to enhancing investors' performance.

Recurring interest payments at the asset level which are an intrinsic part of this investment strategy should thus not be viewed as a cost.

A meaningful cost disclosure can enable investors to determine the costs of managing a specific fund as an extra cost in comparison to direct investments in the relevant assets. If fund management costs were to be mingled together with costs inherent to direct investments e.g. in real estate, investors would not be able to make meaningful comparisons of management cost-efficiency across products.

Regarding distribution costs, a clear difference should be made between carried interest and performance fees. As a reminder, carried interest is a profit share mechanism typical to private equity, which aligns the interests of fund managers with those of investors. Although carried interests are linked directly to the performance of private equity funds, such an arrangement differs from the traditional performance fees as it is typically not paid each year but only once the fund has achieved the "preferred rate of return". Therefore, carried interest and performance fees should be treated separately, as carried interest is a return on co-investments from carried interest shareholders, provided that this would have to be added only when performance fees or carried interests are effectively applied.

Question 5: Do you agree that the types of cost mentioned in paragraph 33 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall cost ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio? Would you see merit in specifying what is to be meant by the "setting-up" of the ELTIF, as referred to in Article 25(1)(a) of the ELTIF Regulation? If yes, could you indicate which elements of the "setting-up" of the ELTIF should be clarified?

Generally speaking, costs for setting up the ELTIF and its distribution costs could be considered as one-off costs for which the duration of the investment is necessary in order to calculate the Article 25(2) ratio. Especially for initiators intending to launch their first ELTIF, it would be reassuring to clarify that the initial calculation of the costs will be based on the business forecast due to the lack of financial statements.

However, it is worth noting that while ESMA considers that the mentioned entry costs (costs of setting up the ELTIF and distribution costs) are to be regarded as "fixed costs", we would like to point out that distribution fees are also paid from the ongoing management fee, on top of the fixed percentage of the distributor holding fee. Even if it is technically a management fee within the meaning of Article 25(1)(c), from which distribution fees are then paid in turn, it should at least be made clear that such distribution costs financed from the ongoing management fee shall be classified as "ongoing costs" and not as "fixed costs". Moreover, distribution costs may change and recur based on the fund's development strategy;

for instance, if the manager chooses to distribute its ELTIF in a different Member State, such distribution costs may be incurred.

Question 6: Do you agree that the types of costs mentioned in paragraph 36 may be considered as fixed costs in the case of an ELTIF?

In general, we agree that costs relating to the acquisition of the main assets of the ELTIF portfolio should be considered one-off costs and therefore be amortised over the life of the asset, or over the intended holding period of the assets. Further consideration may be needed for investments into other ELTIFs. Again, we believe that a more holistic approach to costs (across various pieces of EU legislation on savings & investments) is needed to ensure clarity, consistency and soundness.

Question 7: Would you see merit in including a specific grand-fathering clause (in relation to the RTS under Article 25(3) of the ELTIF Regulation) for ELTIFs benefitting from the grand-fathering clause provided for in Article 2 of Regulation 2023/606?

We see a need for specific transitional/grandfathering provisions for the proposed RTS in order to ensure legal certainty for ELTIF managers and investors.

On the topic of updating prospectuses, Article 1(15) of the draft RTS states that "*the overall ratio shall be calculated once a year*". This could imply that the prospectus should be updated annually. This requirement, however, is not envisaged by the ELTIF Regulation and it makes little sense to update the prospectus once the ELTIF is no longer open to new subscriptions. We would therefore ask ESMA to reconsider Article 1(15).

In addition, we take this opportunity to highlight that under paragraph 5 ESMA seems to provide a clarification on the transitional provisions of the revised ELTIF Regulation, specifying that neither the authorisation, nor the marketing of ELTIF 2.0, is possible before the entry into application of the amended ELTIF Regulation. We wonder whether ESMA has exceeded its mandate by providing such an *ad hoc* clarification on a Level 1 requirement, as such provisions should only be established at Level 1.

- **<u>ESMA empowerment under Article 18 on redemption policy</u>**

Question 8: Do you agree with the proposed amendment to the existing RTS under the first paragraph of Article 18(6) of the ELTIF Regulation?

EFAMA believes that the list of circumstances in which the life of an ELTIF is considered compatible with the life-cycle of each of its individual assets as per Article 2 of the draft RTS is fair and comprehensive.

Question 9: Do you agree with the proposed criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a)) of the ELTIF Regulation?

What are your views on the setting of a minimum of X years for all ELTIFs, irrespective of their individual specificities (with X equal to 3, for example), with respect to the abovementioned minimum holding period?

EFAMA is of the view that the criteria to determine a minimum holding period referred to in Article 3 of the draft RTS are relevant.

Paragraph 62 of the ESMA consultation paper on the draft RTS under the revised ELTIF Regulation recognises that a minimum holding period could be different from one type of ELTIF to another, as asset classes, sectors and markets will behave differently and therefore some may require longer or shorter minimum holding periods. We share ESMA's views as we believe that ELTIFs' variety of fund terms, asset classes (infrastructure, private equity, real estate, among others) and investment strategies call for common standards that are based on qualitative, rather than quantitative criteria.

Setting a compulsory minimum holding period of three years, as proposed by ESMA by default for all ELTIFs, unless the manager of the ELTIF is able to justify that it could be shorter, seems arbitrary and inconsistent with market practice. The proposal also clearly exceeds the mandate given to ESMA by the legislators under ELTIF Level 1 as ESMA's mandate is limited to setting out the criteria to determine the minimum holding period. This action may jeopardise the viability of ELTIF offerings to retail investors, thereby limiting retail investors' access to illiquid asset classes with attractive returns. In certain European markets, products potentially eligible for the ELTIF label do not currently have any minimum holding period but instead rely on other liquidity safeguards such as gates, minimum liquidity buckets, minimum notice periods or other combinations. In one of the Member States, for instance, ELTIFs will mostly be commercialised through unit-linked accounts and the minimum holding period cannot be mirrored by the insurance company, as it would not be compliant with the national insurance regulation. Consequently, setting a mandatory minimum holding period in the proposed RTS would result in a very small number of ELTIFs being potentially marketed to national retail investors.

We also note that early redemptions rarely occur during the initial period of the fund's life, and even in such a case, these could be treated with the disposal of the instruments referred to in point (b) of Article 9(1) of the ELTIF Regulation (i.e. UCITS-eligible assets) as well as other asset- liability management tools such as cash flows resulting from amortising debt instruments and recurring dividend resulting from equity instrument for instance.

In addition, the PRIIPs Regulation applies when ELTIFs are marketed to retail investors. Article 8(3), letter g (iv) of Regulation 1286/2014 mandates that the key information document shall contain an indication of the recommended holding period. Having two different requirements on the minimum holding period – mandatory under the ELTIF regime and recommended under the PRIIPs Regulation – could be misleading and create uncertainty.

Allowing AIFMs to determine the minimum holding period on a case-by-case basis, under the supervision of the national regulator, would provide the necessary flexibility to allow for innovation on ELTIF strategies related to the development of the secondary market. In addition, and as stated previously, we do not see the need to impose a mandatory holding period, as some domestic long-term investment funds that are subscribed to by retail investors encounter no ongoing issues.

Paragraph 61 of the ESMA consultation acknowledges the interaction between the ramp-up period of a given ELTIF and the duration of the minimum holding period. In particular, Article 18 of the amended

ELTIF Regulation provides for the possibility of redemption during the life of the ELTIF, provided that redemptions are not granted before the end of the minimum holding period or before the end of the ramp-up period. We believe that the ELTIF regime allows managers to choose between forbidding redemptions during the ramp-up period or setting a minimum holding period which could be shorter than the initial ramp-up period.

EFAMA also appreciates ESMA's clarification in Recital 7 that the minimum holding period is applicable at the beginning of the ELTIF's life and that the ELTIF managers may apply a similar period to subsequent investors if they deem it appropriate in light of equal treatment, financial stability, or other considerations. Additionally, recital 7 is also helpful in clarifying that redemption windows can be organised after the ramp-up period, with or without a minimum holding period. This is already the case under the ELTIF 1.0 regime and should remain possible under ELTIF 2.0, as confirmed by the recitals. However, for clarity purposes, we suggest modifying the last sentence of paragraph 7 by referring to “fair treatment” instead of “equal treatment”.

In terms of the wording of the draft RTS, Article 3(1), letter b, points (i) and (ii), stipulate that the manager must take into account the aggregate concentration of retail and/or professional investors in the ELTIF when determining the minimum holding period. We observe that it is difficult for fund managers to monitor the concept of "aggregated concentration" because intermediaries and distributors who sell fund units to investors do not provide fund managers with information on client types on a cost-free basis. Such aggregation by the fund manager could also be requested in advance of the fund's launch, and as an expectation of such concentration, as long as regulators require intermediaries and distributors to provide more information on the client type to fund managers on a free-cost basis.

We, therefore, suggest the following drafting amendments to Article 3(1), letter b, points (i) and (ii):

> (i) if the ELTIF can be marketed to retail investors, the *expected* aggregate concentration of retail investors *in conformity with the setting of the target market*; and
>
> (ii) if the ELTIF can solely be marketed to professional investors, information on the expected concentration of these professional investors in the ELTIF *in conformity with the setting of the target market*;

Finally, as noted by ESMA in paragraphs 49 to 51, we believe the revised ELTIF Regulation permits the launch of open-ended ELTIF structures, provided that the conditions outlined in Article 18(2), are satisfied.

Quention10: Do you agree with the proposed approach in relation to the minimum information to be provided to the competent authority of the ELTIF (referred to in point (b) of paragraph 2 - Article 18(6)(b) of the ELTIF Regulation)?

Overall, EFAMA agrees with the list of minimum information that managers should provide to competent authorities.

However, in addition to the ELTIF Regulation, the AIFMD regime lays down the rules concerning the minimum information to be provided to competent authorities and distinguishes between open and closed-ended funds. Therefore, the ELTIF requirements should be added to those of the AIFMD, as ELTIFs are a specific type of AIFs.

Furthermore, Article 4(2) of the draft RTS establishes that "…*the ELTIF should provide to the competent authority …. the update information, where possible, before the application of such material changes, and in any case not later than 10 days from the date the respective material changes became known or should have become known to the ELTIF manager.*"

EFAMA notes that the 10 days deadline for providing the required information is difficult to meet and we suggest a 30 business days period instead. In addition, the term "*should have become known*" should be removed as its applicability is too ambiguous and it would allow for ex-post litigation.

Question 11

a) **Do you agree with the proposed approach in relation to the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2) - Article 18(6)(c) of the ELTIF Regulation)?**

Please see the answers to question 11-b-c-d below.

b) **What are your views on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs, irrespective of their individual specificities, as suggested in paragraph 83?**

ESMA suggests that all ELTIFs would benefit from setting a maximum redemption frequency on a quarterly basis, except if the manager of the ELTIF could justify that it could be higher.

We observe that IOSCO and FSB establish that the liquidity risk management of a fund is tied to its asset, liability, and redemption policies and that sound liquidity risk management depends on the correct articulation of these three variables using a holistic approach. Consequently, the redemption frequency should not be evaluated in isolation without knowledge of the ELTIF's liquidity profile and the available LMTs as described in the fund documentation. Therefore, different combinations of these tools could be foreseen and applied depending on the specificities of the fund and redemption frequencies that are more frequent than quarterly may be required.

We further believe that a fixed maximum redemption frequency would not accommodate investors' needs as well as all ELTIF investment strategies. For the same reasons as above, we believe that common qualitative standards would be more appropriate to determine redemption frequencies that are practicable and adaptable for each case. As a point of comparison, we note that the UK Long-Term Asset Fund (LTAF) provides for a maximum redemption frequency of one month, with a 90 days minimum notice period.

Regarding liquidity management tools (LMTs), ESMA seems to indicate that ELTIF shall select and implement at least one anti-dilution LMT[2] while, "in stressed market conditions" in particular implementing redemption gates to reduce the possibility of selling assets at discounted prices.

[2] ESMA clarifies under paragraph 93 of the consultation that the anti-dilution liquidity management tools paragraph should be anti-dilution levies, swing pricing and redemption fees, as referred to in the Annex V of the Directive 2011/61 in the Commission proposal 2021(721) for a review of the AIFMD.

The EU regulatory framework provides for the possibility to choose between different types of LMTs to better tailor the liquidity management of the fund to the specific case. Although we see merits in the use of anti-dilution tools (anti-dilution levies, swing pricing and redemption fees) as suggested by ESMA, we believe that managers should clearly be able to choose the most appropriate mandatory LMT, in both normal as well as stressed market conditions, depending on the fund's structure and on a case-by-case basis. In addition, it should be noted that the effects of a mandatory anti-dilution mechanism have not been observed, nor really considered, yet.

Finally, we would also expect ESMA to take into account the additional obligations that will be imposed on all AIFMs in the context of the current AIFMD review.

c) **What are your views on the setting of a notice period of Y months for all ELTIFs (with Y equal to 12, for example)?**

What are your views on the options 1 and 2, set out in paragraphs 87 to 90, in relation to the specific requirements/circumstances where the notice period could be less than one year, and the numerical values of the parameters Z(1) to Z(4), under option 1, and Y, under option 2?

ESMA seems to recommend a mandatory minimum notice period of 12 months for all ELTIFs.

While we recognise that a minimum notice period could be an option alongside the remaining LMTs, the ESMA's suggestion of a 12-month notice period seems excessively lengthy, given that funds already have a comprehensive list of tools in the framework of the current review of AIFMD to manage their liquidity without relying on a long notice period. Retail investors accustomed to products with greater flexibility may view such an extensive notice period as a deterrent rather than an attractive feature. It should also be noted that a fixed minimum notice period would be incompatible with all redemption frequencies: for instance, a 12-month notice period would be impractical for a quarterly redemption as suggested under the ESMA proposal.

In addition, the outcome of the AIMFD review appears to consider in its Annex V that the "Extension of the notice period" is a liquidity management tool, and not the notice period itself. We believe that ELTIF managers should have the discretion to set a notice period, only if they deem it necessary, with the caveat that an extension of the notice period could be implemented in exceptional circumstances.

We appreciate ESMA acknowledging that depending on the LMTs available for a specific ELTIF fund, shorter notice periods should be available in certain specific circumstances. However, the two options described in the ESMA consultation as a way of allowing shorter notice periods (Option 1 and Option 2) do not reflect market practices.

More specifically, option 1 offers ELTIF the possibility to hold a minimum proportion of liquid assets in order to offer redemption and, therefore, the length of the notice period could be reduced according to a minimum amount of liquid assets. We note that the fund liquidity depends on the type of underlying assets; a minimum amount of liquid assets might, in certain cases, restrain innovation and limit the range of strategies and structures that could be developed for ELTIFs. In addition, the calibrations as suggested by paragraph 88 of the consultation seem to be too strict and make a whole range of retail AIFs not eligible to the ELTIF structure, thus hindering the objective of making ELTIF a successful brand.

Option 2, which allows the number of possible redemption requests to be calibrated if the notice period is less than one year, is not optimal as it could be confused with redemption gates since both methods

provide for the limitation of redemptions within a maximum percentage applicable to a specific time window. However, option 2 would be more consistent with market practices compared with option 1, if no specific numbers or timeframes are established.

Question 12: Do you agree with the proposed criteria to assess the percentage referred to in point (d) of Article 18(2) - Article 18(6)(d))?

EFAMA understands that the percentage referenced in point (d) of Article 18(2) of Regulation 2015/760 represents a permanent liquidity cap which applies on each window of redemption in accordance with ELTIF's redemption frequency. This conforms to the standard market practice whereby the manager typically determines, based on the available liquidity, the maximum number of redemption orders that can be processed by the next redemption date.

Since this limitation is established at Level 1, our interpretation is that the liquidity restriction as per Article 18(2) is not one of the instruments that must be activated; rather, its application is more a matter of ordinary business conduct. As it is part of ELTIF's redemption policy, it should not be subject to disclosure requirements when it occurs, neither to the competent authority, nor to shareholders.

With regards to the drafting of Article 6 of the draft RTS, we note that paragraph 2 suggests that the assets referred to in Article 9(1), point (b) of Regulation 2015/760, should not be used to meet redemption requests during the life of the ELTIF. According to our understanding, the liquidity buffer provided by Article 9 of the ELTIF Regulation is intended to satisfy redemption requests, provided that the conditions outlined in Article 18(2) of Regulation 2023/606 are satisfied.

In addition, Article 6(4) establishes that the expected cash outflows between the assessment date and the applicable redemption date shall be deducted from the calculation of the percentage of allowed redemptions. However, the expected inflows should be added to the calculation of the percentage of allowed redemptions. Indeed, the corresponding cash-flows will be available to the fund manager to satisfy possible redemption requests and as such, they should be included in the calculation of the percentage of allowed redemptions.

- **ESMA empowerment under Article 19 on the matching mechanism**

Question 13: Do you agree with the principle-based approach suggested above, in relation to the ESMA RTS under Article 19(2a)?

Given the absence of any existing similar matching request mechanism at the EU level, ESMA suggests at this stage adopting a principle-based approach to provide a certain level of flexibility for the industry when designing their matching policy. As the impact of the use of the matching mechanism is still unknown, we firmly support ESMA's principle-based approach.

Question 14: Do you agree with the proposals suggested above and corresponding draft RTS, in relation to the transfer process for both exiting and potential investors, and the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests?

EFAMA agrees with ESMA’s approach as it provides a great degree of freedom to managers in relation to the transfer process for both existing and potential investors, as long as the matching policy is clear and available to investors.

Question 15: Do you agree with the proposed approach and corresponding draft RTS, in relation to the periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF?

If both systems under Article 18(2) and 19(2a) coexist, how could the risk of arbitrage between different prices in the primary and the secondary markets be, in your view, mitigated?

How could (retail) investors be ensured that the purchase or sale of shares on the secondary market will be executed at prices that reflect the value of the ELTIF?

We concur with ESMA's clarification that no specific period of time should be specified during which the matching mechanism may be used. In addition, we believe that the policy for matching requests should be clearly disclosed in the prospectus and specify the period of time an instruction from a client should remain valid or pending in the event a portion of the deal may be fulfilled.

ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages over EUR 30 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors. Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities.

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