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Question
a) Can investments in non-EU AIFs be considered as eligible investments under Article 9 of the ELTIF Regulation, noting that Article 10(1)(d) limits eligible investment assets to units or shares in EU funds?

b) Where an ELTIF, in line with Article 10(1)(d) of the ELTIF Regulation invests in ELTIFs, EuVECAs, EuSEFs, UCITS and/or EU AIFs managed by EU AIFMs should such funds, in turn, invest in “eligible investments” referred to in Article 9(1) and (2) of the ELTIF Regulation?

ESMA Answer

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Original language

Answer provided by the European Commission

Question a. Can investments in non-EU AIFs be considered as eligible investments under Article 9 of the ELTIF Regulation, noting that Article 10(1)(d) limits eligible investment assets to units or shares in EU funds?

Yes. Article 9(1) of the ELTIF Regulation provides that directly eligible investments may be either eligible investment assets (Article 9(1)(a) of the ELTIF Regulation), as specified in Article 10 of that Regulation, or assets referred to in Article 50(1) of the UCITS Directive (Article 9(1)(b) of the ELTIF Regulation). As regards assets referred to in Article 50(1) of the UCITS Directive, Article 50(1)(e) lists as eligible assets units of “other collective investment undertakings within the meaning of Article 1(2)(a) and (b) [of the UCITS Directive], whether or not established in a Member State”, provided that certain conditions referred to in Article 50(1) of the UCITS Directive are fulfilled. Therefore, ELTIF may have direct exposure to non-EU AIF under the conditions set out under Article 50(1) of the UCITS Directive.

As regards eligible investment assets, as specified in Article 10 of the ELTIF Regulation, Article 10(1)(d) provides that units or shares of one or several other ELTIFs, EuVECAs, EuSEFs, UCITS and/or EU AIFs managed by EU AIFMs (collectively referred to the ‘target funds’) are to be considered as eligible investment assets provided that those target funds invest in eligible investments as referred to in Article 9(1) and (2) of the ELTIF Regulation and have not themselves invested more than 10 % of their assets in any other collective investment undertakings.

While Article 10(1)(d) of the ELTIF Regulation limits directly eligible investments to certain EU investment funds (i.e. ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs), ELTIFs may have an indirect exposure to a non-EU AIF if an eligible investment under Article 9(1) of the ELTIF Regulation has an exposure to such a non-EU AIF. In any case, according to Article 13(1) of the ELTIF Regulation each ELTIF shall invest at least 55% of its capital into eligible investment assets.

Question b. Where an ELTIF, in line with Article 10(1)(d) of the ELTIF Regulation invests in ELTIFs, EuVECAs, EuSEFs, UCITS and/or EU AIFs managed by EU AIFMs should such funds, in turn, invest in “eligible investments” referred to in Article 9(1) and (2) of the ELTIF Regulation?

Yes. According to Article 10(1)(d), where an ELTIF invests in target funds, those target funds must invest in eligible investments as referred to in Article 9(1) and (2). In this connection, Article 10(2) sets out the combined assessment of the investments by ELTIFs in units or shares of ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs. According to Article 10(2), subparagraph 2, of the ELTIF Regulation, the combined assessment should be applied solely with respect to the determination of compliance with the investment limit and the other limits laid down in Article 13 and Article 16(1) of the ELTIF Regulation. The look-through approach should thus not be understood to be extended or applied to the eligibility of assets defined in Article 9 and Article 10 of the ELTIF Regulation.

Thus, the target funds themselves can have exposure to assets that do not meet the eligibility criteria laid down in Article 9(1) of the ELTIF Regulation. Regardless, ELTIFs must comply with Article 13 of the ELTIF Regulation, on an aggregate portfolio basis with the portfolio composition and diversification, and with borrowing of cash requirements laid down in Article 16 of the ELTIF Regulation, as well as with the Article 10(1)(d) requirement that target funds should not themselves have invested more than 10% of their capital in other collective investment undertakings.

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