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| 31 July 2015 |

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| Reply form for the  Draft regulatory technical standards under the ELTIF Regulation |
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| Date: 31 July 2015  2015/ESMA/1241 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on Draft regulatory technical standards under the ELTIF Regulation, published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_ QUESTION\_ELTIF\_RTS\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* contain a clear rationale, including on any related costs and benefits; and
* describe any alternatives that ESMA should consider

**Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_ELTIF\_RTS\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_ELTIF\_RTS\_ESMA\_REPLYFORM or

ESMA\_ELTIF\_RTS\_ESMA\_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

***Deadline***

Responses must reach us by **14 October 2015.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | bsi Real Asset Investment Association |
| Confidential[[1]](#footnote-2) |  |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ELTIF\_RTS\_1>

Along with other market participants like INREV and ZIA, bsi supports the idea of the European Commission to improve the financing framework for long term investments in real assets like real estate and infrastructure projects. Amending the ESMA’s actual work on the ELTIF Level-2 provisions, please find some general remarks on ELTIF investing in this asset classes. We are in doubt if product rules in the ELTIF Regulation are really helpful for that aim because of the special conditions of real asset investments such as infrastructure projects.

The high capital requirements are normally meat through debt, especially mortgages. Therefore the introduced strict leverage ratio does not meet the needs of real estate investments. Insofar ELTIF cannot play the desired role for investments in real estate in combination with infrastructure elements.

We therefore are thankful that the European Commission decided to take another approach and work on the attractiveness of the ELTIF regime as a pillar of the Capital Markets Union initiative.

In addition to that it would be very helpful if ELTIF obtain another risk module in Solvency II which taking into account the lower risk profile through the long term structure and the stable cash flow.

In our view ELTIF could only be an alternative to other AIF, if:

* the LTV ratio is market-conform compared to other AIF
* ELTIF obtain their own risk module in solvency II with a lower risk factor
* the product regulation abandons diversification requirements of assets in the fund.

We welcome first initiatives by the Commission to strengthen the attractiveness for ELTIF through the various thoughts and ideas within the Capital Markets Union. Nonetheless, since changes in the ELTIF regime (the level-1 text) itself might take again some years to be implemented, we ask ESMA to contribute to this task not only within the actual level-2 process, but also beyond, when it comes to further elaboration on the ELTIF regime itself.

As providers of closed-ended funds investing in real assets like real estate, infrastructure, aviation, renewable energy projects and private equity etc., bsi members still understand ELTIF as the perfect vehicle for our business models. However, the efforts to design an ELTIF are still too high for both investors and management companies in comparison to just designing AIFs, since the provisions are much too high in our view. In order to raise attractiveness, we ask all EU bodies, both policy makers and authorities to take action on lowering the administrational and legal burden of ELTIF, in order to ensure that this vehicle is not taking the same road as EUVECA and EUSEF did in the past. The German Capital Investment Act (Kapitalanlagegesetzbuch KAGB) could serve as a role model for future ELTIF provision since it already states particular rules on the product and the distribution amending the AIFMD regime, in particular when AIFs are marketed to retail investors (see e.g. §§ 261ff. KAGB). We ask ESMA to include BaFin knowledge on these provisions in the level-2-process and further developments on the ELTIF regime as a whole.

<ESMA\_COMMENT\_ELTIF\_RTS\_1>

1. Do you agree that the abovementioned pieces of legislation and associated regulatory framework are relevant for the purpose of the present advice on Article 9(3) of the ELTIFs Regulation? Which other pieces of legislation and associated regulatory framework do you identify for that purpose?

<ESMA\_QUESTION\_ELTIF\_RTS\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_1>

1. Do you think that the main risks that are necessary to be covered at the level of the ELTIF are currency, inflation and interest rate risks? If no, which types of risk would the manager of an ELTIF potentially have to cover in your view?

<ESMA\_QUESTION\_ELTIF\_RTS\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_2>

1. Do you think that the approach to hedging should not limit ex ante the scope of risks that ought to be covered by the manager of the ELTIF?

<ESMA\_QUESTION\_ELTIF\_RTS\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_3>

1. On the contrary, do you think that the approach to hedging should be tailored to the specific case of ELTIFs, and their possible eligible investments? Do you think that in this case the risks that might have to be covered by the manager of the ELTIF should be limited to the types of risk that were mentioned in question 2?

<ESMA\_QUESTION\_ELTIF\_RTS\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_4>

1. Do you identify any consequences in terms of costs or scope of the eligible investments of the ELTIF if the risks that might be covered at the level of the ELTIF are limited to those that were mentioned in the impact assessment of the Commission?

<ESMA\_QUESTION\_ELTIF\_RTS\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_5>

1. Do you agree with the proposed approach? Should you disagree, please provide reasons and propose an alternative approach and justify it.

<ESMA\_QUESTION\_ELTIF\_RTS\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_6>

1. Do you agree with the risks identified and the related proposed criteria? Would you suggest the introduction of any additional/alternative risks/criteria? Please provide details and explain your position.

<ESMA\_QUESTION\_ELTIF\_RTS\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_7>

1. Do you agree with the proposed valuation criteria? Would you suggest the introduction of any additional/alternative criteria? Please provide details and explain your position.

<ESMA\_QUESTION\_ELTIF\_RTS\_8>

We do not agree with the proposed valuation criteria. The method described and the reference to IFRS 13 is contradicting to the national valuation standards and therefore differs tremendously from AIFM regime which explicitly leaves space for national rules and standards when it comes to valuation. Even though the IFRS 13 Fair Value Measurement is proposed as an endorsement, we are raising serious doubts regarding the application of this requirement. If ESMA is recommending the IFRS 13 Measurement Standards to be used, it is very likely to be seen as an (additional) obligation, which would cause additional expenses and burden for the AIFM, without any further benefit. Especially the idea of implementing another provision than the that is used during the lifetime of the funds is considered to very be difficult. We do suggest a coherent approach towards the measurement for the valuation of the assets to be divested in consitency with the previous valuations during the lifetime of the fund in order to be comparable, transparent and understandable. Previous valuation is performed in line with the AIFMD rules, only thus in line with national law which per se linked to IFRS. We think that a complete change to an IFRS Standard would be cause irritating information especially towards the investors, who received information based on other legislation before it comes to the exit of the fund. This would truly misleading and should therefore be reconsidered by ESMA carefully.

<ESMA\_QUESTION\_ELTIF\_RTS\_8>

1. 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 ELTIFs Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose?

<ESMA\_QUESTION\_ELTIF\_RTS\_9>

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<ESMA\_QUESTION\_ELTIF\_RTS\_9>

1. Do you agree with the abovementioned assumptions?

<ESMA\_QUESTION\_ELTIF\_RTS\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_10>

1. Do you agree that the types of costs mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital?

<ESMA\_QUESTION\_ELTIF\_RTS\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_11>

1. Do you think that performance related fees would be relevant costs to be taken into account in the case of ELTIFs?

<ESMA\_QUESTION\_ELTIF\_RTS\_12>

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<ESMA\_QUESTION\_ELTIF\_RTS\_12>

1. How would you include performance related fees in the overall ratio referred to in paragraph 2 of Article 25?

<ESMA\_QUESTION\_ELTIF\_RTS\_13>

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<ESMA\_QUESTION\_ELTIF\_RTS\_13>

1. Do you agree that the types of costs mentioned in paragraph 54 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 ratio mentioned in Article25(2), provided that this overall ratio is a yearly ratio?

<ESMA\_QUESTION\_ELTIF\_RTS\_14>

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<ESMA\_QUESTION\_ELTIF\_RTS\_14>

1. Do you agree that the types of costs mentioned in paragraph 54 may be considered as fixed costs in the case of an ELTIF?

<ESMA\_QUESTION\_ELTIF\_RTS\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_15>

1. Do you agree with the proposed requirements? Would you suggest the introduction of any additional/alternative requirements? Please provide details and explain your position.

<ESMA\_QUESTION\_ELTIF\_RTS\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_16>

1. What would you consider as appropriate specifications for the technical infrastructure of the facilities?

<ESMA\_QUESTION\_ELTIF\_RTS\_17>

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<ESMA\_QUESTION\_ELTIF\_RTS\_17>

1. In the event that the RTS enter into force after the date of application of the ELTIF Regulation and authorisations are granted between the date of application of the ELTIF Regulation and the date of application of the proposed RTS, do respondents see a need for specific transitional/grandfathering provisions for the proposed RTS?

<ESMA\_QUESTION\_ELTIF\_RTS\_18>

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<ESMA\_QUESTION\_ELTIF\_RTS\_18>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the options as regards hedging? Which other costs or benefits would you consider in this context?

<ESMA\_QUESTION\_ELTIF\_RTS\_19>

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<ESMA\_QUESTION\_ELTIF\_RTS\_19>

1. Do you agree with the assessment of costs and benefits above for the proposal on the sufficient length of the life of the ELTIF? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

<ESMA\_QUESTION\_ELTIF\_RTS\_20>

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<ESMA\_QUESTION\_ELTIF\_RTS\_20>

1. Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the assessment of the market for potential buyers? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

<ESMA\_QUESTION\_ELTIF\_RTS\_21>

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<ESMA\_QUESTION\_ELTIF\_RTS\_21>

1. Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the valuation of the assets to be divested? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

<ESMA\_QUESTION\_ELTIF\_RTS\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_22>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards common definitions, calculation methodologies and presentation formats of costs of ELTIFs? Which other types of costs or benefits would you consider in this context?

<ESMA\_QUESTION\_ELTIF\_RTS\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ELTIF\_RTS\_23>

1. Do you agree with the assessment of costs and benefits above for the proposal on the facilities available to retail investors? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs that the proposal would imply.

<ESMA\_QUESTION\_ELTIF\_RTS\_24>

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<ESMA\_QUESTION\_ELTIF\_RTS\_24>

1. The field will used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account. [↑](#footnote-ref-2)