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European Securities and Markets Authority
201-203 Rue de Bercy
75012, Paris

Submitted via www.esma.europa.eu

24 August 2023

Re: European Securities and Markets Authority's ("ESMA") consultation on the draft Regulatory Technical Standards (the "draft RTS") to be developed under Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 ("ELTIF 2.0")

The Irish Funds Industry Association ("**IF**") is the voice of the funds and asset management industry in Ireland. Founded in 1991, our vision is that Ireland will be the premier location to enable and support global investing through its reputation for trust, capability and innovation. Our 150+ member firms are involved in all aspects of the establishment, management and servicing of investment funds which deploy capital around the world, support saving and investing across economies. The funds industry in Ireland is a leading location in Europe and globally, employing over 17,000 professionals and providing services to over 8,500 Irish regulated investment funds with assets of EUR 3.7 trillion.

IF strongly supports the reforms introduced earlier this year in ELTIF 2.0. We believe that the reforms will allow the ELTIF to now realise its true potential and play a key role in facilitating the raising and channelling of capital towards long-term investments in the real economy. IF welcomes the publication of the draft RTS and appreciates the opportunity to provide comments and feedback on this important matter.

We set out IF's response to questions 1-15 of the draft RTS below but in the first instance wish to highlight the following points:

- **A principle based approach**: IF considers that in order for the ELTIF to realise its true potential, it is crucial that the final RTS are supportive of and consistent with the objectives of ELTIF 2.0 and do not distort the market or compromise the ELTIF's potential. IF also recognises the importance of rules that provide the necessary and appropriate flexibility to account for the new broader range of assets available under ELTIF 2.0 so that the developing ELTIF market is not stifled. While IF acknowledges the need for consistency across the ELTIF product in order to ensure that ELTIFs are understood by investors and allow for effective supervision by the relevant national competent authority ("**NCA**"), IF's view is that this will be best achieved through a principle-based approach, subject always to appropriate guidance from ESMA.

- **Cost disclosures:** We generally agree with ESMA's proposed approach to costs disclosures and consider that the general approach will be welcomed at industry as it will provide greater transparency for investors which will also likely reduce costs

over time and will assist investors in comparing different ELTIFs. However, we note that due to the nature of ELTIF eligible assets, the use of existing frameworks, which are designed for listed assets, may not always be appropriate as they do not account for all costs associated with investing in assets eligible for ELTIFs (see further response to Q4 below).

- **Minimum holding periods:** In light of the broad investment strategies that ELTIF 2.0 can accommodate, IF considers that a principle-based approach should be applied to determine the minimum holding period for individual ELTIFs. We do not agree with or support the suggestion of the introduction of a time-based requirement of "X" years. We have addressed this point in further detail in our responses below but consider that the minimum holding period should be determined by the ELTIF manager having regard to the specific liquidity profile, investor base, investment strategy and objectives and portfolio composition of the relevant ELTIF. A "one size fits all" approach, which can be applied to UCITS funds is not appropriate to ELTIFs, by their nature, can vary considerably in terms of the features referred to above.

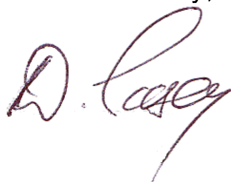
- **Notice periods for redemptions:** We do not consider that the mandating of notice periods for redemptions is necessary or appropriate. As further detailed below, IF's view is that liquidity management can be appropriately and adequately addressed, reflecting the liquidity profile and portfolio composition of the relevant ELTIF, without the need to prescribe minimum notice periods or liquidity management approaches.

- **Redemption frequency:** IF is supportive of a maximum quarterly redemption frequency, provided the flexibility for ELTIF managers to utilise more frequent redemptions where the ELTIF manager can justify it is retained.

- **Redemption policies** IF considers that an ELTIF's redemption policy should remain the responsibility of the ELTIF manager who is best placed to ensure that such redemption policy aligns with the liquidity profile of the assets, the needs of the investor base and the overall liquidity of the fund. In support of our view, we note that recent AIFMD 2.0 revisions confirm that it is the fund manager who is primarily responsible for the liquidity risk management of a fund.

Should you have any questions on our responses or wish to discuss our responses further, please contact me.

Yours sincerely,



Declan Casey
Director- Policy and Regulatory

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Q1: 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?

IF agrees with ESMA's approach in relation to Articles 21 and 26(2) of ELTIF 2.0.

In the context of Article 9(3) of the draft RTS and the circumstances in which the use of financial derivative instruments shall be considered as solely serving the purpose of hedging risks inherent to investments of ELTIFs, IF's view is that the proposed inclusion of the requirement for the use of financial derivative instruments to result in *"verifiable and objectively measurable reduction"* of risks lacks certainty.

IF's view is that it would be more appropriate to include a list of criteria for the use of financial derivative instruments. We note that Article 11 (techniques and instruments for the purpose of efficient portfolio management) of Commission Directive 2007/16/EC of 19 March 2007 sets out criteria for the use of financial derivative instruments in the context of efficient portfolio management. We consider that the use of similar criteria to address Article 9(3) would give rise to less ambiguity as the criteria is well established, and understood, for UCITS funds over a period of many years.

Q2: 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)?

IF agrees with the mentioned legislation and regulatory material. We would also note the relevance of the following additional pieces of legislation and regulatory material:

- MiFID II ex-ante and ex-post cost disclosures
- Article 23 of AIFMD (Disclose to investors)

Q3: 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)?

In the context of ELTIFs marketed to retail investors, IF notes the proposal for managers to be required to include both the PRIIPS RIY figure and the ELTIF overall cost ratio figure in the prospectus of the ELTIF and a narrative explaining the potential differences between those figures. IF considers that the inclusion of both figures with an explanatory narrative may in effect result in a narrative outlining the differences in regulatory approaches taken by ELTIFs and PRIIPs. IF considers that such an explanatory narrative may not provide any useful clarity to retail investors and may in reality give rise to confusion.

Q4: 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 31(b) which are suggested to

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be added, as compared to the list of "other costs" referred to in Article 25(1)(e) of the ELTIF Regulation?

IF agrees with ESMA's approach to aligning ELTIF cost disclosures to the existing disclosure framework to the extent possible. We consider that the ability for service providers to use established disclosure processes is positive and in particular agree with references made to the PRIIPs Regulation in this regard (subject to our below comments).

IF agrees that management fees, performance related fees, administrative, regulatory, depositary, custodial, professional services and audit costs are annual costs that can be expressed as a percentage of an ELTIF's capital. However, we consider that distinction should be made between these ex-ante cost disclosures and ex-post costs disclosed in an ELTIF's annual report. This is particularly relevant in the context of ELTIF eligible assets where certain costs may not be known at the time of making such ex-ante disclosures. In order to address this point, we would suggest the inclusion of a requirement to only include costs known to the ELTIF manager prior to subscription by an investor.

We consider that it is important to note that while the PRIIPs Regulation focuses on listed investments, ELTIFs are intended to have a focus on real assets and unlisted investments. It should be noted that due to the nature of ELTIF eligible assets, there are generally higher costs associated with an ELTIF's investments. ELTIF investments may have additional costs, not relevant to listed investments including, by way of example, deal sourcing costs, due diligence costs, operating costs, financing costs and interest payments, deal structuring costs and additional monitoring and reporting costs. Due to the nature of the assets and their associated costs, the PRIIPs KID fee disclosures may not contain the most material or meaningful information regarding ELTIF eligible assets.

IF also notes that 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 heavily contested among the industry whether (1) operating costs incurred at the level of the asset and (2) interest payments for debt financing shall be considered as a "cost" for these purposes 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 into account the following which was raised by industry bodies in the previous consultation on the presentation of costs for ELTIFs, which we reiterate below:

(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.

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Such costs are not specific to the management of investment funds nor related to property management or similar services. Therefore IF considers that they should not be relevant for the purpose of recurring cost calculation. By way of comparison, costs incurred in the operations of listed companies are not taken into account when calculating recurring cost figures for funds investing in equities or having equities as underlyings. Such operating costs have an impact on the market value of the relevant stocks, but are not included in the cost calculations.

In order to ensure that investors are able to compare the costs of ELTIFs and other funds investing in listed equities, IF considers the same approach should apply to funds investing in real assets to ensure that products can be accurately compared.

(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.

Furthermore, as is apparent in the current high interest rate environment, which was preceded by a lengthy low interest rate environment, interest rates are likely to fluctuate over the life of an average ELTIF.

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

Q5: 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?

IF consider that the costs associated with (a) the cost of setting up an ELTIF and (b) distribution costs can be considered to be fixed costs for which the duration of the investment is necessary in order to calculate the overall cost ratio mentioned in Article 25(2).

We do however note that an ELTIF will be subject to ongoing distribution costs, which may be paid out of the management fee paid by the ELTIF, or directly to a distributor out of the assets of the ELTIF. Therefore, while certain distribution costs are fixed, where an ELTIF is actively marketed, the ELTIF may also pay ongoing distribution fees, which should be classified as "ongoing costs" and not "fixed costs".

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Q6: Do you agree that the types of costs mentioned in paragraph 35 may be considered as fixed costs in the case of an ELTIF?

Due to the nature of ELTIF eligible assets, we agree that the acquisition costs associated with certain ELTIF eligible assets may be considered to be one-off costs and therefore amortised over the life of the ELTIF.

Q7. 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?

Yes, we consider that specific grandfathering provisions are necessary in order to provide certainty and clarity to managers and investors.

Q8: Do you agree with the proposed amendment to the existing RTS under the first paragraph of Article 18(6) of the ELTIF Regulation?

IF agrees with the proposed amendment.

Q9: 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?

IF generally supports the proposed criteria to determine a minimum holding period for ELTIFs and agree with the approach of recognising the various factors and inputs to be considered in order to determine an appropriate minimum holding period. IF's view is that the appropriate minimum holding period is likely to vary between ELTIFs depending on the assets held, the sectors invested in and the overall investment and distribution strategy of an ELTIF.

We note that the consultation outlines that a time-based minimum holding period would provide NCAs a benchmark for comparison. While we acknowledge that in theory the determination of a benchmark may sound beneficial, IF's view is that setting an arbitrary benchmark will not result in a helpful comparison for NCAs given the potential for varied asset classes, investment strategies, investor bases and concentration and diversification limits between ELTIFs.

IF's view is that the use of a prescribed time-based minimum holding period is not appropriate and could jeopardise the full success of the ELTIF. In particular, the use of a time-based minimum holding period may result in the ELTIF becoming unattractive to retail investors or pension schemes who may not wish, or be permitted to, invest in an ELTIF with a lock-up or minimum holding period of X years. Additionally, the use of a minimum holding period of X years may result in additional costs and complexities where it is intended to admit additional investors during the life of the ELTIF.

We consider the criteria proposed by ESMA in the draft RTS for determining the minimum holding period to be appropriate and do not believe that the use of a minimum holding period of X years would benefit NCAs, managers or investors. By allowing ELTIF managers to set the minimum holding period on a case-by-case basis, subject to the supervision of the relevant NCA and the criteria determined by ESMA, we expect that the ELTIF will become a diverse and innovative product.

Q10: 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)?

IF agrees with the proposed approach.

We consider that greater flexibility should be afforded to managers in the case of provision of updated information as the requirement to provide information to the NCA "*not later than 10 days from the date the respective material change became known or should have become known to the ELTIF manager*" may be difficult to meet in practice and we suggest a 30 business day period instead.

Q11: 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)?

See below responses at 11 (b) – 11 (d).

IF agrees with the acknowledgement that a number of factors need to be considered when aligning the liquidity profile of an ELTIF to the liquidity risk management tools and processes to be applied in respect of an ELTIF.

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?

IF supports ESMA's approach regarding a maximum quarterly redemption frequency, subject to the possibility for exceptions from this requirement where the ELTIF manager can justify redemptions on a more frequent basis due to the characteristics of the relevant ELTIF.

We note that it is established practice for quarterly valuations to be carried out on private credit assets and therefore quarterly valuations for ELTIFs would be aligned with accepted market practice. That said, IF's view is that the determination of the appropriateness of an ELTIF's redemption frequency should always be a matter for the ELTIF manager who has ultimate oversight for the nature of the ELTIF's assets, the overall liquidity of the ELTIF and the investor base of the ELTIF. We consider that it is necessary to retain flexibility for ELTIF managers to provide for more or less frequent redemptions in order to cater to the needs of certain investor bases and the maturity profiles of assets.

Regarding liquidity management tools, IF's view is that it is not appropriate for ESMA to require that ELTIF managers to be mandated to employ at least one anti-dilution liquidity management tool which could be anti-dilution levies, swing pricing or redemption fees. We consider an ELTIF's redemption policy should remain a responsibility of the ELTIF manager who would be best placed to ensure that such redemption policy aligns with the liquidity profile of the assets, the needs of the investor base and the overall liquidity of the fund. In support of IF's view, we note that recent AIFMD 2.0 revisions confirm that it is the fund manager who is primarily responsible for the liquidity risk management of a fund.

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?

We note that ELTIFs have the ability under ELTIF 2.0 to invest in a wide range of asset classes and ELTIF managers have the ability to employ a range of liquidity management tools. IF's view is that while notice periods can be useful and important tool to ensure the appropriate management of liquidity risks, the use of a minimum notice period may not always be appropriate for ELTIF investors.

While we acknowledge and agree that the examples provided for in the draft RTS include useful and important considerations for ELTIF managers when considering the liquidity profile of an ELTIF, we do not consider that the use of a prescribed formula to determine notice periods or other liquidity management tools to be appropriate, given the wide variety and nature of the assets permitted under the ELTIF regime.

Market practice has been for managers to consider the relevant characteristics of a specific fund, including, the fund's assets, investor base and needs, the overall strategy and objectives in order to determine the liquidity management tools that are appropriate for that fund. Where a right of redemption is provided in an illiquid fund, the terms of such redemption mechanism are established at the outset of the fund and are consistent with the liquidity of the underlying assets. The introduction of a mandated minimum notice period and prescribed approaches, in IF's view, will make the ELTIF a less attractive product to asset managers who have long established processes and procedures for managing the liquidity of funds that target similar asset classes. It also does not serve the interests of investors either: the introduction of a mandated minimum notice period will necessarily restrict the universe of assets that an ELTIF manager might acquire.

IF's view is that liquidity management can be appropriately and adequately addressed without the need to prescribe minimum notice periods or liquidity management approaches.

In the event that a minimum notice period is introduced, IF is of the view that such minimum notice period should be subject to the ability for ELTIF managers to deviate from it where justified by the profile of a specific ELTIF.

IF reviewed both proposed options set out in the draft RTS and does not consider that the mandating of either approach is necessary or appropriate to ensure the robustness of ELTIF liquidity management practices. 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 if no specific numbers or timeframes are established.

d) In your view, how do these requirements on the redemption policy and liquidity management tools of the ELTIF would compare to those applying to existing long-term investment AIFs which would be similar to ELTIFs (e.g. in terms of eligible assets)?

Where possible, please support your answers by providing examples of current liquidity set-up for similar long-term funds marketed to retail investors, analyses of the data available to assess the value of ELTIF long term assets and the length of the valuation process.

See previous responses which touch upon existing practices of long-term investment AIFs.

Q12: Do you agree with the proposed criteria to assess the percentage referred to in point (d) of Article 18(2) - Article 18(6)(d))?

IF broadly agrees with the criteria set out in Article 6 of the draft RTS.

IF understands that the percentage referenced in point (d) of Article 18, paragraph 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.

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, paragraph 1, point (b) of Regulation 2015/760, should not be used up 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, paragraph 2 of Regulation 2023/606 are satisfied.

Q13: Do you agree with the principle-based approach suggested above, in relation to the ESMA RTS under Article 19(2a)?

IF agrees with ESMA's suggested principle-based approach.

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While currently no secondary market exists for ELTIFs, IF's view is that the matching mechanism will support the emergence of a secondary market for ELTIFs.

IF considers that this point should be revisited in due course, noting the growth of the product anticipated following the application of ELTIF 2.0, to ensure that the RTS do not infringe on the development of a secondary market.

Q14: Do you agree with the proposals suggested above and corresponding draft RTS, in relation to the transfer process for both existing 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?

IF agrees with the approach proposed by ESMA. We note that the proposed approach provides flexibility to ELTIF managers in relation to the transfer process, subject always to appropriate disclosure to investors.

Q15: 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?

IF agrees with ESMA that no specific time period should be specified during which the matching mechanism may be used and agree that the frequency of exit opportunities through the matching mechanism will depend on the characteristics of the ELTIF and should therefore be determined by the ELTIF manager.