August 22, 2023

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

Re: ICI Global comments on draft regulatory technical standards under the revised ELTIF Regulation

To whom it may concern,

ICI Global appreciates the opportunity to respond to the European Securities and Markets Authority (ESMA) consultation on the draft regulatory technical standards (RTS) under the revised ELTIF Regulation (ELTIF 2.0). ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated investment funds. With total assets of $39.9 trillion, ICI's membership includes mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia and other jurisdictions. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. Our members invest on behalf of millions of retail investors around the world who choose investment funds to save for retirement, education, and other important financial goals. We, therefore, are keenly interested the availability of ELTIFs for long-term investors.

ICI Global welcomes the changes to the ELTIF primary legislation. Market experience has shown that the initial framework was too onerous and restrictive. Only a few ELTIFs were launched, despite investor demand for vehicles that generate exposure to long-term investments. The revisions reflected in ELTIF 2.0 should help to address these shortcomings and provide more flexibility. Among other things, they provide a greater level of flexibility, including with respect to eligible assets, portfolio composition, redemptions and distribution to retail investors. These changes are essential to making the framework more attractive, and they should help to drive innovation and the creation of new investment opportunities.

As the RTS and other secondary legislation are drafted, and as ELTIF products are brought to the market, ICI Global encourages regulators and supervisors to maintain a flexible and pragmatic approach. An unduly restrictive approach would stifle innovation and the potential long-term success of the ELTIF framework. Some options presented by ESMA in the consultation risk narrowing the ELTIF market and limiting investor choice, to the detriment of investors. ELTIFs continue to be a novel type of fund and the asset management industry requires a degree of regulatory flexibility in order to develop new products successfully and devise appropriate structures such as evergreen funds.

The UCITS framework developed over 30 years ago is an unparalleled global success story, which has brought significant benefits to investors in the European Union and throughout the world, as well as the EU economy as a whole. We encourage policymakers to similarly keep in mind the potential of the ELTIF framework as the revised ELTIF framework is finalized and ELTIF products are developed.

Our feedback to this consultation focuses on the questions related to redemption policies and the related secondary market matching mechanism. A well-functioning redemption process is crucial to generating investor interest in ELTIFs. Creating a well-struck balance between investor protection and scope for innovation will be the key determinant for the attractiveness of the regime and its ultimate success or failure. As such we recommend looking at the use of liquidity management tools collectively –protections such as the underlying asset liquidity profile, holding periods, notices periods and redemption limits need to be assessed as an interdependent whole and not viewed in isolation. We recommend the application of a series of principles when assessing the appropriate liquidity profile of the fund where the fund manager justifies its liquidity risk management and liquidity stress testing processes to its national competent authority (NCA) on initial launch and on an ongoing basis.

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?

ICI Global agrees with the proposed amendment to the existing RTS. We recommend, however, that ESMA specify that the list of circumstances in which "the life of an ELTIF is considered compatible with the life-cycles of each of its individual assets" is not treated as exhaustive as there may be other factors that could impact compatibility.

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?

ICI Global opposes the requirement for an ELTIF manager to specify a fixed minimum holding period, and therefore do not support the proposed criteria. We believe that managers of ELTIFs are best placed to understand and evaluate the unique circumstances (e.g., asset classes and distribution channels) of a particular ELTIF and to determine whether such fund should be subject to a minimum holding period and, if so, the length of any such period. ESMA itself recognizes in the consultation that there is a wide range of ELTIFs with difference characteristics. Setting a mandated fixed minimum holding would place undue restrictions on ELTIF managers that could reduce innovation and investor interest in the product.

The need for a minimum holding period is further mitigated by the fact that ELTIFs are required to be pre-approved and are already subject to requirements under the Alternative Investment Fund Managers Directive (AIFMD) concerning product characteristics and stress testing. A wealth of information is provided to national competent authorities (NCAs) under the AIFMD reporting regime.

Rather than setting a minimum holding period for all ELTIFs, we recommend that the ELTIF manager have the discretion to set a minimum period and that any such minimum period be reported to the NCA during the approval process and clearly disclosed to investors. In practice, the ability to deploy capital and therefore the necessary length of any ramp up period may vary significantly depending on the underlying asset classes in which the ELTIF is invested.

Question 10: 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)?

ICI Global agrees with the minimum information to be provided to the competent authority of the ELTIF. However, we are concerned that the requirement to report a material change within 10 days from the date the respective material change became known or should have become known to the ELTIF manager may present difficulties for some mangers or products due to the diverse nature of the underlying assets, disparate valuation methods, and communication chains (via custodians, transfer agents, distributors). We therefore recommend that a longer deadline be provided, such as one month. To facilitate the provision of information it may be helpful for the RTS to set out specific guidelines and reporting standards in respect of the items specified in paragraphs 78 and 79. A slightly longer deadline would not undermine supervisory capabilities while providing managers with increased flexibility.

Question11:

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)?

It is common practice for funds with periodic redemption windows to cap the amount of liquidity at particular dealing points in light of ongoing market conditions and to scale down redemptions on a pro rata basis. It is unclear to us whether such any such cap on liquidity would be treated as a redemption gate. If this is the case, then we highlight the importance of not limiting the use of this tool to "exceptional circumstances" but allowing it to be deployed as and when needed. We appreciate the importance of complete and effective disclosure to investors, especially retail investors, to manage their liquidity expectations.

Please also see our responses to sub-sections (b) – (d).

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 84?

We do not agree with the setting of a maximum redemption frequency on a quarterly basis for all ELTIFs. ELTIF funds will not be a homogenous product group. On the contrary, there will be significant differences in the type of assets held, target markets and investment holding periods. A maximum redemption frequency would inhibit the flexibility and attractiveness of the regime. Instead, we recommend that ELTIF managers be required to disclose to investors key information regarding the terms of their investment, including any quarterly maximum redemption frequency.

In addition, consideration should be given to the fact that subscriptions, particularly those at a regular frequency (such as regular investments through pension funds or other regular long-term savings products), may significantly facilitate an ELTIF's ability to redeem shares, by allowing managers to net off redemptions against cash received on subscriptions. Factors such as these should be considered by the manager, but are difficult to account for in a maximum redemption or dealing frequency specified across the board.

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 88 to 91, 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 do not support the setting of a notice period for all ELTIFs because of the wide range of different products that may be created under the ELTIF framework. We are significantly concerned that a minimum notice period, particularly if lengthy (such as one year) would, in practice, result in the creation of a hybrid product, rather than a product that is mostly illiquid. Our members see little demand for such hybrid products in the market.

Between option 1 and option 2, we prefer option 2. Limits on the maximum redemption amounts, as proposed in option 2, will provide ELTIF managers with significantly more flexibility than a prescriptive approach on minimum amounts of liquid assets to be held, as proposed in option 1. Further, minimum liquid assets requirements can negatively impact investment returns, which would not be in the interest of investors. Rather, it should be for the manager to justify to its NCA its assessment of what constitutes an appropriate liquidity profile for the fund by applying the existing requirements of ESMA's Stress Testing Guidelines.

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))?

ICI Global broadly agrees with the proposed criteria. In particular, we support the notion that computation is not conducted at the beginning of the life of the ELTIF but rather in accordance with the timing of redemptions.

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

ICI Global supports a principles-based approach. This will allow managers to develop a suitable approach that factors in various aspects of the fund such as target market, distribution and geography. Further, different national or local mechanisms may develop over time that could benefit the market in terms of flexibility and competition. It should be noted that regular inflows could meet some redemption requests. These could come, for example, as a result of regular savings into pension funds or other long-term savings products. In such cases, there may be increased flexibility for the matching of redemption and subscriptions.

Given the relatively limited number ELTIFs, we do not have evidence to show either way whether a secondary market mechanism could become a feasible alternative. We recommend that ESMA keep market developments under review and determine whether the matching mechanisms are fit for purpose.

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ICI Global appreciates the opportunity to provide input on this consultation. If you have any questions regarding our submission, please contact the undersigned at +202-657-7926 or emykolenko@ici.org.

Sincerely,

/s/ Eva Mykolenko
Associate Chief Counsel – Securities Regulation