

private investment funds lawflash

24 February 2014

European Commission Proposes New Long-Term Investment Funds Product

The EU Long Term Investment Fund will offer investors a mechanism to invest in projects requiring long-term funding.

In June 2013, the European Commission (the Commission) proposed a new type of European closed-end fund—the EU Long Term Investment Fund (ELTIF). The ELTIF will offer professional and retail investors with a readily available pooling mechanism through which to invest in companies and projects that require long-term capital financing and that are not traded on regulated markets. The Commission's aim in proposing the new fund is to build within the EU a common, comparable cross-border standard for what long-term assets are, for whom they may be suitable, and how they function. In short, the Commission seeks to establish a long-term assets counterpart to its successful UCITS fund for investments in liquid financial assets, the assets under management of which reached €6,697 billion in March 2013. As with UCITS, the ELTIF will be available to investors globally.

The Commission considers long-term investment to be the provision of “long-lived capital,” which may be used to finance tangible assets (e.g., energy, transport, and communication infrastructure and housing and industrial facilities) and intangible assets (e.g., education and research and development) and to provide investors with long-term, stable returns.

Whilst the Commission acknowledges that “very large investors, such as large pension funds or insurance undertakings” already have access to such investments, it notes that a broader institutional appetite for investing in longer-term assets exists and that individuals planning for future liabilities may benefit from the regular returns provided by such investments.

The Commission has published its proposal for an ELTIF regulation, which sets out uniform rules on the authorisation, investment policies, and operating conditions for EU alternative investment funds that are structured as ELTIFs. The regulatory framework comprises three core features: rules governing eligible assets and their diversification; a high-threshold competence level required of those allowed to manage and market ELTIFs; and the alignment of ELTIFs' investment horizons with investors' redemption expectations (ELTIFs will not allow early redemption). The proposal does not contemplate fixed time periods for holding assets or the duration of any ELTIF, which will be welcome to prospective ELTIF managers. Managers of ELTIFs will have a marketing passport throughout the European Economic Area, allowing ELTIFs to be sold to all types of European investors without complying with national private placement regimes.

ELTIFs will only be able to invest in unlisted companies needing long-term capital, real assets requiring long-term capital to develop them, or EU-regulated funds financing start-ups or businesses seeking to achieve a social impact (respectively, the so-called “EuVECA” and “EuSEF” funds, which are niche non-retail products that were introduced in 2013 and have not yet established their place in the market).

ELTIFs will also be subject to a network of other EU measures. Only EU funds that qualify as alternative investment funds under the Alternative Investment Fund Managers Directive (AIFMD) and that are managed by investment managers authorised under AIFMD will be eligible for inclusion under the ELTIF brand. ELTIFs will be required to publish a prospectus that complies with the Commission's Prospectus Directive. When the fund is marketed to retail investors, an additional key information document will be required that complies with a

Morgan Lewis

proposed EU regulation on key information documents due to be adopted later in 2014. ELTIFs will be subject to requirements of the Markets in Financial Instruments Directive relating to marketing, selling, and disclosure.

The industry has responded positively to the Commission's proposal but has suggested the following changes: (1) there should be two types of ELTIFs (one for professional investors and one for retail investors); (2) the proposed prohibition on marketing ELTIFs structured as partnerships to retail investors should be discarded, given that the characteristics of a partnership vehicle are appropriate for facilitating long-term investment; and (3) ELTIFs should be able to be structured as funds of funds (albeit limited to other ELTIFs, EuVECAs, and EuSEFs).¹

The precise details of the proposal will likely be modified in light of industry responses to it. We shall be monitoring developments closely.

Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact the following Morgan Lewis lawyer:

London

William Yonge

+44 (0)20 3201 5646

wyonge@morganlewis.com

About Morgan, Lewis & Bockius

Founded in 1873, Morgan Lewis offers more than 1,600 legal professionals—including lawyers, patent agents, benefits advisers, regulatory scientists, and other specialists—in 25 offices across the United States, Europe, Asia, and the Middle East. The firm provides comprehensive litigation, corporate, transactional, regulatory, intellectual property, and labour and employment legal services to clients of all sizes—from globally established industry leaders to just-conceived start-ups. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some jurisdictions. Please note that the prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change. © 2014 Morgan, Lewis & Bockius. All Rights Reserved.

1. An article on ELTIFs, "ELTIF: A Long Fund Indeed", was also published in the February 2014 issue of *Funds Europe*. The article may be accessed via the Morgan Lewis website at http://www.morganlewis.com/pubs/FundsEurope_ELTIPLongFundIndeed_Feb2014.pdf.