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Commission Delegated Regulation (EU) 2018/480 of 4 December 2017 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors (Text with EEA relevance)

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of 4 December 2017

supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds[(1)], and in particular Article 9(3), Article 18(7), Article 21(3) and Article 26(2) thereof,

Whereas:

(1) In order to ensure a common approach to the application of Regulation (EU) 2015/760, it is necessary to lay down provisions to specify the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, the circumstances in which the life of a European long-term investment fund ('ELTIF') is considered sufficient in length, the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets and the facilities available to retail investors.

(2) To ensure coherence among those provisions which should enter into force at the same time, and, to facilitate a comprehensive view and easy access to those provisions, it is appropriate to adopt the regulatory technical standards concerned in a single Regulation.

(3) With respect to the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments of an ELTIF, it is necessary to take into account financial derivative instruments whose underlying corresponds to the assets in which the ELTIF has invested and whose exposures are intended to be hedged, as well as trades in assets that, albeit not being the same in which the ELTIF has invested, relate to the same asset class. This is the case, in particular,

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where a financial derivative instrument to hedge an exposure to a specific item is not available as a dedicated type of derivative, but rather as an item among other items included in an index which is the underlying of a financial derivative instrument. In addition, the use of financial derivative instruments might in some cases constitute a hedging strategy only if it is pursued in combination with trades in some assets, whereby that type of strategy should not be prohibited. In order to ensure that the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments of an ELTIF, the manager of the ELTIF should take all reasonable steps to ensure that the financial derivative instruments used effectively reduce the relevant risk at the ELTIF level and are also efficient in stressed market conditions. The reduction of risk should be verifiable through the use of adequate risk management systems identifying the risk intended to be mitigated and the way in which the derivative would mitigate such risk.

(4) In situations where an ELTIF invests in assets that have different maturity profiles, the life of an ELTIF should be set with reference to the individual asset within the ELTIF portfolio which has the longest investment horizon having regard to the liquidity of that asset.

(5) The assessment of the market for potential buyers to be included in the schedule for the orderly disposal of the ELTIF assets should take into account market risks including whether the potential buyers are typically dependent on obtaining loans from third parties, whether there is a risk of illiquidity of the assets before sale, whether there are risks associated with legislative changes, such as fiscal reforms, or political changes and whether there is a risk of deterioration of the economic situation in the market which is relevant to the ELTIF assets. No specific assessment of those risks should be requested under this Regulation for assets other than eligible investment assets since assets referred to in Article 50(1) of Directive 2009/65/EC of the European Parliament and of the Council[(2)] are supposed to be liquid by their nature.

(6) The valuation of the assets to be included in the schedule for the orderly disposal of the ELTIF assets should be carried out at a moment in time that is sufficiently close to the beginning of the disposal of the assets. However, if the ELTIF carried out a valuation in accordance with Directive 2011/61/EU of the European Parliament and of the Council[(3)] at a moment in time that is sufficiently close to the beginning of the disposal of the assets, an additional valuation should not be required. Nevertheless, the preparation of the schedule for the orderly disposal of the ELTIF assets should start as soon as it is appropriate and well in advance of the time-line for its disclosure to the competent authority of the ELTIF.

(7) The facilities to be made available to retail investors in each Member State where marketing activities are carried out by the manager of the ELTIF may be performed by one or more entities in person, by telephone or electronically, which can be the manager of the ELTIF or another entity subject to regulation governing the tasks entrusted to it by the manager of the ELTIF.

(8) In order to avoid any potential market disruption it is necessary to give ELTIFs, which were authorised before the entry into force of this Regulation, their managers and their

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competent authorities sufficient time to adapt to the requirements contained in this Regulation.

(9) The provisions on the sufficient length of the life of ELTIF should only be applied by ELTIFs submitting an application for authorisation after the entry into force of this Regulation as, pursuant to Regulation (EU) 2015/760, the length of the life of the ELTIF has to be set by the time the application for authorisation as an ELTIF is made to the competent authority of the ELTIF.

(10) In order to allow competent authorities and managers of the ELTIFs authorised under Regulation (EU) 2015/760 before the entry into force of this Regulation to adapt to the new requirements contained in this Regulation, the date of application of this Regulation should be 1 year after its entry into force. The requirement on the sufficient length of the life of the ELTIF is deemed to be fulfilled under this Regulation by the ELTIFs already authorised under Regulation (EU) 2015/760 before the entry into force of this Regulation.

(11) This Regulation is based on regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(12) ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[4],

HAS ADOPTED THIS REGULATION:

Article 1

Hedging derivatives

1 The circumstances in which the use of financial derivative instruments shall be considered as solely serving the purpose of hedging the risks inherent to other investments of the European long-term investment fund ('ELTIF') as referred to in Article 9(2)(d) of Regulation (EU) 2015/760 are fulfilled when they meet all of the criteria set out in paragraphs 2, 3 and 4 of this Article.

2 A financial derivative instrument shall only be used for hedging risks arising from exposures to assets referred to in Article 9(1) of Regulation (EU) 2015/760.

The purpose of hedging the risks arising from exposures to assets referred to in the first subparagraph shall only be considered to be fulfilled where the use of that financial derivative instrument results in a verifiable and objectively measurable reduction of those risks at the ELTIF level.

Where financial derivative instruments to hedge the risks arising from the exposure to the assets referred to in the first subparagraph are not available, financial derivative instruments with an underlying of the same asset class may be used.

3 The use of the financial derivative instruments aimed to provide a return for the ELTIF shall not be deemed to serve the purpose of hedging the risks.

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4. The manager of the ELTIF shall take all reasonable steps to ensure that the financial derivative instruments used to hedge the risks inherent to other investments of the ELTIF reduce the risks at the ELTIF level in accordance with paragraph 2, including in stressed market conditions.

Article 2

Sufficient length of the life of the ELTIF

For the purpose of Article 18(3) of Regulation (EU) 2015/760, the life of an ELTIF shall be considered sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF where the following conditions are met:

(a) the ELTIF aligns the date for the end of its life to the date of the end of the investment horizon of the individual asset within the ELTIF portfolio which has the longest investment horizon at the time of the submission of the application for authorisation as an ELTIF to the competent authority of the ELTIF;

(b) any investment made by the ELTIF after the date of its authorisation as an ELTIF does not have a residual investment horizon exceeding the remaining life of the ELTIF at the time that investment is made.

Article 3

Criteria for the assessment of the market for potential buyers

For the purpose of Article 21(2)(a) of Regulation (EU) 2015/760, the manager of an ELTIF shall assess all of the following elements in relation to each asset in which the ELTIF invests:

(a) whether one or more potential buyers are present in the market;

(b) whether the manager of the ELTIF, based on an assessment conducted with due skill, care and diligence at the time of the completion of the schedule, expects the potential buyers to be dependent on external financing for buying the relevant asset;

(c) where there are no potential buyers for an asset, the length of time likely to be necessary to find one or more buyers for that asset;

(d) the specific maturity profile of the asset;

(e) whether the manager of the ELTIF, based on an assessment conducted with due skill, care and diligence at the time of the completion of the schedule, expects the following risks to materialise:

  (i) a risk associated with legislative changes that could affect the market for potential buyers;

  (ii) a political risk that could affect the market for potential buyers;

(f) the manager's assessment of whether the elements listed under points (a) and (b) may be impacted adversely during the disposal period by overall economic conditions in the market or markets relevant to the asset.