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COMMUNICATION TO THE COMMISSION

on the intention to adopt with amendments the Commission Delegated Regulation supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards specifying obligations concerning hedging derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of an ELTIF, and transparency requirements and repealing Delegated Regulation (EU) 2018/480

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Article 10(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, as amended, sets out that where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards (“RTS”), the European Securities and Markets Authority (“ESMA”) may develop draft RTS and shall submit its draft RTS to the Commission for adoption.

On 19 December 2023, ESMA sent to the Commission the draft RTS on Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds ⁽¹⁾ (hereinafter “ELTIF Regulation”), as amended. The draft RTS specifies obligations of European long-term investment funds (“ELTIFs”) and their managers concerning hedging of derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of ELTIFs, and transparency requirements. ESMA met its obligation to submit the draft RTS by 10 January 2024, as mandated by Article 18(6), sub-paragraph 3 and Article 19(5), sub-paragraph 2 of Regulation (EU) 2023/606.

As per Article 10(1), sub-paragraph 5 of Regulation (EU) No 1095/2010, as amended, where the Commission intends to adopt a draft RTS in part or with amendments, it shall send the draft RTS back to the Authority, explaining the reasons for its amendments, and within a period of 6 weeks, the Authority may amend the draft RTS on the basis of the Commission’s proposed amendments and resubmit it in the form of a formal opinion to the Commission.

In accordance with Article 10(1), sub-paragraph 6 of Regulation (EU) No 1095/2010, as amended, if, on the expiry of that six-week period, the Authority has not submitted an amended draft RTS, or has submitted a draft RTS that is not amended in a way consistent with the Commission’s proposed amendments, the Commission may adopt the RTS with the amendments it considers relevant, or reject it.

This Communication proposes that ESMA be informed of the Commission’s intention to adopt the draft RTS solely once amendments are made by ESMA. The main reasons for these amendments are summarised in the enclosed draft letter to ESMA Chair, which informs ESMA of the Commission’s intention to adopt the draft RTS with amendments and provides for the reasons for the amendments of the draft RTS.

For the reasons above, it is proposed that the Commission, acting in line with the procedure set out in Article 10(1) of Regulation (EU) No 1095/2010, informs ESMA that it intends to adopt the draft RTS submitted by ESMA with the amendments to ensure that the draft RTS complies with the ELTIF Regulation.

⁽¹⁾ OJ L 123, 19.5.2015, p. 98.

Finally, it should be noted that according to the requirement set out in Article 10(1), subparagraph 5, the copy of the Commission's letter to ESMA will be sent to the European Parliament and to the Council.

The Commission is therefore invited to:

- approve the enclosed letter, which informs ESMA of the Commission's intention to adopt with amendments the Commission Delegated Regulation supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards specifying obligations concerning hedging derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of an ELTIF, and transparency requirements and repealing Delegated Regulation (EU) 2018/480; and
- authorise the Director General of the Directorate General for Financial Stability, Financial Services and Capital Markets Union to sign and send the letter, enclosing the amended draft RTS to ESMA on behalf of the Commission.