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Submitted via email to:
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Re: Irish Funds Industry Association response to CP 155 – consultation paper on ELTIF chapter in the AIF Rulebook ("CP155")

Dear Sir/Madam,

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 8,700 Irish regulated investment funds with assets of EUR 3.8 trillion.

IF strongly supports the reforms introduced earlier this year in Regulation 2023/606/EU (the "**ELTIF 2.0 Regulation**"), which amends Regulation (EU) 2015/760 (together the "**ELTIF Regulation**"). 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 CP155 which provides for a standalone ELTIF specific chapter to the AIF Rulebook as well as the proactive steps that the Central Bank of Ireland ("**CBI**") is taking for Ireland to be ELTIF ready for 10 January 2024 (being the date the ELTIF 2.0 Regulation applies from). It is very important that Ireland is in a position to begin authorising ELTIFs under the updated AIF Rulebook as soon as possible and this timing should not be contingent on the publication of the regulatory technical standards provided for under the ELTIF 2.0 Regulation (the "**RTS**"), which is largely relevant to ELTIFs that wish to provide more frequent redemptions during the life of the ELTIF.

We have set out IF's more detailed response to questions 1-6 of CP 155 below. In the first instance, we wish to highlight the following key points:

Prohibition adding further requirements in the field covered by the ELTIF Regulation

- The ELTIF Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (**EU AIFs**) or compartments of EU AIFs, marketed in the EU as ELTIFs. By adopting uniform rules, the intention is to

reduce the complexity of regulatory requirements applicable to ELTIFs and eliminate competitive distortions.¹ In order to reinforce this, the ELTIF Regulation expressly prohibits Member States from adding further requirements in the field covered by the ELTIF Regulation².

- We note that the existing retail investor alternative investment fund ("**RIAIF**") Chapter of the AIF Rulebook was used as the basis for drafting the proposed ELTIF Chapter. A number of provisions have been carried over from this RIAIF Chapter add further requirements to fields already covered by the ELTIF Regulation. This is contrary to Article 1(3) of the ELTIF Regulation and the provisions should be deleted to avoid additional regulatory complexity and impact to the competitiveness of the Irish ELTIF by potentially limiting product design, distribution and structuring flexibility.
 - These provisions primarily relate to:
 - an ELTIF acquiring voting rights which would allow it exercise significant influence over the management of the issuing body;
 - rules on investment through subsidiary companies and accompanying disclosure requirements;
 - disclosure requirements for ELTIFs investing in venture capital, development capital and private equity; and
 - rules on acquisition of real estate interests.

Features to improve the attractiveness of the Irish ELTIF

- **Umbrella funds with ELTIF sub-funds**

In order to ensure the attractiveness of the Irish ELTIF and reflect optionality, available elsewhere, to fund managers considering establishing an Irish ELTIF, it would be very beneficial that provision is made for the establishment of ELTIF sub-funds on an existing RIAIF umbrella fund or qualifying investor alternative investment fund ("**QIAIF**") umbrella fund. This would involve a sub-fund being dual authorised as either an ELTIF RIAIF or ELTIF QIAIF, as relevant.

As discussed in further detail below, this could be achieved by ELTIF RIAIFs being subject to the ELTIF Chapter of the AIF Rulebook only and ELTIF QIAIFs being subject to the ELTIF Chapter and a limited number of provisions from the QIAIF Chapter dealing with qualifying investor criteria.

This would enable fund managers to benefit from existing infrastructures thereby establishing Irish ELTIFs in a cost efficient manner. It would also allow fund managers leverage existing distribution arrangements without having to put new arrangements in place for a new umbrella fund.

¹ Recital 7 of the ELTIF Regulation.

² Article 1(3) of the ELTIF Regulation.

- **ELTIFs marketed solely to Qualifying Investors or Professional Investors**

AIFs or sub-funds of QIAIF umbrellas approved as an ELTIF QIAIF or a professional-only ELTIF should be able to be authorised in accordance with the CBI's 24 fast track approval process that currently operates for QIAIFs.

- **Extension of CBI Guidance on Share Class Features of Closed-ended QIAIFs (the "Closed-Ended QIAIF Guidance") to ELTIFs with Closed-Ended Features**

In order to improve the attractiveness of the Irish ELTIF to reflect the differing liquidity offered by ELTIFs and reduce the complexity of regulatory requirements applicable to ELTIFs, it would be very beneficial to extend the Closed-Ended QIAIF Guidance to cover all ELTIFs that operate closed-ended features so that the capital commitments made by an investor or the participation of the investment management function in the ELTIF can be operationalised.

Question 1: Do you agree with the proposed rules under Part I, Section 1 of the ELTIF chapter of the AIF Rulebook?

Except where specific issues with individual rules are highlighted below, which focus on: (i) identification of proposals that are contrary to Article 1(3) of the ELTIF Regulation; and (ii) highlighting features that would enhance the Irish ELTIF, we agree with the proposed rules.

<p>Part I: GENERAL RULES</p> <p>Section 1: European Long-Term Investment Fund restrictions</p> <p>i. General restrictions</p> <p>1. The ELTIF shall not, nor shall it appoint a management company or general partner or AIFM which would, acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body. This requirement does not apply:</p> <p>(a) to investments in other investment funds;</p> <p>(b) where the ELTIF invests in venture capital, development capital or private equity, provided its prospectus indicates its intention regarding the exercise of legal and management control over underlying investments.</p>	<p>A restriction on an ELTIF acquiring shares carrying voting rights enabling it to exercise significant influence over an issuing body adds a further requirement to a field already covered by the ELTIF Regulation, contrary to Article 1(3) of the ELTIF Regulation and should be deleted.</p> <p>The proposal does not recognise that the ELTIF 2.0 Regulation allows for the concentration and diversification limits that provide for the issue of significant influence to be disapplied for professional-only ELTIFs without placing further requirements on such ELTIFs.</p> <p>The proposal distinguishes between ELTIFs that invests in venture capital, development capital or private equity from other types of ELTIFs, a distinction that has no basis in the ELTIF Regulation.</p> <p>Furthermore, this additional restriction could limit the effectiveness of the Irish ELTIF in terms of product design and possible investments, frustrating the objective of the enhanced ELTIF.</p> <p>Ultimately, the proposal will add regulatory complexity and the possibility of confusion among</p>
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	<p>those investing as rules applicable to Irish ELTIFs will differ to those of non-Irish ELTIFs.</p> <p>IF has no objection to professional-only ELTIFs that have disapplied the ELTIF concentration limits disclosing that due to the disapplication of such restrictions the ELTIF may exercise significant influence over the issuer. Such disclosure should not be required for non-professional-only ELTIFs that are subject to the ELTIF concentration limits that already restrict the ability to exercise significant influence.</p> <p>Significant Influence – already considered by the ELTIF Regulation:</p> <p>The ELTIF Regulation has considered the appropriate investor protection concentration rules to limit the exercise of significant influence by an investing ELTIF over the management of another ELTIF or of an issuing body.</p> <p>Recital 28 of the ELTIF Regulation states:</p> <p><i>'In order to prevent the exercise of significant influence by an investing ELTIF over the management of another ELTIF or of an issuing body, it is necessary to avoid excessive concentration by an ELTIF in the same investment.'</i></p> <p>The revised ELTIF Regulation prescribes the diversification (Article 13) and portfolio concentration (Article 15) limits. Notably, the diversification limits in Article 13 have been materially expanded under the ELTIF 2.0 Regulation and such expanded limits are still considered consistent with the prevention of exercise of significant influence.</p> <p>Exemptions from diversification and concentration limits allowed:</p> <p>Certain exemptions have been provided for in the ELTIF 2.0 Regulation disapplying these limits for ELTIFs reserved solely to professional investors and for feeder ELTIFs. Importantly, the ELTIF 2.0 Regulation does not place additional requirements on professional only ELTIFs and feeder ELTIFs and the AIF Rulebook should not supplement the requirements in the revised ELTIF Regulation contrary to Article 1(3) of the ELTIF Regulation.</p>
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<p>iii. Valuation</p> <p>3. The ELTIF shall only issue or sell its units at a price arrived at by dividing the net asset value of the ELTIF by the number of units outstanding; such price may be increased by duties and charges.</p>	<p>Paragraph 3 limits the issue of units to the net asset value per share of the ELTIF.</p> <p>This is contrary to Article 20(2) of the ELTIF Regulation, which envisages that an ELTIF could issue shares other than at the net asset value per share/ interest:</p> <p><i>“An ELTIF shall not issue new units or shares at a price below their net asset value without a prior offering of those units or shares at that price to existing investors in the ELTIF.”</i></p> <p>Furthermore, given the broad range of asset classes and strategies that an ELTIF may pursue under the revised ELTIF framework, it is anticipated that ELTIFs that only propose to offer limited redemption facilities during the life of the ELTIF will function in a manner that is more closely aligned to closed-ended QIAIFs as compared to open-ended AIFs. The ability of ELTIFs to operate in a manner consistent with closed-ended funds is recognised in other areas of CP155 (e.g., permitting a longer extended initial offer period, closed-ended ELTIFs).</p> <p>Furthermore, a net asset value per share concept may not work in an un-unitised partnership structure, operating capital accounting, where interests are not issued and redeemed at a net asset value per interest.</p> <p>On this basis, we would recommend that clause 3 is deleted and provision is made for ELTIFs to issue shares at a price other than net asset value without the prior approval of the CBI.</p> <p>The issue of shares at a fixed price is already provided for in the Closed-Ended QIAIF Guidance and is also possible in an open-ended context through the establishment of a new share class at a fixed price. Accordingly, the ability to issues shares at a fixed price without the prior approval of the CBI should be extended to ELTIFs that operate closed-ended features as well given the similarities between these fund types, as acknowledged elsewhere within CP155 to improve the attractiveness of the Irish ELTIF and provide clarity on the operational features that ELTIFs with closed-ended features can operate.</p>
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<p>v. Umbrella ELTIFs</p> <ol style="list-style-type: none"> 1. An umbrella ELTIF which has been authorised by the CBI must obtain the Central Bank’s prior approval for each sub-fund. 2. An umbrella ELTIF which is an investment company shall, in its prospectus, include the words: "An umbrella fund with segregated liability between sub-funds". 3. Where the ELTIF, which is an umbrella ELTIF, issues a supplement to its prospectus, it shall state, in the supplement that it is constituted as an umbrella ELTIF and name the other existing sub-funds or provide that these will be available upon request. 4. Where the ELTIF is an umbrella ELTIF, it shall, in its prospectus disclose the extent to which one sub-fund can invest in another and the conditions which apply to such investments. 5. Where the ELTIF is an umbrella ELTIF, it shall, in its prospectus, clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another. 6. Where a sub-fund (the “Investing Fund”) of an umbrella ELTIF invests in the units of other sub-funds of that umbrella (each a “Receiving Fund”), the rate of the annual management fee which investors in the Investing Fund are charged in respect of that portion of the Investing Fund’s assets invested in Receiving Funds (whether such fee is paid directly at the Investing Fund level, indirectly at the level of the Receiving Funds or a combination of both) may not exceed the rate of the maximum annual management fee which investors in the Investing Fund may be charged in respect of the balance of the Investing Fund’s assets, such that there 	<p>In order to improve the attractiveness of the Irish ELTIF and add greater optionality to fund managers considering establishing an Irish ELTIF, it would be beneficial for provision to be made for the establishment of ELTIF sub-funds on an existing RIAIF umbrella fund or QIAIF umbrella fund. This would involve a sub-fund being dual authorised as either an ELTIF RIAIF or ELTIF QIAIF, as relevant.</p> <p>This would enable fund managers to benefit from existing infrastructure and establish Irish ELTIFs in a cost efficient manner. It would also allow fund managers leverage existing distribution arrangements without having to put new arrangements in place for a new umbrella fund.</p> <p>An AIF authorised as an ELTIF QIAIF should be able to be authorised in accordance with the CBI's 24 fast track approval process that currently operates for QIAIFs, providing ELTIF managers with certainty of timing, enhancing the attractiveness of the Irish ELTIF.</p> <p>Legislative basis:</p> <p>Under Article 1 of the ELTIF Regulation, it is stated that the regulation lays down uniform rules for EU AIFs "<i>or compartments of EU AIFs</i>" that are marketed in the EU as ELTIFs. This provision allows for the establishment of sub-funds of an AIF as an ELTIF. Article 8 provides that, where an ELTIF comprises more than one investment compartment, each compartment will be regarded as a separate ELTIF for the purposes of Chapter II of the ELTIF Regulation, addressing obligations concerning the investment policies of ELTIFs.</p> <p>Approach in Luxembourg:</p> <p>In Luxembourg, it is possible for a single sub-fund of an umbrella AIF to apply for the ELTIF label and co-exist with non-ELTIF sub-funds. In the event that only one or several (but not all) compartments of an umbrella vehicle qualify as ELTIF, the designation ‘ELTIF’ must be clearly restricted to those compartments which qualify and have been approved as ELTIF.</p> <p>Existing precedent for dual authorised funds:</p> <p>We note that there is already precedent for Irish regulated funds to be authorised by the CBI</p>
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<p>shall be no double charging of annual management fee to the Investing Fund as a result of its investments in the Receiving Fund. This provision is also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the ELTIF.</p>	<p>under more than one regulatory regimes - money market funds ("MMFs") can be authorised under the UCITS Regulations and the Money Market Fund Regulations ("MMFR"). In such arrangements, the UCITS investment restrictions are dis-applied and the MMFR investment restrictions apply instead. There are also many examples of umbrella funds that have UCITS sub-funds sitting along-side dual authorised UCITS MMFs. There are also examples of AIFs authorised as QIAIFs under the AIF Rulebook and MMFs under MMFR.</p> <p>Application:</p> <p>The proposal could be achieved by ELTIF RIAIFs being subject to the ELTIF Chapter of the AIF Rulebook only and ELTIF QIAIFs being subject to the ELTIF Chapter and a limited number of provisions from the QIAIF Chapter (namely, Chapter 2, PART I, Section 1, I, 1 -5).</p> <p>An “umbrella ELTIF” could be defined to include an umbrella AIF authorised by the CBI as an ELTIF, QIAIF, or RIAIF whose sub-funds: (i) in the case of a umbrella QIAIF may be approved as a ELTIF QIAIF and (ii) in the case of an umbrella RIAIF, may be approved as a ELTIF RIAIF.</p>
<p>vi. Investment through subsidiary companies</p> <p>1. An ELTIF shall not establish a subsidiary unless the ELTIF complies with the following conditions:</p> <ul style="list-style-type: none"> • the establishment of a subsidiary must receive the prior approval of the Central Bank; • the subsidiary must be wholly owned and controlled by the ELTIF. The directors of the ELTIF must form a majority of the board of directors of the subsidiary; • the subsidiary must not be an investment fund or issuing body; • the subsidiary must not appoint any third parties or enter into any contractual arrangements unless the ELTIF is a party to such 	<p>The proposal on investment through subsidiaries is another example of an additional requirement to a field already covered by the ELTIF Regulation. This is contrary to Article 1(3) of the ELTIF Regulation and should be deleted.</p> <p>Consistent with Recital 12 of the ELTIF 2.0 Regulation, it is anticipated that certain investments of ELTIFs may be structured through a variety of intermediate holding entities, some of which may be wholly-owned by the ELTIF. Such entities may be established in a range of EU and potentially third country jurisdictions (with investments in third country assets now clearly permitted). The location of the establishment of intermediate holding entities will depend on a range of factors, including the location of the underlying asset in which the ELTIF is investing.</p> <p>The ELTIF 2.0 Regulation envisages that investments through intermediate holding entities will be a feature of investments by ELTIFs, and</p>

<p>appointments or contractual arrangements;</p> <ul style="list-style-type: none"> • the constitutional document of the ELTIF must provide for the ability of the ELTIF to establish subsidiaries; • the constitutional document of the subsidiary must include provisions which restrict the subsidiary from acting other than under the control of the ELTIF and which restrict any person or entity other than the ELTIF from holding shares in the subsidiary; and • the assets held by the subsidiary must be valued in accordance with the ELTIF's valuation rules. 	<p>further provides for the relaxation of requirements for investment through such entities including by permitting minority co-investments.</p> <p>Noting the aim of the ELTIF 2.0 Regulation is to ensure an effective legal framework for the operation of ELTIFs throughout the EU, and to promote raising and channelling capital towards long-term investments in the real economy, we would consider that an effective legal framework for the operation of ELTIFs would also recognise the commercial practicalities of deploying capital through EU and third country intermediate holding entities, some of which may be wholly-owned.</p> <p>In addition to adding regulatory complexity and requirements beyond those which are set out in the ELTIF Regulation, which impact the effectiveness of the Irish ELTIF in terms of product design, the requirements to:</p> <ul style="list-style-type: none"> • seek prior approval for the establishment of a subsidiary; • for directors of the ELTIF to form a majority of the board of the subsidiary; and • for the ELTIF to be a party to appointments and contractual arrangements, <p>are extremely administratively burdensome and impractical, particularly in the area of real assets which tend to give rise to a significant volume of agreements and contractual arrangements. This will negatively impact the structuring flexibility of Irish ELTIFs.</p> <p>These rules can also have an adverse impact from a tax perspective, for example where directors are required to sit on boards of subsidiary entities in jurisdictions where they are not resident. This can give rise to very burdensome travel requirements and inefficient decision-making processes and governance arrangements, which are not to the benefit of the AIF or its investors.</p> <p>The benefit to investors of these provisions is not clear and they have not been deemed necessary in the ELTIF Regulation. Implementing these requirements in the operation of an ELTIF would create unnecessary cost and potential delays in the execution of the ELTIF's investment strategy.</p>
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	<p>Including provisions in the constitutional document of a subsidiary which restrict the subsidiary from acting other than under the control of the ELTIF, in addition to introducing unnecessary regulatory complexity is also often unworkable in practice and may create local law (including governance-related) issues for subsidiaries.</p> <p>These proposed provisions for wholly owned subsidiaries derive from the existing subsidiary rules within the AIF Rulebook (the “CBI Subsidiary Rules”), which pre-date the implementation of AIFMD. AIFMD provides adequate protections through its rules in relation to control and depositary look-through. The existing provisions of AIFMD remove the need for additional bespoke rules within the AIF Rulebook for ELTIFs (and arguably all types of AIFs). The CBI Subsidiary Rules could place Irish ELTIFs at a competitive disadvantage when compared with non-Irish ELTIFs which apply the requirements of AIFMD only in respect of wholly owned subsidiaries.</p> <p>In order for the Irish requirement to remain in line with Article 1(3) of the ELTIF Regulation, the rules on investing through subsidiaries should be deleted. Particularly, the unnecessary cost, administrative burden, impracticality and operational complexity of applying the CBI Subsidiary Rules to ELTIFs, and the fact that the CBI Subsidiary Rules do not provide any apparent benefit for investors would place Irish ELTIFs at a disadvantage to non-Irish ELTIFs and give rise to competitive distortions, confusion among investors across Irish and non-Irish ELTIFs contrary to the intentions of the ELTIF Regulation.</p>
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Question 2: Do you agree with the proposed rules under Part I, Section 2 of the ELTIF chapter of the AIF Rulebook?

Except where specific issues with individual rules are highlighted below, which focus on: (i) identification of proposals that are contrary to Article 1(3) of the ELTIF Regulation; and (ii) highlighting features that would enhance the Irish ELTIF, we agree with the proposed rules.

Section 2:	
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Supervisory requirements	
<p>ii. Offer period</p> <ol style="list-style-type: none"> 1. The ELTIF shall ensure that the offer period does not commence prior to the authorisation of the ELTIF or approval in the case of a sub-fund and must be for a period no longer than six months. 2. The ELTIF may extend the initial offer period up to two years and six months provided that the terms of the offer ensure that early unitholders are not prejudiced by the arrangements. Where these ELTIFs have multiple closings, this period must commence no later than the date of first closing. 3. The ELTIF may extend the initial offer period, without prior notification to the Central Bank, provided that no subscriptions have been received at the date of the proposed extension. The ELTIF shall notify the Central Bank of any such extensions on an annual basis. 4. The ELTIF may only extend the initial offer period, where subscriptions have been received, if it has received the prior written approval of the Central Bank for such an extension. 5. An ELTIF shall only launch share classes at a fixed price after the initial offer period where it has been confirmed to the Central Bank that existing shareholders in the ELTIF are not prejudiced. 	<p>The ELTIF 2.0 Regulation allows ELTIFs to invest in a broad range of asset classes and to pursue different investment strategies. Accordingly, it is important to provide for rules that allows for differing approaches to subscriptions (ongoing subscriptions at the prevailing net asset value ("NAV") per share, initial period issuing shares at a fixed price and subsequently at NAV and operating a multiple close capital commitment delayed drawdown approach).</p> <p>The proposal for initial offer periods is only appropriate for open-ended style ELTIFs that intend to provide investors with the right to request the redemption of their shares/ units regularly during the life of the ELTIF ("Open-Ended Type ELTIFs").</p> <p>ELTIFs that are closed-ended or open-ended with limited liquidity and which (i) operate a capital commitment, delayed drawdown approach to subscriptions; and (ii) do not intend to provide investors with the right to request the redemption of their shares/ units regularly during the life of the ELTIF should have greater flexibility in terms of the length of the initial offer period and the ability to issue shares at a price other than NAV.</p> <p>This distinction could be achieved through update of the Closed-Ended QIAIF Guidance to extend its scope to cover ELTIFs other than Open-Ended Type ELTIFs.</p>
<p>iii. Directors of ELTIFs investment companies⁴</p> <ol style="list-style-type: none"> 1. Where the ELTIF is an investment company, departures from the office of director and the reason for the departure must be notified to the Central Bank immediately by filing the relevant Central Bank form. In all cases where a director wishes to resign and prior to completing the relevant Central Bank form, the 	<p>It is very likely that the overwhelming majority of newly established ELTIFs will be externally managed funds, and so we consider that this proposed sub-section (iii)(1) should be deleted or, alternatively, amended such that it applies only to self-managed ELTIFs.</p> <p>It is difficult to see how the proposed requirement for the ELTIF board or chair to "<i>form a view as to the impact of the resignation on the manager of the ELTIF having regard to the current and prospective financial state of the manager of the ELTIF and the</i></p>

<p><u>ELTIF (at Board or its Chair level) must form a view as to the impact of the resignation on the manager of the ELTIF having regard to the current and prospective financial state of the manager of the ELTIF and the funds under management. In the event that the Board or, in the absence of a Board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it shall state this on the relevant Central Bank form.</u> The Board or its Chair may consult the Central Bank in order to help it form a view on that matter.</p> <p>⁴ <i>The provisions of footnote 1 in chapter 4 - AIF Management Company Requirements will apply mutatis mutandis to directors of ELTIF investment companies which are in distressed or failing circumstances.</i></p>	<p><i>funds under management” and the related requirement to disclose any such view in the relevant CBI form would be applicable or add any value in the context of an externally managed ELTIF, particularly one with a third party service provider acting as management company.</i></p>
<p>vi. Replacement of AIFM, management company, general partner or third party</p> <ol style="list-style-type: none"> 1. The ELTIF may only replace its AIFM, management company or general partner with the prior approval of the Central Bank. 2. The Central Bank must be notified 12 working days after the last day of the reference quarter (T+12) of any proposal to replace third parties which have contracted (directly or indirectly) with the management company in the case of a unit trust or common contractual fund, investment company or investment limited partnership to carry out services. The Central Bank may object to the proposals and replacements objected to by the Central Bank may not proceed. 3. The procedures to be followed by ELTIFs in relation to the replacement of an AIFM, management company, general partner, investment manager 	<p>Remove or clarify second paragraph (preference to remove).</p> <p>The current AIF Rulebook does not provide any deadlines for notifications and the proposals to introduce a requirement for ELTIFs will only introduce complexity for Irish ELTIFs compared to other non ELTIF AIFs. It is unclear what "reference quarter" is referring to.</p> <p>Reference to “third parties”, “carry out services” and “indirectly” could be very far-reaching, making consistent compliance across ELTIFs more challenging.</p>

<p>or fund administration company must be approved and documented by the ELTIF.</p>	
<p>ix. ELTIFs investing in venture capital or development capital or private equity</p> <p>1. The ELTIF, which invests in venture capital or development capital or private equity investments, shall specify, in its prospectus:</p> <ul style="list-style-type: none"> (a) the intention of the ELTIF regarding the exercise of legal and management control over underlying investments. (b) the prospectus must contain a description of the risks involved in this investment and where the ELTIF provides for the possibility of redemptions, the likelihood that because the ELTIF is invested in unquoted companies, delays may arise in meeting redemption requests from unitholders. (c) a description of the potential conflicts of interest which could arise between the ELTIF and the management company/AIFM and/or any delegates of the ELTIF and the management company/AIFM. 	<p>As noted in our comment on Part 1, Section 1.i above, the ELTIF Regulation does not distinguish between investment strategies that invest in venture capital, development capital or private equity and by its very nature, the ELTIF is designed for pursuing investment strategies of this type. By providing for additional disclosure requirements dealing with these investment strategies it would be contrary to Article 1(3) of the ELTIF Regulation, give rise to additional regulatory complexity and potentially competitive distortions for the Irish ELTIF. Accordingly, the proposal should be deleted.</p> <p>Regarding sub-paragraph (a), given the nature of the ELTIF, the types of long-term investments it makes are likely in venture capital, development capital or private equity but also in other asset classes which are not specifically referenced here. The transparency rules of the ELTIF Regulation require extensive disclosure of all information necessary to enable investors to make an informed assessment about the investment proposed to them. This includes disclosure regarding the risks attached, the categories of assets in which the ELTIF is authorised to invest and the long-term nature of the ELTIF's investments and risk associated with investments in real assets. The ELTIF Regulation does not specifically focus on venture capital or development capital or private equity investments and by requiring additional disclosure relating to these investments is contrary to Article 1(3) of the ELTIF Regulation. However, as noted above in the context of the proposal on exercising significant influence we do not have an objection to a professional-only ELITF that has dis-applied the concentration limits disclosing that it may exercise significant influence and that it may give rise to certain conflicts of interest.</p> <p>Regarding sub-paragraph (b), under the ELTIF regime the ELTIF is by default a closed-ended product and the possibility of redemptions will only be permitted if the manager of the ELTIF is able to demonstrate that the ELTIF has an appropriate</p>

redemption policy, the use of liquidity management tools and other certain conditions are met.

Article 18(2) of the ELTIF Regulation prescribes detailed conditions for the possibility of providing redemptions before the end of the life of an ELTIF. Extensive work is underway at an EU level with the development of the draft RTS under the revised ELTIF Regulation in connection with redemption policies, and the secondary market liquidity matching mechanism. As ESMA has noted in its May 2023 consultation paper on the ELTIF Regulation RTS, one of the objectives of Article 18(2)(c) of the ELTIF Regulation is the clarity of disclosures to be provided to investors in order to ensure that they fully understand the redemption policy. The RTS are due to specify the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF; the criteria to determine the minimum holding period; settlement and pay-out periods, the minimum information to be provided to the competent authority of the ELTIF; the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools; and the criteria to assess the redemption percentage.

As regards disclosure to investors, the manager of the ELTIF is already required, under Article 23 of AIFMD, to make available to the ELTIF investors a description of the ELTIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors.

Additional risk disclosures (such as (b)) are duplicative of the ELTIF Regulation / AIFMD requirements and in respect of redemption and settlement profiles are pre-emptive of the work being conducted by ESMA on the RTS and indeed risk creating an inconsistency between the AIF Rulebook and the expected rules on ELTIF redemption policies.

Regarding sub-paragraph (c), although we do not have significant concerns around these proposed disclosures, we would note that AIFMD requires broad conflicts of interest disclosures so we would

	question whether the inclusion of these additional disclosures is necessary.
<p>x. ELTIFs acquiring real estate</p> <p>1. The ELTIF shall only acquire a real estate interest where that interest has been valued in advance. Such a valuation must be contained in a report and it must confirm that if the real estate interest was acquired for the ELTIF it could be disposed of at that valuation within a reasonable period.</p> <p>2. The ELTIF may not grant any person an option to acquire any real estate interest included in the ELTIF.</p>	<p>Under the ELTIF 2.0 Regulation, ELTIFs have the ability to invest in a broad range of "real assets". Real estate is only one type of real asset. The ELTIF Regulation does not place additional requirements for the making of particular investments and this proposal would be contrary to Article 1(3) of the ELTIF Regulation, give rise to additional regulatory complexity and potentially competitive distortions for the Irish ELTIF. Accordingly, the proposal should be deleted.</p> <p>Furthermore:</p> <ul style="list-style-type: none"> • under AIFMD, the AIFM is responsible for the proper valuation of the ELTIF assets and the valuation is required to be performed impartially and with all due skill, care and diligence. Accordingly, the issue of valuation of assets is already adequately addressed; and • the RTS specifically deal with the issue of valuation in the context of redemptions under Article 5(5) of the draft RTS and domestic CBI rules should not supplement it.
<p>xi. Closed-ended period</p> <p>2. Where the ELTIF is closed ended it may, with the prior approval of the Central Bank, provide for the issue of units other than at net asset value.</p>	<p>As noted in our comments above, in order to improve the Irish ELTIF, we have requested that the Closed-Ended QIAIF Guidance be extended to cover ELTIFs other than Open-Ended Type ELTIFs (as defined above). Furthermore, the requirement for the prior approval of the CBI should be removed since this is not required for closed-ended QIAIFs.</p>

Question 3: Do you agree with the proposed rules under Part I, Section 3 of the ELTIF chapter of the AIF Rulebook?

Except where specific issues with individual rules are highlighted below, which focus on: (i) identification of proposals that are contrary to Article 1(3) of the ELTIF Regulation; (ii) proposals that are inconsistent with the ELTIF Regulation; and (iii) highlighting features that would enhance the Irish ELTIF, we agree with the proposed rules.

Section 3:	
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<p>8 In the event of a change of investment objectives and/or investment policy, on the basis of a majority of votes cast at a general meeting, the ELTIF must provide a reasonable notification period to enable unitholders redeem their units prior to implementation of these changes.</p>	<p>In order to reflect the broad range of liquidity options that ELTIFs may offer, non-Open-Ended ELTIFs that do not have realistic liquidity provisions should operate under the earlier section entitled "xiii. Changes to existing closed-ended ELTIFs" and be required to obtain 75% approval for the changes and should not be subject to a reasonable notification period before becoming effective to allow unitholders to redeem.</p>
<p>iii. Dealing <i>Redemption in Specie</i></p> <p>4. Where the prospectus provides for redemption in specie, the ELTIF shall also provide for the following in its prospectus:</p> <ul style="list-style-type: none"> • redemption in specie is at the discretion of the ELTIF and with the consent of the redeeming unitholder; • asset allocation is subject to the approval of the depositary; and • a determination to provide redemption in specie may be solely at the discretion of the ELTIF where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the net asset value of the ELTIF. In this event the ELTIF will, if requested, sell the assets on behalf of the unitholder. The cost of the sale can be charged to the unitholder. 	<p>Paragraph 4 is not consistent with Article 18(5) of the ELTIF Regulation which provides how redemptions in kind out of the ELTIF's assets should be dealt with and should be deleted to ensure compliance with the ELTIF Regulation.</p>
<p>vii. Risk disclosures</p> <p>4. An ELTIF which invests in emerging stock exchanges and markets shall include in its prospectus a recommendation that unitholders should not invest a substantial proportion of their investment portfolio in the ELTIF. This recommendation shall be set out in bold type at the beginning of the prospectus and must cross refer to the more detailed disclosure of risk factors</p>	<p>Paragraph 4 provides that an ELTIF which invests in emerging exchanges/markets shall include a recommendation that the unitholders should not invest a substantial proportion of their investment portfolio in the ELTIF.</p> <p>Article 23(4)(f) of the ELTIF Regulation already requires that the prospectus and marketing documents should advise investors</p>

<p>which are contained in the body of the prospectus.</p> <p>5. The ELTIF which proposes to make distributions out of capital and which invests greater than 20% in fixed income instruments must highlight, in its prospectus, the greater risk of capital erosion given the lack of potential for capital growth and the likelihood that, due to capital erosion, the value of future returns would also be diminished.</p>	<p>that only a “small proportion of their overall investment portfolio should be invested in an ELTIF”.</p> <p>It would be confusing and potentially contradictory with the ELTIF Regulation to include this specific disclosure for emerging market strategies only.</p> <p>Regarding paragraph 5, Article 22 of the ELTIF Regulation deals with distributions of proceeds and capital and does not place additional disclosure obligations on ELTIFs. While we have no objection to the disclosure requirement it does add a further requirement that is not provided for in the ELTIF Regulation and should be deleted to ensure compliance with Article 1(3) of the ELTIF Regulation.</p>
<p>ix. Warehousing</p> <p>1. The ELTIF shall only acquire assets pursuant to a warehousing arrangement where the use of such arrangements is fully disclosed in its prospectus, including details of any fee payable in relation to such arrangements. The prospectus must state that the ELTIF will pay no more than current market value for these assets.</p>	<p>We have no objection to disclosing the possible use of a warehousing arrangement.</p> <p>We would query though the need for the additional disclosure that "the ELTIF will pay no more than current market value for these assets" given the obligation under AIFMD for the AIFM to perform valuation impartially and with all due skill, care and diligence and transaction with a connected party will be subject to the requirements of the connected party transactions.</p>
<p>x. Investment through subsidiaries</p> <p>1. The ELTIF may only invest through one or more subsidiaries where its <u>prospectus</u> discloses:</p> <p>(a) the name of the subsidiary; and</p> <p>(b) that the <u>subsidiary is wholly owned</u> by the ELTIF.</p>	<p>As noted in our response to question Part 1, Section 1,vi above , the proposed rules on permissible investment through subsidiaries are contrary to Article 1(3) of the ELTIF Regulation, will give rise to regulatory complexity and competitive distortions for Irish ELTIFs.</p> <p>The proposed requirement at sub-section (x) (1) (a) that an investment by an ELTIF through one or more subsidiaries may only proceed where the prospectus of the ELTIF has been updated with the name of the subsidiary is a further additional requirement relating to a field already covered in the ELTIF Regulation.</p> <p>Furthermore, it is impractical, administratively burdensome and creates unnecessary cost and potential delays in the execution of the</p>

	<p>ELTIF’s investment strategy, rendering an Irish ELTIF less competitive and nimble in its pursuit of diversified portfolio of investment opportunities. This may create uncertainty of timeline for execution by an Irish ELTIF of an investment transaction pending clearance by the CBI of an update to its prospectus to list the name(s) of subsidiary entities forming part of the ELTIF’s acquisition structure. It is not clear what benefit this prospectus disclosure provides to investors. We would consider it more appropriate that an ELTIF should list any wholly-owned subsidiaries in its periodic reports, consistent with the requirement currently applicable to QIAIFs.</p> <p>See our comment in respect of Part 1, Section 1,vi on the proposal that investment vehicles must be wholly owned subsidiaries in relation to the proposed requirement of sub-section (x) (1) (b).</p>
<p>xi. Distributions out of and charging fees and expenses to capital</p> <p>1. The ELTIF may only make distributions out of capital where its prospectus has included the following disclosures:</p> <p>(a) the rationale behind the policy;</p> <p>(b) a prominent risk warning, at the front of the prospectus, which describes the effects of making distributions from capital. This warning must include the following:</p> <ul style="list-style-type: none"> • that capital will be eroded; • that the distribution is achieved by forgoing the potential for future capital growth; • this cycle may continue until all capital is depleted; and <p>(c) highlight that distributions out of capital may have different tax implications to distributions of income and recommend that</p>	<p>It is difficult to see how the requirement under sub-section 3(xi)(1) for the referenced disclosure, including a prominent risk warning with respect to distributions out of capital would be relevant in all circumstances of an ELTIF. For example, where an ELTIF is closed-ended, makes long term investments and limits or restricts redemptions at the request of investors, and provides for the return of capital to investors in certain circumstances, we do not consider that a prominent risk warning is warranted. Furthermore, Article 22 of the ELTIF Regulation deals with distributions of proceeds and capital and does not include corresponding requirements. This provision adds requirements to fields already covered by the ELTIF Regulation and should be deleted to ensure compliance with Article 1(3) of the ELTIF Regulation.</p> <p>We also note these requirements apply to RIAIFs under the AIF Rulebook, but not to QIAIFs. If retained, to the extent that an ELTIF is restricted to “Qualifying Investors”, including professional investors, the requirement to include this disclosure should not apply.</p>

<p style="text-align: center;">investors seek advice in this regard.</p> <p>3. Where the ELTIF invests more than 20% in fixed income instruments, and the priority of the ELTIF is the generation of income rather than capital growth this priority shall be specified in the prospectus. In addition the prospectus must include a statement that distributions made during the life of the ELTIF must be understood as a type of capital reimbursement.</p>	<p>Regarding paragraph 3, see comment previous comment addressing this additional disclosure point.</p>
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Question 4: Do you agree with the proposed rules under Part I, Section 4 of the ELTIF chapter of the AIF Rulebook?

Except where specific issues with individual rules are highlighted below, which focus on: (i) identification of proposals that are contrary to Article 1(3) of the ELTIF Regulation and (ii) highlighting features that would enhance the Irish ELTIF, we agree with the proposed rules.

<p>ii. Dealing</p> <p>3. Where the ELTIF provides for the possibility of redemptions from the ELTIF, the ELTIF may only retain 10% or less of redemption proceeds where this reflects the redemption policy of the underlying investment fund(s) and until such time as the full redemption proceeds from the underlying investment fund(s) is received.</p>	<p>Sub-section ii.3 is designed for open-ended type AIFs and is not appropriate for ELTIFs in light of the broad range of liquidity options that may be offered by ELTIFs under the ELTIF 2.0 Regulation.</p> <p>More importantly, the RTS which is currently being finalised will address in detail requirements in relation to ELTIFs that offer redemptions and domestic CBI rules should not add further requirements to this, contrary to Article 1(3) of the ELTIF Regulation.</p>
<p>iii. Distributions out of and charging of fees and expenses to capital</p> <p>1. An ELTIF which proposes to make distributions out of capital shall include the risk warning specified in paragraph 1(b) of section 3.xi of Part I in any subscription form or marketing material.</p>	<p>Regarding distributions out of capital, see previous comments regarding additional disclosure where an ELTIF proposes making distributions out of capital.</p>

Question 5: Do you agree with the proposed rules under Part I, Section 5 of the ELTIF chapter of the AIF Rulebook?

Except where specific issues with individual rules are highlighted below, which focus on: (i) identification of proposals that are contrary to Article 1(3) of the ELTIF Regulation and (ii) highlighting features that would enhance the Irish ELTIF, we agree with the proposed rules.

<p>Section 5:</p> <p>Annual and half-yearly reports</p> <p>i. Publication of annual and half-yearly reports</p> <p>8. In accordance with company law, an investment company established as an umbrella ELTIF must include accounts for all sub-funds of that company in its periodic reports.</p>	<p>An ELTIF ICAV may produce accounts per sub-fund but this is not recognised by this draft section, referring to ELTIF investment companies needing to produce accounts for all sub-funds. We request that there are no differences between accounts requirements for ELTIFs depending on structure (except that an ICAV can produce accounts per sub-fund)</p>
<p>ii. Information to be contained in the annual report</p> <p>1. Where the ELTIF is an investment company it shall confirm in its annual report, whether or not, the aim of spreading investment risk has been maintained.</p> <p>2. The ELTIF shall include the following in its annual report as well as any significant information which will enable unitholders to make an informed judgement on the development of the ELTIF and its results:</p> <p>(a) net asset value per unit;</p>	<p>Regarding ii.1 - the definition of investment company also covers ICAVs and ICAVs are not subject to the statutory investment risk spreading requirement. This could be clarified to read: "Where the ELTIF is an investment company, other than an ICAV..."</p> <p>Regarding ii.2 - ELTIFs established as investment limited partnerships ("ILP") may not have a net asset value per unit, unless they are unitised. We suggest clarifying (a) as follows: "net asset value per unit (<u>where applicable</u>)"</p>
<p>iii. Information to be contained in the half-yearly report</p> <p>1. The ELTIF shall include the following in its half-yearly report:</p> <p>(b) number of units in circulation;</p> <p>(c) net asset value per unit;</p>	<p>As noted in the previous comment, ELTIFs established as ILPs may not be unitised and we suggest clarifying (b), (c) as follows:</p> <p>"(b) number of units in circulation (<u>where relevant</u>);</p> <p>(c) net asset value per unit (<u>where relevant</u>);"</p>

Question 6: Do you agree with the proposed rules under Part II of the ELTIF chapter of the AIF Rulebook?

Except where specific issues with individual rules are highlighted below, we agree with the proposed rules.

Part II: MARKETING OF ELTIF TO RETAIL INVESTORS

This Part applies to an ELTIF other than an authorised ELTIF which market its units in Ireland to retail investors.

1. Where the ELTIF has received approval from the Central Bank to market its units in Ireland to retail investors, it shall include the following statement, in a prominent position, in each copy of its prospectus and in any marketing material distributed in Ireland for the purposes of promoting the ELTIF to retail investors
 “While this ELTIF has been approved to market its units to the public in Ireland by the Central Bank, the scheme is not supervised or authorised in Ireland. It is incorporated/established in _____ and is supervised by _____.”
2. The ELTIF shall include the following information for Irish unitholders in its prospectus:
 - (a) details of the facilities agent and the facilities maintained;
 - (b) provisions of Irish tax laws, if applicable; and
 - (c) details of the places where issue and repurchase prices can be obtained or are published.
3. Where the ELTIF is constituted as an umbrella fund, it shall only market sub-funds for which it has received specific approval from the Central Bank.
4. The ELTIF, in marketing its units in Ireland to retail investors, shall comply with the Consumer Protection Code of the Central Bank.
5. The ELTIF shall submit to the Central Bank a copy of its annual and half-yearly reports, as soon as they are available.

We note that this provision is designed to address the marketing of ELTIFs that are not authorised in Ireland to retail investors in Ireland.

We suggest that this is clarified in the draft as follows:

This Part applies to an ELTIF other than an Irish authorised ELTIF which markets its units in Ireland to retail investors.

Regarding paragraph 2(a) - details of the facilities agent and the facilities maintained can now be removed as per the EU Regulation 2023/606.

Regarding paragraph 5 - semi annual accounts would only be provided where applicable

In addition to a prospectus, a KID would be required for Irish retail investors.

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

Yours sincerely,



A handwritten signature in black ink, appearing to read 'D. Casey', is positioned above a horizontal line.

Declan Casey
Director Policy and Regulatory