

**TECHNICAL STANDARDS (EUROPEAN LONG-TERM INVESTMENT FUND
REGULATION) (EU EXIT) INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

- F. The FCA amends the following EU Regulation in accordance with the Annex of this instrument.

(1)	(2)
Regulation 2018/480 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	Annex

Commencement

- G. This instrument comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.

Citation

- H. This instrument may be cited as the Technical Standards (European Long-Term Investment Fund Regulation) (EU Exit) Instrument 2020.

By order of the Board
10 December 2020

Annex

In this Annex, underlining indicated new text and striking through indicates deleted text.

[*Editor's note:* The text in this Annex takes into account the changes made by the Technical Standards (Long-Term Investment Fund Regulation) (EU Exit) Instrument 2019 (FCA 2019/44). Changes to the text made by that instrument are not marked in this instrument.]

**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**

...

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”)~~ Long-term investment fund (“LTIF”) 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~~ LTIF level.

...
3. The use of the financial derivative instruments aimed to provide a return for the ~~ELTIF~~ LTIF shall not be deemed to serve the purpose of hedging the risks.
4. The manager of the ~~ELTIF~~ LTIF shall take all reasonable steps to ensure that the financial derivative instruments used to hedge the risks inherent to other investments of the ~~ELTIF~~ LTIF reduce the risks at the ~~ELTIF~~ LTIF level in accordance with paragraph 2, including in stressed market conditions.

Article 2

Sufficient length of the life of the ~~ELTIF~~ LTIF

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

- (a) the ~~ELTIF~~ LTIF 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~~ LTIF portfolio which has the longest investment horizon at the time of the submission of the application for authorisation as an ~~ELTIF~~ LTIF to the competent authority of the ~~ELTIF~~ LTIF;
- (b) any investment made by the ~~ELTIF~~ LTIF after the date of its authorisation as an ~~ELTIF~~ LTIF does not have a residual investment horizon exceeding the remaining life of the ~~ELTIF~~ LTIF 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~~ LTIF shall assess all of the following elements in relation to each asset in which the ~~ELTIF~~ LTIF invests:

...

- (b) whether the manager of the ~~ELTIF~~ LTIF, 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;

...

- (e) whether the manager of the ~~ELTIF~~ LTIF, 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:

...

...

Article 5

Specifications on the facilities available to retail investors

1. For the purposes of Article 26(1) of Regulation (EU) 2015/760, the manager of an LTIF shall put in place facilities to perform the following tasks:

- (a) process retail investors' subscription, payment, repurchase and redemption orders relating to the units or shares of the LTIF, in accordance with the conditions set out in the ~~ELTIF~~ LTIF marketing documents;

...

...

Article 6

Transitional provisions

An ~~ELTIF~~ LTIF authorised under Regulation (EU) 2015/760 before the entry into force of this Regulation shall be deemed to fulfil the requirements set out in Article 2 of this Regulation.

An ~~ELTIF~~ LTIF authorised under Regulation (EU) 2015/760 before the entry into force of this Regulation shall apply Articles 1, 3, 4 and 5 of this Regulation from 1 May 2019.

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