

Consultation Paper

Draft regulatory technical standards on open-ended loan-originating AIFs under the AIFMD

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **12 March 2025**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This document will be of interest to alternative investment fund managers, AIFs, and their trade associations, depositories and their trade associations, as well as professional and retail investors investing into AIFs and their associations.

Table of Contents

1	Executive Summary	4
2	Background	5
2.1	ESMA's approach for drafting the RTS	5
2.2	Sound liquidity management.....	8
2.3	Appropriate redemption policy	9
2.4	Availability of liquid assets	9
2.5	Liquidity Stress Testing.....	11
2.6	Ongoing monitoring.....	12
	Annex I.....	14
	Annex II.....	17
	Annex III.....	18
	Annex IV	22

1 Executive Summary

Reasons for publication

The revised AIFMD¹ provides that ESMA shall develop draft Regulatory Technical Standards (RTS) to determine the requirements with which loan-originating Alternative Investment Funds (AIFs) are to comply in order to maintain an open-ended structure. According to the mandate in the AIFMD, those requirements shall include a sound liquidity management system, the availability of liquid assets and stress testing, as well as an appropriate redemption policy having regard to the liquidity profile of loan-originating AIFs. Those requirements shall also take due account of the underlying loan exposures, the average repayment time of the loans and the overall granularity and composition of the portfolios of loan-originating AIFs.

This consultation paper represents the first stage in the development of the draft RTS and sets out proposals for their content on which ESMA is seeking the views of external stakeholders.

Contents

Section 2 explains the background and gives detailed explanations on the content of the proposals and seeks stakeholders' input through specific questions.

Annex I sets out the list of questions contained in this paper.

Annex II contains the legislative mandate to develop draft RTS.

Annex III provides for the cost-benefit analysis related to the draft RTS.

Annex IV contains the full text of the draft RTS.

Next Steps

ESMA will consider the feedback it received to this consultation and expects to publish a final report and submit the draft technical standards to the European Commission by Q3/Q4 2025.

¹ [Publications Office \(europa.eu\)](https://publications-office.europa.eu)

2 Background

1. Directive (EU) 2024/927² (hereafter, ‘the amending Directive’) amending Directives 2011/61/EU (AIFMD) and 2009/65/EC (UCITS Directive) was published in the Official Journal on 25 March 2024.
2. This amending Directive modifies the AIFMD and the UCITS Directive in a number of areas including, on liquidity management, supervisory reporting and depositaries. It also amends the AIFMD in relation to Loan-Originating Alternative Investment Funds (LO AIFs)³.
3. With respect to LO AIFs, these are closed-ended by default. Indeed, article 16(2)(a) of the revised AIFMD provides that an AIFM shall ensure that the LO AIF it manages is closed-ended. However, by way of derogation to this requirement, a LO AIF may be open-ended provided that the AIFM that manages it is able to demonstrate to the competent authorities of the AIFM's home Member State that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy.
4. ESMA shall develop draft Regulatory Technical Standards (RTS) to determine the requirements which LO AIFs are to comply with in order to maintain an open-ended structure. Those requirements shall include:
 - a. a sound liquidity management system;
 - b. the availability of liquid assets and stress testing;
 - c. an appropriate redemption policy having regard to the liquidity profile of loan-originating AIFs.
5. Those requirements shall also take due account of the underlying loan exposures, the average repayment time of the loans and the overall granularity and composition of the loan-originating AIF's portfolios.

2.1 ESMA's approach for drafting the RTS

6. When drafting the draft RTS, ESMA performed an assessment of the existing AIFMD Level 2 provisions⁴ (hereafter referred to as the ‘implementing Regulation’) on liquidity management which all open-ended AIFs shall comply with. The purpose of this assessment was to establish whether there were any gaps in the existing Level 2

² Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (europa.eu)

³ Article. 4 (1) of AIFMD defines LO AIFs as an AIF whose investment strategy is mainly to originate loans or whose originated loans have a notional value that represents at least 50 % of its net asset value.

⁴ See Articles 46, 47, 48 and 49 of [Commission Delegated Regulation \(EU\) No 231/2013 \('implementing Regulation'\)](#)

provisions on liquidity management that would need to be addressed to account for the specificities of open-ended LO AIFs (OE LO AIFs).

7. First of all, Article 46 of the implementing Regulation provides that AIFMs shall be able to demonstrate to the competent authorities of their home Member State that an appropriate liquidity management system and effective procedures referred to in Article 16(1) of Directive 2011/61/EU are in place taking into account the investment strategy, the liquidity profile and the redemption policy of each AIF.
8. In addition, Article 47 of the implementing Regulation provides, *inter alia*, that (emphasis added):
 - a) “The AIFM maintains a level of liquidity in the AIF appropriate to its underlying obligation, based on an assessment of the relative liquidity of the AIF’s assets in the market, taking into account of the time required for liquidation and the price value at which those assets can be liquidated, and their sensitivity to other market risks or factors;
 - b) The AIFM monitors the liquidity profile of the AIF’s portfolio of assets, having regard to the marginal contribution of the individual assets which may have a material impact on liquidity, and the material liabilities and commitments, contingent or otherwise, which the AIF may have in relation to its underlying obligations. For these purposes the AIFM shall take into account the profile of the investor base of the AIF, including the type of investors, the relative size of investments and the redemption terms to which these investments are subject.
 - c) The AIFM implements and maintains appropriate liquidity measurement arrangements and procedures to assess the quantitative and qualitative risks of positions and of intended investments which have a material impact on the liquidity profile of the portfolio of the AIF’s assets to enable their effects on the overall liquidity profile to be appropriately measured. The procedures employed shall ensure that the AIFM has the appropriate knowledge and understanding of the liquidity of the assets in which the AIF has invested or intends to invest including, where applicable, the trading volume and sensitivity of prices and, as the case may be, or spreads of individual assets in normal and exceptional liquidity conditions.
 - d) The AIFM considers and puts into effect the tools and arrangements, including special arrangements, necessary to manage the liquidity risk of each AIF under its management. The AIFM shall identify the types of circumstances where these tools and arrangements may be used in both normal and exceptional circumstances, taking into account the fair treatment of all AIF investors in relation to each AIF under management. The AIFM may use such tools and arrangements only in the circumstances and if appropriate disclosures have been made in accordance with Article 108.”

9. Furthermore, according to Article 48 of the implementing Regulation,

“AIFMs shall, where appropriate, considering the nature, scale and complexity of each AIF they manage, implement and maintain adequate limits for the liquidity or illiquidity of the AIF consistent with its underlying obligations and redemption policy and in accordance with the requirements laid down in Article 44 relating to quantitative and qualitative risk limits. AIFMs shall monitor compliance with those limits and where limits are exceeded or likely to be exceeded, they shall determine the required (or necessary) course of action. In determining appropriate action, AIFMs shall consider the adequacy of the liquidity management policies and procedures, the appropriateness of the liquidity profile of the AIF’s assets and the effect of atypical levels of redemption requests.

AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of each AIF under their management. The stress tests shall:

- a) be conducted on the basis of reliable and up-to-date information in quantitative terms or, where this is not appropriate, in qualitative terms;
- b) where appropriate, simulate a shortage of liquidity of the assets in the AIF and atypical redemption requests;
- c) cover market risks and any resulting impact, including on margin calls, collateral requirements or credit lines;
- d) account for valuation sensitivities under stressed conditions;
- e) be conducted at a frequency which is appropriate to the nature of the AIF, taking in to account the investment strategy, liquidity profile, type of investor and redemption policy of the AIF, and at least once a year.”

10. Finally, Article 49 of the implementing Regulation provides that “the investment strategy, liquidity profile and redemption policy of each AIF managed by an AIFM shall be considered to be aligned when investors have the ability to redeem their investments in a manner consistent with the fair treatment of all AIF investors and in accordance with the AIF’s redemption policy and its obligations. In assessing the alignment of the investment strategy, liquidity profile and redemption policy the AIFM shall also have regard to the impact that redemptions may have on the underlying prices or spreads of the individual assets of the AIF”.

11. In light of these provisions, ESMA is of the view that there are no gaps in the AIFMD Level 2 requirements on liquidity management.

12. Instead, ESMA understands that the RTS shall provide a harmonised implementing framework tailored to the specificities of OE LO AIFs setting out parameters/elements that AIFMs managing OE LO AIFs shall take into account when applying the AIFMD Level 2

provisions so they can demonstrate to the competent authorities of their home Member States that the LO AIF they manage can maintain an open-ended structure.

2.2 Sound liquidity management

13. According to Article 16(2)(a) of AIFMD, LO AIFs shall be closed-ended. However, the co-legislators have agreed that LO AIFs may be open-ended provided that the AIFMs are able to demonstrate to the competent authorities of their home Member States that the AIFs liquidity risk management system is compatible with its investment strategy and redemption policy.
14. ESMA deems it important to stress that this derogation is not a bespoke regime for OE LO AIFs but rather a derogation to the general rule and that AIFMs shall be able to demonstrate to the competent authorities of their home Member States why the LO AIF they intend to manage can be open-ended. To that end, the RTS on OE LO AIFs provide an implementing framework specifying the elements that AIFMs have to take into account to make the demonstration to their competent authorities. It is not because AIFMs comply with the RTS on OE LO AIFs that they can automatically set up an OE LO AIF.
15. In light of the legislative mandate and the related existing Level 1 and Level 2 provisions, ESMA believes that AIFMs that intend to manage an OE LO AIF shall be able to demonstrate to their home competent authorities that:
 - the liquidity risk management system of the open-ended loan-originating AIF they intend to manage is compatible with its investment strategy and its redemption policy; and
 - the key elements of the OE LO AIF, including its strategy and dealing frequency, enable it to remain sufficiently liquid to be able to meet redemption requests;
16. As part of a sound liquidity management, AIFMs that intend to manage open-ended loan-originating AIFs shall establish an appropriate redemption policy tailored to the characteristics of each open-ended loan-originating AIF. In doing so, AIFMs shall take into account a number of factors of the open-ended loan-originating AIFs they intend to manage. These elements are further discussed in section 2.3 thereafter.
17. As for any open-ended AIF, another key element of a sound liquidity management framework is the availability of sufficient liquid assets to ensure that OE LO AIFs have enough liquidity available to meet their liabilities, including redemption requests. In the case of OE LO AIFs, there are several factors that AIFMs shall take into account when determining the appropriate amount of liquid assets. These factors are further discussed in Section 2.4 thereafter.
18. Given the specificities of OE LO AIFs, ESMA is of the view that there is a need to supplement the provisions on liquidity stress testing set out in the AIFMD with bespoke

rules in the draft RTS, in line with the ESMA guidelines on liquidity stress testing⁵ in UCITS and AIFs. These rules are discussed in Section 2.5 thereafter.

19. In order to ensure a sound liquidity management, ESMA is of the view that AIFMs shall monitor on an ongoing basis a number of specific parameters of the OE OL AIFs they manage. The purpose of this monitoring is to ensure that the liquidity management system of the OE LO AIFs remains compatible with the investment strategy and the redemption frequency offered to shareholders and unitholders. These parameters are further discussed in Section 2.6 thereafter.

Q1: Are there any elements other than the redemption policy, the availability of liquid assets, the performance of liquidity stress tests and ongoing monitoring that AIFMs shall take account to demonstrate that the liquidity management system of the OE LO AIFs they manage is sound? If yes, please specify.

2.3 Appropriate redemption policy

20. AIFMs that manage OE LO AIFs shall be able to demonstrate to the competent authorities of their home Member States that the redemption policy of the fund is appropriate.
21. When designing the redemption policy of an OE LO AIF, AIFMs shall take into account the factors outlined in Article 2 of the draft RTS which include, inter alia, the redemption frequency offered to investors, the target investors of the AIF, the length of the AIF's notice period and the amount of liquid assets to be held by the OE LO AIF.

Q2: Do you agree with the list of factors set out in Article 2 of the draft RTS to be considered by AIFMs to establish an appropriate redemption policy for an OE LO AIF? If not, please justify your position.

Q3: Are there any other factors that AIFMs shall consider to demonstrate that the redemption policy of the OE LO AIFs they manage is appropriate? If yes, please provide a list of such factors and explain why they shall be included.

2.4 Availability of liquid assets

22. AIFMs shall determine an appropriate proportion of liquid assets that the OE LO AIFs they intend to manage shall target in order to meet redemption requirements. AIFMs shall take into account certain factors, such as the expected cash flows generated by the loans granted, the AIF's redemption policy, the maturity and the number of loans granted, estimated defaults and rescheduling, the length of the AIF's notice period and the anticipated behaviour of the targeted investors, as well as the investor concentration.

⁵ [esma34-39-897_guidelines_on_liquidity_stress_testing_in_ucits_and_aifs_en.pdf \(europa.eu\)](#)

23. In addition, AIFMs shall determine the type of assets they consider as liquid. ESMA is of the view that it is not possible to specify in the RTS all the assets that can be considered *ex-ante* as liquid. Therefore, in determining the adequate proportion of liquid assets, AIFMs shall exercise a prudent approach and consider as liquid the expected cash flow generated by the loans granted.

24. In addition, the AIFM may also consider as liquid investments that can be converted into cash over the duration of the notice period without significantly changing their value. Indeed, the duration of the notice period is an important element to consider when an asset is to be liquidated because the longer the notice period, the more time AIFMs will have to sell the assets and the higher the probability that it could sell assets without significantly changing their value in order to meet redemption requests. This means that, for a given asset, depending on the length notice period, AIFMs may decide not to consider it as part of the liquid assets because the value of this asset would be subject to a big discount affecting the overall liquidity available for meeting redemption requests.

Q4: Do you agree that AIFMs that intend to manage OE LO AIFs shall determine an appropriate proportion of liquid assets to be able to meet redemption requests? If not, please justify your positions?

Q5: Do you agree with the list of factors that AIFMs shall consider to establish the appropriate amount of liquid assets? If not, please justify your position. Shall AIFMs consider other factors, and if yes what are these factors?

Q6: Do you agree that cash flow generated by the loans granted by OE LO AIFs shall be considered as liquid assets? If not, please justify your position.

Q7: Do you agree that AIFMs may consider other assets as liquid if they can demonstrate that these assets can be liquidated within the notice period, to meet redemption requests, without significantly diluting their value? If not, please justify your positions.

Q8: Are there any other types of assets that could be considered as liquid for the purpose of the availability of liquid assets? If yes, please give examples and explain why they could be considered as liquid for the purpose of the availability of liquid assets. Conversely, are there any other types of assets that shall not be considered as liquid? If yes, please specify.

Q9: In your practical experience, how do AIFMs that manage OE LO AIFs determine the level of liquid assets to be held by the fund to meet redemption requests? In particular, how do they calibrate the amount of liquid assets with respect to the maturity of the loans granted and the number of loans in the portfolio?

Q10: Do you believe there should be a regulatory minimum amount of liquid assets to be held by an OE LO AIFs and, if yes, please specify it? Should this minimum apply across all types of OE LO AIFs, or should it differ among OE LO AIFs and, if yes, how?

2.5 Liquidity Stress Testing

25. Article 48 of AIFMD Level 2 provides *inter alia* that AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of each AIF under their management.
26. It is to be noted that the ESMA guidelines on Liquidity Stress Testing (LST) in UCITS and AIFs include a section dedicated to the LST of less liquid assets, which is applicable to LO AIFs.⁶
27. In line with the ESMA LST guidelines, the LO AIF manager shall have a strong understanding of the liquidity risks arising from the assets and liabilities of the fund's balance sheet, and its overall liquidity profile, in order to employ LST that is appropriate for the LO AIF it manages. The manager shall strike a balance by employing LST that is adequately focused, specific to the fund and highlights the key liquidity risk factors; and uses a wide enough range of scenarios to adequately represent the diversity of the fund's risks.
28. LO AIFs shall perform stress testing at least on a quarterly basis, unless a higher or lower frequency is justified by the characteristics of liquidity of the loans (the less liquid asset base and/or concentrate investor base, use of leverage, deteriorating market conditions are factors that may increase the frequency of regular LST and that may be applicable to LO AIFs).⁷ The reasons for such a determination should be recorded in the LST policy of the OE LO AIFs. The assets and liability side of the balance sheet of the LO AIF shall be stressed separately and then combined, in order to increase its resilience.
29. In terms of scenarios to be used for the purpose of LSTs, those shall be conservative. AIFMs shall consider a range of potential scenarios including those with low probability but high impact on the ability of AIFMs to value the loans.

Q11: Do you agree with the draft provisions on liquidity stress testing set out in Article 4 of the draft RTS? If not, please justify your positions.

Q12: What other parameters, if any, AIFMs managing OE LO AIFs shall take into account when performing liquidity stress tests?

⁶ See [esma34-39-897_guidelines_on_liquidity_stress_testing_in_ucits_and_aifs_en.pdf \(europa.eu\)](#), Section V.1.14.

⁷ *Ibidem*, Section V.1.5.

Q13: What could be the criteria that would justify a frequency of liquidity stress tests higher or lower than on a quarterly basis?

2.6 Ongoing monitoring

30. ESMA is of the view that AIFMs that manage OE LO AIFs shall, as part of their demonstration to the competent authorities of their home Member States, have in place the necessary arrangements to assess and monitor the evolution and behaviour of key elements of their funds.

31. It is important that AIFMs have the capacity to assess whether the liquidity management system remains compatible with the investment strategy of the OE LO AIF and the redemption policy offered to investors. AIFMs shall in particular monitor the evolution and performance of the loans granted such as the repayment schedules, early signals of possible defaults, the level of liquid assets or the behaviour of investors.

Q14: Do you agree with ESMA's proposal on ongoing monitoring set out in Article 5 of the draft RTS? If not, please justify your position.

Q15: What are the parameters that AIFMs managing OE LO AIFs shall monitor to ensure that the AIF has a sufficient level of liquid assets to meet redemption requests?

Q16: How do AIFMs that manage OE LO AIFs monitor the liquidity of the loans originated by the AIFs?

Other questions (non-related to the proposals on the draft RTS)

The questions below are particularly directed to AIFMs managing OE LO AIFs and are aimed at providing ESMA with a better understanding of market practices in terms of LO AIFs and in particular of OE LO AIFs.

Q17: If you are managing an open-ended loan-originating AIFs, please indicate:

- a) the size of these funds, specifying the smallest size as well as the average size;**
- b) the number of loans originated by these funds, specifying the smallest number as well as the average number of loans;**
- c) the loan-origination strategy you implement (direct lending, mezzanine, distressed debt, venture debt, diversification strategy etc);**
- d) the policy of the fund regarding the management of non-performing loans;**

e) the shortest, highest and average redemption frequency and, if any the notice period;

f) among the loans you granted, please indicate (as a % of the number of loans granted, and as a % of the total amounts of the loans):

- i. the share of shareholders' loans⁸;
- ii. the share of non-performing loans;
- iii. the share of loans whose maturity has been extended;

Q18: If you are managing an open-ended loan-originating AIFs, have you already sold loans to meet redemptions requests? What were the main characteristics of the secondary market you used to sell them (i.e.: types of counterparties, time required to achieve the sales process, liquidity, overall cost of transaction etc)?

Q19: If you are managing OE LO AIFs, what are the types of loans originated, how frequently do you value them and what is their level of liquidity?

Q20: If you are managing OE LO AIFs, what are the liquidity management tools you are using to comply with the obligations set out in Article 16 (1) and (2) of the AIFMD? Are you also using liquidity management tools other than those listed in Annex V of AIFMD, and if yes, what are these tools?

⁸ Shareholders' loans are defined Article 4(1) of AIFMD as means a loan which is granted by an AIF to an undertaking in which it holds directly or indirectly at least 5 % of the capital or voting rights, and which cannot be sold to third parties independently of the capital instruments held by the AIF in the same undertaking.

Annex I

Summary of questions

Q1: Are there any elements other than the redemption policy, the availability of liquid assets, the performance of liquidity stress tests and ongoing monitoring that AIFMs shall take account to demonstrate that the liquidity management system of the OE LO AIFs they manage is sound? If yes, please specify.

Q2: Do you agree with the list of factors set out in Article 2 of the draft RTS to be considered by AIFMs to establish an appropriate redemption policy for an OE LO AIF? If not, please justify your position.

Q3: Are there any other factors that AIFMs shall consider to demonstrate that the redemption policy of the OE LO AIFs they manage is appropriate? If yes, please provide a list of such factors and explain why they shall be included.

Q4: Do you agree that AIFMs that intend to manage OE LO AIFs shall determine an appropriate proportion of liquid assets to be able to meet redemption requests? If not, please justify your positions?

Q5: Do you agree with the list of factors that AIFMs shall consider to establish the appropriate amount of liquid assets? If not, please justify your position. Shall AIFMs consider other factors, and if yes what are these factors?

Q6: Do you agree that cash flow generated by the loans granted by OE LO AIFs shall be considered as liquid assets? If not, please justify your position.

Q7: Do you agree that AIFMs may consider other assets as liquid if they can demonstrate that these assets can be liquidated within the notice period, to meet redemption requests, without significantly diluting their value? If not, please justify your positions.

Q8: Are there any other types of assets that could be considered as liquid for the purpose of the availability of liquid assets? If yes, please give examples and explain why they could be considered as liquid for the purpose of the availability of liquid assets. Conversely, are there any other types of assets that shall not be considered as liquid? If yes, please specify.

Q9: In your practical experience, how do AIFMs that manage OE LO AIFs determine the level of liquid assets to be held by the fund to meet redemption requests? In particular,

how do they calibrate the amount of liquid assets with respect to the maturity of the loans granted and the number of loans in the portfolio?

Q10: Do you believe there should be a regulatory minimum amount of liquid assets to be held by an OE LO AIFs and, if yes, please specify it? Should this minimum apply across all types of OE LO AIFs, or should it differ among OE LO AIFs and, if yes, how?

Q11: Do you agree with the draft provisions on liquidity stress testing set out in Article 4 of the draft RTS? If not, please justify your positions.

Q12: What other parameters, if any, AIFMs managing OE LO AIFs shall take into account when performing liquidity stress tests?

Q13: What could be the criteria that would justify a frequency of liquidity stress tests higher or lower than on a quarterly basis?

Q14: Do you agree with ESMA's proposal on ongoing monitoring set out in Article 5 of the draft RTS? If not, please justify your position.

Q15: What are the parameters that AIFMs managing OE LO AIFs shall monitor to ensure that the AIF has a sufficient level of liquid assets to meet redemption requests?

Q16: How do AIFMs that manage OE LO AIFs monitor the liquidity of the loans originated by the AIFs?

Q17: If you are managing an open-ended loan-originating AIFs, please indicate:

- a) the size of these funds, specifying the smallest size as well as the average size;
- b) the number of loans originated by these funds, specifying the smallest number as well as the average number of loans;
- c) the loan-origination strategy you implement (direct lending, mezzanine, distressed debt, venture debt, diversification strategy etc);
- d) the policy of the fund regarding the management of non-performing loans;
- e) the shortest, highest and average redemption frequency and, if any the notice period;
- f) among the loans you granted, please indicate (as a % of the number of loans granted, and as a % of the total amounts of the loans):

- i. the share of shareholders' loans⁹;**
- ii. the share of non-performing loans;**
- iii. the share of loans whose maturity has been extended;**

Q18: If you are managing an open-ended loan-originating AIFs, have you already sold loans to meet redemptions requests? What were the main characteristics of the secondary market you used to sell them (i.e.: types of counterparties, time required to achieve the sales process, liquidity, overall cost of transaction etc)?

Q19: If you are managing OE LO AIFs, what are the types of loans originated, how frequently do you value them and what is their level of liquidity?

Q20: If you are managing OE LO AIFs, what are the liquidity management tools you are using to comply with the obligations set out in Article 16 (1) and (2) of the AIFMD? Are you also using liquidity management tools other than those listed in Annex V of AIFMD, and if yes, what are these tools?

Q21. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the RTS on open-ended loan originating AIFs? Which other types of costs or benefits would you consider in that context?

Q22. Is there any ESG and innovation-related aspects that ESMA should consider when drafting the RTS under the AIFMD?

⁹ Shareholders' loans are defined Article 4(1) of AIFMD as *means a loan which is granted by an AIF to an undertaking in which it holds directly or indirectly at least 5 % of the capital or voting rights, and which cannot be sold to third parties independently of the capital instruments held by the AIF in the same undertaking.*

Annex II

Legislative mandate to develop technical standards:

Article 16(2)(f) AIFMD

“ESMA shall develop draft regulatory technical standards to determine the requirements with which loan-originating AIFs are to comply in order to maintain an open-ended structure. Those requirements shall include a sound liquidity management system, the availability of liquid assets and stress testing, as well as an appropriate redemption policy having regard to the liquidity profile of loan-originating AIFs.

Those requirements shall also take due account of the underlying loan exposures, the average repayment time of the loans and the overall granularity and composition of the portfolios of loan-originating AIFs”.

Annex III

Cost-benefit analysis

1. Introduction

With respect to LO AIFs, Article 16(2)(a) of the revised AIFMD provides that an AIFM shall ensure that the LO AIF it manages is closed-ended. However, by way of derogation to this requirement, a LO AIF may be open-ended provided that the AIFM that manages it is able to demonstrate to the competent authorities of the AIFM's home Member State that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy.

ESMA shall develop draft Regulatory Technical Standards (RTS) to determine the requirements with which LO AIFs are to comply in order to maintain an open-ended structure. Those requirements shall include:

- a. a sound liquidity management system;
- b. the availability of liquid assets and stress testing;
- c. an appropriate redemption policy having regard to the liquidity profile of loan-originating AIFs.

Those requirements shall also take due account of the underlying loan exposures, the average repayment time of the loans and the overall granularity and composition of the loan-originating AIF's portfolios.

This consultation paper sets out proposals for the RTS specifying these requirements.

This draft cost-benefit analysis (CBA) is qualitative by nature. Should relevant data be received through the consultation process, ESMA will take it into account when finalising the RTS and will include it in the CBA accompanying the final report.

2. Technical options on the requirements

The following options were identified and analysed by ESMA to address the policy objectives of the RTS under the AIFMD.

In identifying the options set out below and choosing the preferred ones, ESMA was guided by the relevant rules of the AIFMD.

Policy objective	
Baseline scenario	<p>The baseline scenario should be understood for this CBA as the application of the requirements set out in the AIFMD Directive without any further specification. This would leave NCAs and also AIFMs complete discretion to determine the precise circumstances under which loan-originating AIFs can derogate from the legal obligation to be closed-ended and to operate as open-ended structure. This could clearly lead to a lack of harmonisation in the application of a key provision of AIFMD.</p> <p>The main benefit of the RTS is to establish a harmonised implementing framework for both AIFMs and NCAs. Such harmonisation will contribute to the uniformed application of the legislation by AIFMs and to supervisory convergence between NCAs. This will ultimately also participate to increasing investor protection and financial stability in the EU.</p>
Options	<p>The RTS aim to promote the objectives of the Level 1 Directive by defining the requirements that LO AIFs are to comply with to be open-ended. This should contribute to the creation of convergent approaches across member States, which will help ensure that the conditions under which loan-originating AIFs operate as open-ended structure are consistent across AIFMs and Member States. This should reduce the scope for regulatory arbitrage, which could otherwise hamper the key objectives of the Level 1 Directive.</p>
Option 1	<p>Do not develop RTS and rely only on the requirements set out in the AIFMD.</p>
Option 2	<p>The RTS would provide detailed and prescriptive requirements that LO AIFs would have to comply with to be open-ended.</p>
Option 3	<p>The RTS would provide elements and factors of LO AIFs that AIFMs would have to consider when making the demonstration to the competent authorities of their Member States that the LO AIF can maintain an open-ended structure. These same elements and factors would also provide NCAs with a common framework for their assessment when determining if an LO AIF can derogate from the obligation to be closed-ended and be open-ended.</p>

Preferred option	<p>ESMA decided to consult on Option 3 and discarded Option 1 and 2. In particular Option 2 was not favoured because the AIFMD has not created a bespoke regime for OE LO AIFs but rather has granted the possibility to derogate from the general obligation that LO AIFs shall be closed-ended, in so far as, AIFMs can demonstrate to their NCAs that their LO AIFs can operate as open-ended funds. Therefore, the RTS are not expected to set up the exact criteria for LO AIFs to be open-ended.</p> <p>Option 3 is therefore the option that best corresponds to the legal framework and the empowerment of the RTS.</p>
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Assessment of the impact of the various options

Options	Qualitative description
Benefits	The main benefit of the proposed option is to provide a harmonised implementing framework for both AIFMs and NCAs. This implementing framework will set out the elements and factors of loan-originating AIFs that AIFMs shall consider when making the demonstration to their NCAs that the LO AIFs they manage can be open-ended. This implementing framework will also be beneficial to NCAs as it will provide a framework for their assessment.
Costs	ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provides clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the AIFMD in relation to loan-originating AIFs.
Costs to regulator	The proposed approach is not expected to lead to additional costs for regulators.
Compliance costs	Compared with the current framework, the proposed approach is not expected to lead to substantive compliance costs for AIFMs.
ESG-related aspects	ESG-related aspects are not of direct relevance to the specific nature of the proposed RTS on open-ended loan-originating AIFs.

Innovation-related aspects	Innovation-related aspects are not of direct relevance to the specific nature of the proposed RTS on open-ended loan-originating AIFs.
Proportionality-related aspects	The identified benefits outweigh the expected comparably limited costs, hence no proportionality-related aspects are expected to be impacted by this option.

Q21. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the RTS on open-ended loan originating AIFs? Which other types of costs or benefits would you consider in that context?

Q22. Is there any ESG and innovation-related aspects that ESMA should consider when drafting the RTS under the AIFMD?

Annex IV

Draft regulatory technical standards:

COMMISSION DELEGATED REGULATION (EU) .../..

of [...]

supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining the requirements for loan originating alternative investment funds to maintain an open-ended structure

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers, and in particular Article 16(2)(f),

Whereas,

1. In accordance with Directive 2011/61/EU a loan-originating AIF shall be closed-ended, unless the AIFM that manages it is able to demonstrate to the competent authorities of its home Member State that the liquidity risk management system of the AIF is compatible with its investment strategy and redemption policy.
2. This Regulation aims to provide for a harmonised regulatory framework for the requirements with which loan-originating AIFs are to comply in order to maintain an open-ended structure.
3. For each open-ended loan-originating AIF they intend to manage, AIFMs should define an appropriate redemption policy and an appropriate proportion of liquid assets that the AIF should target to hold in order to be able to comply with redemption requests.
4. When defining the redemption policy of the open-ended loan-originating AIF they intend to manage, AIFMs should consider several factors, including the redemption frequency

offered to investors, the targeted investors, the notice period and the amount of liquid assets to be held by the AIF.

5. When defining the appropriate proportion of liquid assets of the open-ended loan-originating AIF they intend to manage, AIFMs should consider several factors, including the expected cash flows generated by the loans granted, the redemption policy of the AIF, the maturity and the number of loans granted, estimated defaults and rescheduling, the length of the notice period and the anticipated behaviour of the targeted investors, as well as the investor concentration.
6. In addition, AIFMs should determine the type of assets they consider as liquid. For that purpose, expected cash flow generated by the loans granted should be considered as liquid assets.
7. Furthermore, AIFMs may also consider other investments as liquid investments in so far as these investments can be converted into cash, over the duration of the notice period, without significantly changing their value to meet redemption requests. Indeed, the duration of the notice period is an important element AIFMs should consider in determining the liquidity of the assets because the longer the notice period, more time AIFMs would have to sell the assets to meet redemption requests.
8. AIFMs should conduct regular liquidity stress testing of the open-ended loan-originating AIF they manage and these stress testing should be tailored to the strategy pursued by the open-ended loan-originating AIF.
9. In order, to be able to assess whether the liquidity management system of the open-ended loan-originating AIF they manage remains compatible with the investment strategy and the redemption policy of the AIF, AIFM should have in place the necessary monitoring arrangements to enable them to monitor specific parameters, such as, the level of liquid assets, the level of subscriptions and redemptions, or early-warning signals of loans impairment.
10. This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
11. The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION:

Article 1

Sound liquidity management

1. AIFMs that intend to manage an open-ended loan-originating AIF as defined in Article 4(1) of Directive 2011/61/EU shall be able to demonstrate to the competent authorities of their home Member State that the liquidity risk management system of the AIF is compatible with its investment strategy and its redemption policy.
2. For each open-ended loan-originating AIF they intend to manage, AIFMs shall:
 - a) define an appropriate redemption policy considering the factors set out in Article 2 thereafter.
 - b) determine an appropriate proportion of liquid assets that the open-ended loan-originating AIF shall target to hold in order to be able to comply with redemption requests taking into account the factors set out in Article 3 thereafter.
3. For each open-ended loan-originating AIF they manage, AIFMs shall through the life of that AIF:
 - a) carry-out liquidity stress tests based on Article 4 thereafter.
 - b) have in place the appropriate liquidity risk management systems to monitor the elements set out in Article 5 thereafter.
4. AIFMs that intend to manage an open-ended loan-originating AIF shall be able to demonstrate to the competent authorities of their home Member State that they have selected the appropriate liquidity management tools as per Article 16(2)(b) of AIFMD.

Article 2

Appropriate redemption policy

1. In order to ensure that the redemption policy of the open-ended loan-originating AIF they intend to manage is appropriate, the AIFM shall, at least, consider the following factors:
 - a) The frequency of redemptions offered to shareholders or unitholders;
 - b) The proportion of liquid assets referred to in Article 1, paragraph 2, letter b);
 - c) The portfolio diversification and the liquidity profile of the assets to be held;
 - d) The investment policy and strategy;
 - e) The targeted credit quality of the loans to be granted;
 - f) The targeted investor base and the investor concentration;

- g) The anticipated level of subscriptions and redemptions of investors;
- h) The duration of the minimum required holding period, where applicable;
- i) The length of the notice period and of the settlement period, where applicable;
- j) Other redemption conditions, where applicable;
- k) The expected incoming cash flows of the portfolio;
- l) The market conditions and material events that may affect the possibility of the AIFM to implement the redemption policy;
- m) The available liquidity management tools, their calibration, and the conditions for their activation;
- n) The results of the liquidity stress tests; and
- o) The availability of a reliable, sound and up-to-date valuation of the loans and other assets in the portfolio, corresponding to their estimated realisable value at the dates of redemptions.

Article 3

Availability of liquid assets

1. AIFMs that intend to manage an open-ended loan-originating AIF shall, at least, consider the following factors when determining the appropriate proportion of liquid assets:
 - a) The redemption policy of the AIF;
 - b) The assets considered as liquid pursuant to paragraphs 2 and 3;
 - c) The portfolio diversification and the liquidity profile of the assets to be held;
 - d) The length of the notice period and of the settlement period, where applicable;
 - e) The length of the minimum holding period, where applicable;
 - f) The available liquidity management tools, their calibration, and the conditions for their activation;
 - g) Redemption caps, where applicable;
 - h) The repayment terms and schedules of the loans to be granted by the AIF;
 - i) The targeted maturities of the loans to be granted by the AIF, considering their expected amortisation profile;
 - j) The targeted credit quality of loans to be granted by the AIF;

- k) The targeted underlying exposures of the loans to be granted by the AIF;
 - l) The expected incoming cash flow of the portfolio;
 - m) The estimated default rates and rescheduling of the loans to be granted by the open-ended loan-originating AIFs;
 - n) The investor base including the investor type, potential investor concentration and their anticipated subscription and redemption behaviours;
 - o) If any, the targeted level of leverage, including leverage arising from hedging strategies, and the related financial obligations; and
 - p) Any other liabilities.
2. The expected cash flow generated by the loans granted by the open-ended loan-originating AIF shall be considered as liquid.
 3. AIFMs may also consider other investments made by the open-ended loan-originating AIF as liquid if they can demonstrate to the competent authorities of their home Member State that these investments can be converted into cash over the duration of the notice period of the open-ended loan-originating AIF, to meet redemption requests, without significantly decreasing their value.

Article 4

Liquidity stress tests

1. AIFMs that manage open-ended loan-originating AIFs shall conduct liquidity stress tests at least on a quarterly basis, unless a higher or lower frequency is justified by the characteristics of the open-ended loan-originating AIF.
2. AIFMs that manage open-ended loan-originating AIFs shall stress test separately the assets and the liabilities of the AIFs and shall combine the results of these stress tests to determine the overall effect on the liquidity of the AIFs.
3. AIFMs shall apply conservative scenarios in terms of change in interest rates, credit spread and potential defaults in loans granted, as well as in redemptions requests considering the investor base and the liquidity offered and the liquidity management tools put in place in case of redemption pressure from investors.
4. AIFMs shall employ liquidity stress tests that consider adequately the characteristics of the open-ended loan-originating AIFs they manage and shall consider scenarios with low probability but with high impact on the ability of AIFMs to value the loans.

Article 5

Ongoing monitoring

5. In order to ensure that the liquidity management system of the open-ended loan-originating AIF they manage remains compatible with its investment strategy and redemption policy, AIFMs shall, at least, monitor on an ongoing basis the following elements:
- a) The level of liquid assets as determined according to Article 3;
 - b) The expected cash flows and potential future liabilities;
 - c) The amount of subscriptions and redemptions;
 - d) The repayment of the loans pursuant to the schedules agreed;
 - e) The behaviour of shareholders or unitholders;
 - f) The portfolio composition and concentration;
 - g) The maturity of the loans;
 - h) Early-warning signals of loans impairment (e.g. payment delays); and
 - i) the level of leverage, where applicable.

Article 6

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [...]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,