

Reply form

On the Regulatory Technical Standards on Liquidity Management Tools under the AIFMD and UCITS Directive

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:

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

ESMA will consider all comments received by **8 October 2024**.

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

Instructions

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Call for Evidence in this reply form.
- Please do not remove tags of the type < ESMA_QUESTION_GLMT_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_SLMT_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_SLMT_ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at <https://www.esma.europa.eu/press-news/consultations/consultation-liquidity-management-tools-funds> 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, management companies, UCITS, and their trade associations, depositories and their trade associations, as well as professional and retail investors investing into UCITS and AIFs and their associations.

1 General information about respondent

Name of the company / organisation	Association of Real Estate Funds (AREF)
Activity	Industry association
Country / Region	UK

2 Questions

Q1 Do you agree with the proposed characteristics of suspension of subscriptions, repurchases and redemptions? If not, please justify your position.

<ESMA_QUESTION_SLMT_1>

It is vital that managers have the ability to use compulsory redemptions at any time (including during a suspension) to remove investors causing the fund a tax/legal/AML/similar issue. The current proposed characteristics do not give this ability and therefore we do not agree with the proposal on that basis.

We also reiterate the over-arching comments in our separate letter on suspensions, including our concern about the requirement for suspensions of subscriptions, redemptions and repurchases to be applied simultaneously/in parallel to all investors, albeit on a temporary basis, which is not standard practice. |

<ESMA_QUESTION_SLMT_1>

Q2 Do you agree that orders that have been placed but not executed before the fund manager suspends shall not be executed until the suspension is lifted? If not, please explain why these orders shall be executed.

<ESMA_QUESTION_SLMT_2>

[TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SLMT_2>

Q3 Once the fund is reopened for subscriptions, repurchases and redemptions, what would be your approach to redemption orders that have not been executed before the fund was suspended?

<ESMA_QUESTION_SLMT_3>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_3>

Q4 Do you think there are circumstances where subscriptions, repurchases and redemptions may not be reopened simultaneously? If yes, what are these circumstances?

<ESMA_QUESTION_SLMT_4>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_4>

Q5 Can you think of any further characteristics of suspension of subscriptions, repurchases and redemptions?

<ESMA_QUESTION_SLMT_5>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_5>

Q6 Do you think there is merit for the characteristics of suspension of subscriptions, repurchases and redemptions gates to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_6>

[We believe that there is a significant difference between OEF that invest in asset types such as transferable securities that are generally liquid but may become less liquid in certain circumstances and those funds that invest in asset classes that are fundamentally illiquid and

for which the funds are structured accordingly. This is typically the case for real estate and infrastructure. Directly held immovable property is not an eligible investment asset for a UCITS fund so this distinction is much more relevant for AIFs. |

<ESMA_QUESTION_SLMT_6>

Q7 Do you agree with the description of redemption gates and their characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_7>

|Not all AIFs use “net” redemption orders as the basis for the gate, and managers should be free to agree this with investors on a fund level. In respect of application across multiple share classes, different share classes can, in principle, have different characteristics as regards distributions (e.g., a fund might have a liquidating share class), and it should therefore be possible to have different gate provisions across share classes.

Because it is typical in real estate funds that redemptions will be met over subsequent quarterly dealing days, it is also common to have cumulative as well as single dealing day gating thresholds. |

<ESMA_QUESTION_SLMT_7>

Q8 The draft RTS provides that the redemption gate threshold shall be expressed as a percentage of the NAV of the fund considering the net redemption orders for a given dealing day. Are you aware of any other method that ESMA should consider in the RTS? If yes, please explain.

<ESMA_QUESTION_SLMT_8>

|Please see response to Q7 |

<ESMA_QUESTION_SLMT_8>

Q9 Do you agree that redemption gates may be either activated automatically when the activation threshold is exceeded or that the fund manager/ fund Boards may decide whether or not to activate the redemption gate? Do you believe that automatic activation of redemption gates could create a first mover advantage?

<ESMA_QUESTION_SLMT_9>

|Please see response to Q7 |

<ESMA_QUESTION_SLMT_9>

Q10 Do you think that the automatic activation of redemption gates shall not be permitted for some types of funds. If yes, please explain your position.

<ESMA_QUESTION_SLMT_10>

|Please see response to Q7 |

<ESMA_QUESTION_SLMT_10>

Q11 Do you agree that the activation threshold shall not be expressed at the level of the single redemption order? If not, please justify your position.

<ESMA_QUESTION_SLMT_11>

|Please see response to Q7 |

<ESMA_QUESTION_SLMT_11>

Q12 In the case of activation of redemption gates, do you agree that investors should have the right to cancel the non-executed part of their redemption orders? In particular, should there be a different approach between UCITS and AIFs?

<ESMA_QUESTION_SLMT_12>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SLMT_12>

Q13 Do you think there is merit in having different characteristics of redemption gates for different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_13>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_13>

Q14 In the case of funds with multiple share classes, do you agree that the same redemption gate shall apply to all share classes? If not, please justify your position.

<ESMA_QUESTION_SLMT_14>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_14>

Q15 Can you think of any further characteristics of redemption gates?

<ESMA_QUESTION_SLMT_15>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_15>

Q16 Do you agree with the description of extensions of notice period and their characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_16>

[Different classes may, in principle, have different terms as to liquidity, and therefore we consider that it should be possible to apply extensions of notice periods differently as between classes. Ultimately, the manager should have flexibility on the duration of the extension to take into account changing circumstances, rather than being held to a pre-defined number of dealing days. We also consider that managers should have flexibility to determine how to

process orders placed but not executed prior to the extension. Ordinarily, it would seem fairest to process these on the original timetable, but if there is market disruption, the manager might need to take a different approach.

In real estate funds, it would be more usual to extend the period over which redemptions can be deferred rather than to extend the notice period. |

<ESMA_QUESTION_SLMT_16>

Q17 Do you agree that the same extension of notice period shall apply to all investors or different extensions of notice periods per share class/unit shall be allowed? Please justify your position.

<ESMA_QUESTION_SLMT_17>

|Please see response to Q16 |

<ESMA_QUESTION_SLMT_17>

Q18 Do you agree that extensions of notice period may be applied for a pre-defined period of time (for a pre-defined number of dealing dates)? If not, please justify your position.

<ESMA_QUESTION_SLMT_18>

|Please see response to Q16 |

<ESMA_QUESTION_SLMT_18>

Q19 Do you think there is merit for the characteristics of extensions of notice period to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_19>

|Please see response to Q16 |

<ESMA_QUESTION_SLMT_19>

Q20 How would you execute redemption orders that have been placed but not executed before the notice period is extended? Would you execute them under the original notice period, or would you execute them at the following dealing day?

<ESMA_QUESTION_SLMT_20>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_20>

Q21 How would you ensure fair treatment of investors when deactivating the extension of notice period?

<ESMA_QUESTION_SLMT_21>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_21>

Q22 Do you agree with the description of redemption fees and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_22>

[Redemption fees are not always specifically linked to dealing costs and may relate to other pre-determined factors (for example, a pre-determined NAV discount or by way of deduction of a redeeming investor's share of expenses relating to a redemption). An example of a redemption fee mechanism not covered is a soft lock-up, where a fee is charged for redemptions within a certain period of subscription. In addition, approaches may vary between asset classes.]

<ESMA_QUESTION_SLMT_22>

Q23 Can you think of any other redemption fee mechanism than the ones described above? If yes, please provide examples.

<ESMA_QUESTION_SLMT_23>

|Please see response to Q22 |

<ESMA_QUESTION_SLMT_23>

Q24 Do you think there is merit for the characteristics of redemption fees to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_24>

|Please see response to Q24 |

<ESMA_QUESTION_SLMT_24>

Q25 Do you agree with the description of swing pricing and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_25>

|Pricing mechanisms to protect against dilution for funds investing in direct property, whether swing pricing, dual pricing or anti-dilution levies, are not to reflect any difference in the bid and offer price of the underlying properties in which the fund invests, but to reflect the high transaction costs of purchasing real estate assets primarily due to real estate transfer taxes paid by purchasers of real estate. Industry bodies have spent years agreeing methodologies that are accepted by managers and investors and are reflected in detailed guidance issued by [INREV](#).

The RTS should set out the general principles and objectives of unit pricing rather than trying to set out specific rules which may not be appropriate for all asset classes. |

<ESMA_QUESTION_SLMT_25>

Q26 Can you think of any characteristics of swing pricing that the ones described above?

<ESMA_QUESTION_SLMT_26>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_26>

Q27 Do you think there is merit for the characteristics of swing pricing to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_27>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_27>

Q28 Do you agree that in the case of funds with multiple share classes, the same swing factor shall be applied to all share classes? If not, please justify your position.

<ESMA_QUESTION_SLMT_28>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_28>

Q29 Do you agree with the description of the dual pricing and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_29>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_29>

Q30 Are there any other calculation methods for dual pricing that should be considered? If yes, please give example.

<ESMA_QUESTION_SLMT_30>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_30>

Q31 Do you think there is merit for the characteristics of dual pricing to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_31>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_31>

Q32 Do you agree with the description of the anti-dilution levy and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_32>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_32>

Q33 Are there any other calculation methods for anti-dilution levy that ESMA shall consider? If yes, please give example.

<ESMA_QUESTION_SLMT_33>

|Please see response to Q25 |

<ESMA_QUESTION_SLMT_33>

Q34 In the case of funds with multiple share classes, would you see the possibility for different anti-dilution levies depending on share classes? Please justify your position.

<ESMA_QUESTION_SLMT_34>

[Please see response to Q25]

<ESMA_QUESTION_SLMT_34>

Q35 Do you think there is merit for the characteristics of anti-dilution levy to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_35>

[Please see response to Q25]

<ESMA_QUESTION_SLMT_35>

Q36 Do you agree with the description of redemptions in kind and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_36>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_36>

Q37 Can you think of any characteristics of redemptions in kind?

<ESMA_QUESTION_SLMT_37>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_37>

Q38 Do you think there is merit for the characteristics of redemption in kinds to differ between different investment strategies between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_38>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_38>

Q39 Do you agree with the description of side pockets and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_39>

[We do not agree that the assets in the side pocket should always be managed with the view to liquidate them. The manager's objective should be to maximise value for investors and should not be required to sell those assets at an undervalue, for example. In addition, the reason for moving assets into a side pocket may be resolved/cured, in which case the best interests of investors might be to move that asset back into the fund. It also seems unnecessarily restrictive to require that cash from the sale of assets in side pockets cannot be reinvested. It should be possible for investors to agree otherwise.]

<ESMA_QUESTION_SLMT_39>

Q40 Do you agree that in the case of UCITS, side pockets created by physical separation should only be done with the creation of a new UCITS where the assets for which there are no problems are placed? If not, please explain your position.

<ESMA_QUESTION_SLMT_40>

[Please see response to Q39]

<ESMA_QUESTION_SLMT_40>

Q41 Can you think of any other characteristics of side pockets that ESMA should consider? In particular, do you think that the characteristics of side pockets

shall differ between UCITS and AIFs (in addition to the creation of side pockets via physical separation of the assets)? If, yes please elaborate.

<ESMA_QUESTION_SLMT_41>

|Please see response to Q39 |

<ESMA_QUESTION_SLMT_41>

Q42 Do you see merit in specifying further the characteristics that side pocket created by means of accounting segregation should have? If yes, can you please explain how you have created side pocket via accounting segregation? Have you encountered any legal constraints or are you aware of any legal constraints in your jurisdiction that may limit the use of side pockets via asset segregation?

<ESMA_QUESTION_SLMT_42>

|Please see response to Q39 |

<ESMA_QUESTION_SLMT_42>

Q43 Do you agree that the assets in the side pocket should always be managed with the view to liquidate them? Or could there be circumstances, where a reintegration with the normal assets could be contemplated? Please explain.

<ESMA_QUESTION_SLMT_43>

|Please see response to Q39 |

<ESMA_QUESTION_SLMT_43>

Q44 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 characteristics of LMTs set out in Annex IIA of the UCITS Directive? Which other types of costs or benefits would you consider in that context?

<ESMA_QUESTION_SLMT_44>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_44>

Q45 Is there any ESG and innovation-related aspects that ESMA should consider when drafting the RTS under the UCITS Directive?

<ESMA_QUESTION_SLMT_45>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_45>

Q46 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 characteristics of LMTs set out in Annex V of the AIFMD? Which other types of costs or benefits would you consider in that context?

<ESMA_QUESTION_SLMT_46>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_46>

Q47 Is there any ESG and innovation-related aspects that ESMA should consider when drafting the RTS under the AIFMD?

<ESMA_QUESTION_SLMT_47>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_47>