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](http://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\_GLMT\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_GLMT \_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](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/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.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | German Banking Industry Committee |
| Activity | Banking |
| Country / Region | Germany |

# Questions

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

<ESMA\_QUESTION\_SLMT\_1>

We agree with the definitions and descriptions.

Transparency for investors is crucial for all LMTs. Particularly in markets with decentralised marketing (i.e. marketing not directly by the fund company but through intermediaries), it must be clearly and definitively regulated in good time which of the parties involved must inform the investor or potential investor about the LMTs and in what form. As stated in the guidelines accompanying the RTS, the information should be conclusively provided by the manager, as the LMTs affect the legal relationship between the investor and the fund company/manager. It should be made clear in a timely, unambiguous and, most importantly, consistent manner across Europe that the information provided in this respect is both necessary and conclusive. This should also include a definition of how existing investors are to be informed of LMTs. We consider it essential that new investors are also informed via the KID, also in view of the ESAs' Q&As on the PRIIPs Regulation. These should not only state that a fund uses LMTs, but also which ones and how the investor is informed that these are “triggered”.

<ESMA\_QUESTION\_SLMT\_1>

1. 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>

Yes, because the protection of the fund assets is crucial, especially since the type and extent of the restrictions cannot be determined.

<ESMA\_QUESTION\_SLMT\_2>

1. 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>

These should have to be reissued (so-called order expiration). Any other procedure would be incompatible with the principle of equal treatment of investors and would be impracticable. In addition, a ‘backlog’ of outstanding orders would arise, the processing of which would trigger further disruptions. However, a solution must be found for the case that the regulations (contractual conditions or legal solutions) provide for return or notice periods independently of the LMTs. If the order expires and has to be reissued, the problem arises that the corresponding deadlines start to run again even though the investor has announced his intention to redeem and the redemption has not taken place for reasons beyond his control. The problem arises in particular in the case of partial closure (so-called gating, see below). In this case, it might be possible to work with a fiction of termination.

<ESMA\_QUESTION\_SLMT\_3>

1. 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>

Theoretically, market situations are conceivable that could justify this. However, such a scenario is difficult from both an investor protection and a technical process point of view. It would then have to be clarified, for example, how to deal with cancellations or revocations. This question would arise anyway in the case of synchronisation, but it would be intensified.

<ESMA\_QUESTION\_SLMT\_4>

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

<ESMA\_QUESTION\_SLMT\_5>

It is important to have standardised regulations throughout Europe. It is impractical for both investors and management companies if the regulations in the member states are different, since the same conditions should apply everywhere in the sense of a single market.

<ESMA\_QUESTION\_SLMT\_5>

1. 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>

The question arises as to the meaningfulness of the regulations for special funds, especially if they are set up and managed for only one investor. Although they fall under the scope of the AIFMD, the fiduciary relationship is individually contractually agreed and there is no secondary market. A ‘bank run’ cannot take place in the first place; third parties (i.e. other investors) cannot be harmed.

<ESMA\_QUESTION\_SLMT\_6>

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

<ESMA\_QUESTION\_SLMT\_7>

ESMA describes different forms of ‘gating’. Here, great care should be taken with the choice of words and an unambiguous description should be provided so that investors can understand the mechanism and make an informed decision. Gating is likely to be used particularly in tense market situations, so a quickly understandable rule is essential here.

However, the rest order should in any case expire. Similar to a complete suspension of redemption, another procedure is hardly operationally manageable in the current set-up and may also trigger disruptions.

In any case redemption gates should be designed uniformly for all funds, so that either the residual order should expire for all of them or be carried forward. If the residual order does not expire, then ESMA's approach that clients should have cancellation rights is not or hardly practicable. Since most funds have the option of redemption on each trading day, it is simply not possible to inform investors about a redemption gate and to accept their cancellation order and forward it to the Management Company without this resulting in delays of several days. Therefore, cancellation should not be possible at all for these funds. Regarding prioritization, which ESMA considers optional, we would like to argue that this should either be mandatory or not possible, because it is impossible to explain to customers why this could be designed differently between funds. We would also like to point out that the Management Companies will then have to administer this, as the sales offices cannot take over this task.

<ESMA\_QUESTION\_SLMT\_7>

1. 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>

No, the definition is otherwise appropriate.

<ESMA\_QUESTION\_SLMT\_8>

1. 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>

Both variants are conceivable; the decisive factor is rapid transparency. This applies in both cases (automatic or at the discretion).

<ESMA\_QUESTION\_SLMT\_9>

1. 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>

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<ESMA\_QUESTION\_SLMT\_10>

1. 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>

Of course, regulations must always be and remain universally valid and not be related to a single order.

<ESMA\_QUESTION\_SLMT\_11>

1. 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>

As described above, the non-executed part should be allowed to expire entirely. Orders are always final and should not be cancellable; otherwise, expiration would prevent a backlog, which in turn puts pressure on liquidity. This rule should – notwithstanding our general reservations about single-investor special funds – apply uniformly throughout Europe.

<ESMA\_QUESTION\_SLMT\_12>

1. 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>

1. 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>

1. Can you think of any further characteristics of redemption gates?

<ESMA\_QUESTION\_SLMT\_15>

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<ESMA\_QUESTION\_SLMT\_15>

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

<ESMA\_QUESTION\_SLMT\_16>

Yes, we believe the description is accurate.

<ESMA\_QUESTION\_SLMT\_16>

1. 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>

In the interests of transparency, we consider standardised rules to be useful.

<ESMA\_QUESTION\_SLMT\_17>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_18>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_19>

1. 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>

The investor placed his order knowing the original notice period. It is, of course, not permitted to extend the notice period retrospectively. It is not certain whether the investor would have placed the order at all if he had been aware of the extended notice period, meaning that the order must be processed based on the original notice period, but not the extended one.

<ESMA\_QUESTION\_SLMT\_20>

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

<ESMA\_QUESTION\_SLMT\_21>

Two aspects need to be considered here: firstly, transparency regarding the changed situation must be quickly established for all investors, and secondly, all redemption requests that have accumulated in the meantime must be processed according to a fair and predefined procedure.

<ESMA\_QUESTION\_SLMT\_21>

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

<ESMA\_QUESTION\_SLMT\_22>

Return fees are not LMT per se, but rather a way of charging costs to the party that incurs them. In line with the freedom of contract, it should be up to the parties involved to decide whether such fees are charged at all and, if so, at what threshold. Of course, equal treatment of investors must also be ensured here, i.e. that corresponding fees are predefined and applied uniformly.

<ESMA\_QUESTION\_SLMT\_22>

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

<ESMA\_QUESTION\_SLMT\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_23>

1. 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>

Here, too, the question arises as to whether such fees are reasonable for a ‘single-investor special fund’, since the interests are completely different than for an anonymously managed mutual fund.

<ESMA\_QUESTION\_SLMT\_24>

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

<ESMA\_QUESTION\_SLMT\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_25>

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

<ESMA\_QUESTION\_SLMT\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_26>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_27>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_28>

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

<ESMA\_QUESTION\_SLMT\_29>

We agree with the definition, especially since the distinction between a bid and an ask price is widespread. The ‘translation’ to the fund business seems appropriate to us.

<ESMA\_QUESTION\_SLMT\_29>

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

<ESMA\_QUESTION\_SLMT\_30>

We are not aware of any; in any case, the description chosen here should be binding.

<ESMA\_QUESTION\_SLMT\_30>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_31>

1. 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>

Yes, we agree. However, we would ask you to take into account that this is a complicated mechanism, especially for less experienced investors, and it is likely to be less transparent, particularly in tense market situations that require quick action. However, transparency in difficult market situations is the essential prerequisite for overall trust in the market.

<ESMA\_QUESTION\_SLMT\_32>

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

<ESMA\_QUESTION\_SLMT\_33>

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<ESMA\_QUESTION\_SLMT\_33>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_34>

1. 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>

The question arises as to whether this highly complex measure should be possible, especially for UCITS that are to be distributed to retail investors. Although the regulation is economically justified in the sense of fair pricing, it complicates the understanding of the fund business and therefore seems problematic in view of the desire for increased activity in the capital market by private clients as well.

<ESMA\_QUESTION\_SLMT\_35>

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

<ESMA\_QUESTION\_SLMT\_36>

Yes, we agree with the definition.

<ESMA\_QUESTION\_SLMT\_36>

1. Can you think of any characteristics of redemptions in kind?

<ESMA\_QUESTION\_SLMT\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_37>

1. 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>

No, the decisive factor is that a distribution of goods should only be possible for professional clients within the meaning of MiFID.

<ESMA\_QUESTION\_SLMT\_38>

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

<ESMA\_QUESTION\_SLMT\_39>

Both options are reasonable and appropriate.

<ESMA\_QUESTION\_SLMT\_39>

1. 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>

We agree with this approach, as otherwise ‘loopholes’ could arise that would help to undermine the special regulations for UCITS.

<ESMA\_QUESTION\_SLMT\_40>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_41>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SLMT\_42>

1. 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>

If it is foreseeable that currently illiquid assets that are being spun off will become liquid again in the near future, it may be in the interests of investors not to liquidate them immediately. However, the period should be predefined and should not be longer than the medium term (e.g. two years).

<ESMA\_QUESTION\_SLMT\_43>

1. 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>

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<ESMA\_QUESTION\_SLMT\_44>

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

<ESMA\_QUESTION\_SLMT\_45>

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<ESMA\_QUESTION\_SLMT\_45>

1. 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>

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<ESMA\_QUESTION\_SLMT\_46>

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

<ESMA\_QUESTION\_SLMT\_47>

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<ESMA\_QUESTION\_SLMT\_47>