Reply form

**On the Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs**

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 **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 | Irish Funds Industry Association (“Irish Funds”) |
| Activity | Irish Fund Association |
| Country / Region | Ireland |

# Questions

1. Do you agree with the list of elements included under paragraph 17 of Section 6.5.1 of the draft guidelines that the manager should consider in the selection of LMTs? Are there any other elements that should be considered?

<ESMA\_QUESTION\_GLMT\_1>

Irish Funds broadly agree with the list of elements included in paragraph 17 of Section 6.5.1 of the draft Guidelines for selecting liquidity management tools (“LMTs”).

However, there are additional aspects within the points highlighted in the consultation along with some additional points also to be considered:

1. Operational Complexity and Risk: Managers should assess the operational complexity and risks associated with different LMTs. This evaluation should align with the systems sophistication of the manager and their delegates and service providers (such as fund administrators and transfer agents) and their operational structures and governance mechanisms (for example, existing governance structures and the way they operate at group level, if applicable). Cost implications as well as impact on the total expense ratios should also be considered.
2. Investor Preferences: We agree that understanding the investor base is an important factor, and managers should consider whether the selected LMTs are easily comprehensible for existing and prospective investors. However, it is important to acknowledge the common use of intermediaries in the distribution of funds, as involving the use of nominee structures and omnibus accounts can limit the managers’ visibility of the end investor. In certain cases where there is one main investor due to the structure of the fund, the preferences of the investor may need to be factored in, and the use of anti-dilution tools may not be a consideration in such cases.
3. Structural and Operational Barriers: We agree the funds distribution policy is important, and some third-party distributors may face operational or structural limitations when distributing daily dealing funds that utilise specific LMTs (e.g., notice periods) within their liquidity risk management framework. In addition, engagement with regulators (if any) to apply/activate certain LMTs may require regulatory pre-approval in certain jurisdictions.
4. Availability of other LMTs that are not part of the predefined list provided in Annex V (for AIFMD) and Annex IIA (for UCITS Directive) – for example, borrowing and the availability of credit lines (which are often used by certain AIFs and UCITS – subject to vehicle restrictions) and extension of settlement period.
5. Valuation policy of the funds, including frequency of the net asset value (“NAV”) valuation, methods and sources of valuation – for example, in the case of over-the counter (“OTC”) complex instruments, does the valuation model already considered liquidity discounts and other implicit trading costs.
6. Structural characteristics such as Exchange Traded Funds (“ETFs”) versus non-ETFs; synthetic versus physical index funds; master-feeder structures. For example, due to the nature of ETFs, with built-in adjustment mechanisms, anti-dilution tools are generally not suitable for them. On the other hand, although redemptions in kind (“RIK”) are common for physical ETFs (not as an LMT but as an investor redemption payment preference), they may not be suitable for many investors in other funds.
7. Fair Treatment of investors: Apart from understanding and considering investor preference (per point 2), managers should ensure the selected LMTs do not give favourable or preferential treatment at the cost of other investors.

<ESMA\_QUESTION\_GLMT\_1>

1. Should the distribution policy of the fund be considered in the selection of the LMTs? What are the current practices in relation to the application of anti-dilution levies by third party distributors (e.g.: whether the third party corrects the price by adding the anti-dilution levy to the fund NAV)?

<ESMA\_QUESTION\_GLMT\_2>

The distribution policy should be considered in the selection of LMTs. For example, as explained in the response to question 1, some third-party distributors may face significant challenges to their platforms when certain LMTs are activated (e.g. gates or anti-dilution levy (“ADL”) fees). Specifically for ADLs, as these are applied outside of the NAV, distributors may require the ADL to be passed on separately to underlying investors which in a nominee structure is extremely difficult.

It is also worth noting that in some jurisdictions, rules governing certain retail investment products (e.g., tax-efficient stocks and share products through which investors can invest in funds) may even preclude investment in daily dealing funds that use notice periods.

<ESMA\_QUESTION\_GLMT\_2>

1. Do you agree that among the two minimum LMTs managers should consider the merit of selecting of at least one quantitative LMT and at least one ADT, in light of the investment strategy, redemption policy and liquidity profile of the fund?

<ESMA\_QUESTION\_GLMT\_3>

Irish Funds does not agree that managers should always select one quantitative LMT and one anti-dilution tool (“ADT”). Ensuring that managers have sufficient flexibility to select a set of LMTs that are most suitable to their funds is critical to ensuring managers can have the appropriate toolkit to manage each fund’s liquidity in both normal and stressed market conditions. The appropriateness of a particular LMT for a fund can vary. For example, as highlighted within IOSCO’s Guidance on Anti-dilution LMTs final report[[1]](#footnote-2) there may be circumstances when a fund uses dual pricing and layers another ADT when it mainly invests “*in assets whose liquidity costs are mainly comprised of the bid-ask spread, as the fund’s adjusted NAV would already reflect that spread in normal times. However, any significant market impact or explicit transaction costs would need to be accounted for separately, either by additional adjustment to the NAV or via other (anti-dilution) LMTs*”.

Additionally, due to the operational characteristics of ETFs, the use of ADTs is not suitable for these funds (as recognized by the IOSCO Guidance on Anti-dilution LMTs final report). Therefore, it should be up to each manager, on a case-by-case basis, to determine the most suitable LMTs for the funds they manage.

Irish Funds would caution against linking a particular type of LMT to a certain market condition e.g. "normal" or "stressed” as highlighted in Paragraph 19 of Section 6.5.1. Our concern lies in the potential constraint this could impose on the use of certain tools at the fund level, which should be available for use when they are most appropriate.

Irish Funds also wishes to highlight that investor dilution may not be material for certain funds (e.g. large-cap equity funds) and/or the costs of implementation of such practices may outweigh the potential benefits (including operational risk and governance costs as well as other considerations such as increased NAV volatility in some cases or ease of understanding for investors).

As recognised in the draft Guidelines (section 2.3, paragraph 27), Irish Funds agrees that additional liquidity measures outside the predefined list can be utilised for some funds (in line with any local regulatory requirements) and such arrangements should also be considered when selecting the appropriate LMTs for a fund.

Finally, Level 1 rules of the amending Directive 2024/927[[2]](#footnote-3) under the new Article 16(2b) of AIFMD and Article 18a(2) of UCITSD consider a minimum of the two LMTs that the managers are obliged to select should be chosen from the broad list of LMTs included under points 2 to 8 of Annex V to AIFMD (Annex IIA to UCITSD respectively), and we believe this is the appropriate approach. The flexibility provided within the Directive ensures that the Guidelines can meet the stated goal to recognise “*the primary responsibility for liquidity risk management remains with the UCITS and AIFM*”.

<ESMA\_QUESTION\_GLMT\_3>

1. Do you see merit in developing further specific guidance on the depositaries’ duties, including on verification procedures, with regards to LMTs?

<ESMA\_QUESTION\_GLMT\_4>

Irish Funds does not see merit in developing specific guidance on the depositary’s duties regarding LMTs. The depositary’s duty to implement procedures to verify that the fund is acting in compliance with its obligations under the AIFMD and UCITS Directive is clearly prescribed in the relevant delegated regulations. Accordingly, depositaries should establish appropriate verification procedures to ensure that the manager for the fund has documented procedures in place for LMTs. The verification should not require the depositary to assess the adequacy of the LMT procedure, which is consistent with ESMA’s Guidelines on liquidity stress testing in UCITS and AIFs[[3]](#footnote-4). The manager’s procedures should include an escalation process to notify the depositary of any liquidity issues and/or the intention to activate an LMT where not being used currently in the normal course of business.

<ESMA\_QUESTION\_GLMT\_4>

1. Do you agree with the list of elements included under paragraph 28 of Section 6.5.2 of the draft guidelines to be included in the LMT policy? Are there any other elements that, in your view, should be included in the LMT policy?

<ESMA\_QUESTION\_GLMT\_5>

Overall, Irish Funds agree with the majority of the list of elements to be included in the LMT policy and welcome the recognition of proportionality in the draft Guidelines by stating that the LMT policy “*should be adapted to the nature, scale, complexity and liquidity profile of the fund(s)*”.

Considering that the LMT policy “*should form part of the broader fund liquidity risk management process policy document*”, we emphasise that internal ownership of the LMT policy should depend on the governance setup of each manager. It need not necessarily or solely reside with the risk management function as a second line of defence, given the comprehensive aspects — including operational considerations — that must be considered when selecting and calibrating LMTs. We would welcome ESMA’s confirmation of this view.

Irish Funds would however query some elements of paragraph 29, particularly the requirement to review every 6 months which would not be current industry practice. In addition to an industry standard annual review, LMT policies will be updated regardless on an ad-hoc basis where appropriate e.g. ‘lessons learned’ post a stress event.

Finally, it should be understood that an LMT policy is a guide to provide each manager with the appropriate considerations for managing liquidity and should be flexible enough to allow managers to adapt to situations, as required, in the best interests of investors.

<ESMA\_QUESTION\_GLMT\_5>

1. In your view, what are the elements of the LMT policy that should be disclosed to investors and what are the ones that should not be disclosed? Please provide reasons for your answer.

<ESMA\_QUESTION\_GLMT\_6>

Irish Funds support the principle of providing high-level relevant and useful information to investors, however given the LMT policy is an internal document, disclosing elements directly to investors is not, in our view, appropriate. However, there are aspects that could be considered on a principles-basis such as:

* Principles and Processes: Investors should be informed about the principles underlying LMTs and the overall process in the fund’s offering memorandum. This clarity helps them understand the fund’s approach to ensuring all investors are treated fairly, including remaining investors, as well as the fund’s approach to managing risk in the case of stress scenarios.
* Qualitative Information on LMTs: Describing the LMTs available and their intended use in qualitative terms provides transparency and helps to set expectations.
* Qualitative Description of Transaction Cost Considerations: Investors benefit from understanding the impact of transaction costs driven by investor dealing. This information helps set realistic investor expectations. This description should be sufficiently high-level to ensure it can be understood by both retail and professional investors.

Irish Funds believe that the following operational details should not be disclosed to avoid sophisticated investors from exploiting arbitrage opportunities related to LMTs or other unintended consequences:

* Granular Activation Thresholds and Adjustment Factors: We do not believe that providing detailed disclosures, which might contain granular information on areas such as activation thresholds/adjustment factors, would necessarily be of benefit to investors as they may be used to compare funds incorrectly and may provide potential arbitrage opportunities to sophisticated investors or overburden retail investors with too much technical detail that may be difficult to understand.
* Cost of Liquidity: Overly prescriptive disclosures may lead to arbitrary adjustments. Retaining discretion to adapt to changing market situations is crucial. In addition, providing granular information on the cost of liquidity may constitute sensitive or proprietary information.

There are also other operational details that we don’t believe should be routinely disclosed to the investors as they can potentially be commercially sensitive and more confusing than helpful, such as:

* Reporting and escalation procedures and other internal procedures to ensure operational readiness.
* Data assumptions: Detailed assumptions about data availability for LMT activation and calibration can be commercially sensitive and may not be relevant for investors.
* Checks and back testing: While important for fund management, routine checks and back testing are technical aspects that managers undertake but would not provide significant added value for investors and again may be commercially sensitive.

In summary, striking a balance between transparency and practicality ensures that investors receive relevant information without unnecessary complexity.

<ESMA\_QUESTION\_GLMT\_6>

1. Do you agree with the above definition of “exceptional circumstances”? Can you provide examples of additional exceptional circumstances, not included under paragraph 30 of Section 6.5.3.1 of the draft guidelines, that would require the manager to consider the activation of suspension of subscriptions, repurchases and redemptions, having regard to the interests of the fund’s investors?

<ESMA\_QUESTION\_GLMT\_7>

Should a definition be retained, a non-exhaustive list is the correct approach given an event that would require the activation of a suspension would likely have been unforeseen. The definition considered in paragraph 30 appears reasonable, and other examples that could be considered are incidents directly within a manager e.g. where suspension is taken on a business case basis (as part of a fund wind down) and this is not typical (i.e. exceptional) for that firm. Another example may be where a forced corporate action takes place as a result of a stress event with a manager. However, we would caution against any limiting or narrowing of this definition in the final Guidelines as this could have the unintended consequence of reducing the manager’s discretion to apply a suspension at the most appropriate time for the investors in the fund. Ultimately, given the very nature of ‘exceptional circumstances’ it is critical that should any definition be retained it should be sufficiently high-level to allow the manager to retain the discretion to define what they deem ‘exceptional circumstances’ on a case-by-case basis.

<ESMA\_QUESTION\_GLMT\_7>

1. Do you agree with the elements of the LMT plan included under paragraph 32 of Section 6.5.3.1 of the draft guidelines to be included in the LMT plan? Is there any other element that should be considered?

<ESMA\_QUESTION\_GLMT\_8>

Recognising that suspensions are generally intended to be a temporary mechanism activated to achieve the optimal outcome for investors (e.g. manage a particular liquidity stress event or taken as a step before liquidation), we broadly agree with most of the elements of the LMT plan highlighted in paragraph 32. However, in terms of point ‘c’ this may be difficult to provide, as often there are external factors that the manager may not be able to control (e.g. sale of distressed assets, resolution of temporary liquidity distress). For example, a suspension of a fund may initially be intended as a temporary measure but may end up in place longer than expected depending on the stress event (e.g. the Russian invasion of Ukraine). We also do not believe that point ‘e’ should be retained in the final Guidelines as the potential impact will vary per investor (e.g. those who may be trying to redeem, and those willing to remain in the fund). Regardless, a manager has an overarching fiduciary duty to always act in the best interests of its investors and therefore will work for the best positive outcome for all their investors in a suspension situation.

Finally, our understanding is that any “LMT Plan” would be an internal document and not something that would be published more widely.

<ESMA\_QUESTION\_GLMT\_8>

1. Do you agree with the above list of elements to calibrate the suspensions of subscriptions, repurchases and redemptions? Is there any other element that should be considered?

<ESMA\_QUESTION\_GLMT\_9>

Although Irish Funds would broadly support the list of elements outlined to calibrate the suspension of subscriptions, repurchases and redemptions, we would advocate against the mandating of an activation threshold (per section 6.5.3.1 paragraph 33 a), as setting a specific threshold is difficult given that typically each liquidity situation is unique (market event, investor mix in the fund at the time etc). However, we would agree that “*Any mechanistic approach should be avoided to ensure that the LMT allows a timely intervention in order to address the exceptional circumstances that prompted its activation*”, which we think setting a threshold could lead to.

In addition, other elements that could be considered are:

* The investor profile of the fund.
* The expected redemption rate based on experience of investor behaviour or current market behaviour.
* Whether pressure to sell assets would be likely to result in “fire-sale” prices.

However, to reiterate Irish Funds would not be supportive of an overly prescriptive and exhaustive list but rather general guidance of considerations that could be considered.

<ESMA\_QUESTION\_GLMT\_9>

1. Do you agree with the proposed criteria for the selection of redemption gates? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_10>

While Irish Funds agree with most of the proposed criteria for the selection of redemption gates, it is important to continue to recognise that the manager is best placed to determine what the most appropriate LMTs are for their funds. For example, the inclusion of gates as one of the LMTs available for selection in daily dealing UCITS is common, however, where an AIF has a significant notice and/or an infrequent dealing period, gates may be used less.

In addition, it is important to recognise that LMTs are selected at the design stage of the fund, based on the funds expected liquidity profile, including expected investor base. However, the depth of the investor base (or investor makeup and therefore expected behaviour) will not always be known in advance, so deciding whether to include gates based on investor concentration ahead of time might not be an appropriate or relevant selection criteria.

<ESMA\_QUESTION\_GLMT\_10>

1. What methodology should be used and which elements should be taken into account when setting the activation threshold of redemption gates?

<ESMA\_QUESTION\_GLMT\_11>

As an overarching position, Irish Funds believes that the selection and activation of LMTs should be at the discretion of the manager and considered on a case-by-case basis, with the manager being best placed to exercise judgement to ensure the best outcome for their investors. Irish Funds would advocate that the activation threshold of any gate should be determined by the manager and that the activation of a gate should be at the discretion of the manager/fund Board. We believe the activation threshold should allow for flexibility for managers and/or fund Boards to adjust to different and unexpected market conditions in the best interest of investors.

Setting a specific activation threshold provides more information to potential and existing investors, but it is important that any disclosure should be caveated to ensure that the required flexibility is afforded to a manager to adapt to unforeseen market circumstances which may require deviation from a fixed (and disclosed) activation threshold. Critically this threshold is the figure at which the gate may be implemented only, it is not a confirmation that capital flows at or above the figure will immediately result in activation. For example, there may be cases where a manager has to impose a gate at a lower threshold than disclosed where it is determined this is in the best interest of investors. Alternatively, if the percentage of overall redemptions is at 10% (the disclosed threshold) in a day, but the fund is invested in a highly liquid asset class such as large cap equities and has consistent capital or other inflows (dividends), this might not trigger the activation of a gate.

Methodologies and elements used to arrive at the decision to activate redemption gates shall typically be focused on whether other existing LMTs were not able to mitigate the impact of liquidity events in protecting existing investors. Methodologies ideally account for known scenarios with the flexibility to be adapted when new information becomes relevant to improve the process and governance. Elements ideally cover qualitative and quantitative criteria which provide sufficient flexibility to account for previously unknown information and therefore allow managers to adapt to situations to ensure the best outcome for investors. As with deviations from thresholds, any deviations from pre-defined methodologies shall follow a well-defined governance process to ensure proper approvals and documentation.

Ultimately, managers should have the flexibility to assess the methodologies and elements for activation of redemption gates to the best of their knowledge, adapting to their business, clients, distribution model and asset classes. Principles around proper governance and regular reviews of methodologies are preferred over prescriptive guidance on how activation thresholds must be defined.

<ESMA\_QUESTION\_GLMT\_11>

1. Do you agree that the use of redemption gates should not be restricted in terms of the maximum period over which they can be used? Do you think that any differentiation should be made for funds marketed to retail investors? Please provide concrete cases and examples in your response.

<ESMA\_QUESTION\_GLMT\_12>

Irish Funds is supportive of the current text in section 6.5.3.2 paragraph 40 which does not restrict the duration or number of uses of a redemption gate by a manager and recognises the manager is best placed to determine its use.

As noted in the consultation, the reason for activating a gate can vary case to case. For example, it could be used to help prevent a run on the fund, which can destabilise the market. By limiting withdrawals, managers can avoid forced asset sales at depressed prices, which can further exacerbate market declines. Or it could be used to manage an unexpected single redemption request from a large investor to ensure that both the redeeming and the remaining investors are not adversely impacted. Therefore, the period of time the gate needs to be in place will vary depending on the situation and by implementing redemption gates, managers can protect the interests of long-term investors who might otherwise be disadvantaged by a rush of redemptions from short-term investors.

We would caution against the implementation of a maximum period as it is important that a manager is not restricted in trying to meet its fiduciary duty to act in the best interest of its investors. It is also important to note that there should always be a robust governance process around the activation (and deactivation) of gates (as with all LMTs).

Finally, we would not support differentiating the use of redemption gates for retail investors as this creates additional complexity without any obvious benefit for retail investors. Each fund's strategy, investor base, and regulatory environment should guide the implementation of redemption gates, and this should only be activated when in the best interest of all investors.

<ESMA\_QUESTION\_GLMT\_12>

1. What is the methodology that managers should use to calibrate the activation threshold of redemption gates to ensure that the calibration is effective so that the gate can be activated when it is needed? Do you think that activation thresholds should be calibrated based on historical redemption requests and the results of LSTs?

<ESMA\_QUESTION\_GLMT\_13>

Calibrating the activation threshold for redemption gates is a nuanced process and therefore we would caution against the Guidelines being too prescriptive. Activation of a gate will be a function of a variety of factors which may include size of the flows, number of investors redeeming at the same time, outlook of flows, current market conditions, and/or the overall future of the fund (has the fund previously been marked as one set for closure etc). Historical redemption requests may be a factor considered but past flows are not necessarily an accurate measure of future flows. Therefore, it is important that managers are afforded sufficient flexibility to calibrate the activation threshold for their fund in a way that is appropriate for the strategy, asset and investor mix of each fund.

<ESMA\_QUESTION\_GLMT\_13>

1. In order to ensure more harmonisation on the use of redemption gates, a fixed minimum activation threshold, above which managers could have the option to activate the redemption gate, could be recommended. Do you think that a fixed minimum threshold would be appropriate, or do you think that this choice should be left to the manager?

<ESMA\_QUESTION\_GLMT\_14>

Irish Funds would strongly oppose the setting of a harmonised fixed minimum activation threshold for funds. Given the diverse nature of investment funds, and as recognised in the macroprudential debate, the manager is best placed to determine the appropriate makeup for their LMT kit and a ‘one-size-fits-all’ approach is not appropriate. This is further reinforced through Article 16(2h) of AIFMD[[4]](#footnote-5) and Article 18a (4) of UCITS[[5]](#footnote-6), which also acknowledges that the primary responsibility for liquidity risk management remains with the manager. Therefore, sufficient flexibility should be afforded to managers to select a threshold that is appropriate for their funds and investors. Typically, within UCITS we would see 10% as a standard optional gating threshold, however this may not be the case with all UCITS funds. Additionally, setting a fixed threshold may deter a manager from using gates as an LMT if they felt mandated to fix a threshold and this was viewed as not appropriate for their funds.

<ESMA\_QUESTION\_GLMT\_14>

1. If you think that a fixed minimum threshold should be recommended, do you agree that for daily dealing funds (except ETFs and MMFs) it should be set as follows:

<ESMA\_QUESTION\_GLMT\_15>

As referenced in question 14, we do not believe that a fixed minimum threshold is appropriate for investment funds. The suggested thresholds are well below the 10% we would typically see as standard industry practice for this fund type and lowering this threshold would therefore lead to an increase in the activation of gates which may deter investors from investing in funds with this LMT in place. While we welcome the fact that the manager has the discretion to choose not to implement the gate where the threshold is exceeded, setting the threshold too low could lead to an excessively burdensome governance process with little benefit to the investors. We believe that the managers should be afforded the appropriate flexibility to set a threshold that is appropriate for their fund range and allows them to meet their fiduciary duty to investors.

<ESMA\_QUESTION\_GLMT\_15>

a) at 5% for daily net redemptions; and

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b) at 10% for cumulative net redemptions received during a week?

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1. Do you agree with the proposed criteria for the selection of the extension of notice period? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_16>

Irish Funds mostly agree with the selection criteria for the extension of notice period and would expect this mechanism to be more typical in AIFs with less liquid assets. We would also consider that there can be a correlation between the length of notice period and the dealing frequency of the fund (which as the consultation notes for AIFs is nonprescriptive save for a minimum NAV to be calculated annually), which as pointed out tends to be greater in funds investing in less liquid assets. We consider the appropriate notice period and dealing frequency forms part of the governance process during the initial fund design stage (acknowledging that this is subject to review during the lifecycle of the fund e.g. when the liquidity profile of the fund changes), and therefore again it is for the manager to determine what length of notice (and then its extension if this is the chosen LMT) is appropriate, but noting this will not be based solely on asset class or investor concentration but also on the expected investor base of the fund, strategy, expected liquidity profile etc.

However, we do not agree with explicitly including reference to private equity (“PE”)/real estate (“RE”) funds (section 6.5.3.3 paragraph 42) as a fund type that should select this form of LMT. In our view this is overly prescriptive and can be perceived as narrowing the selection criteria for these fund types. Instead, and as referenced throughout Irish Fund’s response to this consultation, the manager is best placed to decide the suite of LMTs most suited to their funds. This will always be anchored with the fiduciary duty of the manager to act in the best interests of its investors.

<ESMA\_QUESTION\_GLMT\_16>

1. According to the revised AIFMD and UCITS Directive, the extension of notice periods means extending the period of notice that unit-holders or shareholders must give to fund managers, beyond a minimum period which is appropriate to the fund. In your view, for RE and PE funds: i) what would be an appropriate minimum notice period; and ii) would the extension of notice period be an appropriate LMT to select?

<ESMA\_QUESTION\_GLMT\_17>

Many RE and PE Funds are structured as closed ended funds which run for a specific timeframe (e.g. 5/10(+) years) or as funds with limited liquidity. Where liquidity is offered, the timeframe may vary, but redemption cycles are often offered on a quarterly, semi-annual, or annual basis. Given the variety of strategies there cannot be a ‘one-size-fits-all’ approach adopted. Many RE/PE funds have existing provisions on settlement and notice periods. Overall, we would advocate for flexibility, anchored on the core concept that the manager is best placed to determine the application and criteria of such tools.

<ESMA\_QUESTION\_GLMT\_17>

1. Do you think the length of the extension of notice periods should be proportionate to the length of the notice period of the fund? Do you think a standard/ maximum extended notice period should be set for UCITS?

<ESMA\_QUESTION\_GLMT\_18>

No. As referenced through this paper (and acknowledged by the Financial Stability Board FSB[[6]](#footnote-7) and International Organisation of Securities Commission (“IOSCO”)[[7]](#footnote-8) and Central Bank of Ireland[[8]](#footnote-9)), there cannot be a ‘one-size-fits-all’ approach. Each fund will consider what is appropriate based on its investable universe and expected investor base, with some managers having a preference for an extended settlement cycle in some instances and the option for extended notice period in others. Also as referenced in our response to question 16 there can also be a correlation between the length of notice period and the dealing frequency of the fund.

It is worth noting that if the primary goal of implementing an LMT is to minimise the adverse impact on both the funds investors and the market due to a redemption request, opting for an extended settlement period could allow for the realisation of value within for example, a T+5 settlement, as opposed to a shorter period, for example T+3, and this could offer a viable alternative to an extended notice period. This approach is likely to allow the manager to manage market impact leading to lower implicit costs. While the value of positions being sold would experience daily gains and losses, executing trades over a more extended timeframe can likely curtail overall market impact costs for investors. Moreover, within these scenarios, it can be argued that an extended settlement period would be operationally simpler. Shifting the settlement date for cash distribution to investors is ostensibly less intricate than dynamically altering a notification period. It is worth noting that fund prospectuses commonly include a provision stating that "settlement cycles will be X, but under certain circumstances, they may extend beyond." In this context, an elongated settlement period leverages an existing clause in the fund prospectus to adapt to specific situations.

However, the abovementioned scenario largely assumes the overall market is stable during the settlement period. This means the manager can engage in trading over several days following the NAV date, allowing the manager to trade in potentially smaller lot sizes which reduces potential market impact and therefore transaction costs for investors.

Conversely, during periods of heightened market stress when concerns about market impact and liquidity are significantly intensified, the situation changes. In such stressed market environments, the remaining investors might encounter more substantial losses than they would in ordinary circumstances due to increased market exposure. Accordingly, in such a scenario, it may be more optimal to consider lengthening the notice period to enable the manager to plan appropriately for the proposed redemption.

These examples are presented as potential abstract scenarios; however, we believe that highlighting these scenarios is constructive as they underscore the significance of relevant facts and specifics (in the current conditions) in determining the appropriateness of implementing a specific LMT. Therefore, akin to the preceding considerations, it remains crucial for the manager to retain the discretion to employ an extended settlement or notice period.

<ESMA\_QUESTION\_GLMT\_18>

1. Do you agree with the above criteria for the activation of the extension of notice period? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_19>

Irish Funds agree that the selection of these tools should be determined based on the specific circumstances of each fund, rather than adhering to a broad market definition of "normal" or "stressed” market conditions. We would caution against adopting single definitions, as the evaluation of stressed markets can differ based on factors such as asset class, managerial approach, and economic conditions. The primary concern lies in the potential constraint this could impose on the use of certain tools at the fund level when they are truly needed. Ultimately, in line with existing regulatory liquidity management requirements within the European Union (as outlined by AIFMD and UCITS), the emphasis should be placed on the fund's readiness to confront stressed market conditions through a robust liquidity risk management framework.

<ESMA\_QUESTION\_GLMT\_19>

1. Do you have any comments on the guidance on the calibration of the extension of notice periods?

<ESMA\_QUESTION\_GLMT\_20>

Ideally, the length of a fund’s notice period will be agreed at the design phase of the fund to correspond with its dealing frequency and align with the liquidity of the underlying assets. In general terms, a longer notice period for redemptions may be established for certain funds to synchronise the fund’s liquidity with the expected liquidity of the underlying holding.

However, when considering the extension of a notice period as an LMT, the best interests of all investors need to be considered. For example, investors may not wish to invest in a fund that has the availability of the extension mechanism, and the platform the fund is distributed on would also need to be considered and determined if it can accommodate extended notice periods.

<ESMA\_QUESTION\_GLMT\_20>

1. Do you agree with the above criteria for the selection of redemptions in kind? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_21>

First, when considering the selection of redemptions-in-kind (RIK), we believe it is important to differentiate between situations in which the RIK is being utilised (i) as an LMT and therefore subject to the associated LMT requirements, and (ii) as a ‘business as usual’ dealing mechanism to support investor preference (as is common in the case of Exchange Traded Funds (ETFs). As further detailed under our response to question 24 below, the use of RIK in such a context by ETFs should be excluded from the LMT requirements. There are also other examples where RIK are not used as an LMT but instead as a mechanism to move allocations of holdings between funds or to provide the seed investment for a fund.

Save for in the case of ETFs (and the other examples provided above), we generally agree with the standard criteria that the RIK should be pro rata and for professional investors, with exceptions allowable in some cases where a fund is only marketed to professional investors. It should be noted there may be cases where an investor in an illiquid fund may not want the asset, which may also be difficult to value.

Save for in the case of ETFs, the implementation of RIK could take into account:

* the structure of the fund, i.e. UCITS or AIF.
* the number of investors (e.g. if a single investor it is a more straightforward process to activate an RIK); and
* asset types (e.g. real assets investments cannot typically be pro-rated).

Such implementation of RIK could also require:

* pre-approval from the fund’s Board or a designated committee before activating the RIK, ensuring that the decision is thoroughly vetted.
* pre-approval from the investor and provision of advance notice about the activation of the RIK, including details relating to assets to be transferred.
* an assessment of the potential impact of RIK on the fund’s liquidity and performance.
* the fund to ensure that all investors are treated fairly during the activation of RIK, avoiding any preferential treatment; and
* implementation of policies to avoid conflicts of interest, particularly in the selection and valuation of the assets to be redeemed in kind.

<ESMA\_QUESTION\_GLMT\_21>

1. Do you agree with the above criteria for the activation of redemptions in kind? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_22>

Irish Funds generally agree with the criteria outlined, as activating redemptions-in-kind (RIK) on NAV calculation dates ensures that the assets being transferred are valued consistently with the fund’s overall valuation process.

However, Irish Funds does not believe that there would be any significant benefit for an additional valuation of assets to be redeemed in kind to be performed by an independent third party (paragraph 48 of Section 6.5.3.4). For example, in the case of the depositary, whilst it has a duty to verify that the manager has established and applied appropriate and consistent procedures for the valuation of the fund’s assets, it has no direct functional role in the valuation process. As a result, depositaries do not have an established capability to provide for the valuations of assets. Additionally, RIK are regularly used for AIFs with professional investors and are documented using official closing prices for the underlying securities, which are the same values used to calculate the official NAV. Therefore, introducing this additional element would add additional cost to the fund without an offsetting benefit.

Finally, investors may request a redemption-in-kind for alternative reasons so any criteria imposed could create unintended consequences.

<ESMA\_QUESTION\_GLMT\_22>

1. Do you think that redemptions in kind should only be activated on the NAV calculation dates?

<ESMA\_QUESTION\_GLMT\_23>

In line with our stated position, the manager is best placed to decide when to activate the relevant LMT. Although it would be standard practice to align with the funds standard NAV dealing date, there may be cases where an RIK does not align with the standard dealing dates. Regulators and clients may expect that, where possible, the RIK would be performed in alignment with standard dealing dates, however there should be discretion afforded to the manager to alter this where necessary when it is in the best interests of investors (i.e. a Board approved NAV ‘special dealing’ date).

Irish Funds would note that where a RIK is appropriate outside of the set standard NAV calculation dates (see example below), an additional ad-hoc NAV special dealing date should be declared to facilitate the RIK, and our understanding is that this ad-hoc special dealing date is considered a “NAV calculation date” per Section 6.5.3.4 paragraph 47.

An example case leading to a RIK falling outside the standard NAV calculation dates is as follows:

A close-ended (e.g. private credit) AIF with a quarterly NAV has assets pledged as collateral (for a loan/fund leverage). The deterioration of such assets means the assets must be replaced by performing assets in order to satisfy the lender, maintain leverage levels, and manage the portfolio in accordance with the fund disclosures etc. When this occurs outside the standard quarterly NAV dates, the fund may need to declare an additional NAV special dealing date to facilitate a RIK (and/or subscription in kind). We would expect the same processes/controls (valuation etc) to be carried out for this ‘ad-hoc’ NAV, in line with the standard NAV calculation dates.

<ESMA\_QUESTION\_GLMT\_23>

1. What are the criteria to be followed by the managers for the selection of the assets to be redeemed in kind in order to ensure fair treatment of investors?

<ESMA\_QUESTION\_GLMT\_24>

Irish Funds note that in the case where passive Exchange Traded Funds (“ETFs”) opt to use in-kind redemptions as one of its two nominated forms of Liquidity Management Tools (i.e. dictates to the investor precisely what securities it will return in exchange for ETF shares), the pro-rata requirement shall not be applied. We would also like to take the opportunity to clarify an important point in respect of ETFs generally (whether passive or active), namely that the requirements in relation to RIK shall only apply where a UCITS ETF is using RIK as one of its two nominated LMTs and not where it is using it as part of its ‘business-as-usual’ redemption process. It is important that this point is clarified.

As noted by both the FSB**[[9]](#footnote-10)** and IOSCO**[[10]](#footnote-11)** in their respective Reports of December 2023, ETFs have an operational structure which is distinct from other UCITS and consequently both the FSB and IOSCO explicitly state that their respective guidance of December 2023 is not applicable to ETFs. They also indicate that the operation and structure of ETFs have been subject to significant review including as outlined in the IOSCO (2021) Exchange Traded Funds Thematic Note – Findings and Observations during Covid-19 induced market stresses[[11]](#footnote-12) and the IOSCO Final Report on Good Practices Relating to the Implementation of the IOSCO Principles for Exchange Traded Funds (May 2023)[[12]](#footnote-13).

ETFs trade in two distinct yet interconnected markets: ‘primary’ (ETF share creation and redemption between ETF issuers and Authorised Participants (APs)), and ‘secondary’ (exchange of ETF shares amongst investors, facilitated by market-makers operating on public trading venues). In the primary market, APs are authorised to transact (by creating and/or redeeming ETF shares) directly with the ETF issuer, in exchange for cash proceeds or a proportionate share of the underlying assets that make up the benchmark tracked by the ETF. APs typically undertake such primary market activity in response to ETF investors’ demand for liquidity in the secondary market. This liquidation feature of ETFs is distinctly different from other forms of UCITS funds such as Open-Ended Funds. With respect to the use of RIK by an ETF issuer, it is important to acknowledge two structural drivers:

1. RIK are regularly used by ETF issuers, enabling APs to facilitate liquidity, efficient pricing and effective arbitrage for the benefit of ETF investors. As such, redemptions-in-kind constitute a regular liquidity transmission tool for UCITS ETFs and restricting their use as an LMT will significantly disrupt the efficient functioning of the UCITS ETF market.
2. APs are specialised financial institutions such as banks and specialist ETF market makers.APs are therefore operationally prepared to receive redemptions-in-kind in exchange for ETF shares. In contrast, most ETF investors cannot receive the custody of underlying securities.

We would highlight that the ability for an ETF issuer to enter into in-kind arrangements with the APs is a key ‘business as usual’ structural feature which is used to facilitate an efficient and effective arbitrage mechanism. While this arrangement is entered into with sophisticated professional investors (i.e. APs), the UCITS ETFs may be sold to retail investors on the secondary market who will benefit from an effective arbitrage mechanism. This arrangement is supported by the transparency of the ETF’s portfolio holdings and dedicated capital markets personnel who assist with its operation and oversight. This is acknowledged by IOSCO (in its May 2023 report**[[13]](#footnote-14)**) which notes that “*The arbitrage mechanism is the defining feature of the ETFs structure as it provides the means to maintain a close tie between market price and NAV per share of the ETF. This in turn helps to ensure that different ETF investors are treated equitably when buying and selling ETF shares*”*.*

It should also be noted that in the case of European Long-Term Investment Funds (“ELTIFs”) there are prescriptive rules on when an investor in an ELTIF can receive assets in-kind and the ELTIF rules should take precedence over any AIFMD rules.

<ESMA\_QUESTION\_GLMT\_24>

1. How should redemptions in kind be calibrated?

<ESMA\_QUESTION\_GLMT\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLMT\_25>

1. Do you agree that managers should consider the merit of avoiding the simultaneous activation of certain ADTs (e.g.: swing pricing and anti-dilution levies)? Please provide examples when illustrating your answer.

<ESMA\_QUESTION\_GLMT\_26>

As stated throughout our response to this consultation, we are of the view that the manager should be afforded sufficient flexibility to be able to discharge its fiduciary duty to always act in the best interest of investors. When implementing LMTs the manager will do so under the governance of a liquidity management framework, and although there is additional operational complexity in implementing layered ADTs (e.g. with the Fund Administrator, and possibly its distribution channels), this would be considered during the design stage of the fund. Therefore, we do not see any merit in restricting a managers ability to simultaneously activate certain ADTs and indeed as noted in our response to question 3, IOSCO’s guidance on anti-dilution LMTs[[14]](#footnote-15) notes there may be circumstances when a fund uses dual pricing and layers another ADT when it mainly invests “*in assets whose liquidity costs are mainly comprised of the bid-ask spread, as the fund’s adjusted NAV would already reflect that spread in normal times. However, any significant market impact or explicit transaction costs would need to be accounted for separately, either by additional adjustment to the NAV or via other (anti-dilution) LMTs*”.

<ESMA\_QUESTION\_GLMT\_26>

1. Do you agree with the list of elements provided under paragraph 56 of Section 6.5.4 of the draft guidelines? Is there any other element that should be included in the estimated cost of liquidity?

<ESMA\_QUESTION\_GLMT\_27>

Irish Funds feel it is important to emphasise that the calculation of implicit transaction costs (including market impact) is, as acknowledged within the consultation, based on a managers estimation given the information available at that point in time. This is also acknowledged by IOSCO who “*recognises that there could be a degree of uncertainty for the market impact estimated despite the best efforts made by responsible entities[[15]](#footnote-16)*”. The acknowledgement of “best efforts” is something we believe should be included within the final Guidelines.

While we agree that, where the cost of liquidity is deemed material, managers should consider both their explicit and implicit costs, there should not be a requirement to systematically include implicit costs, including market impact, in all cases when not deemed material. The calculation of implicit costs is not a straightforward process and can be challenging, with market impact particularly difficult. For example, data can be extremely challenging to obtain due to the fragmented nature of certain European markets (e.g., fixed income) and therefore it is difficult to get full transparency of trading volumes, participation rates etc… in certain markets. Equally, it must be recognised that no manager can be expected to gauge how other market actors will behave under stressed conditions.

The size and quantum of the market impact is driven by a number of factors such as (a) the size of the capital flow (subscription/redemption), (b) the volume and value of trades, and (c) market depth. The proposal to use historically similar market circumstances may work in some instances, but specific assessments involving all relevant stakeholders (trading, risk, portfolio management, compliance, fund valuation, etc.) is necessary to incorporate all trading cost related information at a point in time.

<ESMA\_QUESTION\_GLMT\_27>

1. Do you have any other comments on the proposed general guidance on ADTs?

<ESMA\_QUESTION\_GLMT\_28>

Please see Irish Funds response to questions 3, 26 & 27. While we agree with the flexibility provided through the acknowledgement “*that the disclosed range of adjustments should not be considered as a cap or restriction*”, we would caution against any mandating of publishing these ranges.

<ESMA\_QUESTION\_GLMT\_28>

1. Do you agree with the above criteria for the selection of redemption fees? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_29>

While generally Irish Funds agrees with the selection criteria, reference to specific examples (section 6.5.4.1 paragraph 61) may be perceived as overly prescriptive and narrowing the selection criteria. Therefore, confirmation in the final Guidelines that the selection of redemption fees is at the managers’ discretion subject to the internal governance process and principles as documented in the LMT policy would be welcome, as ultimately the manager is best placed to decide the suite of LMTs most suited to their funds. This will always be anchored with the fiduciary duty of the manager to act in the best interests of its investors.

As referenced in our response to the RTS Characteristics consultation[[16]](#footnote-17) we would like to highlight that often redemption fees are not utilised as an anti-dilution tool and instead are used to encourage investors to hold the investment in line with the recommended holding period. For example, they may take the form of contingent deferred costs or part of a fund lock-up mechanism whereby an investor is charged for redeeming before a certain time frame.

<ESMA\_QUESTION\_GLMT\_29>

1. Do you have any views on how to set the activation thresholds for redemption fees?

<ESMA\_QUESTION\_GLMT\_30>

Irish Funds consider that it is important to maintain discretion in relation to redemption fees as the asset profile may change over time resulting in lower transaction costs. We also understand the use of the term “*‘****may****’ set activation thresholds*” as acknowledging that the manager should be afforded sufficient flexibility to determine the appropriate activation process for their funds i.e. the use of an activation threshold is not mandatory.

<ESMA\_QUESTION\_GLMT\_30>

1. Do you have any comments the calibration of redemption fees?

<ESMA\_QUESTION\_GLMT\_31>

As we have referenced throughout our response to this consultation, we would caution against any mandatory application of estimated implicit costs, including market impact. The calculation of implicit costs is not a straightforward process and can be challenging with market impact particularly difficult. For example, data can be difficult to obtain due to the fragmented nature of certain European markets (e.g., fixed income) and therefore it is difficult to get full transparency of trading volumes, participation rates etc… in certain markets. Equally, it must be recognised that no manager can be expected to gauge how other market actors will behave under stressed conditions.

We would also argue that materiality should be a consideration i.e. if market impact, for example, is deemed minimal it should not be required to be calculated given the additional process cost of doing so. Therefore, we welcome the acknowledgment that implicit costs can be included “*where applicable*”. We also reiterate that any calculation of implicit costs should be seen as a ‘best efforts’ estimate.

<ESMA\_QUESTION\_GLMT\_31>

1. Do you agree with the above criteria for the selection of swing pricing? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_32>

An aspect that is worth mentioning when selecting an anti-dilution tool is whether the funds’ objective is to track an index. Dilution adjustments in fund prices such as swing pricing can lead to higher NAV volatility and thus increase the tracking error of the fund. As such, other anti-dilution tools may be more appropriate for index funds compared to the swing pricing mechanism.

It is also worth noting that in the case of ELTIFs, swing pricing would only be relevant to the liquid portion of the portfolio.

<ESMA\_QUESTION\_GLMT\_32>

1. Under which circumstances should the manager consider the activation of swing pricing?

<ESMA\_QUESTION\_GLMT\_33>

Irish Funds agree that the decision to activate a specific swing model, as well as the calibration of the swing factor, should be based on an established methodology by the manager. In terms of the expectation that it is “dynamic”, we would like to highlight that many managers that utilise anti-dilution tools (such as swing pricing) have established standard time periods when the dilution adjustment is reviewed and recalibrated, which can vary from entity to entity or even asset class to asset class. Additional ad hoc adjustments are typically built into such processes, however, the exact parameters and procedures for implementing these adjustments depend on each entity. We believe that the Guidelines should recognise that “dynamic” may mean based on periodic review. Regardless, swing factors can also be updated on an ad hoc basis where appropriate e.g. ‘lessons learned’ post a stress event.

Concerning the application of a tiered swing factor, the application of swing pricing for low dealing NAV events can also be excluded by using the swing thresholds, i.e. only apply the swing factor for outflows above the threshold.

We also note our agreement that the activation threshold for swing pricing should not be disclosed to prevent first mover advantage. However, we caution that disclosure of relevant details governing the activation of swing pricing to investors should be principles-based and qualitative in nature only to avoid more sophisticated investors using more granular data to ‘game’ the mechanism.

<ESMA\_QUESTION\_GLMT\_33>

1. Do you agree with the above principles that a manager should follow in order to recalibrate the swing factor? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_34>

When recalibrating the swing factor both model estimates and expert judgements (e.g. trading desk) shall be considered. We do not recommend a purely quantitative approach, but rather a mix of quantitative and qualitative consideration through a structured governance framework that ensures swing factors can be adjusted and scaled when needed. Therefore, it is important to clarify in the final Guidelines that the reference to “full cost of liquidity” is on an estimated best-efforts basis.

The acknowledged flexibility to be able to recalibrate the swing factor in periods of stress and beyond the maximum factor in exceptional market conditions is also welcomed.

<ESMA\_QUESTION\_GLMT\_34>

1. Do you have any comments on the proposed guidance on the calibration of swing pricing?

<ESMA\_QUESTION\_GLMT\_35>

Our understanding is that paragraph 71 relates to notifying investors when a swing factor is recalibrated. This would not be typical of market practice and would appear contradictory with the previous paragraphs on the first mover principle as in our view this could lead to ‘gaming’ by more sophisticated investors. Granular details on the swing factors can also be commercially sensitive information, as implicit costs can depend on the network of brokers etc. If the proposal is applied only to the maximum swing factors this should be stated as individual swing factors are not disclosed, and therefore disclosure of change should not be foreseen.

As we have referenced throughout our response to this consultation, we would caution against any mandatory application of estimated implicit costs, including market impact. The calculation of implicit costs is not a straightforward process and can be challenging, with market impact particularly difficult. For example, data can be difficult to obtain due to the fragmented nature of certain European markets (e.g., fixed income) and therefore it is difficult to get full transparency of trading volumes, participation rates etc… in certain markets. Equally, it must be recognised that no manager can be expected to gauge how other market actors will behave under stressed conditions.

We would also argue that materiality should be a consideration here i.e. if market impact, for example, is deemed minimal it should not be required to be calculated given the additional process cost of doing so. We also reiterate that any calculation of implicit costs should be seen as a ‘best efforts’ estimate.

<ESMA\_QUESTION\_GLMT\_35>

1. As dual pricing is a LMT which is not particularly used in most Member States, stakeholders’ feedback on the selection, activation and calibration of this LMT is especially sought from those jurisdictions where this is used.

<ESMA\_QUESTION\_GLMT\_36>

Irish Funds generally agree with the paragraphs on selection and activation of dual pricing. In terms of calibration, it should be noted that the activation methodology based on “adjustable spread” could be set in a way that significant market impact and explicit trading costs are accounted for in the spread. Explicit trading cost can also be taken into account when pricing at bid or ask prices, if such costs are material.

Therefore, we would not agree with the suggestion that an additional LMT has to be used to account for “*any significant market impact or explicit transaction costs*” as normal market practice given the added operational complexity this would entail. However, as noted in our response to both questions 3 and 26 there may be exceptional circumstances where this is required. Irish Funds reiterates the importance of the manager being afforded the appropriate flexibility given they are closest to the markets their funds invest in.

An additional aspect to consider is that, as per the Level 1 rules of the amending Directive 2024/927[[17]](#footnote-18), dual pricing and swing pricing cannot be the only selected LMTs from those referred to in Annex IV of AIFMD and Annex IIA of the UCITS Directive, points 2 to 8.

<ESMA\_QUESTION\_GLMT\_36>

1. Do you agree with the above criteria for the selection of ADL? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_37>

It is important to clarify that the examples provided are to be understood as suggestions rather than criteria (section 6.5.4.4 paragraph 78). In our view the reference to specific assets e.g. high-yield bonds and small cap equities, is overly prescriptive and can be perceived as narrowing the selection criteria. Therefore, confirmation in the final Guidelines that the selection of ADLs is at the managers’ discretion subject to the internal governance process and principles as documented in the LMT policy would be welcome as ultimately the manager is best placed to decide the suite of LMTs most suited to their funds. This will always be anchored with the fiduciary duty of the manager to act in the best interests of its investors.

Irish Funds would challenge the statement that “*smaller funds in terms of NAV could be more impacted by the cost of liquidity caused by large redemptions*”. Usually, smaller size funds are expected to have lower implicit transaction costs due to expected lower market impact of liquidating a smaller volume of assets.

Operational aspects and the distribution framework used by the fund should also be taken into account. If the fund is distributed by a third party, it may be operationally more burdensome to apply ADL versus, for example, swing pricing. This is because with swing pricing the funds NAV will include the swing factor, and therefore from a distribution perspective the quantity of shares multiplied by the NAV will equal the amount being paid through the distribution channel. However, with ADLs the NAV itself is not adjusted, instead the ADL is applied after the final NAV and therefore the quantity of shares by the NAV will not equal the amount distributed back to the investor (in the case of a redemption) as the amount paid to the investor is reduced by the ADL. As such, this creates operational complexity, and some distribution platforms do not accept this type of LMT being applied. This was also acknowledged as a footnote in the IOSCO anti-dilution LMT guidance[[18]](#footnote-19), “*For example, some fund managers expressed that, when a fund is distributed by a third party (e.g., fund platform), applying anti-dilution levies may be more operationally burdensome, compared to swing pricing, because the third party would have to correct the price provided to fund investors by adding the anti-dilution levy to the fund NAV*”.

<ESMA\_QUESTION\_GLMT\_37>

1. Do you agree with the above criteria for the activation of ADL? Is there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_38>

Irish Funds agree with the criteria for the activation of ADL.

<ESMA\_QUESTION\_GLMT\_38>

1. Do you agree that ADL should be calibrated based on the same factor used to calibrate swing factors?

<ESMA\_QUESTION\_GLMT\_39>

Although we generally agree, it is important to highlight that it is the manager who is responsible for the design of the LMT framework and selection of the appropriate LMTs based on a case-by-case basis.

Also, per our response to questions 27, 31 and 35 the calculation of implicit costs can be challenging and therefore any estimation should be considered on a ‘best efforts’ basis. As such the inclusion of the sentence in section 6.5.4.4 (paragraph 82) “*the calibration of ADL should include all estimated explicit and expected implicit transaction costs and it should be dynamic in order to ensure that the levy can evolve on a regular basis in light of the market conditions*” does not appreciate the calculation of implicit costs is not a straightforward process and can be challenging, with market impact particularly difficult. We would also argue that materiality should be a consideration here i.e. if market impact, for example, is deemed minimal it should not be required to be calculated given the additional process cost of doing so.

<ESMA\_QUESTION\_GLMT\_39>

1. Do you have any comments on the selection, activation and calibration of ADL?

<ESMA\_QUESTION\_GLMT\_40>

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<ESMA\_QUESTION\_GLMT\_40>

1. Do you agree with the above definition of “exceptional circumstances”? Can you provide examples of additional exceptional circumstances, not included under the above paragraph?

<ESMA\_QUESTION\_GLMT\_41>

Please see our response to question 7.

One additional exceptional circumstance that could be included would be assets that are subject to a litigation action.

<ESMA\_QUESTION\_GLMT\_41>

1. In your view, how the different types of side pockets (physical segregation vs. accounting segregation) should be calibrated and in which circumstances one should be chosen over the other? Please provide examples including on whether the guidance should be different for UCITS and AIFs.

<ESMA\_QUESTION\_GLMT\_42>

Irish Funds does not believe that there should be any differentiation of guidance between UCITS and AIFs. Instead, more appropriate measures of what should drive the selection of either physical or accounting segregation could, for example, be the asset type or the valuation policy in place for the vehicle.

Circumstances where physical segregation may be preferred:

* More complex/material cases where transparency and flexibility is warranted, even if there are additional costs.
* Where it is deemed beneficial to change or add additional service providers (audit, legal, fund administrator) with expertise in managing side pockets.
* Preference for a more tailored/sophisticated approach, including different classes of participation or rights in the segregated assets. Applicable for AIFs only.
* When reporting transparency is a priority, even if this means some additional cost; and/or
* Future fund raising is expected, where incoming investors may prefer physical segregation.

Circumstances where accounting segregation may be preferred:

* Focus on minimising costs through avoiding the need for separate legal structures.
* There is time sensitivity around implementation; and/or
* Where the use of side pockets is more predictable due to the investment strategy, dealing frequency etc. e.g. using side pockets to manage a liquidity mismatch between asset and investor liquidity.

<ESMA\_QUESTION\_GLMT\_42>

1. Do you have any comments on the calibration of side pockets?

<ESMA\_QUESTION\_GLMT\_43>

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<ESMA\_QUESTION\_GLMT\_43>

1. Do you have any comment on the proposed guidance on disclosure to investors?

<ESMA\_QUESTION\_GLMT\_44>

Irish Funds supports the principal of improving transparency for investors and agrees the disclosure of the types of LMTs (which a fund may activate to ensure all investors are treated fairly, including remaining investors) should be clearly articulated in the fund’s offering documentation. However, we would caution against overly prescriptive or granular disclosure requirements which may prove counterproductive (e.g., first-mover advantage by sophisticated investors) and we welcome this acknowledgement within section 6.5.6 (paragraph 94) of the consultation. Therefore, the disclosures outlined throughout section 6.5.6 should be sufficiently high-level to prevent this.

If there are to be mandatory ex-post disclosure to investors concerning the use of anti-dilution LMTs, they should take the form of a high-level summary of information regarding the use of LMTs over an extended period. In particular, we support the assertion within the consultation that the thresholds for swing pricing activation should not be disclosed in order to avoid cliff edge effects. Similarly, ex-ante disclosures should be sufficiently high-level so that it helps an investor understand the available LMTs and their function but not overly prescriptive whereby it may restrict the managers ability to react to various stressed events, or lead to ‘gaming’ by some sophisticated investors.

Although section 6.5.6 (paragraph 95) recognises the concern around more granular public disclosures, it suggests that ranges of factors that have been used could be disclosed. We consider that transparency on the principles, the processes, and the available LMTs can be of more benefit for investors to understand rather than a specific range. Investors may wrongly frame their expectations on costs around such ranges, irrespective of additional disclosure that such ranges may be exceeded in exceptional circumstances. Funds therefore may potentially disclose wide ranges to account for stressed market period to avoid negative feedback from investors if ranges are exceeded. Therefore, we do not agree that adjustment factor ranges should be disclosed (as referenced in section 6.5.6 paragraph 95).

Disclosing the principles of the LMTs gives entities flexibility, especially under stressed market conditions, whilst providing guidance to investors about how the LMTs work in practice. Irish Funds believes that disclosure to investors should, in all cases, provide sufficient flexibility to managers. Therefore, should more granular data be required we are supportive of including the proposed disclosure that the ranges of liquidity cost adjustments “*could be exceeded on an exceptional basis if justified by the market conditions*”.

So therefore, while recognising that transparency around the governance and use of LMTs is considered an important way of allowing potential and existing investors to make a more informed investment decision, any disclosure should ultimately have the goal of investor protection with regard to LMTs, and not be overly granular which can allow more sophisticated investors ‘game’ these disclosures for their benefit.

Furthermore, it is important to strike the right balance between appropriate disclosures, investor protection and unintended consequences. For example, it is important to consider:

* Complexity and cost – It is important to ensure a proper cost/benefit analysis is considered before mandating overly prescriptive LMT disclosures and rules.
* Excessive LMT Information – There is a risk that providing too much detailed information can actually make it less clear and more difficult for investors to understand.
* Competitive Sensitivity – As referenced within the consultation there has to be an appropriate balance struck to ensure more sophisticated investors cannot ‘game’ the funds they are invested into to the detriment of the remaining investors.

Irish Funds also welcomes the acknowledgement, within the consultation, that the level of detail and timing are something that are important to consider when proposing specific disclosure requirements.

In conclusion, while the proposed Guidance on disclosure to investors aims to enhance transparency and investor confidence, it is essential to balance the benefits against potential drawbacks such as increased operational costs, risk of information overload, inadvertent disclosure of sensitive information, and the suitability of a uniform approach for a diverse investment fund universe. Flexibility in the application and approach should not be limited by the detailed nature of the disclosure requirements. Managers must be able to react to changes in market and/or client dynamics to ensure they can always act in the best interests of all their investors.

<ESMA\_QUESTION\_GLMT\_44>

1. Do you agree that investors should be informed of the fact that the manager can activate selected and available LMTs and that this information should be included in the fund’s rules and instruments of incorporation?

<ESMA\_QUESTION\_GLMT\_45>

Irish Funds are supportive of informing investors that a manager can activate selected and available LMTs. However, we are of the view that given these details are better suited to be included in the fund’s prospectus/supplement, there is no need to mandate for this information to also be included in the fund’s instruments of incorporation as well. The level of detail and channel of communication to prospective and existing investors should not limit the managers’ flexibility to adapt the approach based on changes in market and/or client dynamics to ensure they continue to act in the best interests of investors.

<ESMA\_QUESTION\_GLMT\_45>

1. Which parts of the LMT policy, if any, should be disclosed to investors?

<ESMA\_QUESTION\_GLMT\_46>

As referenced in question 6, the LMT policy is an internal document and as such, we do not believe aspects of this document should be disclosed directly to investors. Instead, we have suggested some areas that could be considered on a more principles disclosure basis. The level of detail shall remain at the managers discretion since approaches may be manager specific and mandating overly prescriptive disclosures could have unintended consequences as highlighted in our response to question 44.

<ESMA\_QUESTION\_GLMT\_46>

1. In your view, how much time would managers need for adaptation before they apply the guidelines, in particular for existing funds?

<ESMA\_QUESTION\_GLMT\_47>

Depending on the final Guidelines and level of detail required from managers to adapt and disclose, the time can vary. There are both internal developments (governance processes, documentation updates, systems and control development etc…, legal document updates) and external developments (e.g. investor communication) required, which may conflict with other business activity related priorities (e.g. new product launches) and are difficult to assess in advance.

An implementation period of 18-24 months could be considered reasonable.

<ESMA\_QUESTION\_GLMT\_47>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States should select, activate and calibrate LMTs? Which other types of costs or benefits would you consider in that context?

<ESMA\_QUESTION\_GLMT\_48>

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<ESMA\_QUESTION\_GLMT\_48>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States should provide disclosure to investors on the selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?

<ESMA\_QUESTION\_GLMT\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GLMT\_49>

1. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States arrange their governance for the selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?

<ESMA\_QUESTION\_GLMT\_50>

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