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:

* 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.

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**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 | European Fund and Asset Management Association (EFAMA) |
| Activity | Asset Management |
| Country / Region | Belgium |

# 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>

**General remarks**

As stated in recital 29 of the Amending Directive 2024/927[[1]](#footnote-2), the new rules on liquidity management tools (LMTs), included both in AIFMD[[2]](#footnote-3) and UCITSD[[3]](#footnote-4), aimed to “*ensure a more effective response to liquidity pressures in times of market stress and to better protect investors*”. It also echoed the Recommendation of ESRB[[4]](#footnote-5) which highlighted that “*The availability of a diverse set of liquidity management tools in all Member States would increase the capacity of fund managers to deal with redemption pressures when market liquidity becomes stressed*”. These goals have been also long supported by EFAMA and the industry welcomed the opportunity to use a broader range of LMTs. The harmonisation of a list of available LMTs at EU level is expected to contribute to the creation of a level playing field and showing that EU has deployed international standards.

Therefore we also appreciate the launch by ESMA of these important consultations and the quality of drafted regulatory technical standards specifying the characteristics of LMTs (RTSs) and guidelines on selection and calibration thereof (Guidelines), as this is an area of many complexities and subtleties.

EFAMA is also of the opinion that these harmonised rules should not disregard solutions that have been previously developed in Member States (e.g. borrowing, credit lines or extension of settlement period) and should view LMTs as an element of the fund’s overall liquidity management framework. Therefore we strongly agree with the general consideration from ESMA in paragraph 21 and 22 of the draft RTSs and paragraph 18 of the draft Guidelines, that “*managers may also decide to use other tools than the ones referred to in the AIFMD and UCITS Directive to manage the liquidity of the fund they manage*”.

Even more importantly rules established by ESMA should not constrain the manager in his ability to choose the most suitable set of LMTs for a particular fund. Ensuring sufficient flexibility for managers is essential to provide them with appropriate solutions that would allow to address any future issues with the fund’s liquidity, both in normal and market stressed conditions. For that reason mandates given to ESMA in Art. 16(2h) of AIFMD and Art. 18a(4) of UCITSD clearly highlight the primary responsibility of the manager for liquidity risk management.

A too prescriptive approach, on the contrary, could hamper the deployment of a full range of available LMTs. Therefore, in our key recommendations we aim to enhance the effective use of LMTs and we call for:

1. Even stronger and more comprehensive recognition of the manager’s discretion in the draft RTSs and guidelines and for that purpose:
2. Managers should not be obliged to consider at least one anti-dilution tool and at least one quantitative LMT;
3. There should be no definition or list of “exceptional circumstances” that justify activation of suspensions and side pockets;
4. There should be no fixed minimum activation thresholds established by ESMA;
5. Once thresholds set by the manager are exceeded, they should not lead to obligatory automatic activation;
6. There should be no obligation to simultaneously suspend subscriptions, redemptions and repurchases.
7. While managers should consider whether funds under their management are exposed to implicit transaction costs, including material market impact, they should only incorporate these costs into their anti-dilution frameworks when appropriate and only on a best effort basis.
8. Disclosures to investors should be limited and help them understand these mechanisms and their implications. They should not include activation thresholds (as well as other conditions for activation/deactivation), as this information could be abused by sophisticated investors.

As on previous occasions, we would also like to highlight that the timing of summer holidays does not work in favour of the outcome of the consultations. It is very challenging when it comes to gathering detailed feedback and analysis, in particular on topics as technical as these. Despite what is being highlighted as most helpful feedback for ESMA, such arrangements for the consultation process impede due consideration being given to all the details. Therefore, we might be providing ESMA with additional analysis and input on the issues raised in the Consultation Paper and we would welcome the possibility to remain in an ongoing dialogue with the authority.

**Response to question no. 1**

Firstly, EFAMA would like to highlight that selection of LMTs is primarily the responsibility of the manager who is best placed to take into account all elements that impact fund’s liquidity. This is why mandates provided for in Art. 16(2h) of AIFMD and Art. 18a(4) of UCITSD clearly state that “*Those guidelines shall recognise that the primary responsibility for risk management remains with AFIMs* (UCITS respectively)”. We are of the opinion that the principle of manager’s discretion should be more broadly recognised in the entire text of the draft Guidelines.

Bearing that in mind, we are of the opinion that exhaustive and cumulative list of elements that should be considered in selection of the LMTs, included in paragraph 17, goes against that principle. Not all of the listed criteria will be equally relevant for all funds, and there might be other elements that should be taken into account. Therefore if any list was to be provided in the Guidelines it should be non-exhaustive and exemplary.

In regards to elements listed in paragraph 17, that are not included in Art. 16(2b) of AIFMD and Art. 18a(2) UCITSD, we would like to highlight the following issues:

1. We would disagree that results of the Liquidity Stress Testing (LST), included under point (e), should be obligatory taken into account when selecting LMTs. The manager would consider the liquidity of specific asset classes as well as risks. Conducting a detailed LST is therefore not necessary in this case, in particular for newly established funds which would not have the detailed position data. LSTs could be relevant at best for funds that already exist, for the purpose of proper calibration and activation of LMTs.
2. As regards “*characteristics of its investor base*”, included under point (d), we would agree that the concentration of investor base could be an important factor of the liquidity of the fund to consider, particularly in the retail sector. What should however be also recognised is that due to the common use of intermediaries in the distribution of funds, involving use of nominee structures and omnibus accounts, there are limits to managers’ full visibility of the end investors. The management company can only obtain information such as the number/volume of units/shares subscribed, generic characteristics of investors as either retail or institutional, without further data. Therefore we would suggest for point (d) to be limited to the “*concentrated investor base*” and only where such information is available.
3. We agree that the fund’s distribution policy, included under point (e), may be taken into account in some cases, would however not always be an important factor for all funds.

There are also other elements that could also play an important role in selecting best LMTs for the particular fund, for example:

1. Operational complexity and risks of LMTs and how they align with the systems sophistication, operational structures and governance mechanisms of managers, as well as their delegates and other providers.
2. Cost implications for investors, as well as total expense rations.
3. Availability of other LMTs that are not listed in Annex V to AIFMD or Annex IIA to UCITSD, as paragraph 18 of the Guidelines specifically mentions that "*managers have discretion to select more LMTs as well as additional liquidity measures*". Use of e.g. borrowing, credit lines or extension of settlement period could be also taken into account and impact the choice of LMTs.
4. Valuation policy of the funds, including frequency, methods and sources of valuation.
5. Structural characteristics such as for example: Exchange Traded Funds (ETFs), synthetic or physical index funds, master-feeders etc.
6. Matching local market practice and investors’ specific appetites, as well as local regulatory constraints that may be applicable (e.g. on certain markets there is a common practice to use anti-dilution levies, while on others swing pricing is preferred).

We would like to take this question as an opportunity to highlight a more general issue regarding the scope of the Guidelines. As Art. 16(2c) of AIFMD refers to AIFs that are open-ended, it should be acknowledged that there are still differences among Member States on how the definition of open-ended AIFs is being interpreted. Also in this case sufficient flexibility should be given to managers to analyse redemption policy of a particular fund to conclude whether it complies with the definition of open-ended AIFs established in the Delegated Regulation 694/2014[[5]](#footnote-6), and as a consequence whether these Guidelines would be applicable to them.

Also in the case of AIFs that are not publicly offered (certain AIFs with restricted number of investors), they should not be covered by this RTS as in this case the redemption procedure is agreed directly between the investor and the fund manager.

<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 of the fund should not necessarily and always be considered in the selection of the LMTs. There is no requirement to establish such policy under the provisions of AIFMD and UCITSD and it is also not a part of the liquidity management system.

It may, however, be relevant to consider how the distribution of a particular fund is organised as for example (i) in case of funds that are distributed to third countries particular LMT might not be allowed or known, or (ii) operational abilities of the distributor may impact practical choice of suitable LMTs.

In particular in the case of anti-dilution levies, distribution partners are not involved in its application to the fund’s NAV. One of the ways to arrange this process, when the distribution is provided by third parties, is for the managers rely on service providers. These service providers appointed by the management company are in charge of processing orders by centralising them and maintaining an order book for every fund NAV. The application of any anti-dilution calculation to the fund NAV is also operated by the service providers and not by the distributor which is located at the end of the distribution channel. The operational capacity of these service providers to cope with the application of some types of LMTs can have an impact on their selection. This is part of the operational risk assessment of the management company. Typically, when the service provider is not able to manage a specific LMT, this tool will not be selected by the fund manager.

<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>

EFAMA is strongly of the opinion that managers should not be constrained to choose at least one anti-dilution tool (ADT) and at least one quantitative LMT.

Ensuring sufficient flexibility for managers to choose LMTs most suitable for a particular fund is essential to provide them with appropriate solutions that would allow to address any future issues with the fund’s liquidity, both in normal and market stressed conditions. For that reason mandates given to ESMA in Art. 16(2h) of AIFMD and Art. 18a(4) of UCITSD clearly highlight the primary responsibility of the manager for liquidity risk management. This should be comprehensively recognised throughout the Guidelines.

The requirement suggested by ESMA was also not included in the Level 1 rules of the amending Directive 2024/927. On the contrary, the new Art. 16(2b) of AIFMD and Art. 18a(2) of UCITSD clearly state that the 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). In our opinion, an a priori expectation to choose at least one ADT and at least one quantitative LMT, irrespective of the specificities of particular fund, would clearly limit that choice. First of all, it would limit the number of possible combinations that managers could create from available ADTs and quantitative LMTs as no two tools from the same category could be combined. This choice would be limited even further as suspensions, which ESMA qualifies as quantitative LMT, are regulated separately in both directives and cannot be selected by managers as one of the two LMTs that they have to choose. Furthermore, ESMA’s approach would highly limit the possibility to use redemptions in kind (listed under point 8 of annexes to both directives) as they were classified by ESMA as “other LMTs” and it is not clear how this type of LMTs could fit with ADTs and quantitative ones.

Moreover, ADTs in many cases would not be best suited for certain funds:

1. Many open-ended funds (OEF) rarely face large outflows and therefore do not face the risk of material dilution[[6]](#footnote-7). Therefore they should be allowed to consider advantages and disadvantages of ADTs and choose the best solution based on their specific situation, including for example their investor base and other available LMTs.
2. ADTs might also be challenging to implement for funds-of-funds (FoF) as it would not be possible to combine the target fund swing factor in order to calculate the global swing factor for the entire FoF.
3. In case of funds mainly investing in illiquid assets, such as real estate and private equity funds, it might also be challenging to calibrate certain ADTs. These funds do not have bid-ask spreads available, which are otherwise crucial for estimating the cost of liquidity in certain ADTs. These difficulties were recognised by the International Organisation of Securities Commissions (IOSCO) in its Guidance on ADTs[[7]](#footnote-8).
4. ADTs might also not be always the right choice for funds invested in very liquid asset classes. In case of e.g. large cap developed equity fund the potential for dilution is minimal. Swing pricing or other ADT adopted for such fund would rarely be activated and if so with a minimal impact, while costs of its adoption would likely outweigh any benefits.
5. Also in the case of ETFs ADTs would not be suitable due to structural features and liquidity management practices of these funds including: (i) investors trade ETF shares on the secondary market at market-determined prices as opposed to unlisted open-ended funds where investors transact directly with the CIS at NAV price, (ii) only the Authorised Participant transacts directly with the ETF in primary market at NAV price, (iii) primary market transactions of ETFs are typically “in kind” and as such they incur fewer costs as they do not include liquidation of the assets under potentially unfavourable market conditions, (iv) as these redemptions in kind usually reflect the ETFs portfolio they do not significantly affect its composition, and (v) in case the ETF purchases securities on the market in exchange for a redemption that they will do in reverse, the costs are typically passed to the Authorised Participant. These specificities were also recognised by IOSCO which excluded ETFs from the application of its Guidance on ADTs[[8]](#footnote-9).
6. Similarly money market funds (MMFs) tend to meet redemption requests from natural liquidity, i.e. by receiving proceeds from maturing short-term securities. Although secondary markets exist in short-term funding instruments, in some stressed market conditions the liquidity may be binary. i.e. market makers are either making quotes or they are not. In this instance, ADTs become irrelevant and other LMTs may need to be invoked instead. Hence, why MMFs are permitted to adopt only one LMT.

On the other hand, there are examples of funds where selection of two ADTs would be most suitable, with no addition of quantitative LMTs. For example, if the fund’s investor base consists of regulated financial entities that themselves have high liquidity requirements imposed on them, it should be possible to relay exclusively on ADTs. This would allow to avoid affecting their liquidity from a regulatory standpoint. It was also recognised by IOSCO that there may be circumstances when a fund that is using already dual pricing, could use another ADT if 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*.”[[9]](#footnote-10)

While we do not question that there are benefits to the use of ADTs, we would also like to underline that their implementation is demanding and expensive. It usually results in higher operational risks notably due to the liquidity cost assessment. As we explain in more detail in response to question no. 27, the estimates of implicit transaction costs (including) significant market impact, can not be calculated or modelled with a high degree of precision. A wrong assessment can lead to a NAV error which in turn can potentially lead to a loss for the fund’s investors and consequently triggering a remediation procedure. There can be also circumstances where an ADT could be implemented and the fee/adjustment/levy would remain at 0 level, with the ability to rise to a pre-determined thresholds.

We would also question here the suggestion made by ESMA under Paragraph 19 of Section 6.5.1. of the draft Guidelines that ADTs could be chosen to be used under normal market conditions, and quantitative LMTs under stressed market conditions. We are of the opinion that such link is not necessarily true and such views could further limit the discretion of the manager to choose the best option for each particular fund. ADTs can be well suited also under stressed market conditions (e.g. swing pricing in high yield or convertible bond markets), as well as the use of redemption gates, for example, can be useful under normal market conditions, when the fund is facing unexpectedly big redemptions.

We would also like to take the opportunity of this question to highlight that the choice of LMTs that could be implemented for a particular fund can become quite limited. As mentioned above, for some funds such as real estate and private equity ADTs may be challenging. Therefore it is important to clarify that selection/use of LMTs listed in Annex V to AIFMD and Annex IIA of UCITSD should not prevent managers from the application of other tools. There can be both, solutions that have been previously developed in Member States (e.g. borrowing, credit lines or extension of settlement period), as well as contractually designed and outlined in the fund's documentation and agreed by the investors. Specifically, the suspensions mentioned in the annexes should not prevent the use of other tools, such as contractually agreed deferrals in executing redemption orders or contractually agreed suspensions, particularly for funds investing in less liquid assets. Similarly, the redemption gates described in the annexes should not prevent the use of permanent gates for these types of funds, which is a mechanism designed to permanently restrict redemptions beyond a certain NAV threshold. Therefore we strongly agree with the general consideration from ESMA in paragraph 21 and 22 of the draft RTSs and paragraph 18 of the draft Guidelines, that “*managers may also decide to use other tools than the ones referred to in the AIFMD and UCITS Directive to manage the liquidity of the fund they manage*”. However, we also believe that these possibilities should be better recognised in paragraph 13 of the Guidelines which notes that “*LMTs should be considered as the essential elements of the fund’s overall liquidity*”.

<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>

As mentioned in the Consultation Paper, obligations of depositaries are already established in the delegated regulations under UCITSD and AIFMD, including a comprehensive and regular review of the manager’s procedures and processes. These include risk management in general and liquidity risk management, with the management of LMTs also being covered. Therefore, we do not see a need for the establishment of further obligations in these regards, in line with paragraph 36 of the Consultation Paper. We also do not see a need for specific guidance to be developed by ESMA on depositary duties in particular as this does not seem to be covered by the scope of the mandate given to ESMA under the recent UCITSD and AIFMD review.

<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>

As a preliminary comment, EFAMA welcomes the recognition of the principle of proportionality in paragraph 26 of Section 6.5.2. of the Guidelines, which requires the LMT policy to be adapted to “*nature, scale, complexity and liquidity profile of the fund(s)*”. However, we also believe that some elements included on the list are too far reaching, especially that paragraph 28 requires all listed elements to be covered by the LMT policy.

While we agree that criteria for selection, activation/deactivation and relevant methodology of these processes should be documented and embedded in the fund’s liquidity risk management framework, we question the necessity of some of the other elements on the list. For example, record keeping of “*relevant data concerning the funds, investors, historical flows, results of LSTs and market data*” as mentioned under point (o)(ii) seems too broad and unclear. Especially that recordkeeping on activation/deactivation and calibration on LMTs are already mentioned under point (i). Similarly, while we see possible benefits in thinking through in advance ways to efficiently communicate with investors, we would question the list of examples that are provided. Especially in view of our comments on disclosures to investors, mentioned below.

We would also like to highlight that the specific elements of the LMT policy that are expected in case ADTs are selected, according to paragraph 29 of Section 6.5.2. of the Guidelines, should be documented on best-effort basis. It is important in our view to include some level of flexibility here, as it may not always be possible to anticipate all costs.

Moreover, the frequency of the review every six months would be at odds with the current practices of the national competent authorities (NCAs). Conducting this review every six months would create additional burden while we do not see neither necessity for the higher frequency nor benefits. In particular that such policies are usually updated also according to lessons learned from past events. We would suggest for the frequency to be extended to one year in line with current annual reviews.

<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>

EFAMA is of the opinion that there are merits in disclosing some information on the LMTs to investors in a descriptive fashion and with the use of a simple language. The aim should be primarily to help them understand how these mechanisms work and what could be their potential impact on the liquidity of the fund and clients’ investments, as regards redemption rights for example. We respond to these issues in more detail under our response to question no. 44 below.

As the LMT policy is part of the internal governance elements of the fund manager, it might not be appropriate for it to be directly disclosed to investors. Technical and specific, quantitative information should be avoided in order to prevent (i) lack of understanding among retail investors, and (ii) possible arbitrage and incorrect market practices executed by sophisticated investors. We are also of the opinion that operational details such as (i) internal procedures, including the ones on reporting and escalation, (ii) assumptions about the availability of data, (iii) routine checks, back testing etc. won’t bring any added value to investors, and to the contrary they would make the important messages less visible.

<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>

EFAMA strongly disagrees with the attempt to establish a definition of “exceptional circumstances” under which suspensions could be activated. The same goes for the attempt to provide a list of examples of such circumstances, even if these are to be non-exhaustive ones.

The exceptional circumstances that justify the activation of suspensions are usually difficult, if not impossible, to predict in advance. Moreover, it would depend on the investment strategy, investor base or dealing frequency what would constitute exceptional circumstances for a particular fund. Established definition would give little comfort to the managers and could in fact limit their ability to properly and timely react to circumstances that would justify the activation of suspensions. The notion of “unforeseen events” carries also the danger that extreme situations that may have been foreseen or foreseeable would be excluded or ambiguity could arise. In case of a list, even if not understood as exhaustive one, it could easily become a benchmark to which all events will be compared, which could also limit managers ability to use suspensions.

It should be also noted that, due to far-reaching possible consequences, that include damaging the relationship with investors, this option is always very carefully analysed by the manager before it is executed. Usually, before such decision is made, consultations occur with the relevant NCA, where inter alia the authority can assess the rationale provided by the manager that such action is justified.

We would also question whether in fact the mandate for ESMA to issue these Guidelines goes as far as providing definition of the “exceptional cases” included in Art. 16(2c) of AIFMD and Art. 84(2) of UCITS. This has not been directly mentioned in the mandate clause, contrary to side pockets in which case both Art. 16(2h) and 18a(4) of UCITS require the Guidelines to include “*indications as to circumstances in which side pockets (...) can be activated*”.

<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>

As already mentioned in our response to question no. 7, the activation of suspensions is always carefully considered by managers due to potential significant repercussions, both reputational, as well as financial and operational. For the same reasons, we think it is beneficial for the LMT plan to clarify what elements manager should take into consideration and think through upfront.

It should be, however, also kept in mind that these decisions are taken in circumstances of a crisis management. It is therefore also important that, as provided in the Guidelines, the LMT plan can be formalised also immediately after the activation of this LMT. It is also key to note that the draft Guidelines specify that elements listed under paragraph 32 should be included “where relevant”, which according to our understanding would allow for the components of the LMT plan to be limited to elements relevant in each, particular situation.

As regards the specific elements of the plan, we would like to highlight that elements such as a simulation of the liquidity profile (point (d)) and an assessment of the impact on investors (point (e)) might be difficult to perform in advance and in a precise way. The same goes for a tentative duration as well as the timeline to resume normal operations (point (c)) which are dependent on external circumstances including those that justified the suspension in the first place. A suspension may be initially intended as temporary but its duration may have to be prolonged if the market stress continues (e.g. Russian invasion on Ukraine). Additionally, point (l) might be difficult to asses at the time of the establishment of the LMT plan, as it might be too early to anticipate to what extent the situation could return to normal conditions (e.g. unpredictable duration of the COVID-19 pandemic).

Even though it is not mentioned in the draft Guidelines at this point, we would like to caution against a requirement to disclose the LMT plan. We understand that under point (f) also communication of the situation to investors, stakeholders, service providers and NCAs should be thought through, but it shouldn’t be understood as communication of the entire plan as this could lead to possible arbitrage. In particular, details such as a remediation plan and foreseen transactions on the market should not be disclosed.

<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>

We disagree with any fixed threshold (as mentioned in paragraph 33 under point (a)) that would cause the activation of the suspensions. We believe that particularly in the case of this LMT, it is impossible to determine such threshold upfront and, indeed, if implemented it might end up with a mechanistic approach. Rather, the manager could non-exhaustively list external events and market conditions that should initiate the discussion around activating suspensions and that should be taken into account in the manager’s decision making process.

Therefore, we would suggest following change in the proposed wording in point (a) in paragraph 33 of Section 6.5.3.1. of the draft Guidelines: “*a) ~~determining the activation threshold for a suspension. This should also take into account, legal and regulatory requirements.~~* ***monitoring of external events and market conditions that should initiate the discussion around activating suspensions.*** *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*.”

<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>

Selection of redemption gates could be considered for nearly all funds and it is crucial to recognise that the manager is best suited to make the right choice, taking into account also practical implications that can be associated with particular LMT. In reference to what is mentioned in paragraph 34 of the Guidelines, we would also like to highlight that redemption gates are being used by less liquid funds in the normal market conditions, and not only under stressed ones and the Guidelines should not limit this possibility. We question also the approach included in paragraph 37 of the Guidelines as it unduly restricts the use of redemption gates for funds marketed to retail investors, without any clear justification.

Therefore we would also question the appropriateness of the specific recommendations being given in paragraph 35, section 6.5.3.2. of the draft Guidelines referring to specific types of funds. As regards point (a)(i) it could be raised that redemption gates could also be considered for publicly offered funds where the (high) concentration of the investor base is suspected, yet cannot be known in detail. On the contrary, we would disagree with the example given under point (a)(iii) referring to real estate and private equity funds. Firstly, we are of the opinion that broader wording applicable to all types of funds should be maintained, so as not to limit the manager’s discretion in selecting the most relevant tool depending on the specificities of a particular fund. Additionally, private equity and real estate funds can vary in their characteristics, and for some of them redemption gates may not be appropriate.

To allow for more flexibility in applying redemption gates to AIFs, we would suggest deleting paragraph 35 of Section 6.5.3.2. of the draft Guidelines or amending it as follows:

*“*35. *The selection of redemption gates:*

*a) should be considered especially by:*

*i) managers of funds with a strongly concentrated investor base,* ***even only suspected,*** *where a redemption of a significant size could cause liquidity issues to the fund and affect investors (particularly the remaining ones);*

*ii) managers of funds whose assets might become less liquid during stressed market conditions and/or that might take longer time to sell;*

*~~iii) AIFMs managing AIFs whose assets might be structurally illiquid/hard to liquidate (e.g.: Real Estate (RE) funds and/or Private Equity (PE) funds).~~*

*b) could be less suited in case of valuation issues, in which case the manager may consider the use of other LMTs (e.g.: suspensions of subscriptions, repurchases and redemptions, together with the suspension of the NAV).”*

We would also note that the European Long Term Investment Fund (ELTIF) Delegated Regulation will contain more precise rules relating to the calibration of the maximum percentage of UCITS-eligible assets which can be used to meet redemptions which apply specifically to ELTIFs.

<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>

When it comes to the automatic activation, please see our response to question no. 9 of the consultation paper on the draft RTSs.

As regards the methodology for the setting of the activation threshold for redemption gates, we would point out that we are not in favour of a unified methodology being imposed on all market participants. Managers should have the flexibility to choose the best approach according to the specificities of the fund, its investors, asset classes. Rather than that principles around proper governance in these regards would be preferred.

In terms of how the threshold could be calculated for different types of funds, please see also our response to question no. 8 of the consultation paper on the draft RTSs.

<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>

EFAMA appreciates and agrees with the flexibility being given to managers over the use of redemption gates under paragraph 40, section 6.5.3.2. of the Guidelines.

In particular the maximum duration for which a redemption gate is activated can differ and should not be restricted as the manager should be able to wait until sufficient liquidity is created as in most cases this could not be determined upfront. These circumstances will differ from case to case. If this LMT is being activated to manage an unexpected large redemption from one investor it will most likely require different amount of time to restore necessary liquidity in comparison to cases when redemption gates are imposed due to general market stress and possible run on the fund. The same goes for the number of times when redemption gates are being used.

<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>

We would like to refer to our response to question no. 11.

We are of the opinion that historical redemption requests and LSTs are only examples for possible circumstances and the calibration shouldn’t be based solely on them. As they may change over time, what may be included is the estimation of future liquidity conditions and their impact on the portfolios. However, at the same time future liquid conditions can be only anticipated to some extent. As a result we would caution against Guidelines being too prescriptive in these regards. Manager should have sufficient flexibility to create this nuanced process according to the factors that he deems relevant to the case of particular fund (including size of flows and predictions for their future outlook, number of redeeming investors, market conditions etc.).

<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>

As mentioned in Art. 16(2h) of AIFMD and Art, 18a(4) of UCITS, the primary responsibility for liquidity risk management remains with the manager and this principle should be comprehensively recognised in the Guidelines. We support this approach and believe that any fixed minimum activation thresholds would clearly go against such principle, and as such against the provisions of both directives. Moreover, it would also be at odds with IOSCO’s Guidance on ADTs which refers to anti-dilution tools, but we believe that as regards the thresholds the same is true for quantitative LMTs.

Therefore, EFAMA strongly opposes any harmonised fixed minimum activation thresholds being imposed by ESMA.

Moreover, a fixed minimum activation threshold would not be suited for all funds due to different investment strategies, fund types, asset classes and investor profiles. A highly liquid UCITS fund with primarily retail clients will not apply redemption gates at the same threshold as a less liquid real estate fund with highly concentrated institutional investor base. It would actually create an increased liquidity pressure on funds in stressed market conditions. Bearing in mind that one of the goals of proper liquidity management is to discourage investors from submitting their redemption orders sooner than necessary to avoid the implementation of the LMT, we believe that fixed minimum thresholds would be counterproductive. They would be known to the investors via the text of the Guidelines and could in fact be used by sophisticated investors to obtain an unfair advantage.

There are observed examples in some Member States, where the NCA communicated expected thresholds to managers. This is however usually accompanied with the discretion to the manager that allows to postpone the activation even if the threshold was exceeded. On the contrary there can be also circumstances where it would be actually justified to activate the redemption gate sooner, however due to established threshold it would not be possible.

Examples were also observed where fixed minimum thresholds were introduced for redemption gates bound to specific circumstances. First of all, it has proven that the low level of the threshold has been excessively easy to trigger. Second of all, it created a number of operational difficulties, for example for UCITS funds with daily redemptions. Notwithstanding the fact that such circumstances go exactly against the principles laid out for the use of LMTs, and this one in particular.

<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>

Please see our response to question no. 14.

<ESMA\_QUESTION\_GLMT\_15>

a) at 5% for daily net redemptions; and

<ESMA\_QUESTION\_GLMT\_0>

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

<ESMA\_QUESTION\_GLMT\_0>

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<ESMA\_QUESTION\_GLMT\_0>

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>

In general we agree with the criteria for the selection of the extension of notice period, however we would suggest a few changes in paragraph 41 and 42 in Section 6.5.3.3. to allow for more flexibility as to when this LMT should be selected.

We would propose the following change in the wording of paragraph 41: “*41. As it creates a time buffer to sell the underlying assets, the selection of extension of notice periods should be ~~available to~~* ***considered for*** *all funds but is recommended for funds whose liquidity can deteriorate quickly in times of stress*.”.

In case of paragraph 42 we are of the opinion that real estate and private equity funds should not be explicitly mentioned as this could be understood as an indication narrowing the selection criteria. As manager is best placed to select LMTs most relevant to the specificities of a particular fund, his discretion should not be limited: “*42.In light of the additional time that may be needed in order to liquidate the portfolio, the selection of the extension of notice periods is recommended for AIFs invested in less liquid assets. ~~and, particularly, for RE and PE funds which should already have in place an appropriate notice period that is in line with the level of liquidity of their assets under normal market conditions~~.*”

We would also like to highlight that there can be correlation between the length of notice period and dealing frequency of the fund (in case of AIFs), which will be decided by the manager based on a plethora of factors including: asset class, investor concentration, expected investor base, investment strategy, expected liquidity profile etc.

<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>

In these regards, we would also like to highlight that there are no regulatory requirements as to the duration of both “*minimum period that is appropriate to the fund*” and the duration of the extension of the notice period. The time that would need to be added to the minimum period for the purpose of activating extended notice periods would depend, among others, on the underlying assets in the fund and the length of the notice period that was already provided. If the underlying assets are of a less liquid nature, the period of the extension would most likely have to be longer. For real estate and private equity funds there is also a variety of strategies observed and one-size-fits-all approach would not be suitable. There can also be cases where the manager would set a long notice period from the beginning (up to even as long as twelve months) and this could already be understood as a remedy to protecting remaining investors and reducing the risk of fire sales and first mover advantage i.e. providing what the LMTs are aiming for. This example has also been recognised by IOSCO in its Guidance on ADTs[[10]](#footnote-11).

However, we believe that this analysis is always multileveled and therefore a flexible approach available to the manager is key. Therefore, we are against any fixed minimum notice periods being established for real estate or private equity funds, or any others.

<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>

We are strongly against standard or minimum extended notice periods being established. Likewise we do not believe that it should be provided that the extension of the notice period should be proportionate to the length of the initial notice period of the fund. Manager’s discretion is key also in this regard and he should be allowed to analyse this issue case-by-case and taking into account all necessary circumstances.

<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>

We agree that activation of this LMT could be considered both under normal and stressed market conditions. It should be, however, born in mind that in the end the decision whether to activate extension of notice period should be taken by the manager based on the analysis of specific circumstances of particular fund.

<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>

We are in favour of sufficient flexibility being given to the manager when applying this LMT as in most cases he might not be in the position to predict upfront when the circumstances that caused the need to extend the notice period will cease to exist. There may be cases when he will be able to extend the notice period for a pre-defined period of time, however he should not be obliged to do so in each particular case.

<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>

We broadly agree with the criteria guiding the opportunity of in kind redemptions for certain types funds.

However, one important consideration in this regard relates to ETFs, given the specific wording of the exemption provided under the new Art. 18a (2). Accordingly, this article introduces a derogation for an in kind redemption to be processed pro rata only if (i) the UCITS is marketed solely to professional investors, or (ii) where the UCITS is structured as an ETF. While the rationale for the latter exemption remains unclear, we stress that:

1. ETF investors – whether professional or retail – transact their shares on a secondary market where liquidity is guaranteed by several specialised market-making firms. Investors have therefore no direct recourse to the ETF issuer (i.e. the management company sponsoring a given ETF) and therefore cannot buy or sell their shares vis-à-vis the latter. Exceptionally, ESMA’s 2014 [Guidelines on ETFs and other UCITS issues](https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2014-0011-01-00_en_0.pdf) do offer investors an opportunity to redeem directly with the ETF, but the related operational complexities would de facto make such process extremely costly and complicated, if not prohibitive for retail investors in particular; and
2. Regarding the “in kind” exchange of an ETF’s portfolio components versus blocks of ETF shares underpinning an ETF’s structural create/redeem mechanism – involving the ETF issuer on the one hand and a specialised dealer (commonly known as the “Authorised Participant”) on the other – this feature should be exempted from the broader “redemption in kind” notion proper of the present ESMA consultations. As create/redeem transactions lie at the heart of an ETF’s constitution, are crucial to the underlying arbitrage mechanism[[11]](#footnote-12) and only involve two very specific professional actors, none of which can been considered as an “investor” in the directive’s sense, it would be sensible to exclude such transactions from the scope of the above Art. 18a provision entirely. Moreover, such transactions would also not meet the definition and rationale of a liquidity management tool under recital (53) of the amended UCITS directive, i.e. “*To enable UCITS established in any Member State to deal with redemption pressures under stressed market conditions (...)*”. Being an intimate part of an ETF’s ordinary operation, create/redeem transactions in fact occur regardless of market conditions.

As noted by both the Financial Stability Board (FSB) and the IOSCO in their respective guidance and recommendations of December 2023, ETFs have an operational structure which is distinct from other UCITS. Consequently, both standard setters explicitly state that their respective guidance/recommendations on the application of LMTs are not applicable to ETFs[[12]](#footnote-13).

<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>

The additional requirement to involve an independent third party to perform additional valuation of the assets to be redeemed (paragraph 48 of Section 6.5.3.4.) is an additional and, in our view, an unjustified requirement. Redemptions in kind 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 we do not see a need for this additional element which introduces extra costs.

<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>

We understand that it is the standard practice to activate redemptions in kind on the NAV calculation date, which also supports our argument above that valuation by an independent third party would be an additional burden. In order to avoid any doubt, we would like to highlight here that calculation of NAV may take place more frequently than dealing dates of the fund. There are also cases, e.g. real estate funds, where the valuation will take place less often than fund’s dealing dates, which is an accepted practice in line with the specificities of the fund’s underlying assets.

Bearing those differences in mind, we are of the opinion that flexibility should be provided to the manager to activate redemptions in kind, in order to adapt to market’s conditions.

<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>

EFAMA is of the opinion that these criteria are not covered by the mandates provided for ESMA in AIFMD and UCITSD.

<ESMA\_QUESTION\_GLMT\_24>

1. How should redemptions in kind be calibrated?

<ESMA\_QUESTION\_GLMT\_25>

Please see our responses to questions above.

<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>

We are of the opinion that, if done properly by the manager, the simultaneous activation of two ADTs should not come with additional risks and could be beneficial to the investors. In fact, there are examples of funds where selection of two ADTs would be most suitable, with no addition of quantitative LMT. For that please see our response to question no. 3.

What is more, in case of funds where different share classes are assigned to different distributors (e.g. insurance companies), for some of them swing pricing would be more suitable, and in other cases anti-dilution levy (ADL). This is the case because ADL impacts more entities further in the value chain (e.g. third party distributors, centralizing agent, custodian, transfer agent) and is harder to manage. In case of swing pricing it is mainly the fund administrator that is impacted.

This example also proves that selection of two tools does not mean that they must be activated simultaneously.

Therefore possibility to select 2 ADTs should not be prohibited by the Guidelines as this could limit the manager’s discretion and could limit his choice for the best approach suitable for particular fund.

<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>

We would like to comment in particular on the requirement to include implicit transaction costs, together with any significant market impact, in the estimations of the cost of liquidity, as mentioned in point (a) in paragraph 56 of Section 6.5.4. of the draft Guidelines. While we agree that managers should consider whether funds under their management are exposed to a material market impact under both normal and stressed market conditions, we do not believe that they should be systematically required to incorporate this implicit transaction cost into their anti-dilution frameworks.

These estimates can not be calculated or modelled with a high degree of precision, particularly that there is no sufficient and reliable data available, which can be the case for example for fixed income securities. When it is challenging to obtain full transparency of trading volumes, participation rates etc. managers should not be expected to guess how the market will behave, and in particular in stressed conditions. Reliance on historical data can be helpful to some extent, but nevertheless it requires assessments to be made in connection to the particular stakeholder. Any model to estimate market impact is subject to limitations and results are highly inaccurate at the single trade level. For example, “arrival price methodology” is subject to many more variables other than the price impact of the own orders of a individual manager. Furthermore, it only works for equity orders traded with broker on an agency basis.

Moreover, costs associated with these calculations may in fact outweigh the actual transaction costs borne by the fund. It would be counterproductive and against the interest of investors to add this additional cost to the fund. For highly liquid funds, any market impact will be de minimis. In cases of some asset classes liquidity costs would be already incorporated in the bid-ask spread quoted by the broker dealer. In such case there is no need and in fact no way to calculate costs of market impact.

Therefore, managers should not be obliged to estimate the market impact when they have sufficient guarantees that their trades would not result in any material impact on pricing. For instance, this could be the case when flow patterns in a fund indicate that, even under market stress conditions, trade sizes are well below the market participation rate (that is the tradable volume under which there is no significant impact on prices), or when an OEF (such as an institutional AIF or a real estate fund) has the possibility to activate a quantity-based LMT, such as a notice period or a gate, which would, as a positive side effect, remove the risk of a market impact altogether.

We would also like to highlight that these issues were, at least to some extent, recognised by IOSCO in its Guidance on ADTs. It clearly acknowledges that there can be cases when information sources used to determine bid-ask spread can become “*less reliable or unavailable, particularly in stressed market conditions*”, as well as that for significant market impact “*there could be a degree of uncertainty for the market impact estimated despite the best efforts made by the responsible entities*.”. Therefore it specifically says that “*As bid-ask spreads and market impact cannot be calculated definitively ex-ante, the overall cost of liquidity to be incorporated in anti-dilution LMTs is expected to be estimated on a best-effort basis. Under normal market conditions, the cost of liquidity could usually be estimated with a higher level of confidence. Under stressed market conditions, transaction costs may become more unpredictable and econometric models may not be fit for purpose*.”.

We are of the opinion that these conditions should be recognised in the draft Guidelines and it should be clearly stated in paragraph 56 of Section 6.5.4. of the Guidelines that managers should consider whether funds under their management are exposed to a implicit transaction costs, including material market impact, however they should only incorporate these costs into their anti-dilution frameworks when appropriate and only on a best effort basis.

<ESMA\_QUESTION\_GLMT\_27>

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

<ESMA\_QUESTION\_GLMT\_28>

Please see our response to questions no. 3, 26 and 27.

In line with our comments on disclosures to investors (please see our response to question no. 44) we would also caution against the disclosure of range of adjustments, as mentioned in paragraph 57 of the draft Guidelines.

<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>

We are of the opinion that selection criteria should apply universally to all funds and any reference to specific investment strategies, like real estate for example, should be avoided. It is the manager who is best placed to look at the specificities of a particular fund (which are not limited to the asset classes that the fund invests in) and decide which LMT is best suited for it. Therefore, we would suggest the following changes in paragraph 61 of Section 6.5.4.1. of the draft Guidelines:

“*61. Managers may consider the selection of redemption fees for all types of funds, but redemption fees may be most applicable to funds:*

* 1. *that invest in assets which have fixed/transparent/foreseeable transaction costs~~, such as RE agency fees or notary fees,~~ and / or that have low-variation transaction costs ~~(e.g.: fixed taxes and levies on RE transactions)~~;*
  2. *that are AIFs invested in less liquid assets where other ADTs, such as swing pricing, might be challenging or impossible to implement ~~(e.g.: RE assets)~~ due to infrequent and limited pricing sources;*
  3. *that invest in assets that have low-variation transaction costs; and*
  4. *whose underlying assets do not have very frequent and reliable pricing sources available from various different trading venues ~~(as opposed to other assets, e.g. equities)~~*.”

<ESMA\_QUESTION\_GLMT\_29>

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

<ESMA\_QUESTION\_GLMT\_30>

We are of the opinion that it is important to provide managers with discretion as regards to the activation of redemption fees, as there might be circumstances where they would need to be applied even without any set activation thresholds. Therefore we appreciate that paragraph 62, section 6.5.4.1. of the draft Guidelines specifically says that “*managers may set activation threshold*”.

What could be considered in setting the activation threshold are notably: size of the redemption, impact of the costs on remaining investors, minimum time invested in the fund, redemptions made outside of the liquidity windows.

<ESMA\_QUESTION\_GLMT\_30>

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

<ESMA\_QUESTION\_GLMT\_31>

Please see our response to question no. 27 as regards the application of implicit transaction costs, including significant market impact. In line with the argumentation presented therein, we appreciate that paragraph 63 of Section 6.5.4.1. of the draft Guidelines clearly states for these costs to be covered “*where applicable*” and “*where appropriate*”.

We would suggest a slight change in paragraph 63 of Section 6.5.4.1. of the draft Guidelines that would allow for a more logical order:

“*63. In the calibration of redemption fees, managers should apply a methodology that:*

***a) if static, it allows for adjustment, when required to reflect the higher cost of liquidity or stressed market conditions;***

*~~a)~~****b)******if not covered by point a),*** *ensures the coverage of the cost of liquidity, including estimated explicit and implicit costs where applicable (e.g.: mapping what the cost of liquidity would be within predetermined redemption thresholds and charge those costs to the redemption fee, where appropriate);*

*~~b) if static, it allows for adjustment, when required to reflect the higher cost of liquidity or stressed market conditions;~~*

*c) is disclosed in the fund documentation and prospectus to ensure appropriate information of investors*.”

<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>

We would like to question the last sentence included in paragraph 65, section 6.5.4.2. of the draft Guidelines, which mentions valuation uncertainty as a factor which would speak against using swing pricing. The important factors in the use of ADTs is the ability to estimate the transaction costs, and this will not necessarily be impacted by uncertain valuations.

What should be, however, highlighted here is that swing pricing is not suited for MMFs and ETFs. In case of MMFs, it is important to note that these funds typically meet redemptions through cash balances and only in the case where redemption orders would exceed these balances, the fund would be in need to sell assets on the secondary market. As MMF investors value same-day liquidity, swing pricing might not allow the fund to deal on a intraday basis. Also, bouts of market volatility may render swing pricing difficult to operate. Instead, redemption fees are more suitable. In the case of ETFs, adjustments to the fund’s NAV are inherent in the process of reflecting secondary market conditions. Premiums and discounts to the fund’s NAV are generated as an element of the fund’s intra-day trading and thus reflect secondary market dynamics.

<ESMA\_QUESTION\_GLMT\_32>

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

<ESMA\_QUESTION\_GLMT\_33>

As regards paragraph 66, section 6.5.4.2. of the draft Guidelines, we agree that activation of a swing factor should be based on a methodology that was established by the manager. Such methodology would usually include also standard time periods when the swing factor is reviewed and recalibrated. The exact parameters, including ad hoc evaluations are designed separately by each entity, sometimes even separately for each asset class. Therefore we would suggest that word “dynamic” in paragraph 66 should be changed to “periodic”.

We would like to refer to our response to question no. 44 below and the issue of information being disclosed to investors. In case of swing pricing it is important that the level of the swing threshold, or the progression of swing factor in the tiered approach, remain confidential, as otherwise, they could encourage the use of this information by sophisticated investors to obtain an unfair advantage. Therefore, in paragraph 67 of Section 6.5.4.2. of the draft Guidelines, it should be made clear that only relevant principles regarding the activation of swing pricing can be disclosed, but by no means all the details.

<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>

We welcome the flexibility to recalibrate the swing factor in stressed market conditions, and beyond the maximum factor.

Based on practice and experience observed on the market, we are of the opinion that when the recalibration takes place in exceptional market circumstances, the recalibrated swing factor should not be obligatory capped. It would unnecessarily limit manager’s discretion which is necessary under stressed market conditions.

<ESMA\_QUESTION\_GLMT\_34>

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

<ESMA\_QUESTION\_GLMT\_35>

We would like to refer to our response to question no. 27 above and highlight again that the calculation of implicit costs, including any significant market impact, can pose significant challenges. Therefore, the wording of paragraph 68 of Section 6.5.4.2. should recognise these problems and, following also the approach taken by IOSCO, require these costs to be included only where relevant and only on a best effort basis.

We would also like to highlight that is unclear as to what is expected to be communicated to investors under paragraph 71 of draft Guidelines. As raised in our response to question 44 below we are against any granular details being disclosed to investors in order to avoid them being used by sophisticated investors to obtain an unfair advantage. Even if it is just the information that the swing factor has been recalibrated, without any specific quantitative information, the fact that there is recalibration can itself be understood by investors as deterioration in the funds situation and encourage them to redeem. Therefore we would suggest for the paragraph 71 to be removed entirely.

<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>

As highlighted in the question above, we agree with ESMA that to the best of our knowledge dual pricing is not particularly used in Member States. Therefore we are of the opinion that Guidelines regarding this LMT should in particular not limit the managers discretion. If needed they could be amended further along the way, once sufficient number of practical examples could be observed on the market.

As we understand dual pricing is used mainly in cases where the manager is dealing with the fund on a net basis, which to our knowledge is not a set up practiced in Member States. In cases where dealing takes place directly to the fund overcharging for dilution may take place, as both gross subscribers and gross redeemers will be charged, while the dilution will occur only due to net flows.

We would disagree with the statement included in paragraph 76 of Section 6.5.4.3. of the draft Guidelines which requires any significant market impact or explicit transaction costs to be accounted separately via an additional LMT as a normal market practice. There may be circumstances where this is justified, as we explained in our response to question no. 3, however there should still be sufficient level of flexibility left to the manager.

<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>

As mentioned in our response to question no. 32 we would like to question the statement that valuation uncertainty is a factor which would speak against the use of ADL. The important factors in the use of ADTs is the ability to estimate the transaction costs, and this will not necessarily be impacted by uncertain valuations.

We are of the opinion that selection criteria should apply universally to all funds and any reference to specific investment strategies, should be avoided. Therefore, we would suggest following changes to point (c) of paragraph 78 of Section 6.5.4.4. of the draft Guidelines:“*(c) that invest in less liquid assets ~~(e.g.: high yield bonds, small cap equities)~~*.”

As regards, point (b) of the same paragraph, we would question the statement that “*smaller funds in terms of NAV could more impacted by the cost of liquidity caused by large redemptions*”. Smaller funds would liquidate smaller volumes of assets, as a result the market impact would also be lower, which also means lower transaction costs. We would therefore suggest for this example to be removed.

When a third party distributor is involved, application of an ADL can be operationally more burdensome in comparison to other ADTs. Therefore managers should also be able to take the distribution framework into account, however, as mentioned in our response to question no. 2, it should not always be obligatory.

<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>

We are of the opinion that managers should have as much flexibility to apply this LMT as possible. Therefore the current practice where the ADL is applied to any subscription and/or redemption should be accompanied with the possibility to set a threshold on a client order level.

<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>

We would like to refer to our response to question no. 27 above and highlight again that calculation of implicit costs, including significant market impact can pose significant challenges. Therefore, the wording of paragraph 82 of Section 6.5.4.4. should recognise these problems and require these costs to be included where relevant and on a best effort basis. In addition, we would suggest for the word “all” to be removed from this paragraph.

Anti-dilution levies are also used where the exposure to underlying assets is obtained in a synthetic manner. In such case built-in, fixed rebalancing costs or “swap fees” need to be taken into account. The “swap fees” are charged by the counterparty that is providing the manager with exposure to a particular asset class or basket of securities via a total return swap. In such case the fund will not buy these assets but will get the performance of these assets from a counterparty. The “swap fees” can include costs of hedging for the counterparty, rebalancing costs, if the underlying basket is not static etc. Therefore, managers should be enabled to take into account also these factors when setting the level of anti-dilution levy.

<ESMA\_QUESTION\_GLMT\_39>

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

<ESMA\_QUESTION\_GLMT\_40>

We do not have further comments.

<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>

We would refer to our response to question no. 7 above.

It is up to the manager to assess whether side pockets are the best way to address current or immediately expected impact on the fund in order to provide investors with the best outcome possible.

<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>

The calibration of different types of side pockets and the choice between various options should be left to the manager which is best placed to choose the best solution depending on the circumstances. However, circumstances where physical segregation may be preferred could include: (i) more complex/material cases where transparency and flexibility is warranted; (ii) there is a need to change or add additional service provider to manage a side pocket; (iii) more tailored approaches including different share classes; (iv) new subscriptions to the fund are expected and new investors would favour physical segregation. On the contrary, accounting segregation could be preferred when: (i) the focus is on minimising costs; (ii) implementation should be done in a timely manner; (iii) use of side pockets is envisaged to manage liquidity mismatch.

We do not believe there should be differences in the Guidelines between AIFs and UCITS.

<ESMA\_QUESTION\_GLMT\_42>

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

<ESMA\_QUESTION\_GLMT\_43>

We do not have comments on the calibration of side pockets. We would like to however highlight that it should be acknowledged that the expectations specified under paragraphs 84 and 85 of Section 6.5.5. of the Guidelines may not always be satisfied in unforeseen circumstances.

<ESMA\_QUESTION\_GLMT\_43>

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

<ESMA\_QUESTION\_GLMT\_44>

EFAMA is of the opinion that there are merits in disclosing some information on the LMTs to investors on a need-to-know basis, primarily with the aim to help them understand how these mechanisms work and what could be their potential impact on the liquidity of the fund and clients’ investments, as regards redemption rights for example. We believe that emphasis should be placed on battling the current stigma around the use of LMTs and educating investors that in fact these tools are selected and activated to protect their interests. Moreover, these disclosures should be cautiously balanced in order to prevent investors from anticipating the application of an LMT and trying to pre-empt it by putting their order early (i.e. sophisticated investors using them to obtain an unfair advantage), or not to constrain the managers in how they quantify the costs of liquidity in specific circumstances. This disclosures should also not be too detailed in order not to limit the manager’s ability to apply LMTs to unpredictable circumstances. Therefore, we agree with the objectives put forward under paragraph 112 of the Consultation Paper and paragraph 94 of the Guidelines.

What could be disclosed is the information about what types of LMTs the manager would be able to use for particular fund and a brief description of their characteristics. These disclosures should aim to use understandable and simple language, and be rather descriptive instead of providing quantitative information. Therefore, the elements listed under paragraph 88 in section 6.5.6. of the Guidelines seem to be going too far as they would require the disclosure of not only the selection of the LMTs, but also calibration and conditions for activation/deactivation.

We are of the opinion that in no case should activation thresholds be disclosed, as this information could be used by sophisticated investors and in fact decrease the level of protection for other investors. Disclosure of quantitative information could also provide too much details to other competing market participants, who could exploit them.

In terms of elements that should not be disclosed for a particular type of LMT, we would like to highlight that:

1. No activation thresholds should be generally disclosed, as this information could be used by sophisticated investors who monitor flows in or out of funds in which they invest;
2. In case of ADTs, the documents should not include “calculation or estimation basis” and other information on the costs of liquidity. As we also explain in our responses to question no. 27 calculation of these costs is subject to many challenges. Providing granular information in this regard can also disclose sensitive and proprietary data;
3. Also potential caps on swing factors, maximum swing pricing factor, the possibility to recalibrate it in stressed market conditions, as well as, the percentage of anti-dilution levies or thresholds or calculation methodology for redemption fees should not be disclosed. In particular, in case of swing pricing, it is important that the level of the swing threshold, or the progression of swing factor in the tiered approach, remain confidential, as otherwise such information could encourage the exploitation of potential opportunities to gain unfair advantage as sophisticated investors might aim to avoid the ADT at the expense of other investors.

While we appreciate that ESMA recognises the concerns around disclosure in public reports of the actual adjustment factors (paragraph 95 of the Guidelines) we are of the opinion that disclosing a range of adjustment factors can also bear negative consequences. Investors may wrongly frame their expectations around such ranges, which can create misunderstanding in case the manager would have to exceed them in stressed market conditions.

We question also the proposed disclosure of periodic reports that would provide an ex-post overview of LMTs that were activated or providing such information on the website (paragraph 93). This could also provide sophisticated investors with detailed information which they could potentially “reverse-engineer” to understand under what conditions LMTs could be used by the manager and in what way. It could also potentially be abused by other market participants to stigmatise the fund which would also bear negative consequences to the 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>

Yes, we are supportive of providing investors with the information about what types of LMTs the manager would be able to use for particular fund and a brief description of their characteristics. It is also important that these disclosures would not limit the flexibility of the manager to adapt the use of particular LMT to actual market conditions, to ensure the best outcome for the investors.

<ESMA\_QUESTION\_GLMT\_45>

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

<ESMA\_QUESTION\_GLMT\_46>

As already mentioned under our response to question no. 6, the LMT policy, being an internal document of the fund manager, might not be best suited for providing investors with simple and understandable information.

<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>

EFAMA agrees that the implementation of these Guidelines would require sufficient time, as all of the following elements have to be taken into account:

1. The new rules governing LMTs would need to be applied in the fund’s documentation which will have to be reviewed and amended. This might also require extensive discussions between different bodies of the manager, including Board of Directors;
2. Other entities in the value chain, such as depositaries, would also have to be included to the review of these documents and they might also require an approval by the NCA;
3. Further to that also custodians, distribution offices and investment advisors would have to make sure that the new LMT is taken into account in their documentation and agreements;
4. Existing processes and technical infrastructure would have to be updated to support activation of an LMT without delay. This can also include the automation of the process along the value chain that includes depositaries, custodians, distributors etc.;
5. This process needs to also be prepared vis a vis the investors. This includes not only the design of the disclosures but also notification about changes in the funds’ documentation, as well as training of advisors who directly engage with customers.

Some LMTs might be easier to apply and some, such as ADTs, could require more time to better calibrate the calculations. We would therefore suggest that the Guidelines should apply 2 years after the final text is adopted by ESMA and all language versions are available. This is the amount of time that is observed as typically needed to complete a project that introduces a new LMT for a particular fund.

The need to provide managers with sufficient time to select, calibrate and operationalise the chosen LMTs should also be recognised once these tools will be made available in all Member States as of April 2026. It is crucial in order to make the best use of the wide pallet of LMTs provided under the Amending Directive 2024/927,

<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>

We are of the opinion that minimal standards on the characteristics of LMTs can be in the interest of investors. What should be however avoided is any type of overregulation that would limit the discretion of the manager.

As regards possible costs, we would like to highlight that the use of ADTs, in particular when implicit costs such as significant market impact have to be included, may be prohibitively expensive. Therefore this element should also be taken into account when choosing this LMT in the view of the interest of investors, in particular for funds thar are not systemically relevant.

<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>

We refer to our response to question no. 48.

<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>

We refer to our response to question no. 48.

<ESMA\_QUESTION\_GLMT\_50>

1. Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (Text with EEA relevance) (Amending Directive 2024/927). [↑](#footnote-ref-2)
2. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (AIFMD). [↑](#footnote-ref-3)
3. Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITSD). [↑](#footnote-ref-4)
4. European Systemic Risk Board, Recommendation of the European Systemic Risk Board of 7 December 2017 on liquidity and leverage risks in investment funds, ESRB/2017/6. [↑](#footnote-ref-5)
5. Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers Text with EEA relevance (Delegated Regulation 694/2014). [↑](#footnote-ref-6)
6. EFAMA demonstrates that, even during periods of high uncertainty as it was the case during March 2020, the European corporate bond fund sector remained resilient. During this period, many (high-yield) corporate bond funds either registered inflows or limited outflows. Moreover, on aggregate, daily flows were relatively small (EFAMA, [Open-ended funds and resilient capital markets](https://www.efama.org/sites/default/files/files/Open-ended%20funds%20and%20resilient%20capital%20markets.pdf), July 2023, pp. 38-42). EFAMA data also shows that, on aggregate, the AIF sector did not face net outflow during that period (EFAMA, [Monthly Fact Sheet](https://www.efama.org/sites/default/files/publications/20%2005%20EFAMA%20Fact%20Sheet%20%28March%202020%29_1.pdf), May 2020). BVI notably explains this resilience by outlining that institutional AIFs that serve long-term investors (i.e., *Spezialfonds* in Germany) can count, even during periods of stress, on a steady inflow of new money, and are therefore unlikely to be forced to sell assets during periods of stress (BVI, [Remarks on the FSB’s Call for papers: Systemic risks and policies to address them in non-bank financial intermediation](https://www.bvi.de/fileadmin/user_upload/220331_BVI_remarks_FSB_call_Systemic_risk_final.pdf), March 2022, pp. 9-11). It is therefore unsurprising that, as demonstrated by ICI, dilution levels are low in the European investment fund sector (ICI, [Response to the proposed revisions to the FSB’s 2017 Policy Recommendations](https://www.fsb.org/wp-content/uploads/ICI-Global-4.pdf), September 2023, p. A5). [↑](#footnote-ref-7)
7. IOSCO, [Anti-Dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD756.pdf), FR/15/2023, December 2023 (Guidance on ADTs), p. 12 footnote 29. [↑](#footnote-ref-8)
8. Guidance on ADTs, p. 6. [↑](#footnote-ref-9)
9. Guidance on ADTs, p. 14. [↑](#footnote-ref-10)
10. Guidance on ADTs, p. 12 footnote 29. [↑](#footnote-ref-11)
11. The arbitrage mechanism is a defining feature of the ETF’s operational set-up and provides the mean for the ETF’s market price and its NAV per share to remain aligned. [↑](#footnote-ref-12)
12. Please refer to IOSCO’s Guidance on ADTs to the FSB’s [Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-ended Funds](https://www.fsb.org/wp-content/uploads/P201223-1.pdf), as published on 20 December 2023. [↑](#footnote-ref-13)