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.

**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 | BlackRock |
| Activity | Asset Management |
| Country / Region | International |

# 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>

**Executive Summary**

BlackRock believes robust liquidity risk management is and has always been a critical part of fund managers’ fiduciary duty to their investors. This includes the consideration and management of risks to the value of an investor’s holdings being impacted in both normal and challenging market conditions.

We are very supportive of the harmonisation of the availability of liquidity management tools (LMTs) across the EU – having access to as broad a range of LMTs as possible provides fund managers with the ability to have flexibility and adaptability in responding to contractions in liquidity, particularly in challenging market conditions. Such harmonisation will raise the level of investor protection and financial stability in Europe, and once in place, will position this toolkit among the most advanced globally.

The LMTs discussed in this consultation are used in all aspects of a fund’s ‘life cycle’; they are embedded in the initial product design and used as part of ongoing portfolio management, but they are also used to manage extraordinary market conditions and protect investors in the run-up to fund closure. The decision to use an LMT and how to do so is informed by the assets a fund is invested in, market conditions for those assets, the fund’s investor base, numerous other factors. These decisions are often highly time-sensitive and dependent on evolving market conditions.

This means there is no one-size-fits-all approach to deploying LMTs, and how to use them is a judgement that should sit primarily with asset managers and fund governance bodies, who have the best knowledge and information on developments within a fund, and are therefore best informed about how and when to deploy LMTs.

While some market events and conditions may affect groups of funds at the same time, variation in investment objectives, portfolio composition, and investor bases make it unlikely there will be a foreseeable ‘right time’ to use particular LMTs across some or all funds in a market, or a scenario in which one tool would be appropriate for multiple funds.

In stressed markets, regulators can play a critical role by issuing supervisory guidance on use of LMTs, informed by close engagement with industry on idiosyncratic or fund-specific issues. More generally, however, regulators can improve LMT uptake by monitoring asset managers’ operational preparedness to use tools, engaging in dialogue with managers on their use, and setting standards and best practises that promote high quality application.

This is exemplified by the final guidance issued by IOSCO in December 2023 on the use of anti-dilution LMTs, which recommend that fund managers “consider and use appropriate anti-dilution LMTs…to mitigate material investor dilution and potential first-mover advantage”.[[1]](#footnote-2) Fund managers retain a level of interpretation and discretion in determining the appropriate course of action for the fund. This is an important consideration, as such discretion provides the requisite flexibility to evaluate whether the fund faces a risk of material dilution, and which LMT is most appropriate to deploy to address the specific risks and market conditions at play.

The use of LMTs should not be viewed solely as a means of crisis management measures: many ex-ante and ex post tools are business-as-usual mechanisms used as part of prudent fund management. To this point, in the case of redemptions in kind, it is important to distinguish between the use of redemptions in kind for liquidity management purposes in OEFs such as a traditional mutual fund, from its use as a redemption mechanism in an exchange-traded fund (ETF). As a redemption mechanism in ETFs, redemptions in kind are considered an integral BAU feature of the fund. While Authorised Participants (APs), typically financial institutions such as banks/brokers, are authorised to transact with the ETF to create or redeem shares, in exchange for a proportionate share of the underlying assets that make up the benchmark tracked by the ETF, other ETF investors, do not interact directly with the ETF when buying or selling shares, but instead trade through brokers with other investors on an exchange, or other venues. Therefore, we do not consider the use of redemptions in kind in ETFs (by APs or market makers) as an ***activation*** of the tool for liquidity risk management purposes.

Much focus in the consultation is centred on how LMTs can manage redemptions, but it is also important to consider the effect of increased subscriptions on the ability of the fund to allocate capital, particularly for funds investing in assets with limited liquidity, where it can be more operationally challenging to find suitable investment opportunities which are aligned in quality and quantity with the existing portfolio. Soft closures for instance, refer to a sliding scale of measures which allow fund managers to restrict the level of subscriptions, allowing them to determine whether they will temporarily gate subscriptions, or suspend them entirely.

**Answer to Question 1**

Yes, we broadly agree with the list of elements. In addition, other elements managers could also consider include:

* **Structural considerations** outside of those listed, such as whether the fund has a master-feeder structure, or if it is an exchange traded fund (ETF). In the case of ETFs, for instance, it is important to take into account the ETF’s trading mechanism which mean that anti-dilution tools used for traditional mutual funds may not always be appropriate.
* **Availability of other LMTs.** Outside of those listed in the Guidelines, other LMTs may be available which would influence the selection of LMTs, such as the ability to activate a ‘soft closure’ of the fund, which can take the form or ceasing active marketing of the fund, or instituting a refusal of subscription, which in a similar way to redemption gates, prevents subscriptions of excessive size.
* **Investor base.** The characteristics of the investor base should also be considered in the selection of the most appropriate tool. For example, ‘funds of one’, where a segregated mandate is wrapped in a fund structure, typically an AIF, there is only one shareholder in the fund, there is no likelihood of a dilutive effect of a subscription or redemption, so an anti-dilution tool would probably be inappropriate.
* **Operational barriers and complexity.** It may not be operationally feasible to deploy certain LMTs for a particular fund, depending on the characteristics of the fund or asset class. For instance, funds with significant dealing volumes may be better served by an anti-dilution LMT that is applied at the fund level (e.g., swing pricing) rather than a tool that is applied at individual deal level (e.g,. subscription/ redemption fees).

<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 be considered in the selection of the LMTs, as it will typically exist in the context of the broader regional or market specific distribution infrastructure, which can impact how operationally feasible it is to implement a particular tool.

For instance, distribution through intermediaries and platforms would make the use of ad-hoc gates much more operationally challenging. The distribution architecture for these funds is increasingly automated and would not lend itself to ad-hoc interventions to gate a fund. On the other hand, European swing pricing models have been designed to align with these distribution models.

Funds which are managed in one jurisdiction, but which are distributed to investors in a jurisdiction with a different time zone will also need to factor in how this might impact the implementation of certain LMTs. <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>

Overall, we agree that managers should consider the merit of selecting of at least one quantitative LMT and at least one ADT for the two minimum LMTs.

Where possible, most open-ended funds can *benefit* from the ability of ADTs to assign transaction costs to the transacting investors, as it contributes to the protection of the remaining investors’ holdings, upholding the principle of equal treatment of investors.

Though ADTs can be better suited to funds which hold assets that trade daily, as there is more available data to calculate the cost of liquidity, the benefit can still extend to funds invested in less liquid or illiquid assets. For instance, a number of large subscriptions to such a fund would require large trades to buy these assets, in turn likely significantly impacting the asset price and raising transaction costs. The use of an ADT such as an anti-dilution levy would help to protect the existing investors from bearing the impact of these trading costs, and maintaining the performance of the fund.

The selection of two tools from those listed in the Guidelines should only mean that the fund is operationally prepared to activate the tool – the actual decision to activate the LMTs would remain at the discretion of the fund manager, and may include consideration of other LMTs not listed.

That being said, we would caution against a hard *requirement* to select one quantitative LMT and at least one ADT, as this would infringe upon the primary responsibility of the fund manager for liquidity risk management. The starting point for the selection of LMTs for a fund (as well as the decision to activate), is to analyse a number of factors to determine suitability, such as the assets a fund is invested in, historical or typical market conditions for those assets, the fund’s investor base, the activity of those investors, and numerous other factors. This underscores the need for flexibility, as the specific circumstances of each fund will dictate the tools selected, which could potentially result in the selection of two ADTs, or two quantitative LMTs.

In certain fund types, dilution is structurally unlikely so selecting an ADT could be inappropriate. This includes ‘funds of one’, which have only one shareholder in the fund, meaning there is no dilutive effect of a subscription or redemption, or master/feeder structures, where dilution is less likely to occur at the feeder fund level, but rather would be a more relevant consideration at the master level.

It is also unclear how this requirement would apply to redemptions in kind, which are neither an ADT nor a quantitative-based LMT, as they fall into the ‘other tools’ category, but are permitted to be selected as one of the two mandatory LMTs.

<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>

The duties of depositaries are already well established in UCITSD and AIFMD, which include oversight and verification of the manager’s compliance with regulatory requirements around risk and liquidity management processes. We do not see it necessary to develop further guidance.

<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>

We broadly agree with the list of elements to be included in the LMT policy. However, we would caution against the LMT policy prescribing the exact course of action concerning the activation of LMTs, as fund managers require a level of discretion in order to manage liquidity in varying circumstances.

The ‘LMT playbook’ in point (b), which requests setting out the “potential sequencing and interdependencies of selected and available LMTs” implies that fund managers always follow a predetermined deployment plan when activating LMTs. While it is important to prepare ahead, as part of a robust operational resiliency framework and good business continuity management, fund managers still require flexibility to tailor the activation of tools to address the specific market circumstances at the time, in the best interests of investors.[[2]](#footnote-3)

Reflecting this case-by-case nature, it should be emphasised that the LMT policy is intended as guidance on the appropriate considerations to keep in mind, but managers should be provided the flexibility to adapt the LMT policy as needed.

We recommend that investment managers are given the discretion to decide how they structure and deliver the governance arrangements outlined in the Guidelines. Each investment manager is structured differently, and individual funds vary in their size and complexity and legal structure.

Concerning the governance of ADTs in the LMT policy, paragraph 29 of 6.5.2 requires a six-monthly review of the nature of the costs, the distribution of costs between unitholders, and the estimation methodology. We suggest that the six-monthly review should be limited to the estimation methodology i.e. reviewing the swing factors or threshold models in place on a particular fund to ensure these are still appropriate. The nature of the costs, which could include elements such as broker fees, share class-specific costs, and bid-ask spreads, may vary per fund but are likely to remain consistent within a six-month period for a specific fund, so an annual review would be better suited in this case.

Review of the distribution of costs would also benefit from an annual, rather than six-month period, as it would better align with the typical timeline for review of the fund’s overall performance, taking into account how the ADTs implemented have shielded the fund from dilution effects.

<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>

Transparency and clarity of information is important for fund investors. Fund investors should have appropriate information in the prospectus on what LMTs are, why they are used, how the fund utilizes them, and, if appropriate, ex-post disclosure of how they have been used.

However, granularity beyond this should be avoided. The disclosure of thresholds and calibration practices, as referenced in point (p) could facilitate investors attempting to arbitrage the fund by trading just below the thresholds.

Funds with nominally similar investment strategies could justify using different parameters for their LMTs. Disclosure of these different parameters could, without clear disclosure and explanations, be incorrectly perceived as a cost difference between different types of funds - and unduly influence investors' fund selection decisions.

It is important that the disclosure also does not imply there is a ‘standard’ way that LMTs will be activated each time, given the variety of market scenarios that can arise. The LMT playbook in point (b), containing the potential sequencing and interdependencies of the fund’s LMTs should not be disclosed for this reason. Decisions to activate LMTs are often highly time-sensitive and dependent on evolving market conditions, so may vary from the stated playbook on a case-by-case basis. Such disclosure could create false expectations for investors, who don’t possess the same oversight or expertise of fund as the fund Board would, and as such, may lack the necessary context needed to understand the decisions taken in a particular scenario.

Other elements of the internal risk management and governance process in the LMT policy covered points (d) – (o) could be summarised in an overview addressing the key points, without delving into detail. Such internal risk management processes are not typically communicated to investors, given they are not considered to be material to their own decision making.

<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>

Overall, we agree with the definition, but would suggest to remove ‘unforeseen’ from the description, as it implies that suspensions should only be activated in novel circumstances, which we would disagree with.

Exceptional circumstances represent the extreme end of a sliding scale of severity, so while a fund manager may foresee a specific liquidity challenge could develop, based on emerging market conditions, it may not be appropriate to suspend subscriptions or redemptions until it becomes apparent that such conditions would materially impact the fund’s ability to “carry out normal business functions…[or] meet the funding obligations arising from the liabilities side of the balance sheet.”

By its nature, we would not see it appropriate to attempt to try to provide a list of what exceptional circumstances are, as these are difficult to predict in advance, and, even a non-exhaustive list may skew or limit the interpretation of the fund manager to determine the appropriate threshold at which to suspend the fund. Moreover, close engagement between NCAs and managers is typical in stressed market conditions, providing an opportunity for managers to justify their decision to suspend, where necessary.

A fund manager may also choose to activate a temporary suspension on non-dealing days, which may not necessarily fit neatlyinto the ‘exceptional circumstances’ definition. A non-dealing day would likely occur where a fund is marketed across several jurisdictions, but has exposure to an underlying local market that is closed or has historically low dealing volumes during a specific period, such as Lunar New Year, or Golden Week.

<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>

While we agree that suspensions should be temporary, including a tentative duration of the suspension, as mentioned in point (c) would be complex in such exceptional circumstances, and should be avoided as they could be misleading. Taking the outbreak of the COVID-19 pandemic in March 2020 as an example, it would not have been possible to estimate how long suspensions would last, or provide a “timeline to resume normal operations”, especially not immediately after activation of the suspension as is requested in the Guidelines, as no fund manager knew how long the health crisis and economic crisis was likely to persist for.

Providing a simulation of the liquidity profile of the fund following the market stress, while at the point of suspension, as in point (d) would similarly be speculative at best, as the accuracy of such a simulation would be hard to guarantee, making the information redundant.

Point (e), an assessment of the impact of the suspension on investors, is also challenging and potentially inappropriate. The decision to suspend is taken by the fund manager in order to fulfil their overarching fiduciary duty to act in best interest of investors, so assessing such an impact seems contradictory to this purpose. It may also be difficult to implement as it is often challenging to determine who the individual investor is with precision, such as when funds are distributed through intermediaries.

Point (i) also should not be included in the LMT plan as the decision to suspend should be based on what is in the best interests of fund investors, and factoring in increased regulatory scrutiny, or perceived legal risks could negatively influence the manager’s decision making.

The LMT Plan should be for internal use only, as it is essentially a contingency planning document.

<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>

An activation threshold for suspensions can act as a guide to inform the fund manager as to when it may be most appropriate to start having discussions around a potential suspension, but should not be a fixed requirement. As discussed, the type of exceptional circumstances which might lead to a suspension can be unique, and a fixed threshold would be unlikely to cover all eventualities.

<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>

We agree with the criteria, but not with the suggestion that redemption gates should be considered for all funds – the manager is best placed to decide which LMTs would be most appropriate for the fund in the fund design process, and discretion should be afforded to them regarding the weight of this criteria in their decision making.

While a concentrated investor base could indeed be a relevant consideration in choosing to activate a redemption gate, LMT selection is made at the fund design phase, where this would be unlikely to be known for certain.

<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 mentioned in our response to the draft RTS, irrespective of whether gates are activated automatically or at the discretion of the fund manager, we believe the activation threshold should always allow flexibility for managers and/or fund boards to adjust to different and unexpected market conditions in the best interest of investors.

We would also caution against redemption gates being understood as a tool for use only in severely stressed market conditions. Especially for AIFs invested in assets with limited liquidity, perhaps as part of a semi-liquid investment strategy, gates are an important and common tool, in normal and stressed market conditions alike. This approach has been recognised in the final draft of the ELTIF RTS.

The use of gates in Money Market Funds (MMFs) on the other hand, would typically indicate that the fund is likely to be wound down, as its primary purpose is to preserve capital and liquidity. Unlike most mutual funds, MMFs are designed to meet outflows using cash on hand, not by selling assets to fund redemptions. Gates, whilst an important LMT, should in this instance therefore be considered as a tool to be used in extreme scenarios. As such, the activation threshold would necessarily be higher.

Concerning regular dealing funds such as UCITS marketed to retail investors, we agree that gates should not be “systematically activated”. However, provided there is appropriate disclosure in the fund prospectus about their function and purpose, gates structured as caps on available liquidity can be explained to retail investors.

While managers may disclose an indicative percentage of the level at which they may activate a gate, for the benefit of aiding investor understanding, it should be clear that this percentage is representative, rather than decisive.

This is for two reasons;

* It is important that the actual internal activation threshold, which may be lower than that published, is kept internal to avoid signalling investors as to when they could potentially arbitrage the fund.
* Additionally, publishing the precise activation threshold could remove the manager’s flexibility to vary from the threshold as needed. Many managers do already disclose a threshold at which they are likely to defer such redemption requests.

Moreover, it is important to note that just as a fund manager may deem it appropriate to activate a gate on redemptions of the fund, a manager may also choose to activate a ‘gate’ on subscriptions to the fund, otherwise known as a ‘soft closure’ of the fund, in order to prevent a potential dilutive effect of a large subscription. This could range from ceasing active marketing of the fund, to restricting or deferring a certain level of subscriptions in a given period.

<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>

We agree that redemption gates should not be restricted by a maximum period over which they can be used. As discussed in Question 11, particularly in the case of AIFs invested in less liquid asset classes gates such as private debt or real estate, gates can be a common tool to manage liquidity, in normal and stressed market conditions alike.

While we do believe that gates are less suited to funds marketed to retail investors, as the distribution architecture for these funds is increasingly automated and would not lend itself to ad-hoc interventions to gate a fund, we do not see a need to differentiate the use of gates for such funds, as the manager likely simply wouldn’t select or activate the tool if they don’t deem it appropriate.

<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>

In addition to historical redemption requests and liquidity stress test results, the calibration methodology should also take into account the current market conditions, to assess whether there is enough liquidity in the market to meet the requisite redemptions for the underlying assets, and expected cashflow, which could help to identify whether there is a potential liquidity mismatch and if this can be mitigated.

The manager could also consider taking into account redemption coverage ratios at different horizons, which help to assess whether a fund has sufficient liquid assets to cover potential redemptions without significantly impacting its overall portfolio.

We would also recommend that access to such liquidity is determined on a pro rata basis on the relevant dealing day rather than on a first come first served basis to maintain fairness between investors.

<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>

The fund manager should determine the appropriate minimum threshold for activating redemption gates in a particular fund, taking into liquidity of the underlying assets, and the expected cash flow of the fund.

We do not believe NCAs or ESMA should attempt to achieve harmonisation in the use of gates, as a fixed minimum threshold is unlikely to be able to account for the variety of cases that may warrant gating across the highly heterogeneous universe of UCITS & AIFs. Statutory imposition of any minimum threshold for the activation of gates can enhance procyclicality, by signalling investors as to when they could potentially arbitrage the fund, rather than leaving it to the manager’s discretion.

<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 stated in Question 14, we believe that fixed minimum thresholds which apply across all fund types and asset classes will be arbitrary, so should be left to the discretion of the fund manager, who possesses the expertise and holistic overview of the fund.

When a fund manager is determining the appropriate minimum threshold for their fund, focusing solely on redemptions might provide a distorted view, and should be balanced with an assessment of the underlying liquidity of the asset class itself, and an assessment of the expected cashflows. For instance, if the percentage of overall redemptions is at 10% in a day, but the fund is invested in a highly liquid asset class such as large cap equities, and has consistent inflows or other cash flows like dividend payments, such level of redemptions might not trigger the activation of a gate.

It is expected that the threshold will be higher for funds invested in more liquid assets, and lower for those invested in illiquid assets, but the fund manager should decide on the specific threshold. Managers should, however, be prepared to justify their judgements to their local NCA and where relevant, their depositary.

<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?

<ESMA\_QUESTION\_GLMT\_0>

Furthermore, calculating weekly outflows, as would be required for the suggested 10% threshold for cumulative net redemptions received during a week, presents many complexities. It is difficult to know where to draw the line for a particular week’s calculation in an effective way, given there may be varying levels of both inflows and outflows which could vary the fund’s proximity to the threshold.

<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>

Yes. Notice periods would typically be selected for funds investing in less liquid or illiquid assets, such as real estate and infrastructure, given the time often needed to plan and prepare for transactions. Where the assets invested in are inherently illiquid, we would agree that the notice period should be in line with the level of liquidity of their assets under normal market conditions.

<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>

RE and PE funds can possess different lifespans, even from the same fund manager, ranging from 7-10 years in RE, and 10-12 years in PE. For this reason, we would advise against defining a minimum notice period, which would be arbitrary given the differences, but would support fund managers aligning their minimum notice periods to the liquidity of the assets in normal market conditions, as already included.

For such funds, the extension of notice periods would be an appropriate LMT, but would be best placed for the fund manager to decide, as for instance, they could choose to also implement extended settlement periods, to provide additional time to sell the underlying assets in an orderly manner.

<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. The length of the extended notice period should be at the discretion of the fund manager, and as stated previously, we do not believe setting standard minimum or maximum notice periods would be effective, given the highly heterogeneous universe of UCITS funds.

<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>

Yes, we agree with the activation criteria.

<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>

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<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>

It is important to distinguish between the use of redemptions in kind for liquidity management purposes in OEFs such as a traditional mutual fund, from its use as a redemption mechanism in an ETF.

As an LMT, we agree with limiting the use of redemptions in kind to funds marketed only to professional investors. Redemptions in kind enable the fund to transfer the underlying assets to the redeeming investor, instead of their cash value. Only large, institutional or professional investors who possess their own dedicated custody accounts would be able to use redemptions-in-kind, and such investors would likely only find this tool useful if they have a similar portfolio on their own account to the one held in the fund.

We would not consider this a tool that can or should be a widely usable substitute for the normal OEF redemption process or as a means of easing pressure on markets liquidity – few investors possess the capability to receive redemptions in kind, narrowing their practicality as an LMT to a limited number of scenarios.

However, as a redemption mechanism in ETFs, redemptions in kind are considered an integral feature of the structure of the fund. ETFs trade in both primary and secondary markets. Authorised Participants (APs), typically financial institutions such as banks/brokers, are authorised to transact with the ETF to create or redeem shares, in exchange for a proportionate share of the underlying assets that make up the benchmark tracked by the ETF. Other ETF investors, which aren’t APs, do not interact directly with the ETF when buying or selling shares, but instead trade through brokers with other investors on an exchange, or other venues.

As specialised financial institutions, which are typically affiliated on an individual basis with specific ETFs and portfolio of assets they track, APs are operationally prepared to receive redemptions in kind in exchange for ETF shares. This should not be subject to a pro-rata slice as it would impact the ETF’s ability to keep its price aligned with the value of its underlying securities, by removing the economic incentives of APs and market makers to trade with them.

To reflect this, we suggest making the following addition to the Guidelines:

*"When, in the normal course of regular dealing activities relating to the direct redemption of shares in a UCITS ETF by an Authorised Participant / market-maker, delivery in whole or in part of underlying securities held by, or on behalf of, the UCITS ETF to authorised participants / market makers in satisfaction of such dealing request is not considered an activation of the redemption-in-kind mechanism in the context of Annex IIA liquidity management tools.”*

<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>

Broadly, yes.

Where redemptions in kind are used for liquidity management purposes, we would support the requirement for an independent third party to value the redemption in kind independently. This helps to ensure fairness of the allocation of assets to both remaining investors and redeeming investors, and can be fulfilled in different ways, as demonstrated by existing practices across the EU.

In some markets like Luxembourg, redemptions in kind require valuation by an external auditor. The costs of that report are borne by the shareholder requesting the redemption in kind, but if the manager decides to implement an RIK to avoid the sale of sizable blocks of securities in response to a redemption request, then it is unclear who would pay.

By contrast, in Ireland the depositary is responsible for signing off that an assessment of the assets chosen has been made, confirming they are a representative pro rata share and secondly that the valuation of the assets is fair and does not disadvantage remaining investors.

As stated in Question 21, we do not consider the use of redemptions in kind in ETFs (by APs or market makers) as an ***activation*** of the tool for liquidity risk management purposes. Typically, the individual AP redeeming is affiliated with the specific ETFs and portfolio of assets they track, and other ETF investors (such as retail investors) which aren’t APs, do not interact directly with the ETF when buying or selling shares, so the same issues of fair treatment of investors do not arise. Therefore, we do not consider it appropriate or necessary to require an independent valuation of the assets.

<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>

Yes, activating the redemption in kind on the NAV calculation date will help to ensure that the amount and type assets transferred are based on the most recent and accurate valuation, providing fair value for both redeeming and remaining investors.

<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>

Apart from in the case of ETFs, the fund manager activating a redemption in kind should select assets in the fund on a pro-rata basis, in order to ensure fairness of the allocation of assets to both remaining investors and redeeming investors.

For use in ETFs, redemptions in kind should not be subject to a pro-rata slice as it would impact the ETF’s ability to keep its price aligned with the value of its underlying securities, by removing the economic incentives of APs and market makers to trade with them.

<ESMA\_QUESTION\_GLMT\_24>

1. How should redemptions in kind be calibrated?

<ESMA\_QUESTION\_GLMT\_25>

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<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>

Fund managers should be afforded the flexibility to activate the LMTs they deem will best protect investors from material dilution, which may indeed include the simultaneous activation of two ADTs.

<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 agree that explicit (e.g., taxes, trading levies, broker fees) and implicit (indirect costs such as bid-ask spreads and market impact) transaction costs are the two main components of estimating the cost of liquidity. However, the underlying elements of each component, as described in the Guidelines, should not be seen as an exhaustive list. Further, for some securities, the distinction between the two components is less clear.

Explicit transaction costs may also include:

* Custody transaction charges on an actual or historical basis.
* Share class-specific costs, e.g., for currency hedged share classes.
* Any anti-dilution adjustments or spreads applied to underlying investment funds or derivative instruments.
* Bid-ask spreads – which are described in the Guidelines as implicit only, but may also be known in advance if managers have access to the relevant data.

Implicit transaction costs help to provide a more accurate estimate of the costs generated from the fund manager’s actual trading activity in running their fund. The bid-ask spread represents the difference between the lowest ask price and the highest bid price, a cost that managers will likely incur in buying a security and selling it later. However, the quantity available to buy at the lowest ask price or to sell at the highest bid price is limited, and large orders will likely exceed the quantity available at the current best price. Market impact therefore typically reflects the influence of the order size on the trade execution, usually showing that larger orders will be executed at less advantageous prices than the best bid or offer for the fund manager.[[3]](#footnote-4) The accuracy of the estimated market impact will depend on the calibre of market data available in a particular asset class. Access to complete fund flow data for each dealing day plays a large role in the ability to assess liquidity costs and fragmentation in certain markets across Europe may make this more challenging to obtain.

It should be noted that while we believe that managers should be expected to calculate their estimates with a reasonable degree of confidence, there may be instances where even in light of all reasonable efforts taken by the investment manager to estimate the cost of liquidity, the actual transaction costs may still differ.

The degree to which both explicit and implicit costs can be incorporated for *all* of the listed ADTs will vary in certainty. For swing pricing and dual pricing both elements can typically be incorporated into liquidity cost estimates, again on a best-efforts basis, dependent on the asset class. Anti-dilution levies can in some cases incorporate these costs, although where fund distribution is significantly intermediated this may prove more difficult. For redemption fees, market impact would be more challenging to incorporate, as these are often structured as a static fee, requiring managers to estimate in advance one fee appropriate for normal conditions and a different fee for stressed conditions, based on a representative slice of the underlying assets.

For these reasons, we feel the manager should have discretion concerning the incorporation of market impact with appropriate evidence and perhaps a level of transparency, rather than market impact being always required.

<ESMA\_QUESTION\_GLMT\_27>

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

<ESMA\_QUESTION\_GLMT\_28>

Paragraph 60 of 6.5.4 states that “managers should not calibrate ADTs in a way that could help to artificially improve the performance of the fund.”

While this is never the intention of the use of ADTs, shielding the fund from dilutive effect may influence performance to a degree. In the case of swing pricing for instance, in the event that a fund swings on the last day of a reporting period (i.e. month end), the swing effect will, to some extent, obscure underlying fund performance. The impact can be positive or negative, depending on the direction of the swing. Some mention of this impact may be made in commentaries should the effect be significant. This is an unavoidable consequence of a process which exists for the sole purpose of investor protection. This is not the same as leveraging ADT costs to manipulate what would otherwise have been the fund’s expected performance.

To support investor understanding of this impact, managers could then provide investors, on request, with the swing factor applied to a fund on a day that the investor has subscribed or redeemed units of that fund.

<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>

As noted in our response to the ESMA RTS on LMTs, this LMT is intended to address the risk of opportunistic arbitrage of fund assets, and we believe it is important to note that this risk may arise from both subscriptions and redemptions.

We agree with the criteria, though would suggest removing references to RE assets specifically, which could skew the interpretation of both fund managers and NCAs as to which types of funds subscription or redemption fees should be selected for.

<ESMA\_QUESTION\_GLMT\_29>

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

<ESMA\_QUESTION\_GLMT\_30>

The activation thresholds should take into account the size of subscription orders above which a fee could be charged to transacting investors, as well as redemption orders.

<ESMA\_QUESTION\_GLMT\_30>

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

<ESMA\_QUESTION\_GLMT\_31>

Subscription or redemption fees are typically calculated as a percentage of the transaction size, meaning investment managers can estimate an average for market impact but cannot always make a full allocation of the liquidity costs.

Paragraph 64 of 6.5.4.1 which states that – “Managers should consider whether to calibrate the redemption fee as a single fee or whether it is adjusted based on a tiered approach corresponding to the amount of net fund flows (i.e. the larger the redemption order the higher the redemption fee)” – could contribute to making a more accurate allocation of the liquidity costs, however, depending on the number of intermediaries involved and the volume of orders and the level of technology in place within these networks, it could be challenging to make frequent and quick changes to the subscription/ redemption fee for a given volume of trades and still conduct the associated cash reconciliations.

<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>

Overall, we agree with the selection criteria.

<ESMA\_QUESTION\_GLMT\_32>

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

<ESMA\_QUESTION\_GLMT\_33>

As with all of the anti-dilution tools, swing pricing is a means of attributing the cost of liquidity to the transacting investor. Swing pricing adjusts the NAV at which all investors’ transactions in a fund take place on a particular day, and is based on the cumulative total fund flows for the day, netting off purchases and sales, to arrive at a total net flow. The activation thresholds should reflect elements such as the fund size, dealing costs, investor base, liquidity of the underlying markets and investment universe in which the particular fund invests, among other factors.

Many swing pricing models adopt a tiered approach, which allows multiple thresholds to be set for the application of increasing swing factors. These thresholds are set according to the possible range of redemptions and adjust the NAV price by the different sizes of flows, e.g., from 0.25% to over 25%.

From a BlackRock perspective, our tiered threshold model takes account of the different levels of dilution incurred at varying shareholder flow sizes – that is, the differences between overall costs and dilution on small security deals (typically low spreads) and very large deals (typically with much larger spreads and where market impact occurs). For example, a 2% net inflow might trigger a 20-bps swing to offer, while a 10% net inflow could trigger a 40-bps swing to offer.

Ultimately, the setting and activation of such thresholds should remain at the discretion of the fund manager, taking into account the elements discussed. Detailed disclosure of the activation thresholds should not be made available, to avoid incentivising investor dealing just below the threshold, as well as protecting potentially commercially sensitive information.

Upon request, investors could however receive information regarding the size and direction of a pricing swing in relation to relevant investor transactions on any given valuation day, on an ex post event basis.

<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 agree that managers should have the flexibility to recalibrate the maximum swing pricing factor (which would have been set for normal market conditions) in stressed market conditions, and that such recalibration should be justifiable to the NCA if required, on the basis of the prevailing market conditions at the time. Paragraph 70 of 6.5.4.2 should be clear that it is solely the decision to recalibrate the *maximum* swing factor that needs to be justified, rather than just any of the swing factors.

Given there will have been a documented maximum swing factor in the prospectus, we agree that the recalibration of this should be communicated to investors, though not necessarily with detail of what the new maximum is, to again guard against the possibility of investors attempting to game the fund.

<ESMA\_QUESTION\_GLMT\_34>

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

<ESMA\_QUESTION\_GLMT\_35>

For most fund managers, it is not yet possible to ensure that the estimated cost of liquidity, including market impact, is incorporated into the swing factors for swing pricing. As previously stated, the level of precision to which market impact can be estimated varies per asset class, reflecting different market structures.

We strongly discourage any intervention that aims to prescribe specific swing pricing models or minimum swing factors: this process requires considered judgement drawing on the skill sets of different asset management functions and should not be prescriptive. Mandating the inclusion of specific market impact where underlying market data is not available could raise the risk of ‘over’ swing pricing, which risks a pricing error for which fund investors will require compensation; and disadvantages open-ended fund investors vis-à-vis those using other investment vehicles by creating an unlevel playing field in their respective abilities to access market liquidity.

Swing factors can instead take into account the following components, based on the observed transaction cost for each fund portfolio:

* An adjustment for the spread. Spread is the difference between the bid and offer price of a security. This needs to be captured because the funds calculate a single NAV price each day while the underlying securities held within the funds’ portfolio are traded at bid and offer prices. This spread is not caught in a single NAV price, unless it is captured in the swing factor adjustment.
* An adjustment for broker fees and any other market charges.
* An adjustment for governmental taxes and duties payable on securities transactions (may or may not include capital gains tax and withholding tax).
* An adjustment for the market movement caused by the trading activity. This may be close to zero for liquid securities with large market capitalisation. When dealing in less liquid securities with lower daily trading volumes a trade can cause the securities’ price to move (due to demand and supply), therefore this movement is estimated and included in the swing factor for each fund.

<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>

Dual pricing tends to be used for funds where the costs are mainly comprised of the bid-ask spread or can also be driven by investor preferences.

We observe two common approaches to calibrating dual pricing:

* The fund has two NaVs, valued on both a bid & offer basis, relying on the bid/offer prices quoted plus an estimate of dealing expenses.
* The fund has one NaV, valued at mid-price. A spread – including costs of liquidity such as the bid-ask difference, foreign exchange costs, and other dealing expenses – is applied to the mid NAV to derive the fund bid & offer prices.

The two-NaV method is considered more traditional, and typically relies on the touch spread, which can become less reliable in stressed conditions. However, this method can incorporate market impact by adjusting either the bid NaV or offer NaV (flow direction dependent) to incorporate market impact.

The single NaV method better enables the per-trade spread costs to incorporate the impact of investor dealing, allowing closer alignment to actual costs. In this method, either the bid or offer (flow direction dependent) spread, which is used to derive the bid / offer price of the fund, is adjusted to incorporate market impact, but the NaV itself is not adjusted.

<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>

Generally, we agree with the selection criteria. An additional consideration would be the distribution architecture of the fund, integrating ADL calculations into a distribution platform’s systems, efficiently updating transaction records and communicating the levy details to investors can be operationally complex, and at times not possible for such intermediaries.

<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>

Yes, we agree with the activation criteria.

<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>

Please see our answer to Question 35.

<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>

Reflecting our answer to Question 7, we would suggest to remove ‘unforeseen’ from the description, as it creates the narrower assumption that side pockets should only be activated in completely novel circumstances, which is not always the case.

As previously stated, it may be difficult to predict the scenarios in which such exceptional circumstances may arise which may require the activation of side pockets, and a non-exhaustive list should not be interpreted by NCAs as a narrowing of the applicable conditions for activation.

<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>

BlackRock does not believe the guidance should be differentiated for UCITS and AIFs, to allow fund managers to be able to take a flexible approach to determining which type of side pocket will work in the best interests of investors, in the given circumstance.

Accounting segregation – through the creation of an additional share class in the same fund – may provide better investor outcomes where reducing costs, facilitating a faster implementation time, and minimising additional tax implications are the primary considerations. Physical segregation – creating a new fund or sub-fund – is often a costly process, given the requirements to develop a new prospectus and all the administrative and legal costs that go with setting up a new fund, including the set-up of new custody accounts for the fund. In several non-EU countries this may be a time–consuming process and could defeat the objective of taking decisive action to protect investors’ interests.

However, there are circumstances where a manager may deem physical segregation more suitable. It may, for instance, lower the investment risk (by way of tracking error) associated with the problem assets potentially gaining value again, and could simplify the accounting and regulatory reporting and oversight processes through providing a simple and clear delineation.

Regarding the ‘detailed plan’ that should be formalised before the activation of a side pocket, point (d), which requires an estimated timeline of the side pocket’s duration, is impractical. Prior to activating the side pocket, and indeed even during its activation, it would be difficult to know how long the side pocket might be necessary for. If this timeline is to be relied upon as part of the communications to investors addressed in paragraph 86, it may prove misleading, as it would be speculative.

<ESMA\_QUESTION\_GLMT\_42>

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

<ESMA\_QUESTION\_GLMT\_43>

We believe the approach taken to side pocket activation and calibration in Luxembourg provides an appropriate balance between maintaining manager discretion and a level of supervisory oversight.

Before determining which option is most appropriate to deal with the assets that became illiquid, the CSSF require the governing body of the fund to conduct a thorough analysis covering the following aspects:

* The governing body must be able to justify why the selected tool is the only possible/adequate tool to be implemented, taking into consideration the best interest of the investors.
* The analysis must cover legal aspects (e.g. potential breaches with respect to UCITS regulation) as well as fiscal and accounting aspects related to the proposed operation.
* It should be ascertained that the model is compliant with the sanction regime.
* It should be ascertained that the implementation of the tool is not contrary to the constitutional documents of the UCITS.
* It must be checked to what extent and under what conditions the approval of investors is required.
* The costs of the selected model must be assessed (e.g. avoidance of fees that are disproportionate for the investors or any duplication of fees due to an asset splitting).

The fund must then have permission from the CSSF to undertake the split. The following considerations, which are required to be included in the application, are pertinent from our perspective for managers to consider in calibrating a side pocket:

* Information on the illiquid assets (e.g. percentage of assets concerned, reason why they are illiquid)
* Description of the segregation option the governing body contemplate implementing and reason for choosing this option.
* Description of the additional fees to be charged in relation to the contemplated option.
* Information on measures taken to avoid unfair treatment of remaining investors.
* Information on the way the governing body will communicate to investors.
* Where applicable, information on the approval process of the operation by investors.
* Necessary update of the prospectus in case the investment strategy changes (to be assessed on a case-by-case basis)
* List of countries where the UCITS is eligible for marketing. Confirmation whether the supervisory authorities of such countries have been / will be informed, and if not, why such information procedure is not necessary.
* A statement from the governing body confirming the assessment of the legal and fiscal issues related to the proposed operation. That statement must be documented by a legal assessment/opinion duly endorsed by the governing body.

<ESMA\_QUESTION\_GLMT\_43>

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

<ESMA\_QUESTION\_GLMT\_44>

BlackRock is supportive of providing transparency and clarity to fund investors. Investors should have appropriate information to aid their understanding and decision-making with regards to the fund, including what the LMTs are, why they are used, how the fund utilizes them, and, if appropriate, ex-post disclosure of how they have been used.

Granularity in such disclosure, however, such as regarding specific elements of how LMTs are calibrated and activated can have unintended adverse effects on the fund, so should be avoided.

As discussed in our answer to Question 11, disclosing the specific activation thresholds (for redemption gates or any other LMTs) could incentivise certain investors to redeem just under the threshold, voiding the intended function of LMTs, and potentially even creating a destabilising effect in the fund. Instead, if the intention is to provide investors with understanding of why a particular LMT could be or has been activated, managers may give a high-level qualitative indication of the conditions for activation, such as high subscription or redemption requests and market stress in the case of redemption gates.

Similarly, the range of adjustment factors used by a fund could constitute commercially sensitive information. Funds with nominally similar investment strategies could justify using different adjustment factors for their LMTs. Disclosure of these different parameters could, without clear disclosure and explanations, be incorrectly perceived as a cost difference between different types of funds - and unduly influence investors' fund selection decisions. The release of this information to trading counterparties may also lead to deterioration in dealing terms, at the expense of underlying investors.

Regarding ex-post disclosures, we agree this can be helpful for investors to understand the cost implications of LMTs on the fund, but would suggest that it be left to the manager’s discretion as to whether this is provided as a summary or in a more granular format, as well as the timing of such disclosure.

In order to manage expectations, any disclosure should not imply that there is a singular way in which the LMTs will be applied, given the varying market scenarios that may arise. Therefore, we welcome the ability of the fund to exceed the range of adjustment factors, even where disclosed to investors. Decisions to activate LMTs are often highly time-sensitive and dependent on evolving market conditions, so may vary from the stated ranges on a case-by-case basis. Such disclosure could create false expectations for investors, who don’t possess the same oversight or expertise of fund as the fund Board would, and as such, may lack the necessary context needed to understand the decisions taken in a particular scenario.

<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>

We would suggest that this disclosure be included in the fund’s rules (or offering document / prospectus) ***or*** the instruments of incorporation, rather than being required for both. Instruments of incorporation can be complex and costly to amend, due to their legal nature, and are not typically the main reference point for investors.

<ESMA\_QUESTION\_GLMT\_45>

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

<ESMA\_QUESTION\_GLMT\_46>

Please see our answer to Question 6.

<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>

Given the number of ongoing regulatory development changes currently in progress the time taken to build and test adaptations to existing processes typically requires a 12-to-18-month implementation timeline. We therefore recommend at least 18 months implementation for roll out of the changes.

<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>

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<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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<ESMA\_QUESTION\_GLMT\_50>

1. <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD756.pdf> [↑](#footnote-ref-2)
2. For further analysis of business continuity management practices and operational resilience, see our ViewPoint: [Lessons from COVID-19: Operational Risk and Resilience.](https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-lessons-from-covid-19-operational-risk-resilience-october-2020.pdf) [↑](#footnote-ref-3)
3. For further discussion of implicit costs, please see our ViewPoint: [Disclosing Transaction Costs - The need for a common framework](https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-disclosing-transaction-costs-august-2018.pdf). [↑](#footnote-ref-4)