

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 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 under the heading '[Data protection](#)'.

Who should read this paper?

This document will be of interest to alternative investment fund managers, AIFs, management companies, UCITS, and their trade associations, depositories and their trade associations, as well as professional and retail investors investing into UCITS and AIFs and their associations.

1 General information about respondent

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

2 Questions

Q1 Do you agree with the 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_1>

Q2 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_2>

Q3 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>

|Managers should have sufficient flexibility to determine the best use and combination of LMTs in all circumstances. We therefore do not see that the proposed consideration should be mandated in the Guidelines, particularly as this is not a requirement of the Level 1 text. |

<ESMA_QUESTION_GLMT_3>

Q4 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>

|In line with the Investment Association, AREF and INREV are of the opinion that current requirements for depositary oversight of managers in relation to liquidity risk management are sufficient. A specific obligation to set up appropriate verification procedures to check that managers have in place documented procedures for LMTs goes beyond the scope of the Directives. A specific duty to monitor managers' liquidity management practices would also result in further cost to the fund and should therefore not be included in the Guidelines. |

<ESMA_QUESTION_GLMT_4>

Q5 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>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_GLMT_5>

Q6 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>

It should be clearly and simply explained to investors what liquidity risk is and what features of the fund contribute to that risk e.g. the disclosure that assets of the fund could be subject to reduced liquidity in stressed markets. The tools that the fund may use to manage liquidity should be detailed, with a brief description of how the tool operates and how the fund and its investors are protected. The description should not include details of e.g. scenarios where tools may be implemented, thresholds and methodology for calculation that more informed and experienced investors can use to game the fund and its remaining investors.

As noted in our separate letter, it would be helpful if any changes made to information disclosed to investors and in updated constitutional documents, in order to supplement liquidity management provisions pursuant to the amended legislation, RTS and Guidelines, do not constitute a material change for which member state regulators require notice.]

<ESMA_QUESTION_GLMT_6>

Q7 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>

Para 6.5.3.1 of the Guidelines define ‘exceptional circumstances’ as: “unforeseen events and/or operational/regulatory environments that impact materially on the fund’s ability to carry out normal business functions and activities **and** which would temporarily prevent the manager to meet the funding obligations arising from the liabilities side of the balance sheet.” Given that suspensions of redemptions, subscriptions and repurchases can only be activated by a manager in these circumstances where needed and in the interests of the investors, we would suggest inserting “/or” after the emboldened “and” to allow the manager more scope to activate this tool when necessary. It would be helpful if the same definition applied to ‘exceptional circumstances’ (para 6.5.5 of the Guidelines) in respect of the activation of side pockets under the RTS.

As previously mentioned, it is important to distinguish between unforeseen events that might prevent payment of redemptions unforeseen events that make it impossible to calculate a net asset value.]

<ESMA_QUESTION_GLMT_7>

Q8 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_8>

Q9 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_9>

Q10 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_10>

Q11 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_11>

Q12 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_12>

Q13 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_13>

Q14 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_14>

Q15 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_15>

a) at 5% for daily net redemptions; and

<ESMA_QUESTION_GLMT_0>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_0>

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

<ESMA_QUESTION_GLMT_0>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_0>

Q16 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_16>

Q17 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_17>

Q18 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_18>

Q19 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_19>

Q20 Do you have any comments on the guidance on the calibration of the extension of notice periods?

<ESMA_QUESTION_GLMT_20>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_20>

**Q21 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_21>

**Q22 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_22>

**Q23 Do you think that redemptions in kind should only be activated on the NAV
calculation dates?**

<ESMA_QUESTION_GLMT_23>

[AREF and INREV are of the opinion that such guidance is beyond the mandate of ESMA. However, we note that the calculation of NAV may take place more or less frequently than a fund's dealing dates and it is unclear whether the intention of the Guidelines is that a redemption in kind must take place on a dealing day, or at a NAV calculation point. Real estate funds in particular may only calculate the value of assets at infrequent points, which may not align with their dealing dates. This is an accepted practice and has been deemed fair to those investors subscribing to or redeeming from the fund. The existing valuation of the fund should suffice, unless the manager has cause to believe that it is inaccurate. Real estate funds typically obtain independent valuations from specialist real estate valuers. As an aside, the fund's depositary is rarely able to perform a full independent valuation on its own accord.]

<ESMA_QUESTION_GLMT_23>

Q24 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_24>

Q25 How should redemptions in kind be calibrated?

<ESMA_QUESTION_GLMT_25>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_25>

Q26 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_26>

Q27 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_27>

Q28 Do you have any other comments on the proposed general guidance on ADTs?

<ESMA_QUESTION_GLMT_28>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_28>

Q29 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_29>

Q30 Do you have any views on how to set the activation thresholds for redemption fees?

<ESMA_QUESTION_GLMT_30>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_30>

Q31 Do you have any comments the calibration of redemption fees?

<ESMA_QUESTION_GLMT_31>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_31>

Q32 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_32>

Q33 Under which circumstances should the manager consider the activation of swing pricing?

<ESMA_QUESTION_GLMT_33>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_33>

Q34 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_34>

Q35 Do you have any comments on the proposed guidance on the calibration of swing pricing?

<ESMA_QUESTION_GLMT_35>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_35>

Q36 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_36>

Q37 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_37>

Q38 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_38>

Q39 Do you agree that ADL should be calibrated based on the same factor used to calibrate swing factors?

<ESMA_QUESTION_GLMT_39>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_39>

Q40 Do you have any comments on the selection, activation and calibration of ADL?

<ESMA_QUESTION_GLMT_40>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_40>

Q41 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>

Para 6.5.3.1 of the Guidelines define ‘exceptional circumstances’ as: “unforeseen events and/or operational/regulatory environments that impact materially on the fund’s ability to carry out normal business functions and activities **and** which would temporarily prevent the manager to meet the funding obligations arising from the liabilities side of the balance sheet.” Given that suspensions of redemptions, subscriptions and repurchases can only be activated by a manager in these circumstances where needed and in the interests of the investors, we would suggest inserting “/or” after the emboldened “and” to allow the manager more scope to activate this tool when necessary. It would be helpful if the same definition applied to ‘exceptional circumstances’ (para 6.5.5 of the Guidelines) in respect of the activation of side pockets under the RTS.

As previously mentioned, it is important to distinguish between unforeseen events that might prevent payment of redemptions unforeseen events that make it impossible to calculate a net asset value.]

<ESMA_QUESTION_GLMT_41>

Q42 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_42>

Q43 Do you have any comments on the calibration of side pockets?

<ESMA_QUESTION_GLMT_43>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_43>

Q44 Do you have any comment on the proposed guidance on disclosure to investors?

<ESMA_QUESTION_GLMT_44>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_44>

Q45 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_45>

Q46 Which parts of the LMT policy, if any, should be disclosed to investors?

<ESMA_QUESTION_GLMT_46>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_46>

Q47 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>

[AREF and INREV suggest that managers be given 24 months from finalisation of the guidelines to adopt the guidelines, with early adoption encouraged. Where managers adopt new LMTs within the adoption period, the guidelines could apply immediately to the application of these LMTs.

We reiterate our overarching comment in our separate letter, that it would be useful to defer the requirement to implement the LMT regime in existing real estate funds that (i) have a small number of institutional investors, and (ii) where such investors unanimously resolve for the new LMT regime not to apply until the end of a deferral period. In such circumstances, managers could be required to update their documentation for such funds only following a defined period commencing on the earlier of (i) a new investor subscribing for fund interests, or (ii) an existing investor transferring its interests. This should avoid unnecessary administration for existing customised vehicles where existing investors were heavily involved in the vehicle's original establishment.]

<ESMA_QUESTION_GLMT_47>

Q48 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_48>

Q49 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all

managers across Member States should provide disclosure to investors on the selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?

<ESMA_QUESTION_GLMT_49>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_49>

Q50 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>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_GLMT_50>