

# 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](#)'.

## **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 | Swedish Investment Fund Association |
| Activity                           | Industry organisation               |
| Country / Region                   | Sweden                              |

## 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>

Regarding “characteristics of its investor base” it should be noted that many funds have limited access to the identity of end investors, for example when nominee accounts are used. However, it is normally possible to make an assumption based on the type of distributor/nominee. |

<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>

Anti-dilution levy has not been an allowed LMT for Swedish domiciled funds. We are therefore hesitant that the distributors have the infrastructure in place to handle this. |

<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>

|We believe that the guidelines should acknowledge more clearly that the amended legislation does permit free choice from points 2-8 of the Annex. |

<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>

|No |

<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>

|We agree in principle, but the provisions are very extensive. Given that not all LMTs are equally complex, it would be useful to include in the first sentence: The LMT policy should include, where relevant, provisions on the following aspects.

We also believe that the six months review period on costs stated in paragraph 29 is too narrow. One year is more realistic. |

<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>

The disclosed information to the investor should be on a high level basis, informing them of the LMTs in place, their basic function and purpose. Most of the policy concerns internal procedures that are not to be disclosed. |

<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>

We agree, and also find the examples useful. They match very well what we would consider “exceptional circumstances”. It is, however, very important that the list of examples is non-exhaustive, since it is impossible to think of all exceptional circumstances that may occur in the future. |

<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>

We agree with the elements. We also appreciate the flexibility that the LMT plan should be formalised “prior to or immediately after” the activation and that the plan should include, “where relevant” the listed elements. This is necessary given the challenge to regulate future events. |

<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>

[We support that a mechanistic approach should be avoided. This is however at odds with the wording in a) “determining the activation threshold for a suspension”. In our view the threshold can be affected by the specific circumstances in the future. ]

<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>

|Yes, since it is hard to foresee and should be up to the managers discretion.  
No. |

<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>

|We oppose a fixed minimum activation threshold. Given that it is hard to foresee future events, the choice should be left to the manager when the event occurs. |

<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>

[Although recommended for AIFs invested in less liquid assets, the guidelines should acknowledge that extension of notice period could be considered for all funds. In our view all funds have notice periods, although most UCITS have very short notice periods (24 h). ]

<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>

[No. It should be up to the manager to decide. If the extension of notice periods should be proportionate to the length of the normal notice period of the fund, this LMT would not be useful to most funds that are traded on a daily bases (that is, traded with one day notice period). It is thus important that an appropriate extension of the notice period may be used regardless of the normal notice period. All LMTs should be used in the best interest of investors and the extended notice period should anyhow end as soon as it is no longer needed. If a limitation of the extension of notice periods still were to be considered, it must not be shorter than ten trading days for all funds, even those that are traded on a daily basis. ]

<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>

[Yes ]

<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>

[We oppose the requirement to use independent third party valuation in all cases. In the case of index-ETFs, redemption in kind is used frequently, and not merely as a LMT. The demand for a third party valuation would hinder the effective use of redemption in kind, to the detriment of the unit holders. It should be sufficient to demand that the manager has documented routines to handle redemptions in kind without violating the principle of equal treatment. The same should apply to index funds when this is done pro-rata. It is the responsibility of the manager to ensure that his does not affect the duration, liquidity and tracking error of the fund. ]

<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>

[Yes ]

<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>

[See our answer on Q22 ]

<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>

[Although we do not believe that the combination of swing pricing and anti-dilution levies will be frequently occurring, we oppose that the guidelines in any way restrict the selection of LMTs. The only restriction stated in the level 1 Directive is the combination of swing-pricing and dual-pricing. We believe that it is neither necessary nor appropriate to indicate further restrictions on level 3. ]

<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>

[In general, we agree, but we would recommend that it is clearly stated that the calculation of implicit transaction costs is based on estimations/made on an best effort basis. It is not in the interest of the unitholders that the costs of calculation get too high. ]

<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>

[We agree, and would like to highlight that the use of a tiered approach (paragraph 64) could be very useful and beneficial to all unit holders. ]

<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>

[Yes ]

<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>

[Not permitted in our jurisdiction. ]

<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>

[TYPE YOUR TEXT HERE ]

<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>

We note that paragraph 87(d) mentions “potentially revising the side-pocket decision”. At the same time Article 9(6) of the proposed RTS states that side-pockets should be managed with the sole objective of being liquidated. These two rules seem conflicting, and we would prefer the more flexible approach of the proposed guidelines. |

<ESMA\_QUESTION\_GLMT\_43>

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

<ESMA\_QUESTION\_GLMT\_44>

We believe that the ex-ante information should mainly be disclosed in the prospectus, while only the most basic features should be stated in the fund rules. In some jurisdictions the practical time frame for a (even minor) change of the fund rules is often very long.

Regarding the ex-post information, it could be interesting to disclose the frequency of activation in order for investors to get an estimation of future activations. However, this information should not be detailed (to avoid any counteracting behaviour). |

<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>

Yes, this is the right level of information for investors: which LMTs are available, that they can be activated and their basic features. |

<ESMA\_QUESTION\_GLMT\_45>

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

<ESMA\_QUESTION\_GLMT\_46>

[The LMT policy is mainly an internal document, and it should not be the starting point for deciding on investor disclosures. ]

<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>

[TYPE YOUR TEXT HERE ]

<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>