

Reply form

On the Regulatory Technical Standards on Liquidity Management Tools under the AIFMD and UCITS Directive

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	Swedish Investment Fund Association
Activity	Industry organisation
Country / Region	Sweden

2 Questions

Q1 Do you agree with the proposed characteristics of suspension of subscriptions, repurchases and redemptions? If not, please justify your position.

<ESMA_QUESTION_SLMT_1>

It would be good if the process was made more flexible. There could be situations when closing only for subscriptions and keeping redemptions open (and vice versa) would be more beneficial for the unit holders. One example is when a part of the fund assets is very difficult to value (as was the case for Russian securities). In those situations, it could be in the best interest for unit-holders to allow redemptions, while of course disclosing the valuation difficulties. At the same time, allowing subscriptions could lead to a risk of arbitrage why the fund manager could consider suspending subscriptions.

In the case of multiple share classes there could be situations where it would be beneficial to the unit holders of one share class to be able to transact, while another share class is suspended. This is the case when the currency of one share class has trading issues (via the currency or the derivative used).

<ESMA_QUESTION_SLMT_1>

Q2 Do you agree that orders that have been placed but not executed before the fund manager suspends shall not be executed until the suspension is lifted? If not, please explain why these orders shall be executed.

<ESMA_QUESTION_SLMT_2>

|YES|

<ESMA_QUESTION_SLMT_2>

Q3 Once the fund is reopened for subscriptions, repurchases and redemptions, what would be your approach to redemption orders that have not been executed before the fund was suspended?

<ESMA_QUESTION_SLMT_3>

We agree that redemption orders should not be executed before the suspension is lifted. However, this should not prevent fund managers from allowing investors to cancel their orders (both redemption and subscription) where such cancellation is considered feasible to the fund manager in practice. When a suspension is needed for a longer period, it could be in the interest of investors to allow cancellation of orders. Such cancellation could however not be practically possible in some cases due to for example the chain of intermediaries (distributors) and may also be to the detriment of the remaining unit holders. We believe that the wording of the RTS (Article 1 (4)) provides for the possibility to allow cancellation of orders, but we would nevertheless like to draw the attention to the need for flexibility when it comes to allowing, or not allowing, cancellation of orders. |

<ESMA_QUESTION_SLMT_3>

Q4 Do you think there are circumstances where subscriptions, repurchases and redemptions may not be reopened simultaneously? If yes, what are these circumstances?

<ESMA_QUESTION_SLMT_4>

Yes, we believe there are. For example, right now, some suspended funds with Russian assets plan, when it is feasible, to open up again but only for redemptions. Also there could be situations where a fund first open up for subscriptions and after that for redemptions. Another obvious case is the situation where the fund prior to the suspension has been “soft closed”. |

<ESMA_QUESTION_SLMT_4>

Q5 Can you think of any further characteristics of suspension of subscriptions, repurchases and redemptions?

<ESMA_QUESTION_SLMT_5>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_5>

Q6 Do you think there is merit for the characteristics of suspension of subscriptions, repurchases and redemptions gates to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_6>

[No]

<ESMA_QUESTION_SLMT_6>

Q7 Do you agree with the description of redemption gates and their characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_7>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_7>

Q8 The draft RTS provides that the redemption gate threshold shall be expressed as a percentage of the NAV of the fund considering the net redemption orders for a given dealing day. Are you aware of any other method that ESMA should consider in the RTS? If yes, please explain.

<ESMA_QUESTION_SLMT_8>

[There could be arguments for a monetary threshold. If a fund is/becomes large in size in relation to the market of the fund's asset class.]

<ESMA_QUESTION_SLMT_8>

Q9 Do you agree that redemption gates may be either activated automatically when the activation threshold is exceeded or that the fund manager/ fund Boards may decide whether or not to activate the redemption gate? Do you believe that automatic activation of redemption gates could create a first mover advantage?

<ESMA_QUESTION_SLMT_9>

|Yes, it is good to be able to choose between the two. No |

<ESMA_QUESTION_SLMT_9>

Q10 Do you think that the automatic activation of redemption gates shall not be permitted for some types of funds. If yes, please explain your position.

<ESMA_QUESTION_SLMT_10>

|No |

<ESMA_QUESTION_SLMT_10>

Q11 Do you agree that the activation threshold shall not be expressed at the level of the single redemption order? If not, please justify your position.

<ESMA_QUESTION_SLMT_11>

|There should be a possibility to apply the activation threshold at the level of the individual redemption orders: This would allow for the possibility to apply a gate to large individual redemption orders (institutional clients), while still allowing retail clients to redeem (a proportionality approach). In practice, there are often agreements with institutional clients that would prevent them from redeeming in a way that is detrimental to the fund (or the market). |

<ESMA_QUESTION_SLMT_11>

Q12 In the case of activation of redemption gates, do you agree that investors should have the right to cancel the non-executed part of their redemption orders? In particular, should there be a different approach between UCITS and AIFs?

<ESMA_QUESTION_SLMT_12>

No. It must be up to the fund manager to decide whether it allows for cancellation of the non-executed part of the redemption orders. In theory it could be beneficial to a specific client to be able to cancel the redemption order, but in practice, being able to execute a cancellation may be practically impossible for the fund manager and may also be to the detriment of the remaining unit holders. Otherwise, it must be made clear that the fund manager should have the right not to accept the placing of redemption orders (that is, the fund manager will cease to receive redemption orders).

No |

<ESMA_QUESTION_SLMT_12>

Q13 Do you think there is merit in having different characteristics of redemption gates for different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_13>

Probably not |

<ESMA_QUESTION_SLMT_13>

Q14 In the case of funds with multiple share classes, do you agree that the same redemption gate shall apply to all share classes? If not, please justify your position.

<ESMA_QUESTION_SLMT_14>

No. For example, it should be possible to apply one type of gate for an institutional share class, where the risk for larger trades is higher, and another type of gate – or no gate – for retail share classes. Since institutional share classes would often be combined with a lower fee (in percentage), it could in some cases be considered fair to combine those terms with more strict redemption terms. |

<ESMA_QUESTION_SLMT_14>

Q15 Can you think of any further characteristics of redemption gates?

<ESMA_QUESTION_SLMT_15>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_15>

Q16 Do you agree with the description of extensions of notice period and their characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_16>

[On the overall yes, but different notice periods should be permitted for different share classes.]

<ESMA_QUESTION_SLMT_16>

Q17 Do you agree that the same extension of notice period shall apply to all investors or different extensions of notice periods per share class/unit shall be allowed? Please justify your position.

<ESMA_QUESTION_SLMT_17>

[It should be possible to apply different extension periods for different share classes. Since institutional clients typically place larger orders, and therefore could often be subject to longer notice periods, it could be justified to also apply a longer extension of the notice period to those clients (institutional share classes).]

<ESMA_QUESTION_SLMT_17>

Q18 Do you agree that extensions of notice period may be applied for a pre-defined period of time (for a pre-defined number of dealing dates)? If not, please justify your position.

<ESMA_QUESTION_SLMT_18>

[Yes, it may.]

<ESMA_QUESTION_SLMT_18>

Q19 Do you think there is merit for the characteristics of extensions of notice period to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_19>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_19>

Q20 How would you execute redemption orders that have been placed but not executed before the notice period is extended? Would you execute them under the original notice period, or would you execute them at the following dealing day?

<ESMA_QUESTION_SLMT_20>

[On the original notice period, if possible, otherwise on the next dealing day. The decision must be up to the fund manager.]

<ESMA_QUESTION_SLMT_20>

Q21 How would you ensure fair treatment of investors when deactivating the extension of notice period?

<ESMA_QUESTION_SLMT_21>

[With information in good time before on when the deactivation takes place. When deactivating the extension, the normal notice period would apply to all redeeming investors from the same date.]

<ESMA_QUESTION_SLMT_21>

Q22 Do you agree with the description of redemption fees and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_22>

|Redemption fees is an effective tool. However, it will be difficult to apply in practice since some distributors will net the flows and the fund manager will therefore not be able to determine the size of the redemption orders. Also, some distributors do not accept funds with redemption fees. |

<ESMA_QUESTION_SLMT_22>

Q23 Can you think of any other redemption fee mechanism than the ones described above? If yes, please provide examples.

<ESMA_QUESTION_SLMT_23>

|Another mechanism could be time. Today some funds charge a redemption fee if the redemption is made within x months after the subscription. This is to foster long time investor behaviour and to protect the long-time unit holders. |

<ESMA_QUESTION_SLMT_23>

Q24 Do you think there is merit for the characteristics of redemption fees to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_24>

|Probably not |

<ESMA_QUESTION_SLMT_24>

Q25 Do you agree with the description of swing pricing and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_25>

| Yes |

<ESMA_QUESTION_SLMT_25>

Q26 Can you think of any characteristics of swing pricing that the ones described above?

<ESMA_QUESTION_SLMT_26>

| TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SLMT_26>

Q27 Do you think there is merit for the characteristics of swing pricing to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_27>

| No |

<ESMA_QUESTION_SLMT_27>

Q28 Do you agree that in the case of funds with multiple share classes, the same swing factor shall be applied to all share classes? If not, please justify your position.

<ESMA_QUESTION_SLMT_28>

| No. It should be possible to have due to the special characteristics of institutional share classes (large trades). It should in general also be considered the need to differentiate liquidity tools between an ETF share class and other share classes. |

<ESMA_QUESTION_SLMT_28>

Q29 Do you agree with the description of the dual pricing and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_29>

|Yes |

<ESMA_QUESTION_SLMT_29>

Q30 Are there any other calculation methods for dual pricing that should be considered? If yes, please give example.

<ESMA_QUESTION_SLMT_30>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SLMT_30>

Q31 Do you think there is merit for the characteristics of dual pricing to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_31>

|No |

<ESMA_QUESTION_SLMT_31>

Q32 Do you agree with the description of the anti-dilution levy and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_32>

|Yes. It is beneficial that anti-dilution levy has more flexible application possibilities (Article 7(5)) and we would see merits in having the same flexibility for the other LMT:s. |

<ESMA_QUESTION_SLMT_32>

Q33 Are there any other calculation methods for anti-dilution levy that ESMA shall consider? If yes, please give example.

<ESMA_QUESTION_SLMT_33>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SLMT_33>

Q34 In the case of funds with multiple share classes, would you see the possibility for different anti-dilution levies depending on share classes? Please justify your position.

<ESMA_QUESTION_SLMT_34>

|Yes. Different share classes could have different client types behaving in different ways. |

<ESMA_QUESTION_SLMT_34>

Q35 Do you think there is merit for the characteristics of anti-dilution levy to differ between different investment strategies and between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_35>

|No |

<ESMA_QUESTION_SLMT_35>

Q36 Do you agree with the description of redemptions in kind and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_36>

|We see merits in the regulation of redemptions in kind, it is a tool widely used today by ETFs (together with creations in kind) for transactions on the primary market (i.e. between the

management company and the Market Makers/Authorised Participants). Having said that, it is not used as an exceptional tool that is activated by stressed situations, hence more of an ongoing feature against the Market Makers/Authorised Participants. Unit holders (retail and professionals) are referred to the secondary market.

It should be clarified that “replicate the composition of a certain stock or debt index” includes index funds with leverage against an index. We would like to add that the “pro-rata exception” also is often necessary for non ETF funds tracking a debt securities index.

Also, important is to be able to use different practices for different share classes. Redemption in kind should be able to be used for an institutional share class even if it is not permitted for a retail share class. This should apply for all funds but is especially important for ETFs where redemptions in kind are frequently used. In the case of funds with “ordinary” share classes and one ETF share class, appropriate LMT may differ between the ordinary share classes and the ETF class. For instance, the ETF share class may consider redemption (and creation) in kind an appropriate LMT but that may not be suitable for the “ordinary” share classes. |

<ESMA_QUESTION_SLMT_36>

Q37 Can you think of any characteristics of redemptions in kind?

<ESMA_QUESTION_SLMT_37>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SLMT_37>

Q38 Do you think there is merit for the characteristics of redemption in kinds to differ between different investment strategies between AIFs and UCITS? If yes, how?

<ESMA_QUESTION_SLMT_38>

|No |

<ESMA_QUESTION_SLMT_38>

Q39 Do you agree with the description of side pockets and the corresponding characteristics? If not, please justify your position.

<ESMA_QUESTION_SLMT_39>

In Article 9(5) it is stated that necessary cash should be placed within the side pockets. It should be noted that in our jurisdiction (Sweden) it is not allowed for fund managers to charge a UCITS with such costs. Instead, it is the fund manager that should pay for the costs. It should therefore be an option to either place an amount of cash within the side pocket, or to let the fund manager be liable to the costs. |

<ESMA_QUESTION_SLMT_39>

Q40 Do you agree that in the case of UCITS, side pockets created by physical separation should only be done with the creation of a new UCITS where the assets for which there are no problems are placed? If not, please explain your position.

<ESMA_QUESTION_SLMT_40>

Normally, problematic assets are difficult to transfer to other securities accounts, why the only possibility is to transfer the non-problematic assets to a new UCITS. However, it cannot be ruled out that this is not always the case. If only a small portion of the fund is affected by the problems, which is normally the case, it would be more effective to transfer the problematic assets to a new UCITS. Where that is possible, we see no reason why it shouldn't be allowed.

Even if it is evident, it could also be reflected in the legal text that the structure of a side pocket fund will deviate from the obligations concerning the investment policies of UCITS.

It should also be possible to allow unit-holders to redeem, even though they will not receive any cash for their units. This is in the interest of the unit-holders since the holding of a side pocket could have tax consequences (flat tax on holdings). A unit-holder could thus want to be able to refrain from an uncertain future payment<ESMA_QUESTION_SLMT_40>

Q41 Can you think of any other characteristics of side pockets that ESMA should consider? In particular, do you think that the characteristics of side pockets shall differ between UCITS and AIFs (in addition to the creation of side pockets via physical separation of the assets)? If, yes please elaborate.

<ESMA_QUESTION_SLMT_41>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_41>

Q42 Do you see merit in specifying further the characteristics that side pocket created by means of accounting segregation should have? If yes, can you please explain how you have created side pocket via accounting segregation? Have you encountered any legal constraints or are you aware of any legal constraints in your jurisdiction that may limit the use of side pockets via asset segregation?

<ESMA_QUESTION_SLMT_42>

We see merit in having the possibility to use a share class as a side pocket. This could be a cost efficient alternative. However, it should be noted that such a share class deviates from the normal concept of a share class since among other things the assets of that share class will not be the same as the rest of the UCITS.

<ESMA_QUESTION_SLMT_42>

Q43 Do you agree that the assets in the side pocket should always be managed with the view to liquidate them? Or could there be circumstances, where a reintegration with the normal assets could be contemplated? Please explain.

<ESMA_QUESTION_SLMT_43>

[We believe there could be situations where side pockets are created for a period of time, for example due to a geopolitical crisis, and it turns out that these assets can become liquid again. However, a reintegration with the normal assets would in many cases be very difficult to achieve. Nevertheless, there should be some flexibility for the fund manager to decide how to best act in the interest of the unit-holders.]

<ESMA_QUESTION_SLMT_43>

Q44 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the characteristics

of LMTs set out in Annex IIA of the UCITS Directive? Which other types of costs or benefits would you consider in that context?

<ESMA_QUESTION_SLMT_44>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_44>

Q45 Is there any ESG and innovation-related aspects that ESMA should consider when drafting the RTS under the UCITS Directive?

<ESMA_QUESTION_SLMT_45>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_45>

Q46 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the characteristics of LMTs set out in Annex V of the AIFMD? Which other types of costs or benefits would you consider in that context?

<ESMA_QUESTION_SLMT_46>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_46>

Q47 Is there any ESG and innovation-related aspects that ESMA should consider when drafting the RTS under the AIFMD?

<ESMA_QUESTION_SLMT_47>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_SLMT_47>

