8 July 2024
ESMA34-1985693317-1097

Consultation Paper

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:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. 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'.

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.

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1.Executive Summary

Reasons for publication

The revised AIFMD and UCITS Directive[1] provide that ESMA shall develop guidelines on the selection and calibration of liquidity management tools (LMTs) by UCITS and AIFMs of open-ended AIFs for liquidity risk management and for mitigating financial stability risks. Those guidelines shall recognise that the primary responsibility for liquidity risk management remains with the UCITS and AIFM. Furthermore, they shall include indications as to the circumstances in which side pockets can be activated and allow adequate time for adaptation before they apply, in particular for existing UCITS and open-ended AIFs.

This Consultation Paper (CP) represents the first stage in the development of the guidelines and sets out proposals for their content on which ESMA is seeking the views of external stakeholders.

Contents

Section 2 explains the background to our proposals and outlines its legislative basis. Annex III details ESMA's initial Cost-Benefit Analysis (CBA) concerning the draft Guidelines. At all stages stakeholders' input is sought through specific questions, which are summarised in Annex I. Annex IV contains the full text of the draft guidelines.

Next Steps

ESMA will consider the feedback it received to this consultation and expects to publish a final report by 16 April 2025.

[1] Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (europa.eu)

2. Background

5. Directive (EU) 2024/927 [2] (hereafter to as 'the amending Directive') amending Directives 2011/61/EU (AIFMD) and 2009/65/EC (UCITS Directive) was published in the Official Journal on 25 March 2024. This amending Directive modifies the AIFMD and the UCITS Directive in the area of, *inter alia*, LMTs, supervisory reporting and depositaries. It also amends the AIFMD in relation to loan-originating alternative investment funds.

6. The amending Directive provide that, by 16 April 2025, ESMA shall develop guidelines ("the Guidelines") on the selection and calibration of LMTs by UCITS and AIFMs of open-ended AIFs for liquidity risk management and for mitigating financial stability risks. Those guidelines shall recognise that the primary responsibility for liquidity risk management remains with UCITS and the AIFM. Furthermore, they shall include indications as to the circumstances in which side pockets can be activated and allow adequate time for adaptation before they apply, in particular for existing UCITS and AIFs.

7. In that context, ESMA shall, by 16 April 2025, also develop draft RTS to specify the characteristics of the LMTs under Article 16(2)(g) of AIFMD and 18a(3) of the UCITS Directive. The future RTS on the characteristics of LMTs will have to be read in conjunction with the Guidelines.

8. Article 18a(2) of the revised UCITSD and Article 16(2b) of the revised AIFMD state that a UCITS and an AIFM shall select at least two appropriate LMTs from those referred to in Annex IIA, point 2 to 8, of the UCITSD and in Annex V, points 2 to 8, of the AIFMD, after assessing the suitability of those tools in relation to the pursued investment strategy, the liquidity profile and the redemption policy of the fund. The same Articles state that "*the UCITS and the AIFM shall include those tools in the UCITS/AIF rules or instruments of incorporation for possible use in the interest of the UCITS'/AIF's investors*" and that "*it shall not be possible for that selection to include only the tools referred to in Annex V, points 5 and 6*".

[2] Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (europa.eu)

9. By way of derogation, a UCITS that is authorised as a Money Market Fund (MMF) and an AIFM that manages an AIF authorised as an MMF[3] may decide to select only one LMT from the above lists.

10. In addition, UCITS/AIFMs should always have the possibility of temporarily suspending subscriptions, repurchases and redemptions or of activating side pockets, in exceptional circumstances and where justified having regard to the interests of the UCITS/AIF's investors.

11. Against this background, suspensions of subscriptions, repurchases and redemptions and side pockets can always be activated in exceptional circumstances and in the best interest of the investors, without the need for the UCITS/AIFM to "pre-select" them.

12. On the contrary, the "other" LMTs[4] , i.e.: redemption gates, extension of notice periods, redemption fee, swing pricing, dual pricing, Anti-Dilution Levy (ADL), redemption in kind) can be activated by the UCITS/AIFMs only if selected and included in the fund's rules and instruments of incorporation among the selected LMTs.

13. With regards to the calibration of LMTs, the mandate does not set any limitations. Therefore, the guidelines should cover the calibration of all LMTs listed, respectively, in Annex IIA of the UCITSD and Annex V of the AIFMD, including suspensions of subscriptions, repurchases and redemptions and side pockets.

14. As regards to the activation of LMTs, while the UCITSD and AIFMD refer to the activation of side pockets only, ESMA deems important setting minimum expectations, as well as examples, in order to identify instances that may lead to the activation of all LMTs.

15. For ease of reference, in this CP references to 'funds' should be understood as references to both UCITS and open-ended AIFs. Similarly, references to 'managers' should be understood as references to both Alternative Investment Fund Managers (AIFMs) of open-ended AIFs and Management Companies. In case there are provisions that apply only to one type of funds or fund managers, then the text specifically refers to UCITS, AIFs, AIFMs or Management Companies.[5]

[3] In accordance with Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).
[4] Those referred to in Annex IIA, point 2 to 8, of the UCITSD and in Annex V, points 2 to 8 of the AIFMD.
[5] For a list of legislative references, abbreviations and definitions used in this CP, please see Section 2 of the draft Guidelines.

2.1 Scope of the Guidelines

16. Against this background, the proposed scope of the draft ESMA Guidelines on LMTs of UCITS and open-ended AIFs is the following:

		Selection	Calibration	Activation and, where appropriate, deactivation
A.	Suspension of subscriptions, repurchases and redemptions		✓	Minimum expectations/examples
B.	LMTs points 2 to 8 of the Annexes[6] (i.e.: redemption gate, extension of notice periods, redemption fee, swing pricing, dual pricing, anti-dilution levy, redemption in kind)	✓	✓	Minimum expectations/examples
C.	Side pockets		✓	✓

17. For the purpose of the Guidelines, A and C above are also referred to as "available LMT(s)", and B as "selected LMT(s)".[7]

2.2 Type of LMTs

18. As highlighted by the IOSCO Final Report on Anti-Dilution Liquidity Management Tools[8], LMTs can be broadly divided in Anti-Dilution Tools (ADTs, or price-based tools, as they adjust the final price received or paid by investors) and quantitative-based LMTs. While the first "*aim to pass on the estimated costs of liquidity associated with fund subscriptions/redemptions to the subscribing / redeeming investors by adjusting*

[6] Annex IIA, point 2 to 8, of the UCITSD and in Annex V, points 2 to 8 of the AIFMD.
[7] See also the Definition section of the guidelines further below.
[8] FR15/23 Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes (iosco.org)

the NAV of the OEF or the price at which they transact", the latter "*operate by reducing the liquidity obligations of OEFs through delaying / deferring payments to investors*".[9]

19. Against this background, in order to ensure alignment with the IOSCO principles, the proposed guidance adopts the following distinction:

Type of LMT	**LMTs**
Anti-Dilution Tools (ADT)	Redemption fees, swing pricing, dual pricing, Anti-Dilution Levy (ADL)
Quantitative LMTs	Suspension of subscriptions, repurchases and redemptions, redemption gates, extension of notice period.
Other LMTs	Redemptions in kind, side pockets

2.3 General principles

20. As stated in the revised UCITS Directive and AIFMD, the primary responsibility for liquidity risk management remains with the manager, who shall select and include in the fund's rules or instruments of incorporation at least two appropriate LMTs from the following list: redemption gates, extension of notice periods, redemption fee, swing pricing, dual pricing, Anti-Dilution Levy (ADL), redemption in kind.[10]

21. By way of derogation, a UCITS that is authorised as a MMF and an AIFM that manages an AIF authorised as a MMF may decide to select only one of the LMTs referred to in the above paragraph.

22. Therefore, the primary responsibility for liquidity risk management, as well as for the selection, calibration, activation and deactivation of LMTs is of the manager. In the selection of appropriate LMTs, managers should give due consideration that the

[9] *Ibidem*, p. 4.
[10] Those are the LMTs referred to in Annex IIA, point 2 to 8, of the revised UCITSD and in Annex V, points 2 to 8 of the revised AIFMD. Furthermore, in light of Article 18a paragraph 2 of the revised UCITD and Article 16 paragraph 2b of the revised AIFMD, it shall not be possible to select only swing pricing and dual pricing.

selected tools will allow to effectively manage the fund's liquidity risk in both normal and stressed market conditions and be as comprehensive as possible.

23. Without prejudice to the use of tools to mitigate against the dilution of investor interests, managers should not solely rely on LMTs to manage a fund's liquidity risk. LMTs should be considered as an essential element of the fund's overall liquidity management framework, which should incorporate relevant provisions related to the fund's structure, investment strategy and operational processes and procedures to manage liquidity.

24. LMTs should not be seen as a backstop for the purpose of addressing liquidity issues stemming from inadequate fund structuring, poor investment decisions, inappropriate risk management or other management failings.

25. The activation and deactivation of LMTs should not exempt managers from their obligations on best execution, eligibility of assets, fair valuation of assets, liquidity risk management and fair treatment of investors, as well as the obligation to ensure consistency between the investment strategy, the liquidity profile and the redemption policy of the fund.[11]

26. In light of the legislative mandate, managers shall select LMTs after assessing the suitability of those tools in relation to the pursued investment strategy, the liquidity profile, as well as the distribution policy (e.g.: the levy to be applied by the platform) and the redemption policy of the fund as further detailed under paragraph 17 of Section 6.5.1 of the draft guidelines.

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?

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)?

27. While the amended legislations require the selection of at least two appropriate LMTs from the list provided in Annex V (for AIFMD) and Annex IIA (for UCITS Directive),

[11] See Article 40(4) of Commission Directive 2010/43/EU and Article 16(2) of the AIFMD.

managers have the discretion to select more LMTs, as well as additional liquidity measures, according to the criteria set out in the previous paragraph, in order to ensure the fund's overall resilience and ability to manage its liquidity during both normal and stressed market conditions.

28. Bearing in mind that the primary responsibility for the selection of LMTs remains within the manager, ESMA deems important providing some indications on what manager should consider in the selection of LMTs.

29. According to the revised FSB Recommendation 4, "*Authorities should ensure that a broad set of liquidity management tools and measures is available for use by managers of open-ended funds in normal and stressed market conditions as part of robust liquidity management practices. Authorities should also reduce operational and other barriers that prevent the use of such tools and measures*"[12]. In this context, when considering the set of LMTs available to managers, the FSB recommends a balance between ADTs and quantity based LMTs. If operationalised effectively, ADTs can in fact reduce redemptions arising from potential first-mover advantage.

30. Against this background, in the selection of the two minimum mandatory LMTs, managers should consider, where appropriate, the merit of selecting at least one quantitative-based LMT (i.e.: redemption gates, extension of notice period) and at least one ADT (i.e.: redemption fees, swing pricing, dual pricing, ADL), taking into consideration the investment strategy, redemption policy and liquidity profile of the fund and the market conditions under which the LMT could be activated. In this context, managers may consider whether to select one LMT to use under normal market conditions and one LMT to be used under stressed market conditions (for instance, one ADT to use for normal market conditions and one quantitative LMT to be used under stressed market conditions).

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?

[12] See Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds (fsb.org), p. 17.

31. When considering the activation of an LMT, an assessment of whether to activate LMTs individually or in combination with additional LMTs or other liquidity measures should be undertaken in each instance.

32. Managers should be able to demonstrate, under the request of the NCA, that the activation and calibration(s) of the selected LMTs is (are) in the best interest of all investors and are appropriate and effective for the prevailing market conditions, be that normal or stressed.

33. The activation of a specific LMT or its calibration should not in any way alter or change the fund's investment objectives, policy, profile or characteristics as stated in the fund's rules, offering documents or instruments of incorporation.

34. When activating and calibrating LMTs, managers should ensure that there is no possibility of modifying orders after the centralisation date where the order will be processed, including through cancellation requests.[13] Managers should ensure that the level of subscription and redemption orders received is treated with the strictest confidentiality, in order to avoid that some investors can benefit from information on the probability that LMTs may be activated (e.g.: activation thresholds may be reached in case of redemption gates).

35. Managers should calibrate and activate LMTs based on the unique attributes of the fund (e.g.: the liquidity profile, the type of underlying assets, the investor base) and the prevailing market conditions.

36. Under both the UCITS Directive and the AIFMD, depositaries are required to implement procedures to verify that the fund is acting in compliance with obligations under those Directives.[14]Therefore, a depositary should set up appropriate verification procedures to check that managers have in place documented procedures for LMTs.

Q4: Do you see merit in developing further specific guidance on the depositaries' duties, including on verification procedures, with regards to LMTs?

[13] This is without prejudice to the separate provisions proposed under Article 2 of the CP on RTS on the characteristics of LMTs under the AIFMD and UCITS Directive (ESMA34-1985693317-1095), whereby investors may ask for the cancellation of the non-executed part of their redemption orders in case of activation of redemption gates.

[14] In the case of UCITS, under Article 3(2) of Commission Delegated Regulation (EU) 2016/438. In the case of AIFMD, under Article 95 of Commission Delegated Regulation (EU) 231/2013

2.4 Governance principles

37. Both IOSCO and the FSB highlight the importance of establishing an adequate and appropriate governance for their liquidity risk management processes, including on the use of LMTs[15].

38. The selected LMTs should therefore be properly integrated and embedded in the fund's liquidity risk management framework.

39. In light of the IOSCO guidance, the internal governance arrangements should at least include the following elements: a) objective criteria (e.g.: activation thresholds) for the application of LMTs; b) methodology, including calibration; c) parties involved (e.g.: senior management, risk management, etc.); d) source of information and data used; e) controls; f) documentation of decisions made; g) escalation processes; h) oversight by the governing body.

40. The revised AIFMD and UCITSD also provide that the UCITS and AIFM "*shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of such tool*".[16]

41. Against this background, it is important that the selected LMTs, the methodology for their calibration, as well as the conditions for their selection, activation/deactivation, are detailed in a documented LMT policy ("the LMT policy").

42. The LMT policy, which should form part of the broader fund liquidity risk management process policy document, should also document the conditions for the activation/deactivation and calibration of the available LMTs.[17]

[15] "The relevant authorities have an important role to play in setting expectations on how these decisions could be made with respect to fund governance, for example through involvement by the fund board of directors (where relevant) and communication to unitholders and the relevant authorities (see also Recommendation 8). The more prepared asset managers and fund investors are with respect to the use of quantity based LMTs and other liquidity management measures in stressed market conditions, the more effective such tools and measures are likely to be when used". See Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds (fsb.org), p. 20. See IOSCO's Recommendation 8 whereby "The responsible entity's liquidity risk management process must be supported by strong and effective governance", FR15/23 Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes (iosco.org), p. 18. See also, Section II of the document. Both the FSB and IOSCO highlight the link between internal governance and appropriate disclosure to investors on the objectives, design and use of LMTs.

[16] See Art. 18 paragraph 2 of the revised UCITSD and Art. 16 paragraph 2b of the revised AIFMD.

[17] The "available LMTs" are: suspension of subscriptions, repurchases and redemptions and side pockets. See Section II.1 and the Definition section of the guidelines.

43. The LMT policy should include provisions on a series of aspects and, at least, on the ones included under paragraph 28 of Section 6.5.2 of the draft guidelines. Those include clear and objective criteria for the selection, activation/deactivation of the selected and available LMTs, the governance framework, the methodology, disclosure to investors.

44. In case the manager has selected ADT(s) as LMTs, the LMT policy should document the nature of the costs taken into account, the rules regarding the distribution of these costs between entering, exiting or remaining holders, as well as the estimation methodology, which should be based on documented and justifiable criteria and reviewed at least every six months. Managers should document all methodologies and calculations in such a way as to allow traceability and ensure their logging.

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?

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.

2.5 Quantitative-based LMTs

2.5.1 Suspension of subscriptions, repurchases and redemptions

Activation

45. The Directives indicate that suspensions of subscriptions, repurchases and redemptions can always be activated in exceptional circumstances and in the best interest of the investors, without the need for the UCITS/AIFM to select this LMT.

46. Managers should consider the activation of suspension of subscriptions, repurchases and redemptions only in exceptional circumstances. As indicated in the Background section, the Guidelines aim at providing indications of which are the “exceptional circumstances” that could require the activation of this LMTs. Exceptional circumstances can be defined 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. Paragraph 30 of Section 6.5.3.1 of the draft guidelines include a non-exhaustive list of examples of exceptional circumstances.

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?

47. The suspension of subscriptions, repurchases and redemptions may be applied together with a suspension of the NAV calculation, particularly in case of uncertain valuation and where it is not possible to compute the NAV of the fund(s). In other cases, and whenever possible, the manager should continue to value the assets in the fund and publish a NAV to ensure a proper information to investors.

48. While suspensions of subscriptions, repurchases and redemptions can, in some cases, anticipate the manager's decision to liquidate the fund, as they allow time to the manager to assess whether the fund is no longer viable, managers should ensure that suspensions of subscriptions, repurchases and redemptions are activated only on a temporary basis (i.e.: with the view not to permanently suspend the fund, but to re-open it, or liquidate it or activate side pockets, if necessary, at a certain point in time). To this end, prior to or immediately after the activation of the suspension of subscriptions, repurchases and redemptions, managers should formalise a detailed plan (the "LMT plan") that should be in line with the LMT policy and should include, where relevant, the elements included under paragraph 32 of Section 6.5.3.1 of the draft guidelines. Those elements include a description of the exceptional circumstances, the possibility to combine the LMT with other LMTs and the disclosure to investors.

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?

Calibration

49. Relevant calibrations for the suspension of subscriptions, repurchases and redemptions should include:

a) determining the activation threshold for a suspension. This should also take into account, legal and regulatory requirements. Any mechanistic approach should be avoided to ensure that the LMT allows a timely intervention in order to address the exceptional circumstances that prompted its activation;

b) the criteria for assessing and monitoring the conditions that prompted the activation of the suspension of subscriptions, repurchases and redemptions;

c) determining when the conditions referred to under paragraph b) no longer exist; and

d) the criteria for reviewing and potentially revising the decision to suspend and the change in circumstances that would warrant this.

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?

2.5.2 Redemption gates

50. According to the revised AIFMD and UCITS Directive, redemption gates mean a temporary and partial restriction of the right of unitholders or shareholders to redeem their units or shares, so that investors can only redeem a certain portion of their units or shares. Contrary to suspensions of subscriptions, repurchases and redemptions, a fund that applies redemption gates could still be open for subscriptions and the restrictions only apply to the redemptions.

Selection

51. Managers should consider the selection of redemption gates for all funds, as all assets could potentially become less liquid during stressed market conditions and the use of this LMT could be useful to avoid the activation of suspension of subscriptions, repurchases and redemptions.

52. The selection of redemption gates:

a) should be considered especially by:

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

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

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

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

Q10: Do you agree with the proposed criteria for the selection of redemption gates? Is there any other criteria that should be considered?

Activation

53. The activation of redemption gates should be considered in cases of significant calls on a fund's liquidity and can be automatic or at the discretion of the manager when the activation threshold is exceeded.

54. For funds marketed to retail investors, redemption gates should not be activated to manage the fund's liquidity on a day-to-day basis, but should be activated in specific circumstances and carefully calibrated, for instance, to address severe liquidity stresses or stressed market conditions where executing the sale of underlying assets could worsen liquidity issues of the fund.

55. The activation threshold should be disclosed in the fund's rules, offering documents or instruments of incorporation.

Q11: What methodology should be used and which elements should be taken into account when setting the activation threshold of redemption gates?

Calibration

56. Managers should calibrate the activation threshold in order to ensure that it operates effectively and in the best interest of investors at all times. In calibrating such threshold, managers should give due consideration to the NAV calculation frequency, the investment objective of the fund and the liquidity of the underlying assets and should ensure that investors are able to redeem their units or shares under normal market conditions.

57. The use of redemption gates should not be restricted in terms of the maximum period over which they can be used (maximum duration of redemption gates), or the maximum number of times that redemption gates can be activated (maximum use of redemption gates), as long as it remains temporary in nature. These matters should be determined by the manager on a case-by-case basis.

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.

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?

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?

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:

a) at 5% for daily net redemptions; and

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

2.5.3 Extension of notice periods

58. By definition, the extension of notice periods is based on the already existing notice period of the fund, which is set at its inception/design phase based on the liquidity of the underlying assets.

Selection

59. As it creates a time buffer to sell the underlying assets, the selection of extension of notice periods should be available to all funds but is recommended for funds whose liquidity can deteriorate quickly in times of stress.

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?

60. In light of the additional time that may be needed in order to liquidate the portfolio, the selection of the extension of notice periods is recommended for AIFs invested in less liquid assets and, particularly, for RE and PE funds which should already have in place an appropriate notice period that is in line with the level of liquidity of their assets under normal market conditions.

61. While Article 76 of the UCITSD sets out a minimum dealing frequency of twice of a month (and, if authorised by the NCA, once a month) [18], the AIFMD does not require a minimum redemption frequency. However, Article 16(2) of the AIFMD provides that "*AIFMs shall ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent*". Furthermore, Article 72(1) of the AIFMD L2 provides that "*an AIFM shall ensure that for each AIF it manages the net asset value per unit or share is calculated on the occasion of each issue or subscription or redemption or cancellation of units or shares, but at least once a year*". As recently highlighted by the FSB, better alignment between asset liquidity and redemption terms "*may be effective in reducing the systemic vulnerabilities of real estate funds and other funds that invest in inherently illiquid assets*".[19] The importance of ensuring ongoing supervision of the alignment between the funds' investment strategy, liquidity profile and redemption policy was also stressed by ESMA, in numerous occasions[20].

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

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[18] According to Article 76 of the UCITSD "A UCITS shall make public in an appropriate manner the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, and at least twice a month. The competent authorities may, however, permit a UCITS to reduce the frequency to once a month on condition that such derogation does not prejudice the interests of the unit-holders".

[19] See Response to FSB consultation on Addressing Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds – Revisions to the FSB's 2017 Policy Recommendations, p. 39.

[20] See the 2020 ESMA Report in response to the May 2020 ESRB Recommendation and the ESMA Final Report on the 2022 CSA on valuation, available, respectively at esma34-39-1119-report_on_the_esrb_recommendation_on_liquidity_risks_in_funds.pdf (europa.eu) and ESMA34-45-1802_2022_CSA_on_Asset_Valuation_-_Final_Report.pdf (europa.eu).

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?

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?

Activation

62. The activation of extension of notice periods should be considered both under normal and stressed market conditions and it may be useful in specific circumstances, for instance, in case of redemption pressures and/or temporary valuation uncertainty.

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?

Calibration

63. In the calibration of the extension of notice periods, managers should consider, where appropriate, the time necessary for the orderly liquidation of the underlying instruments in the best interest of the investors.

64. In order to avoid an increase of redemptions requests, managers should carefully consider at what time to announce and activate the extension of notice periods.

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

2.5.4 Redemptions in kind

65. The revised Directives provide that "redemptions in kind shall only be activated to meet redemptions requested by professional investors and if the redemption in kind corresponds to a pro rata share of the assets held by the AIF". By way of derogation, "the redemption in kind need not correspond to a pro rata share of the assets held by the AIF [UCITS] if that AIF [UCITS] is solely marketed to professional investors, or if the aim of that AIF's [UCITS'] investment policy is to replicate the composition of a certain stock or debt securities index and that AIF [UCITS] is an exchange-traded fund".

Selection

66. In selecting redemptions in kind, managers should consider the applicable restrictions that apply to the use of redemptions-in-kind and its permitted application to professional investors only, i.e. managers of funds which are marketed to both retail and professional investors should carefully assess the merit of selecting redemptions in kind as one of the two minimum LMTs in light of their potential limited usability and their expected impact on the fund(s) they manage.

Q21: Do you agree with the above criteria for the selection of redemptions in kind? Are there any other criteria that should be considered?

Activation

67. Redemption in kind should be activated on the NAV calculation dates, in light of the minimum valuation frequency set out in the [UCITSD] / [AIFMD L2] at the discretion of the manager, as foreseen in the fund's prospectus/articles of incorporation.

68. In case of the activation of redemptions in kind, an independent third party (e.g.: the fund auditor, depositary) should perform an additional valuation of the asset(s) to be redeemed in kind.

Q22: Do you agree with the above criteria for the activation of redemptions in kind? Are there any other criteria that should be considered?

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

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?

Q25: How should redemptions in kind be calibrated?

2.6 Anti-Dilution Tools (ADT)

69. Anti-dilution tools (ADT) are methodologies to address the dilution of investor interests associated with the creation and/or redemption of shares/units by investors. According to the IOSCO guidance on ADTs, anti-dilution LMTs "*aim to pass on the estimated costs of liquidity associated with fund subscriptions / redemptions to the subscribing /*

redeeming investors by adjusting the NAV of the OEF or the price at which they transact"[21].

70. Against this background, managers should consider the selection of ADTs for all types of funds to mitigate material investor dilution and potential first mover advantage. This is the case, in particular, for those funds which invest in assets that are less liquid or are usually liquid but can become less liquid during stressed market conditions (and are therefore exposed to substantial dilution risks), and for whom the liquidation cost of the underlying assets may increase significantly.

71. Managers should have appropriate internal systems, procedures and controls in place at all times in compliance with the applicable regulatory requirements for the design, calibration and use of ADTs as part of their liquidity risk management framework. Managers should identify the risks specific to the selected ADTs and implement an appropriate system of controls to mitigate such risks, even if such tools would not always be activated.

72. When selecting and activating ADTs, managers should note that ADTs share similar features and may deliver similar outcomes in similar conditions. It is to be noted that under the revised AIFMD and UCITS Directive, it shall not be possible for the selection of the two minimum LMTs to include only swing pricing and dual-pricing. While the simultaneous selection and activation of other ADTs (e.g.: swing pricing and anti-dilution levies) is not excluded under the revised AIFMD and UCITS Directive, it could potentially lead to duplicating impacts and may have the potential to undermine broader liquidity risk management objectives.

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.

[21] See FR15/23 Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes (iosco.org), p. 4. In this context, the IOSCO guidance points out that "*a key element of the policy discussions around OEF liquidity risk management is the balance among various LMTs and liquidity risk management measures. From that perspective, quantity-based LMTs, such as suspensions of redemptions and redemption gates, have typically been activated as ex-post tools in response to increased redemptions or when responsible entities face major valuation issues. Exclusive reliance on such ex-post tools may result in unintended consequences. For example, investor expectations that an OEF will use quantity-based LMTs may motivate investors to front-run potential restrictions on redemptions, which may add to redemption pressures. In this context, anti-dilution LMTs, if operationalised effectively, are a useful and recommended tool to address the investor dilution issue and the potential financial stability issue at their source while being less prone to the unintended consequences associated with quantity-based LMTs. This would also put fund unitholders in a similar economic position to investors that opt to invest directly in portfolio securities*". *Ibidem*.

73. While ADTs are generally applicable to a wide range of funds, managers should determine the applicability of individual ADTs for a fund in both normal and stressed market conditions.

74. ADTs may have different rules around when they are activated and the thresholds for activation. Managers should carefully assess the different levels for the activation of ADTs at fund level and should set appropriate and prudent activation threshold so as to avoid any material dilution impact on investors or on the fund in both normal and stressed market conditions depending on the investment strategy, assets under management, size and portfolio characteristics (including the investment strategy and asset liquidity), estimated cost of liquidity, investor profile, liquidity profile of each fund and historical fund flows.

75. The activation of ADTs may be more challenging in certain circumstances, where for example there is limited market liquidity and/or in cases of valuation uncertainty. In those cases managers should consider the use of other LMTs in addition to ADTs (e.g.: quantity based LMTs).

76. The activation of ADTs should not affect the manager's duty to value the fund(s) at fair value at all times.

77. Managers may activate ADTs, both under normal and stressed market conditions, to impose on subscribing and/or redeeming investors the estimated costs of liquidity. As further indicated under paragraph 56 of Section 6.5.4 of the draft guidelines, the estimated cost of liquidity should include both explicit and implicit transaction costs, be based, as a starting point, on costs associated with transacting a pro-rata slice of all assets in the portfolio and be estimated in a documented manner.[22]

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?

78. As the calibration of ADTs aims at reflecting the estimated costs of liquidity, this should be adjustable when needed, even if a normal range of adjustment factors / fees is disclosed or set. To this effect, in exceptional circumstances, the disclosed range of

[22] In line with the IOSCO guidance on ADTs available at the following link: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD756.pdf

adjustments should not be considered as a cap or restriction that would prevent ADTs from achieving their objectives to mitigate material dilution and potential first-mover advantages arising from investor transactions. Managers should include in the fund's rules, offering documents or instruments of incorporation, relevant disclosures on ADTs. These disclosures should explicitly state the ranges of liquidity cost adjustment, that these ranges could be exceeded on an exceptional basis if justified by the market conditions, the governance structures around any changes and the factors driving these.

79. In any case, managers should be able to demonstrate, at the request of the NCA, that the calibration of ADTs is fair and reasonable for both normal and stressed market conditions, taking into account the best interests of investors. This should be supported by a strong liquidity risk management framework, which should include periodic back-testing and strong governance.

80. Managers should identify the risks specific to ADT and set up an appropriate control system.

81. Managers should not calibrate ADTs in a way that could help to artificially improve the performance of the fund.

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

2.6.1 Redemption fee

Selection

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

a) that invest in assets which have fixed/transparent/foreseeable transaction costs, such as RE agency fees or notary fees, and / or that have low-variation transaction costs (e.g.: fixed taxes and levies on RE transactions);

b) that are AIFs invested in less liquid assets where other ADTs, such as swing pricing, might be challenging or impossible to implement (e.g.: RE assets) due to infrequent and limited pricing sources;

c) that invest in assets that have low-variation transaction costs; and

d) whose underlying assets do not have very frequent and reliable pricing sources available from various different trading venues (as opposed to other assets, e.g. equities).

Q29: Do you agree with the above criteria for the selection of redemption fees? Is there any other criteria that should be considered?

Activation

83. In the activation of redemption fees, managers may set activation thresholds that could be expressed as the size of redemption orders above which redemption fees will be charged to redeeming investors.

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

Calibration

84. In the calibration of redemption fees, managers should apply a methodology that:

a) ensures the coverage of the cost of liquidity, including estimated explicit and implicit costs where applicable (e.g.: mapping what the cost of liquidity would be within predetermined redemption thresholds and charge those costs to the redemption fee, where appropriate);

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

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

85. 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).

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

2.6.2 Swing pricing

Selection

86. Managers should consider the selection of swing pricing for funds whose underlying assets are actively traded and information on trading costs (bid/ask) is available and frequently updated, particularly where the funds invest mainly in assets with market contingent liquidity costs. Swing pricing may be less appropriate in cases of valuation uncertainty.

Q32: Do you agree with the above criteria for the selection of swing pricing? Is there any other criteria that should be considered?

Activation

87. The decision to activate a specific swing pricing model (i.e.: full, partial with a single or tiered swing factor), as well as the calibration of the swing factor should be dynamic and based on market conditions, based on a methodology that is established by the manager and documented in the LMT policy. It should be noted that a tiered swing pricing system may be *de facto* always activated without any material effect on the NAV for low levels of flows.

88. The manager should disclose to investors relevant details governing the activation of swing pricing both for normal and stressed market conditions. The activation threshold for swing pricing should not be disclosed in order to avoid first mover advantage.

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

Calibration

89. When calibrating swing pricing, managers should ensure that the full cost of liquidity, in light of the market conditions, is incorporated in the swing factor, including any significant market impact of the trades. By design, swing pricing should ensure that the NAV is always adjusted to market conditions. The estimation of the liquidity costs of the assets in the portfolio should be carried out in a documented manner and on the basis of justifiable data.

90. The manager should disclose to investors a maximum swing pricing factor for normal market conditions but should also be able to recalibrate it for stressed market conditions. The possibility to recalibrate the swing factor beyond the maximum factor in exceptional market conditions should be established within a clearly described framework and clearly disclosed to investors in the prospectus.

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?

91. The decision to recalibrate the swing factor should be duly justified and taken in the best interest of the investors. The revised swing factors should be the result of a robust internal governance process, in line with the LMT policy and should be based on a robust methodology.

92. Both current and new investors should be informed through the usual communication channels, such as the ordinary notice to investors, the fund's internet website or any other way as laid down in the prospectus.

93. In case the swing factor adjustment goes beyond the maximum swing factor laid down in the fund's prospectus, the manager should be able to justify if required by the NCA on an *ex-post* basis the level of the swing factor applied and to provide documentary evidence that such factor was at any time representative of the prevailing market conditions.

94. In case the fund charges performance fees, the manager should not consider the "swung" NAV (i.e.: the NAV published by the manager when swing pricing is applied) for the purpose of the calculation of performance fees, but the NAV before swing pricing is applied not to take into account an over performance which is not linked to the performance of the portfolio.

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

2.6.3 Dual pricing

Selection

95. The selection of dual pricing may be appropriate for funds that invest mainly in assets whose liquidity costs are comprised primarily of the bid-ask spread. Dual pricing may be less appropriate in cases of valuation uncertainty.

Activation

96. Managers should consider which methodology to use when activating dual pricing based on the type of the fund and the market conditions:

a) calculating two NAVs (i.e.: one NAV incorporating assets' ask prices to be paid by subscribing investors and another NAV incorporating assets' bid prices to be received by redeeming investors); or

b) setting an "adjustable spread" around the fund's NAV under which assets are priced on a mid-market basis (i.e.: a bid price at which the fund redeems shares and an offer price at which the fund issues new shares), which should be estimated in a verifiable way and based on objective criteria by the manager and could be dynamic to reflect the liquidity costs in prevailing market conditions, akin to swing pricing or anti-dilution levies.

Calibration

97. While dual pricing may be more applicable to funds that invest mainly in assets whose liquidity costs are mainly comprised of the bid-ask spread, any significant market impact or explicit transaction costs should be accounted for separately by additional adjustment to the NAV.

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.

2.6.4 Anti-dilution levy (ADL)

Selection

98. By design, swing factor pricing and the ADL can be useful LMTs for funds that invest mainly in assets with market-contingent liquidity costs.

99. As for swing pricing, managers should consider the selection and activation of ADL for those funds whose underlying assets are actively traded and information on trading costs (bid/ask) is generally available, including for funds that invest in assets with market contingent liquidity costs. ADL may be less appropriate in cases of valuation uncertainty.

100. ADL may be more appropriate for funds:

a) with a high investor concentration (i.e.: a small number of investors), in order to address the risk that one investor/a few investors could fully redeem their shares at a short notice;

b) with significant levels of subscription and/or redemption activity that could negatively impact the fund's existing investors (e.g.: smaller funds in terms of NAV could be more impacted by the cost of liquidity caused by large redemptions);

c) that invest in less liquid assets (e.g.: high yield bonds, small cap equities).

Q37: Do you agree with the above criteria for the selection of ADL? Is there any other criteria that should be considered?

Activation

101. ADLs can be activated on an ongoing basis or dynamically based on pre-defined thresholds.

102. In typical market environments, the ongoing activation of the ADL primarily serves as a preventative measure against dilution risks, discouraging short-term trading behaviours and protecting the interests of long-term investors.

103. Managers should be proactive in their approach, recognising that market conditions can swiftly shift from normal to stressed. While the ADL may be implemented consistently during normal periods, its calibration must be adapted to changing market conditions to ensure its effectiveness in preserving the fund's liquidity.

Q38: Do you agree with the above criteria for the activation of ADL? Is there any other criteria that should be considered?

Calibration

104. ADL should be calibrated based on the same factors used to calibrate swing factors. The calibration of ADL should include all estimated explicit and expected implicit transaction costs and it should be dynamic in order to ensure that the levy can evolve on a regular basis in light of the market conditions.

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

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

2.7 Side pockets

Activation

105. Managers should consider the activation of side pockets only in exceptional circumstances. Exceptional circumstances can be defined as unforeseen events and/or operational/regulatory environments that impact materially on the fund's ability to carry out normal business functions and activities. A non-exhaustive list includes:

a) significant valuation uncertainty and/or illiquidity of a specific portion of the portfolio of the fund for which there is no active market and/or for which trading is prohibited (e.g. due to sanctions) and/or for which fair valuation is temporarily unavailable with the view of segregating it from the rest of the fund (to enable this part to remain open for investors);

b) in case of fraud, financial crisis or war affecting a particular sector or geopolitical region and where justified having regard to the interests of the UCITS/AIF investors.

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?

Q42: In your view, how the different types of side pockets (physical segregation vs. accounting segregation[23]) 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.

106. In order to activate side pockets, managers should have the operational capacity and governance to put in place side pockets efficiently.

107. Prior to the activation of a side-pocket, managers should formalise a detailed plan, that should include elements from the non-exhaustive list provided under paragraph 86 of Section 6.5.5 of the draft guidelines.

108. In case of activation of side pockets, investors should be made aware through a formal investor communication that includes the strategy, the relevant costs, the expected timeline, contingency planning and communication to investors with regards to the side pocket, as further detailed under paragraph 87 of Section 6.5.5 of the draft guidelines.

Calibration

[23] See paragraph 89 of the ESMA CP on RTS on LMTs under AIFMD and UCITS Directive (ESMA34-1985693317).

109. Relevant calibration for side pockets should include:

a) determining the activation threshold for a side-pocket. This should also take into account legal and regulatory requirements;

b) the criteria for assessing and monitoring the conditions that prompted the activation of the side-pocket;

c) determining when the conditions referred to under paragraph b) no longer exist; and

d) the criteria for reviewing and potentially revising the side-pocket decision and the changing circumstances that would warrant this.

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

2.8 Disclosure to investors

110. According to the IOSCO guidance on ADTs LMTs, an appropriate level of transparency towards investors is important to "(i) to help investors better incorporate the liquidity cost into their investment decisions and (ii) to avoid any unintentional counter-productive effect (e.g., any trigger effects which may lead to pre-emptive redemptions by investors or any actions taken by investors to game the mechanism and thereby reduce the effectiveness of the anti-dilution LMTs)".[24] To improve investors awareness, the IOSCO guidance recommends to publish clear disclosures of the objectives and operation (including design and use) of anti-dilution LMTs.

111. In this context, the FSB also recommend that "Authorities should review existing investor disclosure requirements and determine the degree to which additional disclosures should be provided by open-ended funds to investors regarding fund liquidity risk and the availability and use of liquidity management tools, proportionate to the liquidity risks funds may pose from a financial stability perspective. Authorities should enhance existing investor disclosure requirements as appropriate to ensure that the required disclosures are of sufficient quality and frequency".[25]

[24] "*This is relevant both in terms of investor protection and financial stability*". See FR15/23 Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes (iosco.org), p. 22.
[25] See Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds (fsb.org), p. 12.

112. Against this background, the proposed ESMA guidance fully endorses the IOSCO recommendations and pursues the objective of ensuring an enhanced level of investors' disclosure on the use of LMTs, in line with the recommendations provided at international level. Information to investors should be clear and presented in an effective manner in order to "normalise" the use of these tools for asset managers and increase the understanding of their functioning by investors. In determining the content of this disclosure, attention should be given to the exact level of detailed information to be provided, in particular on the use of ADTs, in order to avoid the potential for investors to engage in opportunistic behaviours, such as exploiting first-mover advantages.

113. In light of Recital 55) of the revised UCITS Directive and 32) of the revised AIFMD, "To be able to make an investment decision in line with their risk appetite and liquidity needs, investors should be informed of the conditions for the use of liquidity management tools". Furthermore, under Article 23 AIFMD ("disclosure to investors"): "AIFMs shall make available to investors in accordance with the AIF rules or instruments of incorporation, the following information before they invest in the AIF, as well as any material changes thereof: (…) (h) a description of the AIF's liquidity risk management, including the redemption rights, both in normal and in exceptional circumstances, of the existing redemption arrangements with investors, and of the possibility of, and conditions for, using liquidity management tools selected in accordance with Article 16(2b)".

114. Against this background, the proposed guidance recommends that managers should provide appropriate disclosure on the selection, calibration and conditions for activation, deactivation of the selected and available LMTs in the fund documentation, rules or instruments of incorporation, prospectus and/or periodic reports (e.g. a periodic report would provide an *ex-post* overview of activation whereas fund rules and prospectuses would state the conditions for activating an LMT), including the reasons for their activation, their objectives, the implications of the various mechanisms and governance structures around the process. The disclosure should indicate that the main purpose of LMTs is to facilitate fair treatment of investors by protecting the ones that remain invested in the fund from bearing the costs generated by the subscription and redemption activities of other investors.

115. The information to investors should help them appropriately incorporating the liquidity costs into their investment decisions and to avoid any unintentional counter-productive effects, (e.g.: any trigger effects which may lead to pre-emptive redemptions by investors, or any actions taken by investors to game the mechanism and thereby reduce the effectiveness of LMTs) and should be sufficient to inform them on the implications of LMTs in terms of liquidity costs or access to their capital.

116. In case of ADTs, specific guidance on disclosure is provided under paragraph 93 of Section 6.5.6 of the draft guidelines.

117. For redemption gates, the activation thresholds should be disclosed in the fund's rules, offering documents or instruments of incorporation.

118. Periodic *ex-post* disclosures of a funds historical use of LMTs may be useful to help investors: i) understand the potential cost implications of redeeming from, and subscribing to, an investment fund at different points in time, as well as the situations in which they would not be able to access their capital; ii) enhance the ability of oversight by authorities or other stakeholders (e.g.: depositaries, auditors). Managers should consider whether it could be appropriate to include such periodic disclosure in the investment fund's annual or semi-annual financial statements or websites, and which type of information should be disclosed to investors at the time they submit a subscription or redemption request and after such a request has been executed.

119. The type of information and the timing to disclose such information should be carefully considered to balance the benefits of providing transparency and useful information to investors and any potential risk of unintended consequences. Disclosure of detailed calibration of LMTs and the activation thresholds may allow some investors to game the mechanism to the detriment of other investors, which will circumvent the objective of LMTs and should therefore be avoided.

120. There may also be concerns that the disclosure in public reports of the actual adjustment factors that have been used by funds could result in stigma effects or front-running which may jeopardise the effectiveness of LMTs. Disclosing a range of factors that have been used, rather than specific figures, or delayed disclosure after application, could help to mitigate this risk.

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

121. Managers should provide appropriate pre-contractual disclosure to investors, in the prospectus or in the offering documents, on the possibility to activate suspension of subscriptions, repurchases and redemptions and side pockets, as the use of LMTs should be part of the description of the fund's liquidity risk management. This is without prejudice to the possibility for the manager to activate suspension of subscriptions, repurchases and redemptions and side pockets even where those are not specified in the offering documents.

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?

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

2.9 Application of the guidelines

122. In light of the mandate, the guidelines shall allow adequate time for adaptation before they apply, in particular for existing UCITS.

Q47: In your view, how much time would managers need for adaptation before they apply the guidelines, in particular for existing funds?

3. Annex I: Summary of 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?

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)?

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?

Q4: Do you see merit in developing further specific guidance on the depositaries' duties, including on verification procedures, with regards to LMTs?

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?

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.

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?

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?

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?

Q10: Do you agree with the proposed criteria for the selection of redemption gates? Is there any other criteria that should be considered?

Q11: What methodology should be used and which elements should be taken into account when setting the activation threshold of redemption gates?

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.

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?

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?

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:

a) at 5% for daily net redemptions; and

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

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?

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?

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?

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?

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

Q21: Do you agree with the above criteria for the selection of redemptions in kind? Are there any other criteria that should be considered?

Q22: Do you agree with the above criteria for the activation of redemptions in kind? Are there any other criteria that should be considered?

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

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?

Q25: How should redemptions in kind be calibrated?

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.

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?

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

Q29: Do you agree with the above criteria for the selection of redemption fees? Is there any other criteria that should be considered?

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

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

Q32: Do you agree with the above criteria for the selection of swing pricing? Is there any other criteria that should be considered?

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

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?

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

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.

Q37: Do you agree with the above criteria for the selection of ADL? Is there any other criteria that should be considered?

Q38: Do you agree with the above criteria for the activation of ADL? Is there any other criteria that should be considered?

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

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

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?

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.

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

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

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?

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

Q47: In your view, how much time would managers need for adaptation before they apply the guidelines, in particular for existing funds?

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?

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?

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?

4. Annex II: Legislative basis

123. Article 16(2h) AIFMD

“*By 16 April 2025 ESMA shall develop guidelines on the selection and calibration of liquidity management tools by AIFMs for liquidity risk management and for mitigating financial stability risks. Those guidelines shall recognise that the primary responsibility for liquidity risk management remains with AIFMs. They shall include indications as to the circumstances in which side pockets, as referred to in Annex V, point 9, can be activated. They shall allow adequate time for adaptation before they apply, in particular for existing AIFs”.*

124. Article 18a (4) UCITS Directive

“*By 16 April 2025 ESMA shall develop guidelines on the selection and calibration of liquidity management tools by UCITS for liquidity risk management and for mitigating financial stability risks. Those guidelines shall recognise that the primary responsibility for liquidity risk management remains with UCITS. They shall include indications as to the circumstances in which side pockets, as referred to in Annex IIA, point 9, can be activated. They shall allow adequate time for adaptation before they apply, in particular for existing UCITS*”.

125. Article 16 ESMA Regulation

“*1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants and issue recommendations to one or more competent authorities or to one or more financial market participants.*

Guidelines and recommendations shall be in accordance with the empowerments conferred in the legislative acts referred to in Article 1(2) or in this Article.

2. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request advice from the Securities and Markets Stakeholder Group referred to in

Article 37. Where the Authority does not conduct open public consultations or does not request advice from the Securities and Markets Stakeholder Group, the Authority shall provide reasons".

5. Annex III: Cost-Benefit Analysis (CBA)

1. Introduction

The revised UCITS Directive and the AIFMD establish a list of LMTs that shall be available to UCITS and AIFs. The list of LMTs and their definitions are the same in both Directives.

The Directives also provide that, by 16 April 2025, ESMA shall develop guidelines on the selection and calibration of LMTs by UCITS and AIFMs of open-ended AIFs for liquidity risk management and for mitigating financial stability risks. Those guidelines shall recognise that the primary responsibility for liquidity risk management remains with UCITS and the AIFM. Furthermore, they shall include indications as to the circumstances in which side pockets can be activated and allow adequate time for adaptation before they apply, in particular for existing UCITS and AIFs.

This consultation paper sets out proposals for the guidelines on LMTs of UCITS and AIFs.

This draft cost-benefit analysis (CBA) is qualitative by nature. Should relevant data be received through the consultation process, ESMA will take it into account when finalising the guidelines and will include it in the CBA accompanying the final report.

The following table summarises the potential costs and benefits resulting from the implementation of the guidelines.[26]

2. Providing guidelines on the selection, activation and calibrations of LMTs

Policy objective	To achieve a set of minimum standards by which all managers across Member States should select, activate and calibrate LMTs
Baseline scenario	The baseline scenario should be understood for this CBA as the application of the requirements set out in the AIFMD and UCITS Directive without any further specification. This would leave managers complete discretion on how to select, activate and calibrate the LMTs referred to in Annex IIA of the UCITSD and in Annex V of the AIFMD (hereafter “the Annexes”).
Technical proposal	To provide guidelines on how managers should select, activate and calibrate the LMTs listed in the Annexes.
Benefit	ESMA expects that these guidelines will benefit managers, investors and NCAs by providing clarity and guidance on expected practices. The introduction of these guidelines aims at contributing to the creation of a level playing field across Member States, reducing the scope for regulatory

[26] ESG and innovation related aspects are not of direct relevance to the specific nature of the guidelines, as well as to RTS on the characteristics of LMTs under AIFMD and UCITS Directive.

arbitrage, which could otherwise hamper investor protection and financial stability.[27]

The main benefit of the guidelines is therefore to establish harmonised practices on the selection, activation and calibration of the LMTs listed in the Annexes. Such harmonisation will contribute to the uniformed application of the legislation by managers and to supervisory convergence between NCAs. This will ultimately also participate to increasing investor protection and financial stability in the EU.

Compliance costs

While there is significant variation in the availability of LMTs across EU jurisdictions, depending on national rules, suspension of redemptions is already available for UCITS in all jurisdictions, as shown by the mapping published in the 2020 ESMA response to the ESRB recommendation on liquidity risks in investment funds[28]:

Availability of LMTs for UCITS

	AT (1)	BE (2)	BG (3)	CY (4)	CZ (5)	DE (6)	DK (7)	EE (8)	ES (9)	FI (10)	FR (11)	GR (12)	HR (13)	HU (14)
Gates	NO	YES	NO	YES	NO	YES	NO	NO	NO	YES	YES	NO	*	NO
Side pockets	NO	NO	NO	YES	NO	NO	NO	NO	YES	NO	YES	NO	*	NO
Anti-dilution levy	NO*	YES	NO	NO	NO	NO	NO	NO	YES	NO	YES	NO	*	NO
Redemption fees	YES	YES	NO	NO	YES	YES	YES	NO	YES	YES	YES	YES	*	YES
Redemption in kind	NO	NO	NO	NO	NO	YES	YES	NO	YES	YES	YES	NO	*	NO
Suspension redemptions /subscriptions	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Swing pricing	NO**	YES	NO	NO	NO	YES	NO	NO	YES	YES	YES	NO	*	NO
Mandatory liquidity buffers	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	NO	*	NO
Side letters	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	*	NO

	IE (15)	IS (16)	IT (17)	LI (18)	LT (19)	LU (20)	LV (21)	MT (22)	NL (23)	NO (24)	PL (25)	PT (26)	RO (27)	SE (28)	SI (29)	SK (30)
Gates	YES	NO	NO	NO	YES	YES	NO	YES	YES	YES		YES	YES	NO	NO	NO
Side pockets	NO	NO	NO	YES	NO	YES*	NO	NO	YES	YES		NO	NO	NO	YES	NO
Anti-dilution levy	YES	NO	NO	NO	NO	YES	NO	YES	YES	YES		NO	NO	YES	NO	NO
Redemption fees	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES		YES	YES	YES	NO	YES
Redemption in kind	YES	YES	NO	YES	NO	YES**	NO	YES*	YES	NO		YES	NO	NO	YES	NO
Suspension redemptions /subscriptions	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES		YES	YES	YES	YES	YES
Swing pricing	YES	NO	NO	YES	NO	YES	NO	YES**	YES	YES		NO	NO	NO	NO	NO
Mandatory liquidity buffers	YES	NO	NO	NO	NO	NO	NO	YES	NO	NO		NO	NO	NO	NO	NO
Side letters	NO	NO	NO	NO	NO	NO	NO	YES	YES	NO		NO	NO	NO	NO	NO

Furthermore, in the majority of Member States a selection of LMTs is already available and managers are therefore already familiar with the possibility to select and activate LMTs.

As such, while having the benefit of providing a harmonised framework at EU level for the selection, activation and calibration of LMTs, these guidelines may not add significant costs to managers, other than compliance costs linked to the update of the relevant policies and procedures regarding LMTs. Furthermore, the guidelines will not impose any strict obligations on the managers as, ultimately, the primary responsibility for liquidity risk management, as well as for the selection, calibration, activation and deactivation of LMTs is of the manager.

[27] See FR15/23 Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes (iosco.org), p. 22.
[28] See esma34-39-1119-report_on_the_esrb_recommendation_on_liquidity_risks_in_funds.pdf (europa.eu), p. 36.

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?

3. Providing guidelines on the disclosure on the selection, activation and calibrations of LMTs

Policy objective	To achieve 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
Baseline scenario	The baseline scenario should be understood for this CBA as the lack of disclosure to investors on the selection, activation and calibration of the LMTs included in the Annexes. This would leave managers complete discretion on whether to provide disclosure to investors and on the information to be disclosed.
Technical proposal	To provide guidelines on disclosure to investors on the selection, activation and calibration in the fund documentation, rules or instruments of incorporation, prospectus and/or periodic reports, of the LMTs referred to in the Annexes, by means of endorsing the recommendations provided by IOSCO and the FSB.[29]
Benefit	The main benefit of the guidelines is to also participate to increasing not only investor protection, but also financial stability, by means of establishing harmonised disclosure standards in the fund documentation, rules or instruments of incorporation. More specifically, ESMA anticipates that the suggested approach will benefit all stakeholders but particularly: - investors, by providing clarity and raising awareness on the liquidity risks and costs that they should incorporate in their investment decisions; - the overall financial system and, ultimately, financial stability, by avoiding any trigger effects which may lead to first mover advantage behaviours due to the

[29] See FR15/23 Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes (iosco.org) and Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds (fsb.org).

	nature of the disclosed information. This is particularly true for ADTs where the disclosure of detailed information on the activation thresholds / calibrations, as highlighted by IOSCO[30], may allow some investors to engage in opportunistic behaviours to the detriment of the other investors and ultimately, of the financial system. The benefit of providing detailed information on LMTs should be therefore counterbalanced with the potential of such unintended consequences, which is why the proposed guidance on disclosure recommends avoiding such detailed disclosure in line with the IOSCO recommendations. Lastly, more detailed and transparent information to investors would largely benefit the fund management industry from a reputational side, while reducing the stigma effect around the activation of LMTs.
Compliance costs	ESMA takes the view that the proposed approach is unlikely to lead to significant additional costs to the extent that it provides clarifications, as well as a harmonised approach, on the existing disclosure requirements applicable at national level (several NCAs already provide for additional disclosure requirements in the fund rules / instruments of incorporation, the annual report and the prospectus). Therefore, the cost of complying with this requirement is likely to be counterbalanced by its beneficial effects, also in light of the flexible approach it allows in detailing the information to be disclosed.

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?

4. Providing guidelines on governance principles around the selection, activation and calibrations of LMTs

Policy objective	To achieve a set of minimum standards by which all managers across Member States arrange their governance for the selection, activation and calibration of LMTs

[30] See FR15/23 Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes (iosco.org), p. 22.

Baseline scenario	The baseline scenario should be understood for this CBA as the lack of minimum standards around the governance arrangements on the selection, activation and calibration of the LMTs included in the Annexes.
Technical proposal	To provide guidelines on governance principles regarding the selection, activation and calibration of the LMTs referred to in the Annexes, so that the selected LMTs are properly integrated and embedded in the fund's liquidity risk management framework of the fund. In this context, the guidelines foresees the development by the manager of an LMT policy, which should form part of the broader fund liquidity risk management process policy document, and should document the conditions for the selection, activation and calibration of LMTs. This is in line with the IOSCO recommendations.[31]
Benefit	ESMA anticipates that the suggested approach will be beneficial for all stakeholders and, particularly, for NCAs, managers and investors. The introduction of the guidelines will standardise NCAs' supervisory practices, as NCAs will be able to request the relevant documentation on the selection, activation (both *ex ante* and *ex post*) and calibration of LMTs and better compare the relevant procedures and governance arrangements among managers in their supervisory activity. Managers will also benefit from the introduction of these guidelines as they will standardise the governance arrangements around the activation of LMTs and will have at their disposal an LMT toolbox which will assist their liquidity risk management both under normal and stressed market conditions in an effective and efficient manner. The guidelines will also benefit investors by means of ensuring a transparent governance process, as well as the right checks and balances, in the decision making around the selection, activation and calibration of LMTs.
Compliance costs	ESMA expects higher initial compliance costs especially for those managers who did not have internal procedures and governance arrangements around the selection, activation and use of LMTs. However, those costs are likely to be counterbalanced by the benefits of having a governance framework that

[31] Whereby "the internal governance arrangements should at least include the following elements: a) objective criteria (e.g.: activation thresholds) for the application of LMTs; b) methodology, including calibration; c) parties involved (e.g.: senior management, risk management etc); d) source of information and data used; e) controls; f) documentation of decisions made; g) escalation processes; h) oversight by the governing body". Ibidem, p. 18.

	can effectively support the liquidity risk management of the fund and promptly activate and/or calibrate, where appropriate, the selected LMTs.

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?

6. Annex IV: draft guidelines on Liquidity Management Tools (LMTs) of [UCITS] / [open-ended AIFs]

Table of Contents

6.1 Scope

Who?

1. These guidelines apply to [UCITS] / [AIFMs managing open-ended AIFs] and depositaries.

What?

2. The guidelines apply in relation to [Article 18a paragraph 4 of the UCITS Directive] / [Article 16 paragraph 2h of the AIFMD]. In respect of depositaries, these guidelines apply primarily in relation to Article 21 of the AIFMD, Articles 92 and Article 95 of the AIFMD Level 2 Regulation, Article 22(3) of the UCITS Directive and Article 3 of the UCITS Level 2 Regulation.

When?

3. These guidelines apply from [dd month yyyy]

6.2 Legislative references, abbreviations and definitions

Legislative references

[UCITSD]	[Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)]
[AIFMD]	[Directive 2011/65/EU on Alternative Investment Fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010]
[AIFMD Level 2]	[Commission Delegated Regulation (EU) No 231/2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision]
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

Abbreviations

[UCITS]	[Undertaking in Collective Investment in Transferable Securities]
[AIF]	[Alternative Investment Fund]
[AIFM]	[Alternative Investment Fund Manager]
LMTs	Liquidity Management Tools
NAV	Net Asset Value
ADT	Anti-Dilution Tools
ADL	Anti-Dilution Levies

Definitions

Management Company	Management companies (as defined in Article 2(1)(b) of the UCITS Directive) and investment company that has not designated a management company authorised pursuant to the UCITS Directive
Manager	AIFM as defined in Article 4(1)(b) of the AIFMD that manages an open-ended AIF
Anti-Dilution Tools (ADT)	Redemption fees, swing pricing, dual pricing, Anti-Dilution Levies
Selected LMTs	The LMTs included under Annex IIA, point 2 to 8, of the UCITSD and in Annex V, points 2 to 8 of the AIFMD, i.e.: redemption gate, extension of notice periods, redemption fee, swing pricing, dual pricing, anti-dilution levy, redemption in kind.
Available LMTs	The LMTs included under Annex IIA, points 1 and 9, of the UCITSD and under Annex V, points 1 and 9 of the AIFMD, i.e.: suspension of redemptions, repurchases and subscriptions and side pockets.
Suspension of Subscriptions, Repurchases and Redemptions[32]	Suspension of subscriptions, repurchases and redemptions means temporarily disallowing the subscription, repurchase and redemption of the fund's units or shares
Redemption Gate	A redemption gate means a temporary and partial restriction of the right of unit-holders or shareholders to redeem their units or shares, so that investors can only redeem a certain portion of their units or shares
Extension of Notice Periods	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, when redeeming their units or shares
Redemption Fee	Redemption fee means a fee, within a predetermined range that takes account of the cost of liquidity, that is paid to the

[32] The definitions of the single LMTs correspond to the definitions provided under Annex IIA of the revised UCITS and Annex V of the revised AIFMD.

	fund by unit-holders or shareholders when redeeming units or shares, and that ensures that unitholders or shareholders who remain in the fund are not unfairly disadvantaged
Swing Pricing	Swing pricing means a pre-determined mechanism by which the net asset value of the units or shares of an investment fund is adjusted by the application of a factor (“swing factor”) that reflects the cost of liquidity
Dual pricing	Dual pricing means a pre-determined mechanism by which the subscription, repurchase and redemption prices of the units or shares of an investment fund are set by adjusting the net asset value per unit or share by a factor that reflects the cost of liquidity
Anti-Dilution Levy	Anti-dilution levy means a fee that is paid to the fund by a unit-holder or shareholder at the time of a subscription, repurchase or redemption of units or shares, that compensates the fund for the cost of liquidity incurred because of the size of that transaction, and that ensures that other unit-holders or shareholders are not unfairly disadvantaged
Redemption in Kind	Redemption in kind means transferring assets held by the fund, instead of cash, to meet redemption requests of unit-holders or shareholders
Side Pockets	Side pockets means separating certain assets, whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances, from the other assets of the fund
Depositary	Depositary of a UCITS or AIF

6.3 Purpose

4. These guidelines are based on Article 16(1) of the ESMA Regulation.

5. The purpose of these guidelines is to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of Union law, in particular [Article 18a paragraph 4 of the UCITS Directive] / [Article 16 paragraph 2h of the AIFMD].

6. The guidelines aim at establishing common standards in relation to the selection, activation and calibration of LMTs to harmonise their use among Member States. The guidelines also aim at promoting disclosure to investors and a clear governance framework around the LMTs.

6.4 Compliance and reporting obligations

6.4.1 Status of the guidelines

7. In accordance with Article 16(3) of the ESMA Regulation, NCAs must make every effort to comply with these guidelines.
8. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

6.4.2 Reporting requirements

9. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
10. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
11. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

6.5 Guidelines on Liquidity Management Tools (LMTs) of [UCITS] / [open-ended AIFs]

6.5.1 Guidelines on general principles

12. The primary responsibility for liquidity risk management, as well as for the selection, calibration, activation and deactivation of LMTs is of the manager. In the selection of appropriate LMTs, managers should give due consideration that the selected tools will allow to effectively manage the fund's liquidity risk in both normal and stressed market conditions and be as comprehensive as possible.

13. Without prejudice to the use of tools to mitigate against the dilution of investor interests, managers should not solely rely on LMTs to manage a fund's liquidity risk. LMTs should be considered as an essential element of the fund's overall liquidity

management framework, which should incorporate relevant provisions related to the fund's structure, investment strategy and operational processes and procedures to manage liquidity.

14. LMTs should not be seen as a backstop for the purpose of addressing liquidity issues stemming from inadequate fund structuring, poor investment decisions, inappropriate risk management or other management failings.

15. The activation and deactivation of LMTs should not exempt managers from their obligations on best execution, eligibility of assets, fair valuation of assets, liquidity risk management and fair treatment of investors, as well as the obligation to ensure consistency between the investment strategy, the liquidity profile and the redemption policy of the fund.

16. Managers shall select at least two appropriate LMTs from a predefined list (i.e.: redemption gates, extension of notice periods, redemption fee, swing pricing, dual pricing, Anti-Dilution Levy (ADL), redemption in kind), after assessing the suitability of those tools in relation to the pursued investment strategy, the liquidity profile and the redemption policy of the fund. Furthermore, A [UCITS that is authorised as a Money Market Fund (MMF)] / [AIFM that manages an AIF authorised as a MMF] should be able to decide to select only one LMT.

17. In selecting LMTs, managers should assess the suitability of those tools in relation to:

    a) the fund's pursued investment strategy and investment policy;

    b) the structure of the fund in terms of, *inter alia*, the duration of the notice period, lock up period, settlement period and dealing frequency;

    c) the liquidity profile of the fund and its underlying assets, as well as the fund's liquidity demands, taking into account not only redemptions but also other potential sources of liquidity risk emanating from the liability side of the fund balance sheet (e.g.: margin calls) under normal and stressed market conditions, as well as the results of the Liquidity Stress Testing (LSTs);

    d) the fund's redemption policy and the characteristics of its investor base; and

    e) the fund's distribution policy (e.g.: the levy to be applied by the platform).

18. While the UCITSD and AIFMD require the selection of at least two appropriate LMTs from the list provided in Annex V (for AIFMD) and Annex IIA (for UCITS Directive), managers have the discretion to select more LMTs, as well as additional liquidity measures, according to the criteria set out in the previous paragraph, in order to ensure the fund's overall resilience and ability to manage its liquidity during both normal and stressed market conditions.

19. In the selection of the two minimum mandatory LMTs, managers should consider, where appropriate, the merit of selecting of at least one quantitative-based LMT (i.e.: redemption gates, extension of notice period) and at least one ADT (i.e.: redemption fees, swing pricing, dual pricing, ADL), taking into consideration the investment strategy, redemption policy and liquidity profile of the fund and the market conditions under which the LMT could be activated. In this context, managers may consider whether to select one LMT to use under normal market conditions and one LMT to be used under stressed market conditions (for instance, one ADT to use for normal market conditions and one quantitative LMT to be used under stressed market conditions).

20. When considering the activation of an LMT, an assessment of whether to activate LMTs individually or in combination with additional LMTs or other liquidity measures should be undertaken in each instance.

21. Managers should be able to demonstrate, under the request of the NCA, that the activation and calibration(s) of the selected LMTs is(are) in the best interest of all investors and are appropriate and effective for the prevailing market conditions, be that normal or stressed.

22. The activation of a specific LMT or its calibration should not in any way alter or change the fund's investment objectives, policy, profile or characteristics as stated in the fund's rules, offering documents or instruments of incorporation. As an example, the activation of a suspension of subscriptions, repurchases and redemptions or extension of notice periods should not result in the transformation of an open-ended into a closed-ended fund.

23. When activating and calibrating LMTs, managers should ensure that there is no possibility of modifying orders after the centralisation date where the order will be processed, including through cancellation requests. Managers should ensure that the level of subscription and redemption orders received is treated with the strictest

confidentiality, in order to avoid that some investors can benefit from information on the probability that LMTs may be activated (e.g.: activation thresholds may be reached in case of redemption gates).

24. Managers should calibrate and activate LMTs based on the unique attributes of the fund (e.g.: the liquidity profile, the type of underlying assets, the investor base) and the prevailing market conditions.

25. A depositary should set up appropriate verification procedures to check that managers have in place documented procedures for LMTs.

6.5.2 Guidelines on the governance principles

26. The selected LMTs, the methodology for their calibration, as well as the conditions for their activation, should be detailed in a documented LMT policy ("the LMT policy") within the fund liquidity risk management process which should be adapted to the nature, scale, complexity and liquidity profile of the fund(s).

27. The LMT policy, which should form part of the broader fund liquidity risk management process policy document, should also document the conditions for the activation/deactivation and calibration of the "available LMTs".

28. The LMT policy should include provisions on at least the following aspects:

    a) clear and objective criteria for the selection of LMTs;

    b) clear and objective criteria for the activation/deactivation of selected and available LMTs, including an "LMT playbook" highlighting the potential sequencing and interdependencies of selected and available LMTs;

    c) the methodology for the activation and, where appropriate, deactivation of LMTs, as well as the calibration of selected and available LMTs;

    d) the governance framework around the selection, activation, deactivation and calibration of selected and available LMTs;

    e) the governance framework around the frequency of monitoring and reviewing the calibration of an activated LMT to ensure ongoing correctness and effectiveness;

    f) a detailed description of senior management's role in the process, including the governing body and the staff involved in the decision making;

g) the role and oversight of internal control functions (risk management, compliance, and internal audit);

h) the management of conflicts of interests, and where such conflicts cannot be avoided, how their impact is managed and mitigated in the best interest of investors, including to avoid that the use of LMTs is aimed at artificially increasing/reducing the NAV and that the knowledge of subscription/redemption flows, or of other information related to the calibration of LMTs (e.g.: ADTs' thresholds) is used by some investors to benefit from more advantageous subscription or redemption conditions;

i) procedures to ensure the operational readiness and effectiveness of the manager and relevant stakeholders (e.g.: depositary, accounting, distributors and other services providers) in the event of the activation of LMTs ;

l) reporting and escalation procedures;

m) assumptions related to the availability of data for activating and calibrating LMTs, their justification and the frequency of their review;

n) routine checks, including back testing, on the activation of LMTs;

o) procedures to ensure record keeping and record retention on: i) the activation, deactivation and calibration of LMTs and the reasons for their activation, deactivation and calibration; and ii) the relevant data concerning the funds, investors, historical flows, results of LSTs and market data;

p) procedures for effective and efficient communication to investors and other stakeholders (e.g.: swing pricing factors and thresholds, and, if appropriate, the explanation of how they mitigate the risk of first mover advantage, bearing in mind that it should be avoided that the disclosed information is used by some investors to benefit from more advantageous subscription or redemption conditions, as explained under point h above), as well as the notification process to the NCA, where relevant.

29. In case the manager has selected ADT(s) as LMTs, the LMT policy should document the nature of the costs taken into account, the rules regarding the distribution of these costs between entering, exiting or remaining holders, as well as the estimation methodology, which should be based on documented and justifiable criteria and

reviewed at least every six months. Managers should document all methodologies and calculations in such a way as to allow traceability and ensure their logging.

6.5.3 Guidelines on quantitative-based LMTs

6.5.3.1 Guidelines on suspension of subscriptions, repurchases and redemptions

Activation

30. Managers should consider the activation of suspension of subscriptions, repurchases and redemptions only in exceptional circumstances. Exceptional circumstances can be defined 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. A non-exhaustive list includes: asset valuation difficulties; severe liquidity issues (e.g.: due to margin calls, significant size withdrawal) where executing the sale of underlying assets could cause liquidity issues for the fund (e.g.: large discounts in asset sales, large dilution of remaining investors); critical cyber incident that impacts on the fund, the manager and/or fund's services provider capacity to operate; unforeseen market closures, trading restrictions, closure of trading venues; severe financial and/or political crisis; identification of significant fraud; natural disaster.

31. The suspension of subscriptions, repurchases and redemptions may be applied together with a suspension of the NAV calculation, particularly in case of uncertain valuation and where it is not possible to compute the NAV of the fund(s). In other cases, and whenever possible, the manager should continue to value the assets in the fund and publish a NAV to ensure a proper information to investors.

32. While suspensions of subscriptions, repurchases and redemptions can, in some cases, anticipate the manager's decision to liquidate the fund, as they allow time to the manager to assess whether the fund is no longer viable, managers should ensure that suspensions of subscriptions, repurchases and redemptions are activated only on a temporary basis (i.e.: with the view not to permanently suspend the fund, but to re-open it, or liquidate it or activate a side pockets, if necessary, at a certain point in time). To this end, prior to or immediately after the activation of this LMT, managers should

formalise a detailed plan (the "LMT plan") that should be in line with the LMT policy and should include, where relevant, elements from the following list below:

a) a description of the exceptional circumstances behind the activation of the suspension of subscriptions, repurchases and redemptions and an analysis on whether other LMT(s) could be used/have been used under the specific circumstances;

b) the possibility of the use of suspension of subscriptions, repurchases and redemptions in combination with other LMT(s) and/or to activate other LMT(s) in case of a prolonged duration of the suspension of subscriptions, repurchases and redemptions(e.g.: side pockets);

c) a tentative duration of the use of suspension of subscriptions, repurchases and redemptions and a timeline to resume normal operations (i.e.: re-open the fund for subscriptions, repurchases and redemptions);

d) a simulation of the liquidity profile of the fund during the market stress and following the market stress (e.g.: whether some assets will have become illiquid due to the market stress and/or whether the time-to-liquidation will deteriorate);

e) an assessment of the suspension of subscriptions, repurchases and redemptions' impact on investors;

f) a communication plan for investors, stakeholders, service providers and NCAs to notify of the suspension of subscriptions, repurchases and redemptions, provide updates on the situation, and outline the steps being taken to address the issues at hand;

g) whether the suspension of subscriptions, repurchases and redemptions will also entail a suspension to the calculation of the fund's NAV and if so, the implications of this;

h) an exit plan from the suspension of subscriptions, repurchases and redemptions, including re-opening procedures, determinations of timelines, costs and associated contingencies;

i) an assessment of the legal and compliance risks associated with the suspension of subscriptions, repurchases and redemptions, including potential legal challenges or increased regulatory scrutiny; and

l) in case it is impossible to resume normal operations, the process to enter the fund into liquidation or activate a side pocket.

Calibration

33. Relevant calibrations for the suspension of subscriptions, repurchases and redemptions should include:

a) determining the activation threshold for a suspension. This should also take into account, legal and regulatory requirements. Any mechanistic approach should be avoided to ensure that the LMT allows a timely intervention in order to address the exceptional circumstances that prompted its activation;

b) the criteria for assessing and monitoring the conditions that prompted the activation of the suspension of subscriptions, repurchases and redemptions;

c) determining when the conditions referred to under paragraph b) no longer exist; and

d) the criteria for reviewing and potentially revising the decision to suspend and the change in circumstances that would warrant this.

6.5.3.2 Guidelines on redemption gates

Selection

34. Managers should consider the selection of redemption gates for all funds, as all assets could potentially become less liquid during stressed market conditions and the use of this LMT could be useful to avoid the activation of suspensions of subscriptions, repurchases and redemptions.

35. The selection of redemption gates:

a) should be considered especially by:

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

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

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

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

Activation

36. The activation of redemption gates should be considered in cases of significant calls on a fund's liquidity and can be automatic or at the discretion of the manager when the threshold is exceeded.

37. For funds marketed to retail investors, redemption gates should not be systematically activated to manage the fund's liquidity on a day-to-day basis, but should be activated in specific circumstances and carefully calibrated, for instance, to address severe liquidity stresses or stressed market conditions where executing the sale of underlying assets could worsen liquidity issues for the fund.

38. The activation thresholds should be disclosed in the fund's rules, offering documents or instruments of incorporation.

Calibration

39. Managers should calibrate the activation threshold in order to ensure that it operates effectively and in the best interest of investors at all times. In calibrating such threshold, managers should give due consideration to the NAV calculation frequency, the investment objective of the fund and the liquidity of the underlying assets and should ensure that investors are able to redeem their units or shares under normal market conditions.

40. The use of redemption gates should not be restricted in terms of the maximum period over which they can be used (maximum duration of redemption gates), or the maximum number of times that redemption gates can be activated (maximum use of redemption gates), as long as it remains temporary in nature. These matters should be determined by the manager on a case-by-case basis.

6.5.3.3 Guidelines on the extension of notice periods

Selection

41. As it creates a time buffer to sell the underlying assets, the selection of extension of notice periods should be available to all funds but is recommended for funds whose liquidity can deteriorate quickly in times of stress.

42. In light of the additional time that may be needed in order to liquidate the portfolio, the selection of the extension of notice periods is recommended for AIFs invested in less liquid assets and, particularly, for RE and PE funds which should already have in place an appropriate notice period that is in line with the level of liquidity of their assets under normal market conditions.

Activation

43. The activation of extension of notice periods should be considered both under normal and stressed market conditions, and it may be useful in specific circumstances, for instance, in case of redemption pressures and/or temporary valuation uncertainty.

Calibration

44. In the calibration of the extension of notice periods, managers should consider, where appropriate, the time necessary for the orderly liquidation of the underlying instruments in the best interest of the investors.

45. In order to avoid an increase of redemptions requests, managers should carefully consider at what time to announce and activate the extension of notice periods.

6.5.3.4 Guidelines on redemptions in kind

46. In selecting redemptions in kind, managers should consider the applicable restrictions that apply to the use of redemptions-in-kind and its permitted application to professional investors only, i.e. managers of funds which are marketed to both retail and professional investors should carefully assess the merit of selecting redemptions in kind as one of the two minimum LMTs in light of their potential limited usability and their expected impact on the fund(s) they manage.

47. Redemption in kind should be activated on the NAV calculation dates at the discretion of the manager, as foreseen in the fund’s prospectus/articles of incorporation.

48. In case of the activation of redemptions in kind, an independent third party (e.g.: the fund auditor, depositary) should perform the valuation of the asset(s).

6.5.4 Guidelines on Anti-Dilution Tools (ADT)

49. Managers should consider the selection of ADTs for all types of funds to mitigate material investor dilution and potential first mover advantage. This is the case, in particular, for those funds which invest in assets that are less liquid or are usually liquid but can become less liquid during stressed market conditions (and are therefore exposed to substantial dilution risks), and for whom the liquidation cost of the underlying assets may increase significantly.

50. Managers should have appropriate internal systems, procedures and controls in place at all times in compliance with the applicable regulatory requirements for the design, calibration and use of ADTs as part of their liquidity risk management framework. Managers should identify the risks specific to the selected ADTs and implement an appropriate system of controls to mitigate such risks, even if such tools would not always be activated.

51. When selecting and activating ADTs, managers should note that ADTs share similar features and may deliver similar outcomes in similar conditions. It is to be noted that under the revised AIFMD and UCITS Directive, it shall not be possible for the selection of the two minimum LMTs to include only swing pricing and dual-pricing. While the simultaneous selection and activation of other ADTs (e.g.: swing pricing and anti-dilution levies) is not excluded under the revised AIFMD and UCITS Directive, it could potentially lead to duplicating impacts and may have the potential to undermine broader liquidity risk management objectives.

52. While ADTs are generally applicable to a wide range of funds, managers should determine the applicability of individual ADTs for a fund in both normal and stressed market conditions.

53. ADTs may have different rules around when they are activated and the thresholds for activation. Managers should carefully assess the different levels for the activation of ADTs at fund level and should set appropriate and prudent activation threshold so as to avoid any material dilution impact on investors or on the fund in both normal and stressed market conditions depending on the investment strategy, assets under management, size and portfolio characteristics (including the investment strategy and asset liquidity), estimated cost of liquidity, investor profile, liquidity profile of each fund and historical fund flows.

54. The activation of ADTs may be more challenging in certain circumstances, where for example there is limited market liquidity and/or in cases of valuation uncertainty. In those case managers should consider the use of other LMTs in addition to ADTs (e.g.: quantity based LMTs).

55. The activation of ADTs should not affect the manager's duty to value the fund(s) at fair value at all times.

56. Managers may activate ADTs, both under normal and stressed market conditions, to impose on subscribing and/or redeeming investors the estimated costs of liquidity. The estimated cost of liquidity should:

    a) include both explicit and implicit transaction costs of subscriptions, repurchases or redemptions, including any significant market impact of asset purchases or sales. Explicit transaction costs, which are generally stable in amount and quantifiable in advance of the transactions with a high level of certainty, include, but are not limited to, brokerage fees, trading levies, taxes and settlement fees. Implicit transaction costs, which are costs incurred indirectly upon acquisition or disposal of assets by a fund (with the bid-ask spread and market impact being the key components) may vary depending on, among other things, the type of underlying asset and the market conditions. A reasonable input for the estimation of the market impact could be to analyse previous transactions under similar market conditions to compare the difference between the price when the order was placed and the final executed price.

    b) be based, as a starting point, on costs associated with transacting a pro-rata slice of all assets in the portfolio (i.e. "pro-rata approach"), unless this does not represent a fair estimate of the true liquidity cost. In that case, the estimation can be adjusted to reflect more accurately the expected cost of liquidity when transacting in selected single holdings of the portfolio. Managers may consider using the pro-rata cost in stressed times, when it is most relevant for mitigating the potential dilution impact on the remaining investors.

    c) be estimated in a documented manner and based on justifiable data and through methodologies with different degrees of sophistication to respond to the fund's profile (e.g.: size, complexity, investment strategy, asset classes, liquidity of asset classes, redemption condition of the fund and overall liquidity risk management framework).

57. As the calibration of ADTs aims at reflecting the estimated costs of liquidity, this should be adjustable when needed, even if a normal range of adjustment factors / fees is disclosed or set. To this effect, the disclosed range of adjustments should not be considered as a cap or restriction that would prevent ADTs from achieving their objectives to mitigate material dilution and potential first-mover advantages arising from investor transactions. Managers should include in the fund's rules, offering documents or instruments of incorporation, as determined by local jurisdictional requirements, relevant disclosures on ADTs. These disclosures should explicitly state the ranges of liquidity cost adjustment, that these ranges could be exceeded on an exceptional basis if justified by the market conditions, the governance structures around any changes and the factors driving same.

58. In any case, managers should be able to demonstrate, at the request of an NCA, that the calibration of ADTs is fair and reasonable for both normal and stressed market conditions, taking into account the best interests of investors. This should be supported by a strong liquidity risk management framework, which should include periodic back-testing and strong governance.

59. Managers should identify the risks specific to ADT and set up an appropriate control system.

60. Managers should not calibrate ADTs in a way that could help to artificially improve the performance of the fund.

6.5.4.1 Guidelines on redemption fee

Selection

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

a) that invest in assets which have fixed/transparent/foreseeable transaction costs, such as RE agency fees or notary fees, and / or that have low-variation transaction costs (e.g.: fixed taxes and levies on RE transactions);

b) that are AIFs invested in less liquid assets where other ADTs, such as swing pricing, might be challenging or impossible to implement (e.g.: RE assets) due to infrequent and limited pricing sources;

c) that invest in assets that have low-variation transaction costs; and

d) whose underlying assets do not have very frequent and reliable pricing sources available from various different trading venues (as opposed to other assets, e.g. equities).

Activation

62. In the activation of redemption fees, managers may set activation thresholds that could be expressed as the size of redemption orders above which redemption fees will be charged to redeeming investors.

Calibration

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

a) ensures the coverage of the cost of liquidity, including estimated explicit and implicit costs where applicable (e.g.: mapping what the cost of liquidity would be within predetermined redemption thresholds and charge those costs to the redemption fee, where appropriate);

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

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

64. 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).

6.5.4.2 Guidelines on swing pricing

Selection

65. Managers should consider the selection of swing pricing for funds whose underlying assets are actively traded and information on trading costs (bid/ask) is available and frequently updated, particularly where the funds invest mainly in assets with market

contingent liquidity costs. Swing pricing may be less appropriate in cases of valuation uncertainty.

Activation

66. The decision to activate a specific swing pricing model (i.e.: full, partial with a single or tiered swing factor), as well as the calibration of the swing factor should be dynamic and based on market conditions, based on a methodology that is established by the manager and documented in the LMT policy. It should be noted that a tiered swing pricing system may be de facto always activated without any material effect on the NAV for low levels of flows.

67. The manager should disclose to investors relevant details governing the activation of swing pricing both for normal and stressed market conditions. The activation threshold for swing pricing should not be disclosed in order to avoid first mover advantage.

Calibration

68. When calibrating swing pricing, managers should ensure that the full cost of liquidity, in light of the market conditions, is incorporated in the swing factor, including any significant market impact of the trades. By design, swing pricing should ensure that the NAV is always adjusted to market conditions. The estimation of the liquidity costs of the assets in the portfolio should be carried out in a documented manner and on the basis of justifiable data.

69. The manager should disclose to investors a maximum swing pricing factor for normal market conditions but should also be able to recalibrate it for stressed market conditions. The possibility to recalibrate the swing factor beyond the maximum factor in exceptional market conditions should be established within a clearly described framework and clearly disclosed to investors in the prospectus.

70. The decision to recalibrate the swing factor should be duly justified and taken in the best interest of the investors. The revised swing factors should be the result of a robust internal governance process, in line with the LMT policy and should be based on a robust methodology.

71. Both current and new investors should be informed through the usual communication channels, such as the ordinary notice to investors, the fund's internet website or any other way as laid down in the prospectus.

72. In case the swing factor adjustment goes beyond the maximum swing factor laid down in the fund's prospectus, the manager should be able to justify, if required by the NCA, on an *ex-post* basis the level of the swing factor applied and to provide documentary evidence that such factor was at any time representative of the prevailing market conditions.

73. In case the fund charges performance fees, the manager should not consider the "swung" NAV (i.e.: the NAV published by the manager when swing pricing is applied) for the purpose of the calculation of performance fees, but the NAV before swing pricing is applied not to take into account an over performance which is not linked to the performance of the portfolio.

6.5.4.3 Guidelines on dual pricing

Selection

74. The selection of dual pricing may be appropriate for funds that invest mainly in assets whose liquidity costs are comprised primarily of the bid-ask spread. Dual pricing may be less appropriate in cases of valuation uncertainty.

Activation

75. Managers should consider which methodology to use when activating dual pricing based on the type of the fund and the market conditions:

    a) calculating two NAVs (i.e.: one NAV incorporating assets' ask prices to be paid by subscribing investors and another NAV incorporating assets' bid prices to be received by redeeming investors); or

    b) setting an "adjustable spread" around the fund's NAV under which assets are priced on a mid-market basis (i.e.: a bid price at which the fund redeems shares and an offer price at which the fund issues new shares), which should be estimated in a verifiable way and based on objective criteria by the manager and could be dynamic to reflect the liquidity costs in prevailing market conditions, akin to swing pricing or anti-dilution levies.

Calibration

76. While dual pricing may be more applicable to funds that invest mainly in assets whose liquidity costs are mainly comprised of the bid-ask spread, any significant market

impact or explicit transaction costs should be accounted for separately by additional adjustment to the NAV.

6.5.4.4 Guidelines on Anti-Dilution Levy (ADL)

Selection

77. Managers should consider the selection and activation of ADL for those funds whose underlying assets are actively traded and information on trading costs (bid/ask) is generally available, including for funds that invest in assets with market contingent liquidity costs. ADL may be less appropriate in cases of valuation uncertainty.

78. ADL may be more appropriate to funds:

    a) with a high investor concentration (i.e.: a small number of investors), in order to address the risk that one investor/a few investors could fully redeem their shares at a short notice;

    b) with significant levels of subscription and/or redemption activity that could negatively impact the fund's existing investors (e.g.: smaller funds in terms of NAV could be more impacted by the cost of liquidity caused by large redemptions);

    c) that invest in less liquid assets (e.g.: high yield bonds, small cap equities).

Activation

79. ADL can be activated on an ongoing basis or dynamically based on pre-defined triggers and thresholds.

80. In typical market environments, the ongoing activation of the ADL primarily serves as a preventative measure against dilution risks, discouraging short-term trading behaviours and protecting the interests of long-term investors.

81. Managers should remain be proactive in their approach, recognising that market conditions can swiftly shift from normal to stressed. While the ADL may be implemented consistently during normal periods, its calibration must be adapted to changing market conditions to ensure its effectiveness in preserving the fund's liquidity.

Calibration

82. ADL should be calibrated based on the same factors used to calibrate swing factors, i.e.:. the calibration of ADL should include all estimated explicit and expected implicit

transaction costs and it should be dynamic in order to ensure that the levy can evolve on a regular basis in light of the market conditions.

6.5.5 Guidelines on side pockets

Activation and calibration

83. Managers should consider the activation of side pockets only in exceptional circumstances. Exceptional circumstances can be defined as unforeseen events and/or operational/regulatory environments that impact materially on the fund's ability to carry out normal business functions and activities. A non-exhaustive list includes:

    a) significant valuation uncertainty and/or illiquidity of a specific portion of the portfolio of the fund for which there is no active market and/or for which trading is prohibited (e.g. due to sanctions) and/or for which fair valuation is temporarily unavailable with the view of segregating it from the rest of the fund (to enable this part to remain open for investors);

    b) in case of fraud, financial crisis or war affecting a particular sector or geopolitical region and where justified having regard to the interests of the UCITS/AIF investors.

84. In order to activate side pockets, managers should have the operational capacity and governance to put in place side pockets efficiently.

85. Prior to the activation of a side-pocket, managers should formalise a detailed plan, that includes elements from the non-exhaustive list below:

    a) the governance structures around the management, operation and oversight of the side-pocket;

    b) considerations of the impact on investors;

    c) a communication plan for investors, stakeholders, service providers and national competent authorities to notify investors of the side-pocket, provide updates on the situation, and outline the steps being taken to address the issues at hand;

    d) an estimate timeline detailing the proposed duration of the side-pocket;

    e) an assessment of the fund's remaining assets and a determination as to whether the matter that prompted the activation of the side-pocket had any impact on their quality, liquidity, valuation or viability;

f) an exit plan from the side-pocket, including side-pocket termination procedures, determinations of timelines, costs and contingencies;

g) an assessment of the legal and compliance risks associated with the side-pocket, including potential legal challenges or regulatory scrutiny;

h) an assessment on how compliance with regulatory guidelines and requirements related to side-pockets is ensured.

86. In case of activation of side pockets, investors should be made aware through a formal investor communication of:

a) the strategy behind establishing the side-pocket;

b) the relevant costs and ongoing expenses and how they will be managed;

c) how the day-to-day operations fees will be met, including when attributed liquid assets are depleted;

d) expected timelines to realise the inherent value of the asset(s);

e) whether secondary market activities in units / shares of the side pocket will be facilitated;

f) contingency plans in the event that assets cannot be realised/ timelines respected; and

g) ongoing communication after the side pocket is established.

87. In the calibration of side pockets, managers should consider:

a) determining the circumstances for activating a side-pocket, also in light of legal and regulatory requirements;

b) setting criteria for assessing and monitoring the conditions that prompted the use of the side-pocket;

c) defining when such conditions no longer exist; and

d) criteria for reviewing and potentially revising the side-pocket decision and the changing circumstances that would warrant this.

6.5.6 Guidelines on disclosure to investors

88. Managers should provide appropriate disclosure on the selection, calibration and conditions for activation, deactivation of the selected and available LMTs in the fund documentation, rules or instruments of incorporation, prospectus and/or periodic reports (e.g. a periodic report would provide an *ex-post* overview of activation whereas fund rules and prospectuses would state the conditions for activating am LMT), including the reasons for their activation, their objectives, the implications of the various mechanisms and governance structures around the process. The disclosure should indicate that the main purpose of LMTs is to facilitate fair treatment of investors by protecting the ones that remain invested in the fund from bearing the costs generated by the subscription and redemption activities of other investors.

89. Managers should provide appropriate pre-contractual information to investors to help them appropriately incorporating the liquidity costs into their investment decisions and to avoid any unintentional counter-productive effects, (e.g.: any trigger effects which may lead to pre-emptive redemptions by investors, or any actions taken by investors to game the mechanism and thereby reduce the effectiveness of LMTs).

90. Managers should provide appropriate and sufficient pre-contractual information to investors on the implications of LMTs in terms of liquidity costs or access to their capital.

91. In case of ADTs:

    a) managers should explain clearly and in non-technical terms the reason for applying the anti-dilution levy, and how that differentiates from an exit fee;

    b) investors should be prepared to bear the liquidity costs associated with portfolio transactions passed on to them via the use of these tools;

    c) the fund documents should set out details of the constituents of the costs taken into account to calculate the adjustment factor, including the calculation or estimation basis. The disclosure may also differentiate between the normal and stressed market conditions. To enable liquidity costs to be sufficiently passed on to transacting investors, the relevant funds constitutional documents should not impose the application of adjustment factors. Some funds may disclose a range of adjustment factors, in particular those applicable under normal market conditions, to facilitate investors' understanding of the potential implications of ADTs, with the aim to benefit investor communication and discourage any potential first mover advantage. When it is foreseen that the range may be exceeded, to reflect higher liquidity costs in changing market situations, this should be appropriately disclosed to investors.

92. For redemption gates, the activation thresholds should be disclosed in the fund documentation, rules or instruments of incorporation, prospectus and/or periodic reports the fund documentation, rules or instruments of incorporation, prospectus and/or periodic reports.

93. Periodic *ex-post* disclosures of a funds historical use of LMTs may be useful to help investors: i) understand the potential cost implications of redeeming from, and subscribing to, an investment fund at different points in time, as well as the situations in which they would not be able to access their capital; ii) enhance the ability of oversight by authorities or other stakeholders. Managers should consider whether it could be appropriate to include such periodic disclosure in the investment fund's annual or semi-annual financial statements or websites, and which type of information should be disclosed to investors at the time they submit a subscription or redemption request and after such a request has been executed.

94. The type of information and the timing to disclose such information should be carefully considered to balance the benefits of providing transparency and useful information to investors and any potential risk of unintended consequences. Disclosure of detailed calibration of LMTs and the activation thresholds may allow some investors to game the mechanism to the detriment of other investors, which will circumvent the objective of LMTs and should therefore be avoided.

95. There may also be concerns that the disclosure in public reports of the actual adjustment factors that have been used by funds could result in stigma effects or front-running which may jeopardise the effectiveness of LMTs. Disclosing a range of factors that have been used, rather than specific figures, or delayed disclosure after application, could help to mitigate this risk.

96. Managers should provide appropriate disclosure to investors on the possibility to activate suspension of subscriptions, repurchases and redemptions and side pockets, as the use of LMTs should be part of the description of the fund's liquidity risk

management. This is without prejudice to the possibility for the manager to activate suspension of subscriptions, repurchases and redemptions and side pockets even where those are not specified in the offering documents.