

# Reply form

**On the Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **8 October 2024**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

## Instructions

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Call for Evidence in this reply form.
- Please do not remove tags of the type < ESMA\_QUESTION\_GLMT\_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_GLMT\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_GLMT \_ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at <https://www.esma.europa.eu/press-news/consultations/consultation-liquidity-management-tools-funds> under the heading 'Your input - Consultations'.

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading '[Data protection](#)'.

## **Who should read this paper?**

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

## 1 General information about respondent

Name of the company / organisation	Association of Foreign Banks in Germany (Verband der Auslandsbanken in Deutschland e.V.)
Activity	The Association of Foreign Banks in Germany represents about 200 foreign banks, investment firms, fund management companies and financial services institutions domiciled or having a branch in Germany. Among our members, there are several large depositories and global custodians.
Country / Region	Germany

## 2 Questions

**Q1 Do you agree with the list of elements included under paragraph 17 of Section 6.5.1 of the draft guidelines that the manager should consider in the selection of LMTs? Are there any other elements that should be considered?**

<ESMA\_QUESTION\_GLMT\_1>

According to the draft Guidelines, managers should have the discretion to select the appropriate LMTs from the predefined list and they should have the discretion to select more LMTs. We fully agree with this. However, we would welcome a clarification that an eligible LMT may under certain circumstances also be a combination of two LMTs, giving a choice to (professional) investors which one of the two combined LMTs should be used (e.g. either an extended notice period for redemption or a redemption fee). Provided that the combined LMTs only qualify as one LMT, thus requiring the manager to select at least one further LMT from the list, we do not see any detriment for investors or the liquidity of the fund. Combined LMTs would rather facilitate the factual use of more than two LMTs from the predefined list. |

<ESMA\_QUESTION\_GLMT\_1>

**Q2 Should the distribution policy of the fund be considered in the selection of the LMTs? What are the current practices in relation to the application of anti-dilution levies by third party distributors (e.g.: whether the third party corrects the price by adding the anti-dilution levy to the fund NAV)?**

<ESMA\_QUESTION\_GLMT\_2>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_2>

**Q3 Do you agree that among the two minimum LMTs managers should consider the merit of selecting of at least one quantitative LMT and at least one ADT, in light of the investment strategy, redemption policy and liquidity profile of the fund?**

<ESMA\_QUESTION\_GLMT\_3>

[No, managers should be given as much flexibility as possible in order to ensure that such LMTs are selected that best meet the specific circumstances and features of the respective fund. ]

<ESMA\_QUESTION\_GLMT\_3>

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

<ESMA\_QUESTION\_GLMT\_4>

[No. We agree with ESMA that a depositary should set up appropriate verification procedures thus ensuring that the fund manager has put in place documented and appropriate procedures for LMTs. This will constitute an integral part of the controls performed by the depositary. The suggested Guidelines are sufficient and no additional or more specific guidance is needed. It should rather be clarified that the depositary's duties in this respect do not go any further than verifying that the fund manager has put in place documented procedures. ]

<ESMA\_QUESTION\_GLMT\_4>

**Q5 Do you agree with the list of elements included under paragraph 28 of Section 6.5.2 of the draft guidelines to be included in the LMT policy? Are there any other elements that, in your view, should be included in the LMT policy?**

<ESMA\_QUESTION\_GLMT\_5>

|From our perspective, no further elements need to be included in the LMT policy. We agree with para. 28 of the draft Guidelines and would like to emphasize that in particular point i) of the list (procedures to ensure the operational readiness and effectiveness of relevant stakeholders in the event of the activation of LMTs) is central for depositaries and other stakeholders (e.g. custodians, asset servicers). |

<ESMA\_QUESTION\_GLMT\_5>

**Q6 In your view, what are the elements of the LMT policy that should be disclosed to investors and what are the ones that should not be disclosed? Please provide reasons for your answer.**

<ESMA\_QUESTION\_GLMT\_6>

|In view of the principle that information provided to investors should be simple, clear and not misleading and should enable the investor to make an informed investment decision, we strongly suggest that LMT policy-related disclosures should be restricted to those elements in the list set out in para. 28 of the draft Guidelines that are relevant to the investor's decision-making. Consequently, information that relates to internal procedures for LMTs should not be disclosed to investors. Therefore, we suggest that disclosure should be limited to items h) and p) of the list in para. 28. |

<ESMA\_QUESTION\_GLMT\_6>

**Q7 Do you agree with the above definition of “exceptional circumstances”? Can you provide examples of additional exceptional circumstances, not included under paragraph 30 of Section 6.5.3.1 of the draft guidelines, that would require the manager to consider the activation of suspension of subscriptions, repurchases and redemptions, having regard to the interests of the fund's investors?**

<ESMA\_QUESTION\_GLMT\_7>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_7>

**Q8 Do you agree with the elements of the LMT plan included under paragraph 32 of Section 6.5.3.1 of the draft guidelines to be included in the LMT plan? Is there any other element that should be considered?**

<ESMA\_QUESTION\_GLMT\_8>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_8>

**Q9 Do you agree with the above list of elements to calibrate the suspensions of subscriptions, repurchases and redemptions? Is there any other element that should be considered?**

<ESMA\_QUESTION\_GLMT\_9>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_9>

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

<ESMA\_QUESTION\_GLMT\_10>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_10>

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

<ESMA\_QUESTION\_GLMT\_11>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_11>

**Q12 Do you agree that the use of redemption gates should not be restricted in terms of the maximum period over which they can be used? Do you think that any differentiation should be made for funds marketed to retail investors? Please provide concrete cases and examples in your response.**

<ESMA\_QUESTION\_GLMT\_12>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_12>

**Q13 What is the methodology that managers should use to calibrate the activation threshold of redemption gates to ensure that the calibration is effective so that the gate can be activated when it is needed? Do you think that activation thresholds should be calibrated based on historical redemption requests and the results of LSTs?**

<ESMA\_QUESTION\_GLMT\_13>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_13>

**Q14 In order to ensure more harmonisation on the use of redemption gates, a fixed minimum activation threshold, above which managers could have the option to activate the redemption gate, could be recommended. Do you think that a fixed minimum threshold would be appropriate, or do you think that this choice should be left to the manager?**

<ESMA\_QUESTION\_GLMT\_14>

[TYPE YOUR TEXT HERE ]



<ESMA\_QUESTION\_GLMT\_14>

**Q15 If you think that a fixed minimum threshold should be recommended, do you agree that for daily dealing funds (except ETFs and MMFs) it should be set as follows:**

<ESMA\_QUESTION\_GLMT\_15>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_15>

**a) at 5% for daily net redemptions; and**

<ESMA\_QUESTION\_GLMT\_0>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_0>

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

<ESMA\_QUESTION\_GLMT\_0>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_0>

**Q16 Do you agree with the proposed criteria for the selection of the extension of notice period? Are there any other criteria that should be considered?**

<ESMA\_QUESTION\_GLMT\_16>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_16>

**Q17** According to the revised AIFMD and UCITS Directive, the extension of notice periods means extending the period of notice that unit-holders or shareholders must give to fund managers, beyond a minimum period which is appropriate to the fund. In your view, for RE and PE funds: i) what would be an appropriate minimum notice period; and ii) would the extension of notice period be an appropriate LMT to select?

<ESMA\_QUESTION\_GLMT\_17>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_17>

**Q18** Do you think the length of the extension of notice periods should be proportionate to the length of the notice period of the fund? Do you think a standard/ maximum extended notice period should be set for UCITS?

<ESMA\_QUESTION\_GLMT\_18>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_18>

**Q19** Do you agree with the above criteria for the activation of the extension of notice period? Are there any other criteria that should be considered?

<ESMA\_QUESTION\_GLMT\_19>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_19>

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

<ESMA\_QUESTION\_GLMT\_20>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_20>

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

<ESMA\_QUESTION\_GLMT\_21>

[It should be ensured that

- the use of this tool is restricted to professional investors,
- these investors in turn are not restricted to receive the assets redeemed in kind due to own regulatory constraints and that
- the assets to be redeemed are suitable for redemption in kind (e.g. divisible in proportion). ]

<ESMA\_QUESTION\_GLMT\_21>

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

<ESMA\_QUESTION\_GLMT\_22>

[We suggest that ESMA clarifies in para. 48 that depositaries should not have to perform the valuation of the assets and that valuation by an independent third party should be related to the assets to be redeemed in kind.

Although we strongly support that valuations for redemptions in kind should be checked by an independent third party, we do not think that depositaries are suitable third parties for such task.

The existing regulatory framework does not put responsibility on the depositary to (re-)calculate the value of assets and – under the AIFMD – even generally restricts depositaries from acting as external valuer unless certain strict conditions are met (cf. Art. 19 (4)). The depositary's function rather consists in verifying the fund manager's framework and procedures for the valuation performed by the fund manager.

Consequently, para. 48 of the draft Guidelines should be changed as follows:

“In case of the activation of redemptions in kind, an independent third party (e.g.: the fund auditor, ~~depository~~) should perform the valuation of the asset(s).” ]

<ESMA\_QUESTION\_GLMT\_22>

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

<ESMA\_QUESTION\_GLMT\_23>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_23>

**Q24 What are the criteria to be followed by the managers for the selection of the assets to be redeemed in kind in order to ensure fair treatment of investors?**

<ESMA\_QUESTION\_GLMT\_24>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_24>

**Q25 How should redemptions in kind be calibrated?**

<ESMA\_QUESTION\_GLMT\_25>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_25>

**Q26 Do you agree that managers should consider the merit of avoiding the simultaneous activation of certain ADTs (e.g.: swing pricing and anti-dilution levies)? Please provide examples when illustrating your answer.**

<ESMA\_QUESTION\_GLMT\_26>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_26>

**Q27 Do you agree with the list of elements provided under paragraph 56 of Section 6.5.4 of the draft guidelines? Is there any other element that should be included in the estimated cost of liquidity?**

<ESMA\_QUESTION\_GLMT\_27>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_27>

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

<ESMA\_QUESTION\_GLMT\_28>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_28>

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

<ESMA\_QUESTION\_GLMT\_29>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_29>

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

<ESMA\_QUESTION\_GLMT\_30>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_30>

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

<ESMA\_QUESTION\_GLMT\_31>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_31>

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

<ESMA\_QUESTION\_GLMT\_32>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_32>

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

<ESMA\_QUESTION\_GLMT\_33>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_33>

**Q34 Do you agree with the above principles that a manager should follow in order to recalibrate the swing factor? Is there any other criteria that should be considered?**

<ESMA\_QUESTION\_GLMT\_34>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_34>

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

<ESMA\_QUESTION\_GLMT\_35>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_35>

**Q36 As dual pricing is a LMT which is not particularly used in most Member States, stakeholders' feedback on the selection, activation and calibration of this LMT is especially sought from those jurisdictions where this is used.**

<ESMA\_QUESTION\_GLMT\_36>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_36>

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

<ESMA\_QUESTION\_GLMT\_37>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_37>

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

<ESMA\_QUESTION\_GLMT\_38>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_38>

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

<ESMA\_QUESTION\_GLMT\_39>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_39>

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

<ESMA\_QUESTION\_GLMT\_40>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_40>

**Q41 Do you agree with the above definition of “exceptional circumstances”? Can you provide examples of additional exceptional circumstances, not included under the above paragraph?**

<ESMA\_QUESTION\_GLMT\_41>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_41>

**Q42 In your view, how the different types of side pockets (physical segregation vs. accounting segregation ) should be calibrated and in which circumstances one**



**should be chosen over the other? Please provide examples including on whether the guidance should be different for UCITS and AIFs.**

<ESMA\_QUESTION\_GLMT\_42>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_42>

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

<ESMA\_QUESTION\_GLMT\_43>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_43>

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

<ESMA\_QUESTION\_GLMT\_44>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_44>

**Q45 Do you agree that investors should be informed of the fact that the manager can activate selected and available LMTs and that this information should be included in the fund's rules and instruments of incorporation?**

<ESMA\_QUESTION\_GLMT\_45>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_45>

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

<ESMA\_QUESTION\_GLMT\_46>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_46>

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

<ESMA\_QUESTION\_GLMT\_47>

[Past experience with the implementation of LMTs has shown that a generous transitional phase is necessary. This holds particularly true as not only fund managers but also numerous other stakeholders (fund administrators, asset managers, custodians, depositaries, market data providers, distributors) need time to implement the necessary changes associated with the introduction of the LMTs at their respective level. ]

<ESMA\_QUESTION\_GLMT\_47>

**Q48 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States should select, activate and calibrate LMTs? Which other types of costs or benefits would you consider in that context?**

<ESMA\_QUESTION\_GLMT\_48>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_48>

**Q49 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States should provide disclosure to investors on the**

**selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?**

<ESMA\_QUESTION\_GLMT\_49>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_49>

**Q50 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States arrange their governance for the selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?**

<ESMA\_QUESTION\_GLMT\_50>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_GLMT\_50>

