8 October 2024

European Securities and Markets Authority
201-203 rue de Bercy
CS 80910
75589 Paris Cedex 12
France

Re: *Draft Regulatory Technical Standards and Guidelines on Liquidity Management Tools under the AIFMD and UCITS Directive*

Submitted electronically

The Investment Company Institute[1] is submitting its views on the European Securities and Markets Authority's (ESMA) consultations regarding draft regulatory technical standards (RTS) and guidelines on liquidity management tools (LMTs), which have been proposed as part of the amendments to the Alternative Investment Fund Management Directive (AIFMD) and Undertakings for Collective Investment in Transferrable Securities (UCITS) Directive (the Directives).[2] Our comments specifically address UCITS, ETFs, and related fund structures, including money market funds (MMFs), that our members manage in the European Union and in global markets. These funds are integral in supporting economic growth, fostering capital formation, and providing the benefits of collective investment to a wide range of investors, particularly long-term individual investors.

While we are generally supportive of the draft RTS and Guidelines set forth in the Consultations, which are aligned with the recent international work on LMTs,[3] we have

[1] The Investment Company Institute (ICI) is the leading association representing the global asset management industry in service of individual investors. ICI members are located in Europe, North America and Asia and manage fund assets of €41.8 trillion, including UCITS, mutual funds, exchange-traded funds (ETFs), closed-end funds, unit investment trusts (UITs) and similar funds in these different jurisdictions. ICI has offices in Brussels, London, and Washington, DC.

[2] ESMA, Consultation Paper on the Draft Regulatory Technical Standards on Liquidity Management Tools under the AIFMD and UCITS Directive (8 July 2024) (draft RTS); ESMA, Consultation Paper on the Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs (8 July 2024) (Guidelines) (collectively, the Consultations).

[3] IOSCO, Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes: Final Report (20 December 2023); FSB, Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds (20 December 2023).

concerns about prescriptive and rigid elements of the approach that ESMA may be considering.

In addition to our detailed responses to the Consultations' questions, we offer the following overarching comments on themes that arise across our responses.

1. Use of LMTs should be consistent with the fund's policies and legal requirements.

LMTs generally should be applied consistently to all investors and used in accordance with the fund's policies and legal obligations, including acting in the best interest of the fund.

We do not support rules that would require a fund to apply LMTs differently to share classes within the same fund, although a fund may determine to do so where appropriate. For some funds, such obligations could lead to unfair treatment or discrepancies among investors holding the same product and may present significant operational challenges.

We also suggest defining "exceptional circumstances" more precisely as "unforeseen *or unusual* events" rather than relying solely on the term "unforeseen." The list of examples ESMA provides demonstrates that the events are, in a general sense, foreseeable and predictable, and it would be impractical to generate an exhaustive list of such events. Using only the term "unforeseen" could create ambiguity, as determinations of what is foreseeable may differ prospectively and retrospectively.

2. The mechanistic approaches in the draft Guidelines and RTS lack flexibility and feasibility.

Liquidity risk management is inherently fund-specific, involving multi-faceted and highly individualised determinations for each fund. There is no one-size-fits-all approach for funds when selecting, activating, calibrating, and deactivating LMTs.

We recommend adjusting parts of the draft RTS and Guidelines that employ a mechanistic approach, particularly around activation thresholds and required calibration criteria. Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS.[4] Instead, the focus should be on establishing processes or frameworks that reflect each fund's characteristics and provide criteria fund managers would use to guide LMT-related decisions. This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

We support ESMA's recognition that anti-dilution LMTs do not need to be permanently activated. ICI research shows that the average dilution for UCITS is minimal, and applying anti-dilution tools daily would increase costs without substantial benefits.[5]

However, we do not endorse mandatory or automatic activation thresholds, especially for quantitative LMTs, which are deployed only after a fund manager conducts a fact-specific analysis in response to unpredictable and unusual events. If appropriate, the fund manager

[4] This is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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").

[5] *See* ICI, Summary of Recent ICI Research on First-Mover Advantage, Dilution, and Systemic Risk in Open-End Funds (December 2023).

would activate the chosen tool, acting in the best interest of the fund. While in limited circumstances, at the individual fund level, it could be appropriate for a fund manager to design an automatic activation process based on specific thresholds and tailored to the fund's structure, applying strict activation threshold criteria across all LMTs does not work well. Such an approach is incompatible with the discretionary judgment needed to deploy tools such as suspensions, gates, and side pockets. Using these tools are exceptional measures that first require care consideration and automatic triggers by rigid thresholds are not appropriate.

We recommend removing the rigid, mechanistic elements from the draft RTS and Guidelines. Instead, the focus should be on developing processes that account for the characteristics of the fund, which include criteria or factors that fund managers use to guide their determinations on the selection, activation/deactivation, and calibration of LMTs.

3. Prescriptive LMT requirements could constrain effective liquidity risk management.

We acknowledge ESMA's recognition of fund managers' responsibility for managing liquidity risk, including decisions around the selection, calibration, and activation/deactivation of LMTs. We support the flexible aspects of the draft RTS and Guidelines that recognise there is no homogeneous approach to liquidity risk management, as Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions."

However, the draft RTS and Guidelines include prescriptive provisions that extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. For instance, requiring fund managers to impose liquidity costs through explicit and implicit transaction costs, including market impact, would necessitate highly subjective assessments, often without the necessary underlying data. This could lead to poorly calibrated fees or adjustments, resulting in inequitable treatment of investors and unnecessary costs without clear benefits. Additionally, assuming a pro rata portfolio sale for cost calculations could misrepresent costs and wrongly imply a preferred portfolio management approach.

4. Disclosures should avoid triggering opportunistic investor behaviour.

We fully support ESMA's objective of promoting fairness and transparency to protect investors. However, it is crucial that disclosures do not unintentionally trigger counterproductive investor behaviour, such as premature redemptions in anticipation of LMT activation. To mitigate this risk, we recommend that the disclosure provisions be revised. Instead of requiring disclosure of specific activation thresholds (*e.g.*, for imposing gates), funds would provide general factors they would consider when making LMT decisions, including activation. This approach would enable funds to offer useful guidance to investors regarding LMTs without setting and disclosing rigid thresholds that could prompt premature investor actions.

Finally, the fund's LMT policy disclosures should focus on describing fund policies, procedures, and factors considered, ensuring that transparency does not undermine LMT efficacy or investor protection.

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We appreciate your consideration of our comments. If you have any questions or would like to discuss our comments further, please contact me at Tracey.Wingate@ici.org, Annette Capretta (acapretta@ici.org), or Kirsten Robbins (kirsten.robbins@ici.org).

Sincerely,
/s/ Tracey Wingate

Tracey Wingate
Head of Global Affairs
Investment Company Institute

Attachments

Investment Company Institute Responses to Consultation Paper: Draft Regulatory Technical Standards on Liquidity Management Tools under the AIFMD and UCITS Directive

Investment Company Institute Responses to Consultation Paper: Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs

Investment Company Institute Responses to Consultation Paper: Draft Regulatory Technical Standards on Liquidity Management Tools under the AIFMD and UCITS Directive

Submitted electronically via response form. Questions without a response have been omitted.

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

We generally agree with the proposed characteristics of suspension of subscriptions, repurchases, and redemptions as proposed in Article 1.

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

We note that the approach to redemption orders that have not been executed before the fund was suspended must be considered in the context of the fund's policies on pending orders more generally. There is no one-size-fits-all answer, as the approach also must be consistent with legal requirements and other fund policies, which may vary.

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

The approach to redemption orders that have not been executed before the fund was suspended must be considered in the context of the fund's policies on pending orders more generally. There is no one-size-fits-all answer, as the approach also must be consistent with legal requirements and other fund policies, which may vary.

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

As we read the definitions of LMTs in the Consultations, a situation in which subscriptions, repurchases, and redemptions are not reopened simultaneously would involve the transition from the use of a suspension tool to another LMT, such as a redemption gate.

Activating a suspension would be an exceptional act with intensely fact-specific determinations in response to extraordinary events. Usually, suspensions would be applied when prices are not available to calculate the net asset value (NAV). In such cases, it is appropriate to suspend both subscriptions and redemptions.

As conditions evolve, a manager could determine that it is appropriate for a fund to deactivate one LMT and activate another LMT. For example, there may be situations where prices become available, but the fund is temporarily illiquid. The manager should have the flexibility to accept subscriptions while redemptions remain suspended where that is determined to be in the best interest of the fund.

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

In Article 2, we have concerns with the notion of a predefined "activation threshold." While the Directives use the terms "activation" and "calibration" to describe actions managers take with regards to LMTs, the Directives do not refer to a fixed activation threshold, which is incompatible with the discretionary judgment needed to deploy tools such as suspensions, gates, and side pockets. Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS, which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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"). Requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Accordingly, we recommend that the Consultations be revised to focus instead on activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. The term "activation threshold" should be revised and referred to as an "analytical threshold." This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

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

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support providing guidance that could limit the method that fund managers could use to express a redemption gate threshold so that the tool could be used in the best interest of the fund.

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

We do not endorse mandatory our automatic activation of redemption gates, which are incompatible with the discretionary judgment needed to deploy this tool. A redemption gate would be deployed only after a fund manager conducts a fact-specific analysis in response to extraordinary events, where appropriate, acting in the best interest of the fund.

While in limited circumstances, at the individual fund level, it could be appropriate for a fund manager to design an automatic activation process based on specific thresholds and tailored to the fund's structure, applying strict activation criteria across all funds, may result in worse outcomes for a particular fund. In addition, since funds have varying liquidity risk profiles, it is not feasible to design a uniform automatic activation threshold for all funds.

These concerns are heightened depending on what funds must disclose. Automated activation thresholds could inadvertently encourage counterproductive investor behaviour, such as premature redemptions in anticipation of LMT activation, running counter to the goal of investor protection and undermining the effectiveness of redemption gates.

We have specific concerns with the provision in Section 6.5.3.2, Paragraph 38 and 6.5.6, Paragraph 92, which would require activation thresholds for redemption gates to be disclosed to investors in the fund's rules, offering documents, or instruments of incorporation. To ensure that disclosures do not undermine LMT efficacy or investor protection, we recommend revising the draft RTS and Guidelines to focus disclosures of factors a fund would consider in determining whether to activate the gate, perhaps with ranges or estimates, and the potential impact on investors.

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

We do not endorse mandatory our automatic activation of redemption gates, which are incompatible with the discretionary judgment needed to deploy this tool. A redemption gate would be deployed only after a fund manager conducts a fact-specific analysis in response to extraordinary events, where appropriate, acting in the best interest of the fund.

While in limited circumstances, at the individual fund level, it could be appropriate for a fund manager to design an automatic activation process based on specific thresholds and tailored to the fund's structure, applying strict activation criteria across all funds, may result in worse outcomes for a particular fund. In addition, since funds have varying liquidity risk profiles, it is not feasible to design a uniform automatic activation threshold for all funds.

These concerns are heightened depending on what funds must disclose. Automated activation thresholds could inadvertently encourage counterproductive investor behaviour, such as premature redemptions in anticipation of LMT activation, running counter to the goal of investor protection and undermining the effectiveness of redemption gates.

We have specific concerns with the provision in Section 6.5.3.2, Paragraph 38 and 6.5.6, Paragraph 92, which would require activation thresholds for redemption gates to be disclosed to investors in the fund's rules, offering documents, or instruments of incorporation. To ensure that disclosures do not undermine LMT efficacy or investor protection, we recommend revising the draft RTS and Guidelines to focus disclosures of factors a fund would consider in determining whether to activate the gate, perhaps with ranges or estimates, and the potential impact on investors.

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

We have concerns with the notion of a predefined "activation threshold." While the Directives use the terms "activation" and "calibration" to describe actions managers take with regards to LMTs, the Directives do not refer to a fixed activation threshold, which is incompatible with the discretionary judgment needed to deploy tools such as suspensions, gates, and side pockets. Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS, which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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"). Requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Accordingly, we recommend that the Consultations be revised to focus instead on activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. The term "activation threshold" should be revised and referred to as an "analytical threshold." This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

While we would expect that any "analytical threshold" would generally be expressed as a percentage of a fund's net assets, we do not believe that the Guidelines or RTS should preclude other approaches.

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

The ability to cancel the non-executed part of a redemption order following the activation of a redemption gate must accordingly be considered in the context of the fund's policies on pending orders more generally.

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

LMTs generally should be applied consistently to all investors and used in accordance with the fund's policies and legal obligations, including acting in the best interest of the fund.

We do not support rules that would require a fund to apply LMTs differently to various share classes within the same fund, although a fund may determine to do so where appropriate. For some funds, such obligations could create lead to unfair treatment or discrepancies among investors holding the same product and may present significant operational challenges.

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

We generally agree with the description of extensions of notice period and the characteristics set forth in Article 3.

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

LMTs generally should be applied consistently to all investors and used in accordance with the fund's policies and legal obligations, including acting in the best interest of the fund.

We do not support rules that would require a fund to apply LMTs differently to share classes within the same fund, although a fund may determine to do so where appropriate. For example, in limited circumstances, a separate notice period based on a threshold transaction value could be appropriate. For some funds, such obligations could create lead to unfair treatment or discrepancies among investors holding the same product and may present significant operational challenges.

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

Liquidity risk management is inherently fund-specific and multi-faceted. There is no one-size-fits-all approach for funds when selecting, activating, calibrating, and deactivating LMTs. We therefore do not recommend issuing guidance that might restrict the application of this tool in the best interest of the fund, and we support allowing (but not requiring) funds in their discretion to set extended notice periods for pre-defined periods.

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

LMTs generally should be applied consistently to all investors and used in accordance with the fund's policies and legal obligations, including acting in the best interest of the fund.

We do not support rules that would require a fund to apply LMTs differently to share classes within the same fund, although a fund may determine to do so where appropriate. For some funds, such obligations could create lead to unfair treatment or discrepancies among investors holding the same product and may present significant operational challenges.

The approach to non-executed redemption orders placed before the notice period is extended must be considered in the context of the fund's policies on pending orders more generally. There is no one-size-fits-all answer, as the approach also must be consistent with legal requirements and other fund policies, which may vary.

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

We generally agree with the description of redemption fees and the characteristics set forth in Article 4.

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

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support providing guidance that would restrict managers ability to determine the appropriate mechanism for setting a redemption fee that could be activated in the best interest of the fund.

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

We generally agree with the description of swing pricing and the characteristics set forth in Article 5.

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

LMTs generally should be applied consistently to all investors and used in accordance with the fund's policies and legal obligations, including acting in the best interest of the fund.

We do not support rules that would require a fund to apply LMTs differently to share classes within the same fund, although a fund may determine to do so where appropriate. For some funds, such obligations could create lead to unfair treatment or discrepancies among investors holding the same product and may present significant operational challenges.

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

We generally agree with the description of dual pricing and the characteristics set forth in Article 6.

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

We generally agree with the description of anti-dilution levies and the characteristics set forth in Article 7.

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

We object to the provisions, including Section 6.5.4.3, Paragraph 76, that require managers to impose the estimated costs of liquidity, through explicit and implicit transaction costs, including significant market impact. Requiring the inclusion of implicit transaction costs such as market impact in the estimated costs of liquidity obliges managers to make highly subjective judgments, particularly where the necessary underlying data is unavailable. Poorly calibrated fees or net asset value adjustments would penalise certain investors and produce unfair results. Obtaining this data may also be costly and lacks a demonstrated benefit. Finally, when calculating estimated costs, presumptively requiring funds to assume sales of a pro rata slice of their portfolios could overstate costs and erroneously presume a preferred approach to portfolio management.

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

LMTs generally should be applied consistently to all investors and used in accordance with the fund's policies and legal obligations, including acting in the best interest of the fund.

We do not support rules that would require a fund to apply LMTs differently to share classes within the same fund, although a fund may determine to do so where appropriate. For some funds, such obligations could create lead to unfair treatment or discrepancies among investors holding the same product and may present significant operational challenges.

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

We generally agree with the description of redemptions in kind and the characteristics set forth in Article 8.

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

We generally agree with the description of side pockets and the characteristics set forth in Article 9.

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

We observe that the circumstances in which UCITS may determine that side pockets are appropriate are likely very narrow. However, to promote the utility of the tool in the best interest of the fund, we recommend that the accounting segregation method be permitted for UCITS. The accounting segregation method does not have the same kinds of disadvantages that physical segregation has. Whereas the physical segregation method could trigger various legal, tax, and operational complexities that slow down the establishment of the side pocket, the accounting segregation method could be used more quickly with lower implementation costs.

Investment Company Institute Responses to Consultation Paper: Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs

Submitted electronically via response form. Questions without a response have been omitted.

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?

We support the Guidelines' affirmation in Section 6.5.1, Paragraph 12 that the manager has "primary responsibility for liquidity risk management, as well as for the selection, calibration, activation and deactivation of LMTs…" We agree with Paragraph 13 that LMTs are "an essential element of the fund's overall liquidity risk management framework," but are not the primary means through which managers address liquidity risk and with the related principles in Paragraphs 14-15 that LMTs do not relieve managers from their obligations to the fund. The provisions in Paragraphs 16, 17, and 24 are appropriate that managers should select LMTs, consistent with the Directives, in consideration of the investment strategy, the liquidity profile, and the redemption policy of the fund. We also agree with Paragraph 22 that LMTs should not "alter or change" the fund.

Nevertheless, given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the provision in Paragraph 19 that fund managers should be obliged to consider the merits of one quantitative tool and one anti-dilution tool.

We also recommend modifying Paragraph 21 because we note that it is not feasible for a manager to "demonstrate" that "activation and calibration" are in the best interest of all investors. We recommend revising the text to expect that managers can demonstrate that the fund's activation and calibration processes are in the best interest of the fund.

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)?

The distribution policy of the fund is generally not a relevant consideration in the selection of LMTs for UCITS.

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?

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the provision in Section 6.5.1, Paragraph 19 that fund managers should be obliged to consider the merits of one quantitative tool and one anti-dilution tool. While this may seem like a well-rounded approach, and we support ESMA's affirmation of the FSB guidance, this provision goes beyond the Directives and is not necessary because managers are already required to be able to suspend redemptions, the strongest form of a quantitative LMT.

We also observe that ADTs are not suitable or useful for all funds. For example, exchange-traded funds (ETFs) have structural features and liquidity management practices that distinguish them from other open-ended funds (OEFs), which led IOSCO to conclude that its guidance on ADTs for OEFs would not apply to ETFs.[6]

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?

Generally, we agree with the elements of the LMT policy that are described in Section 6.5.2, Paragraphs 26, 28, 29, and that the LMT policy should form part of the broader fund liquidity risk management process policy document described in Paragraph 27.

We recommend, however, modifying the description of selection and activation/deactivation criteria in Paragraphs 28(a) and (b). Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS, which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("Any mechanistic approach should be avoided to ensure that the LMT allows a timely intervention in order to address the exceptional circumstances

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[6] IOSCO, Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes: Final Report (20 December 2023) at 6.

that prompted its activation"). Requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Accordingly, we recommend that the Consultations be revised to focus instead on activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. Here, we recommend that ESMA revise Paragraphs 28(a) and (b) to delete the references to "clear and objective" criteria and instead require "criteria…" for each. This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

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.

We fully support ESMA's objective of promoting fairness and transparency for all investors. However, it is crucial that disclosures do not unintentionally trigger counterproductive investor behaviour, such as premature redemptions in anticipation of LMT activation.

For example, we have concerns with any provisions, such as in Section 6.5.3.2, Paragraph 38 and Section 6.5.6, Paragraph 92, which would require activation thresholds to be disclosed to investors in the fund's rules, offering documents, or instruments of incorporation. These paragraphs would require the disclosure of a specific activation threshold for redemption gates, which could trigger investors to redeem shares in anticipation of the application of a gate.

We agree that funds must alert their investors to the possibility of gating (if it is a chosen tool), when it may be used, and what it would mean in practice. To ensure that disclosures do not undermine LMT efficacy or investor protection, we recommend revising the draft RTS and Guidelines to focus on providing factors a fund manager would use to guide their determinations whether to activate the gate, perhaps with ranges or estimates, and the potential impact on investors. This approach would enable funds to offer useful guidance to investors regarding LMTs without disclosing rigid thresholds that could prompt premature investor actions.

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?

While we agree that the activation of quantitative LMTs would be an extraordinary event, we recommend that "exceptional circumstances" be more precisely defined as "unforeseen *or unusual* events" rather than relying solely on the term "unforeseen." The list of examples ESMA provides demonstrates that the events are, in a general sense, foreseeable and predictable, and it would be impractical to generate an exhaustive list of such events. Using only the term "unforeseen" could create ambiguity, as determinations of what is foreseeable may differ prospectively and retrospectively. Activation also should be permitted in unusual (but generally foreseeable) circumstances when deemed appropriate in the interest of the fund.

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?

Generally, we agree with the elements of the LMT plan that are described in Section 6.5.3.1, Paragraph 32.

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?

We strongly agree with the statement in Section 6.5.3.1, Paragraph 33(a) that "any mechanistic approach should be avoided…" Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS. Requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund and is in tension with the obligation set forth in Paragraph 33(a) to "determin[e] the activation threshold for a suspension."

Accordingly, we recommend that the Consultations be revised to strike the language "determining the activation threshold for suspension" and replacing it with "the criteria for determining whether to suspend." This would adjust the focus to activation processes or frameworks that reflect the characteristics of the fund and criteria or factors that fund managers would use to guide their determinations. This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

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

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the proposed selection criteria set forth in Section 6.5.3.2, Paragraphs 34-35. We recommend that the selection criteria in the RTS and Guidelines be drafted so that they can apply universally to all funds and not make reference to specific investment strategies.

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

We have concerns with the notion of a predefined "activation threshold." While the Directives use the terms "activation" and "calibration" to describe actions managers take with regards to LMTs, the Directives do not refer to a fixed activation threshold, which is incompatible with the discretionary judgment needed to deploy tools such as suspensions, gates, and side pockets. Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS, which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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"). Requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Accordingly, we recommend that the Consultations be revised to focus instead on activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. The term "activation threshold" should be revised and referred to as an "analytical threshold." This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

For redemption gates, we observe that redemption frequency and notice period are relevant considerations for setting an analytical threshold.

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.

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support restricting the maximum gating period.

We believe that imposing gates would be an extraordinary measure, and that they should remain in place only while necessary. We also do not support differentiation for UCITS that are marketed to retail investors. Legally, UCITS are not susceptible to such distinctions, with a potential exception of funds with multiple share classes.

We do not support rules that would require a fund to apply LMTs differently to share classes within the same fund, although a fund may determine to do so where appropriate. For some funds, such obligations could create lead to unfair treatment or discrepancies among investors holding the same product and may present significant operational challenges.

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?

We recommend modifying the description of calibration criteria in Paragraph 39. While the Directives use the terms "activation" and "calibration" to describe actions managers take with regards to LMTs, the Directives do not refer to a fixed activation threshold, which is incompatible with the discretionary judgment needed to deploy tools such as suspensions, gates, and side pockets. Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS, which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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"). Requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Accordingly, we recommend that the Consultations be revised to focus instead on activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. In paragraph 39, we recommend replacing the term "activation threshold" with "analytical threshold." This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

For redemption gates, we observe that redemption frequency and notice period are relevant considerations for setting an analytical threshold.

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?

We do not endorse mandatory our automatic activation of redemption gates, which are incompatible with the discretionary judgment needed to deploy this tool. A redemption gate would be deployed only after a fund manager conducts a fact-specific analysis in response to extraordinary events, where appropriate, acting in the best interest of the fund.

While in limited circumstances, at the individual fund level, it could be appropriate for a fund manager to design an automatic activation process based on specific thresholds and tailored to the fund's structure, applying strict activation criteria across all funds, may result in worse outcomes for a particular fund. Using an automated activation threshold risks unintended consequences, particularly if funds must disclose this threshold. In addition, since funds have varying liquidity risk profiles, it is not feasible to design a uniform automatic activation threshold for all funds.

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?

We do not endorse mandatory our automatic activation of redemption gates, which are incompatible with the discretionary judgment needed to deploy this tool. A redemption gate would be deployed only after a fund manager conducts a fact-specific analysis in response to extraordinary events, where appropriate, acting in the best interest of the fund.

While in limited circumstances, at the individual fund level, it could be appropriate for a fund manager to design an automatic activation process based on specific thresholds and tailored to the fund's structure, applying strict activation criteria across all funds, may result in worse outcomes for a particular fund. Using an automated activation threshold risks unintended consequences, particularly if funds must disclose this threshold. In addition, since funds have varying liquidity risk profiles, it is not feasible to design a uniform automatic activation threshold for all funds.

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?

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the proposed selection criteria set forth in Section 6.5.3.3, Paragraphs 41-42. We recommend that the selection criteria in the RTS and Guidelines be drafted so that they can apply universally to all funds and not make reference to specific investment strategies.

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?

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we would strongly oppose the setting of a standard/maximum extended notice period for UCITS or a fixed proportionality requirement.

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

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the proposed selection criteria set forth in Section 6.5.3.4, Paragraph 46. We recommend that the selection criteria in the RTS and Guidelines be drafted so that they can apply universally to all funds and not make reference to specific investment strategies.

Q25: How should redemptions in kind be calibrated?

Generally, we note that rigid formulas and thresholds for activation and calibration of LMTs do not align with the multi-dimensional nature of liquidity risk management for UCITS, which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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"). Requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Accordingly, we recommend that the Consultations be revised to focus instead on activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

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.

We agree that it is appropriate for fund managers to consider the merit of avoiding the simultaneous activation of certain ADTs.

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?

We generally agree with the provisions set forth in Section 6.5.4, Paragraphs 49-50, 53-55, 57-60. We particularly appreciate that Paragraph 53 confirms that managers need not permanently activate ADTs for each fund, which is appropriate, given the multi-faceted and fact-specific nature of liquidity risk management for UCITS.

We do not support, however, the proposed requirement in Section 6.5.4, Paragraph 56(a) that managers impose the estimated costs of liquidity, through explicit and implicit transaction costs, including significant market impact. Requiring the inclusion of implicit transaction costs such as market impact obliges managers to make highly subjective judgments, particularly where the necessary underlying data is unavailable. Poorly calibrated fees or NAV adjustments would penalise certain investors and produce unfair results. Obtaining this data may also be costly and lacks a demonstrated benefit. Finally, when calculating estimated, presumptively requiring funds to assume that sales of a pro rata slice of their portfolios, as proposed in Paragraph 56(b), could overstate costs and erroneously presume a preferred approach to portfolio management.

Calculating market impact often is a subjective activity, for which some UCITS may have little available and reliable data. It cannot be done with certainty for a hypothetical transaction, and particular concerns have been expressed about the inability to measure or model market impact. Several factors that influence market impact may move in different directions or affect market dynamics in varying degrees. Moreover, it is difficult to definitively disentangle such effects on likely model inputs such as spread changes for risky assets; liquidity premia (widening of bid/offer) for larger trades or smaller odd lots; and overall/secular market sentiment. Without the ability to disaggregate these components, any estimate of likely market impact will be difficult to quantify.

Consequently, while models are used for other liquidity risk purposes, market impact models often lack the precision necessary to adjust a NAV or impose a fee. Given the difficulty of this exercise, we urge ESMA to amend the proposed guidance to allow flexibility for UCITS to incorporate the market impact cost only where calculation is practical and can be performed with high confidence using sufficiently reliable data.

Taking such an expansive view of transaction costs that sacrifices precision does not necessarily result in a “fairer” outcome, which is equal treatment for all investors. Estimated transaction costs could be higher than actual transaction costs. Non-transacting investors would benefit from redemptions, and redeeming investors will have been treated unfairly. Fees cannot be calibrated in a way that penalises or otherwise unduly burdens exiting investors in the name of protecting remaining investors. Fairness requires balancing protections for both redeeming and remaining investors.

While we appreciate that Section 6.5.4, Paragraph 56(b) acknowledges that another approach may be used when the pro rata approach “does not represent a fair estimate of the true liquidity cost,” the presumptions that the “starting point” should be a pro rata approach and that a pro rata approach is preferable in estimating stressed transaction costs are flawed. These presumptions suggest that there is a “right” way to buy or sell portfolio investments in response to flows, which would be contrary to the Directives and ESMA’s acknowledgement elsewhere in the draft RTS and Guidelines that fund managers must have flexibility to act in the best interest of the fund. Managers must consider many risks and factors as they manage a portfolio, in order to account for the diversity of UCITS, including investment objectives, strategies, and underlying portfolio assets.

The pro rata slice assumption presumes there is a rigid relationship between daily flows and portfolio transactions, even though in practice such an approach may be sub-optimal. Less liquid assets may sell at lower values during market stress and at higher values once the stress has ended. Conversely, liquid assets may sell at a premium (or hold their value) during market stress. Pro rata selling therefore could cause a fund to lock in losses when certain markets are temporarily depressed. Also, rigidly selling multiple small positions to create a pro rata vertical slice can be less efficient than other approaches and thus could lead to increased transaction costs.

Selling a vertical slice may also be inconsistent with UCITS’ actual cash and portfolio management practices. For instance, funds can meet redemptions through receipt of income (*e.g.*, interest and dividends from portfolio investments, which for fixed-income funds can be regular and sizable), capital from asset roll-off (e.g., receipts from maturing bonds), share purchases, and in-kind redemptions. Highly liquid investments and short-term forms of borrowing also can be used to meet redemptions, which provides flexibility to sell portfolio investments at more opportune times.

The slicing approach provides a simplifying assumption that could ease administrative burdens and certain funds may deem it appropriate in certain circumstances (*e.g.*, in calculating a swing factor or liquidity fee). Yet, the assumption should not be required for all funds because it may overstate transaction costs and inappropriately presume a preferred portfolio management approach.

Accordingly, we urge ESMA to:

(1) Revise Paragraph 56(a) to strike the requirement that funds include implicit transaction costs, including market impact, in their estimated costs of liquidity and instead permit funds to include implicit costs on a voluntary basis where the manager concludes that they can be estimated with high confidence.

(2) Strike Paragraph 56(b) entirely.

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

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the proposed selection criteria set forth in Section 6.5.4.1, Paragraph 61. We recommend that the selection criteria in the RTS and Guidelines be drafted so that they can apply universally to all funds and not make reference to specific investment strategies.

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

We have concerns with the use of the notion of a predefined "activation threshold." While the Directives use the terms "activation" and "calibration" to describe actions managers take with regards to LMTs, the Directives do not refer to a fixed activation threshold, which is incompatible with the discretionary judgment needed to deploy tools such as suspensions, gates, and side pockets. Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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") and requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Accordingly, we recommend that the Consultations be revised to focus instead on activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. The term "activation threshold" should be revised and referred to as an "analytical threshold." This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

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

We object to the provisions, including Section 6.5.4.1, Paragraph 63(a), that require managers to impose the estimated costs of liquidity, through explicit and implicit transaction costs, including significant market impact. Requiring the inclusion of implicit transaction costs such as market impact in the estimated costs of liquidity obliges managers to make highly subjective judgments, particularly where the necessary underlying data is unavailable. Poorly calibrated fees or net asset value adjustments would penalise certain investors and produce unfair results. Obtaining this data may also be costly and lacks a demonstrated benefit. Finally, when calculating estimated costs, presumptively requiring funds to assume sales of a pro rata slice of their portfolios could overstate costs and erroneously presume a preferred approach to portfolio management.

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

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the proposed selection criteria set forth in Section 6.5.4.2, Paragraph 65. We recommend that the selection criteria in the RTS and Guidelines be drafted so that they can apply universally to all funds and not make reference to specific investment strategies.

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?

We appreciate that Section 6.5.4.2, Paragraph 70 sets forth principles that a manager should follow when recalibrating a swing factor. While the Directives use the terms "activation" and "calibration" to describe actions managers take with regards to LMTs, the Directives do not refer to a fixed activation threshold, which is incompatible with the discretionary judgment needed to deploy tools such as suspensions, gates, and side pockets. Rigid formulas do not align with the multi-dimensional nature of liquidity risk management for UCITS which is recognised in the Guidelines in Section 6.5.3.1, Paragraph 33(a) ("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") and requiring a rigid application of LMTs across all funds may result in worse outcomes for a particular fund.

Thus, this principles-based approach in Paragraph 70 is consistent with our general recommendation that the draft RTS and Guidelines focus on funds having calibration processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

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

We object to the provisions, including Section 6.5.4.2, Paragraph 68, that require managers to impose the estimated costs of liquidity, through explicit and implicit transaction costs, including significant market impact. Requiring the inclusion of implicit transaction costs such as market impact in the estimated costs of liquidity obliges managers to make highly subjective judgments, particularly where the necessary underlying data is unavailable. Poorly calibrated fees or net asset value adjustments would penalise certain investors and produce unfair results. Obtaining this data may also be costly and lacks a demonstrated benefit. Finally, when calculating estimated costs, presumptively requiring funds to assume sales of a pro rata slice of their portfolios could overstate costs and erroneously presume a preferred approach to portfolio management.

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

Given the multi-faceted and fact-specific nature of liquidity risk management for UCITS, we recommend that ESMA remove the aspects of the draft RTS and Guidelines that unduly prescribe how managers should select LMTs and use LMTs, which are intended to influence fund managers' choice of tools. These provisions extend beyond the Directives and may limit fund managers' ability to manage liquidity effectively. Further, Article 18a of the Directive states that ESMA "should not restrict the ability of UCITS to use any appropriate liquidity management tool for all asset classes, jurisdictions and market conditions." To this end, we do not support the proposed selection criteria set forth in Section 6.5.4.4, Paragraphs 77-78. We recommend that the selection criteria in the RTS and Guidelines be drafted so that they can apply universally to all funds and not make reference to specific investment strategies.

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

We appreciate that Section 6.5.4.4, Paragraphs 79-81 sets forth principles that a manager should follow when activating an anti-dilution levy. This principles-based approach is consistent with our general recommendation that the Guidelines and RTS focus on funds having activation processes or frameworks that reflect the characteristics of the fund and provide criteria or factors that fund managers would use to guide their determinations. This approach would give fund managers the necessary flexibility to exercise judgement, as appropriate, and act in the best interest of the fund.

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

We object to the provisions, including Section 6.5.4.4, Paragraph 82, that require managers to impose the estimated costs of liquidity, through explicit and implicit transaction costs, including significant market impact. Requiring the inclusion of implicit transaction costs such as market impact in the estimated costs of liquidity obliges managers to make highly subjective judgments, particularly where the necessary underlying data is unavailable. Poorly calibrated fees or net asset value adjustments would penalise certain investors and produce unfair results. Obtaining this data may also be costly and lacks a demonstrated benefit. Finally, when calculating estimated costs, presumptively requiring funds to assume sales of a pro rata slice of their portfolios could overstate costs and erroneously presume a preferred approach to portfolio management.

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?

While we agree that the activation of quantitative LMTs would be an extraordinary event, we recommend that "exceptional circumstances" be more precisely defined as "unforeseen *or unusual* events" rather than relying solely on the term "unforeseen." The list of examples ESMA provides demonstrates that the events are, in a general sense, foreseeable and predictable, and it would be impractical to generate an exhaustive list of such events. Using only the term "unforeseen" could create ambiguity, as determinations of what is foreseeable may differ prospectively and retrospectively. Activation also should be permitted in unusual (but generally foreseeable) circumstances when deemed appropriate and in the best interest of the fund.

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.

We observe that the circumstances in which UCITS may determine that side pockets are appropriate are likely very narrow. However, to promote the utility of the tool in the best interest of the fund, we recommend that accounting segregation method be permitted for UCITS. The accounting segregation method does not have the same kinds of disadvantages that physical segregation has. Whereas the physical segregation method could trigger various legal, tax, and operational complexities that slow down the establishment of the side pocket, the accounting segregation method could be used more quickly with lower implementation costs.

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

We agree with the considerations set forth in Section 6.5.5, Paragraph 87.

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

We fully support ESMA's objective of promoting fairness and transparency to protect investors and appreciate ESMA's recognition of the potential for unintended consequences. It is crucial that disclosures do not unintentionally trigger counterproductive investor behaviour, such as premature redemptions in anticipation of LMT activation or permitting investors to circumvent thresholds or time trades systematically.

For example, we have concerns with any provisions, such as in Section 6.5.3.2, Paragraph 38 and Section 6.5.6, Paragraph 92, which would require activation thresholds to be disclosed to investors in the fund's rules, offering documents, or instruments of incorporation. These paragraphs would require the disclosure of a specific activation threshold for redemption gates, which could trigger investors to redeem shares if they anticipate that a gate may be applied. However, we agree that funds must alert their investors the possibility of gating (if it is a chosen tool), when it may be used, and what it would mean in practice. Specifically, we recommend that the draft RTS and Guidelines be revised to focus on providing factors that fund manager fund would use to guide their determinations whether to activate the gate, perhaps with ranges or estimates, and the potential impact on 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?

We fully support ESMA's objective of promoting fairness and transparency to protect investors. However, it is crucial that disclosures do not unintentionally trigger counterproductive investor behaviour, such as premature redemptions in anticipation of LMT activation or permitting investors to circumvent thresholds or time trades systematically.

For example, we have concerns with any provisions, such as in Section 6.5.3.2, Paragraph 38 and Section 6.5.6, Paragraph 92, which would require activation thresholds to be disclosed to investors in the fund's rules, offering documents, or instruments of incorporation. These paragraphs would require the disclosure of a specific activation threshold for redemption gates, which could trigger investors to redeem shares in anticipation of the application of a gate.

We agree that funds must alert their investors to the possibility of gating (if it is a chosen tool), when it may be used, and what it would mean in practice. To ensure that disclosures do not undermine LMT efficacy or investor protection, we recommend revising the draft RTS and Guidelines to focus on providing factors that a fund manager would use to guide their determinations whether to activate the gate, perhaps with ranges or estimates, and the potential impact on investors. This approach would enable funds to offer useful guidance to investors regarding LMTs without disclosing rigid thresholds that could prompt premature investor actions.

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

We fully support ESMA's objective of promoting fairness and transparency to protect investors. However, it is crucial that disclosures do not unintentionally trigger counterproductive investor behaviour, such as premature redemptions in anticipation of LMT activation or permitting investors to circumvent thresholds or time trades systematically.

For example, we have concerns with any provisions, such as in Section 6.5.3.2, Paragraph 38 and Section 6.5.6, Paragraph 92, which would require activation thresholds to be disclosed to investors in the fund's rules, offering documents, or instruments of incorporation. These paragraphs would require the disclosure of a specific activation threshold for redemption gates, which could trigger investors to redeem shares in anticipation of the application of a gate.

We agree that funds must alert their investors to the possibility of gating (if it is a chosen tool), when it may be used, and what it would mean in practice. To ensure that disclosures do not undermine LMT efficacy or investor protection, we recommend revising the draft RTS and Guidelines to focus on providing factors that a fund manager would use to guide their determinations whether to activate the gate, perhaps with ranges or estimates, and the potential impact on investors. This approach would enable funds to offer useful guidance to investors regarding LMTs without disclosing rigid thresholds that could prompt premature investor actions.

Consistent with this approach, we recommend that fund disclosures of information set forth in a fund's LMT policy should focus on describing fund policies, procedures, and factors considered, ensuring that transparency does not undermine LMT efficacy or investor protection.

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

We recommend an implementation period of at least 12 months following the publication of the final RTS and Guidelines.