

Reply form

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

Responding to this paper

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

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

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

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

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

- Insert your responses to the questions in the Call for Evidence in this reply form.
- Please do not remove tags of the type < ESMA_QUESTION_GLMT_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_GLMT_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_GLMT _ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at <https://www.esma.europa.eu/press->

[news/consultations/consultation-liquidity-management-tools-funds](https://www.esma.europa.eu/news/consultations/consultation-liquidity-management-tools-funds) under the heading *'Your input - Consultations'*.

Publication of responses

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

Data protection

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

Who should read this paper?

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

1 General information about respondent

Name of the company / organisation	State Street Corporation
Activity	Investment servicing, investment management and investment research and trading
Country / Region	Europe

2 Questions

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

<ESMA_QUESTION_SLMT_1>

We generally agree with the characteristics of suspension of subscriptions, repurchases and redemptions as proposed under Article 1 of the two Delegated Regulations.

<ESMA_QUESTION_SLMT_1>

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

<ESMA_QUESTION_SLMT_2>

We agree with this approach and consider important to maintain the right for the fund Manager not to execute such order until the suspension on redemptions is lifted.

<ESMA_QUESTION_SLMT_2>

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

<ESMA_QUESTION_SLMT_3>

We would argue that the fund Manager/fund Board should retain flexibility in determining which approach would be suitable for its fund. The goal should be to ensure fair treatment of investors at all times and efficient execution of those redemption orders. We would support an approach taking into account the chronological order and the pro rata of non-executed redemptions orders. This approach should be adequately considered and disclosed in the prospectus of the fund. |

<ESMA_QUESTION_SLMT_3>

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

<ESMA_QUESTION_SLMT_4>

No further comments. |

<ESMA_QUESTION_SLMT_4>

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

<ESMA_QUESTION_SLMT_5>

No further comments. |

<ESMA_QUESTION_SLMT_5>

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

<ESMA_QUESTION_SLMT_6>

We would not consider the distinction between AIFs and UCITS as a relevant factor when determining the characteristics of suspension of subscriptions, repurchases and redemptions. If allowed flexibility, fund Managers should be able to adapt LMTs use to the specificities of their funds.

<ESMA_QUESTION_SLMT_6>

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

<ESMA_QUESTION_SLMT_7>

We generally agree with the description of redemption gates. It is important however that full flexibility is given to managers to determine an appropriate activation threshold for each fund. As we explain in more details in our responses below, we believe that any fixed minimum activation thresholds would go against the principle of fund Manager/fund Board's discretion.

<ESMA_QUESTION_SLMT_7>

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

<ESMA_QUESTION_SLMT_8>

As stated in the previous response, we want to emphasise that any threshold should not result in automatic activation of redemption gates, rather be a trigger for the fund Manager/fund Board to consider activation of the redemption gate in cases where it is in the best interest of investors. We would also point out that there could be alternative methods to be considered when calibrating redemption gate thresholds, depending for example on the dealing frequency of the fund, so ultimately flexibility needs to be preserved also as regards the discretion of the fund Manager/fund Board to apply the best suited methodology for defining activation thresholds.

<ESMA_QUESTION_SLMT_8>

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

<ESMA_QUESTION_SLMT_9>

The decision to activate redemption gates should ultimately rest with the fund Manager/ fund Board rather than be activated automatically upon exceedance of a set threshold. The automatic activation of redemption gates does not allow for proper consideration of the specific circumstances that exist at that point in time, or whether activation of the redemption gate is necessary or in the best interest of investors. Moreover, in case of full disclosure of the activation thresholds there is a risk of creating first mover advantage incentive for sophisticated investors. |

<ESMA_QUESTION_SLMT_9>

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

<ESMA_QUESTION_SLMT_10>

Please refer to our response to the previous question, we do not think that an automatic activation of redemption gates should be pursued as a default option. Unless the fund Manager/fund Board decides to design the process of LMTs use in such an automatic way, flexibility around the activation of all LMTs should remain the baseline principle. |

<ESMA_QUESTION_SLMT_10>

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

<ESMA_QUESTION_SLMT_11>

We agree that the activation threshold shall not be expressed at the level of the single redemption order. |

<ESMA_QUESTION_SLMT_11>

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

<ESMA_QUESTION_SLMT_12>

We agree that investors should have the right to cancel non-executed redemptions orders but this should be subject to the consent of the fund Manager/fund Board, in order to prevent situations where the cancellation could disrupt asset sales already underway to fulfil redemptions, with further negative impacts to the best interest of remaining investors. Moreover, we do not see merits in differentiating between AIFs and UCITS in this specific instance.

<ESMA_QUESTION_SLMT_12>

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

<ESMA_QUESTION_SLMT_13>

As long as the fund Manager/fund Board has discretion to deploy the LMT which is most suitable to the fund's specific circumstances based on an assessment of prevailing market and liquidity conditions, we do not see a need to have different characteristics based on the investment strategies or between AIFs and UCITS.

<ESMA_QUESTION_SLMT_13>

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

<ESMA_QUESTION_SLMT_14>

To support the fair treatment of all investors, LMTs should generally be applied in the same manner to all investors. |

<ESMA_QUESTION_SLMT_14>

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

<ESMA_QUESTION_SLMT_15>

No further comment. |

<ESMA_QUESTION_SLMT_15>

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

<ESMA_QUESTION_SLMT_16>

We broadly agree with the description of extensions of notice period. |

<ESMA_QUESTION_SLMT_16>

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

<ESMA_QUESTION_SLMT_17>

Similar to our response to Question 14, to support the fair treatment of all investors, LMTs should generally be applied in the same manner to all investors. |

<ESMA_QUESTION_SLMT_17>

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

<ESMA_QUESTION_SLMT_18>

We believe that depending on the nature of the fund, and given that the time required to return to normal dealing cannot always be anticipated, a fund Manager/fund Board should have the flexibility to choose whether to apply extensions of notice period for a pre-defined period of time or for an indefinite period. |

<ESMA_QUESTION_SLMT_18>

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

<ESMA_QUESTION_SLMT_19>

We do not see merit in the RTS providing different characteristics of extension of notice period based on different investment strategies and between different types of funds. As long as the fund Manager/fund Board retains an appropriate level of discretion, this should be enough to take into account the specificities of each individual fund. |

<ESMA_QUESTION_SLMT_19>

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

<ESMA_QUESTION_SLMT_20>

We believe that there could be circumstances where, in the best interest of investors and in case of market liquidity issues, the execution of redemptions orders should not follow the original notice period. Therefore we would suggest flexibility on this specific point. |

<ESMA_QUESTION_SLMT_20>

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

<ESMA_QUESTION_SLMT_21>

When activating or deactivating a LMT, we always ensure that all investors are treated in the same way and adopt an approach to pending redemption orders which ensure a chronological consistency in execution.

<ESMA_QUESTION_SLMT_21>

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

<ESMA_QUESTION_SLMT_22>

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<ESMA_QUESTION_SLMT_22>

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

<ESMA_QUESTION_SLMT_23>

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<ESMA_QUESTION_SLMT_23>

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

<ESMA_QUESTION_SLMT_24>

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<ESMA_QUESTION_SLMT_24>

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

<ESMA_QUESTION_SLMT_25>

Yes we broadly agree with the description of swing pricing and the corresponding characteristics. We take the view that in normal market conditions and for relatively small flows it should not be systematically required to include implicit costs in swing price estimates. Ex ante market impact cannot be predicted with a high degree of confidence and should always be conducted on a best-effort basis. |

<ESMA_QUESTION_SLMT_25>

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

<ESMA_QUESTION_SLMT_26>

|No further comment. |

<ESMA_QUESTION_SLMT_26>

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

<ESMA_QUESTION_SLMT_27>

|We do not see merit in the RTSs providing different characteristics of swing pricing based on different investment strategies and between different types of funds. As long as the fund Manager/fund Board retains an appropriate level of discretion, this should be enough to take into account the specificities of each individual fund. |

<ESMA_QUESTION_SLMT_27>

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

<ESMA_QUESTION_SLMT_28>

In our opinion, it should be possible to apply different swing factors or different anti-dilution tools to different share classes of the same fund. This would be the case for example when a fund Manager needs to reflect the different costs incurred by the different share classes, or when an ETF share class co-exists with other share classes in the same fund. For ETF share classes in particular, the adoption of a swing factor would not make sense given the operational specificities of the ETF structure. We further expand on these ETF specificities under question 36. |

<ESMA_QUESTION_SLMT_28>

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

<ESMA_QUESTION_SLMT_29>

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<ESMA_QUESTION_SLMT_29>

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

<ESMA_QUESTION_SLMT_30>

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<ESMA_QUESTION_SLMT_30>

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

<ESMA_QUESTION_SLMT_31>

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<ESMA_QUESTION_SLMT_31>

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

<ESMA_QUESTION_SLMT_32>

|Yes we broadly agree with the description of the anti-dilution levy and the corresponding characteristics. We take the view that in normal market conditions and for relatively small flows it should not be systematically required to include implicit costs in ADL estimates. Ex ante market impact cannot be predicted with a high degree of confidence and should always be conducted on a best-effort basis. |

<ESMA_QUESTION_SLMT_32>

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

<ESMA_QUESTION_SLMT_33>

|No further comment |

<ESMA_QUESTION_SLMT_33>

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

<ESMA_QUESTION_SLMT_34>

|In line with our response to Question 28, it should be possible to apply different swing factors or different anti-dilution tools to different share classes of the same fund. This would be the case for example when a fund Manager needs to reflect the different costs incurred by the different share classes, or when an ETF share class co-exists with other asset classes in the same fund. For ETF share classes in particular the adoption of a swing factor would not make sense given the operational specificities of the ETF structure. We further expand on these ETF specificities under question 36. |

<ESMA_QUESTION_SLMT_34>

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

<ESMA_QUESTION_SLMT_35>

We do not see merit in the RTSs providing different characteristics of anti-dilution levy based on different investment strategies and between different types of funds. As long as the fund Manager/fund Board retains an appropriate level of discretion, this should be enough to take into account the specificities of each individual fund.

<ESMA_QUESTION_SLMT_35>

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

<ESMA_QUESTION_SLMT_36>

We broadly agree with the principles and characteristics of redemptions in kind, but we want to highlight some relevant considerations related specifically to ETF and that should be acknowledged in the RTS.

Firstly, as recognized by the IOSCO's Guidelines on Anti-Dilution Liquidity Management Tools from December 2023, ETFs have an operational structure which sets them apart from other open-ended funds, as a result of which ETFs were excluded from the application of the Recommendations. This has not been reflected in the ESMA's RTS and Guidelines.

Secondly, given ETF's specificity, we believe that the notion of redemption in kind should not include the process of creation/redemption of shares which takes place between the ETF issuer and the Authorised Participant. These activities lie at the core of the ETF structure and are not related to market conditions or liquidity management considerations which underpin the rationale of LMT.

Third, the RTS introduces a derogation for an in-kind redemption to be processed pro rata if the Fund is marketed to professional investors and if the investment policy of the fund is to replicate an index. This would suggest that active ETFs which do not replicate an index would not be included in the derogation. The rationale for this approach is not adequately explained

in the Guidelines and RTS, as in the case of active ETFs as for index tracking ETFs, the process of redemption in-kind is always the result of a negotiation with the professional investor as to what securities will be included as in kind assets.

More generally, it is important to not mandate a transfer of a vertical slice of the portfolio (pro rata) in all circumstances. We see benefit in clarifying that where a type of transfer of assets (e.g. pro rata share) is applied to one redeeming professional investor, this should not automatically extend to the rest of redeeming investors in the same way, but it should remain the responsibility of the fund Manager to make sure that the interest of all remaining investors is adequately preserved. |

<ESMA_QUESTION_SLMT_36>

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

<ESMA_QUESTION_SLMT_37>

|Please refer to our response to question 36 as it relates to specific ETF considerations. Moreover, we would like to point out that in certain jurisdictions, as for example Ireland, it is current practice that the fund Manager/fund Board can, at discretion, force the redemption in kind on all types of investors when redemptions breach a certain activation threshold expressed as % of the fund's NAV. |

<ESMA_QUESTION_SLMT_37>

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

<ESMA_QUESTION_SLMT_38>

|Please refer to our response to question 36 as it relates to specific ETF considerations. |

<ESMA_QUESTION_SLMT_38>

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

<ESMA_QUESTION_SLMT_39>

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<ESMA_QUESTION_SLMT_39>

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

<ESMA_QUESTION_SLMT_40>

We would like to refer to the response provided by the European Fund and Asset Management Association (EFAMA) on this specific point. |

<ESMA_QUESTION_SLMT_40>

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

<ESMA_QUESTION_SLMT_41>

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<ESMA_QUESTION_SLMT_41>

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

<ESMA_QUESTION_SLMT_42>

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<ESMA_QUESTION_SLMT_42>

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

<ESMA_QUESTION_SLMT_43>

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<ESMA_QUESTION_SLMT_43>

Q44 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the characteristics of LMTs set out in Annex IIA of the UCITS Directive? Which other types of costs or benefits would you consider in that context?

<ESMA_QUESTION_SLMT_44>

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<ESMA_QUESTION_SLMT_44>

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

<ESMA_QUESTION_SLMT_45>

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<ESMA_QUESTION_SLMT_45>

Q46 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the characteristics

of LMTs set out in Annex V of the AIFMD? Which other types of costs or benefits would you consider in that context?

<ESMA_QUESTION_SLMT_46>

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<ESMA_QUESTION_SLMT_46>

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

<ESMA_QUESTION_SLMT_47>

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<ESMA_QUESTION_SLMT_47>