

Newsflash | April 2025

## AIFMD II update - ESMA publishes implementing rules on liquidity management tools for funds

On 15 April 2025, ESMA published draft regulatory standards on liquidity management tools under the AIFMD and UCITS Directive (“RTS”) and its final report on guidelines on liquidity management tools of UCITS and open-ended AIFs (“Guidelines”). Both documents have been developed based on respective mandates resulting from Directive (EU) 2024/927 amending the AIFMD and the UCITSD (“AIFMD II”).



### Key changes to the RTS

Following the public consultation on the draft regulatory technical standards on liquidity management tools (“LMTs”) under the AIFMD and UCITS Directive published by ESMA on 8 July 2024 (“Draft RTS”), ESMA introduced the main following changes to the Draft RTS (see also the below redlines):

- **Introduction of some flexibility for redemption gates** (limiting the amount or proportion of units or shares that shareholders can redeem within a given period) in the way the activation threshold of redemption gates shall be expressed. Exemplarily, for AIFs, the RTS provide that the activation threshold shall be expressed in proportion to the NAV of the AIF, or in a monetary value (or as a combination of both), or as a percentage of liquid assets. However, for UCITS, ESMA did not amend the RTS for the activation threshold which shall be expressed in a proportion to the NAV of the UCITS in line with nature of UCITS that can only be invested in liquid assets.
- **Removal of the provisions on the application of LMTs to share classes.** ESMA concluded that their mandate does not empower them to determine the level of application of LMTs to share classes and did, therefore, not include these provisions in the RTS.

#### ■ **Application of the rules of redemptions in kind to ETFs.**

Following alerts from consultation participants on the unintended consequences of the rules on redemption in kind for the functioning of the primary market of ETFs, ESMA included a new provision in the RTS clarifying that the rule on the *pro-rata* approach in the case of redemptions in kind (stating that redemption orders shall be executed on a *pro rata* basis of the redeeming professional investor's participation in the assets of the AIF) do not apply to authorized participants and market makers operating on the primary market of ETFs, e.g. by using redemptions in kind for the purpose of creation/redemption of units/shares of ETFs.

### Key changes to the Guidelines

The key changes in comparison to the consultation paper on draft guidelines on liquidity management tools of UCITS and open-ended AIFs published by ESMA on 8 July 2024 are as follows (see also the below redline):

#### ■ **Guideline on considering the merit of selecting at least one anti-dilution tool and at least one quantitative-based LMT.**

ESMA has decided to retain the guidance that, in the selection of the two minimum mandatory LMTs, fund managers should consider, where appropriate, the merit of selecting at least one quantitative-based LMT (i.e.: redemption gates, extension of notice period) and at least one anti-dilution tool (i.e.: redemption fees, swing pricing, dual pricing, anti-dilution levy), taking into consideration the investment strategy, redemption policy and liquidity profile of the fund and the market conditions under which the LMT could be activated. In this context, fund managers may consider whether to select one LMT to use under normal market conditions and one LMT to be used under stressed market conditions. However, ESMA has stressed that the primary responsibility for liquidity risk management and for the selection, calibration, activation and deactivation of LMTs remains with the fund manager, who should give due consideration in the selection of the appropriate LMTs that the selected LMTs will allow to effectively manage the fund's liquidity risk under both normal and stressed market conditions and that the selection is as comprehensive as possible to address different circumstances.

#### ■ **Deletion of the guideline on the governance principles,** amongst others, by stating that the UCITSD and the AIFMD do, in ESMA's view, already contain provisions on

organizational requirements, incl. the implementation of policies and procedures for the activation and deactivation of any selected LMT and the operational and administrative arrangements for the use of such tool.

#### ■ **Deletion of the guideline on the disclosure to investors,** amongst others, due to the investor disclosure obligations of article 23(1h) of AIFMD II stating that AIFMs shall for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union make available to AIF investors *"a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, of the existing redemption arrangements with investors, and of the possibility of, and conditions for, using liquidity management tools selected in accordance with Article 16(2b)"*. Against this background, ESMA has decided not to produce guidelines in this respect.

#### ■ **Guideline addressed to depositaries.** ESMA acknowledged that the obligations of depositaries are already established under the UCITSD and AIFMD, including on risk management and liquidity risk management and has decided not to include specific guidelines in this respect in the Guidelines.

#### ■ **Deletion of other guidelines that imposed more restrictive obligations on the selection, activation and calibration of LMTs.** Considering the feedback received by consultation participants, ESMA has decided to better recognize the fund manager's sole responsibility on the selection, activation and calibration of LMTs in light of the specific situation and the market conditions and, therefore, to refrain from taking a restrictive approach in the Guidance.

Please find here the links to redlines of the respective documents:

- [Draft regulatory technical standards on liquidity management tools under the AIFMD](#)
- [Draft regulatory technical standards on liquidity management tools under the UCITS Directive](#)
- [Final report on guidelines on liquidity management tools of UCITS and open-ended AIFs](#)

## Next steps

The RTS have been submitted to the European Commission for adoption. From the date of submission, the European Commission shall take a decision on whether to adopt the RTS within three months. The Commission may extend that period by one month.

The Guidelines will be translated into the official EU languages and published on the ESMA website. The publication of the translations will trigger a two-month period during which NCAs must notify ESMA whether they comply or intend to comply with the Guidelines. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. The Guidelines will apply on the date of application of the RTS ("Application Date"). By way of derogation, in respect of funds existing before the Application Date, the Guidelines apply twelve (12) months from the Application Date.

For more information and to stay up to date on this topic, please feel free to reach out to the contacts listed on this article or your usual Luther S.A. contact.

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