

**MEMO# 35881**

October 9, 2024

# ICI Responds to ESMA Consultations on Liquidity Management Tools

[35881]

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TO: ICI Members

ICI Global Members

Europe Regulatory and Policy Committee SUBJECTS: Alternative Investments

Disclosure

Financial Stability

International/Global

Money Market Funds

Operations RE: ICI Responds to ESMA Consultations on Liquidity Management Tools

On 8 October, ICI responded to two consultations regarding liquidity management tools (LMTs) issued by the European Securities Market Authority (ESMA) (the Consultations).[\[1\]](#) The Consultations set forth proposed LMTs with proposed regulatory technical standards (RTS) and guidelines (Guidelines) for Undertakings for the Collective Investment in Transferable Securities (UCITS) and Alternative Investment Funds (AIFs).[\[2\]](#)

The Consultations seek to implement the recent revisions to the UCITS and AIF Managers Directives (the Directives),[\[3\]](#) which entered into force on 16 April. The Directives require UCITS and AIFs to select and implement at least two LMTs and money market funds (MMFs) to select at least one LMT from the following list:

1. Redemption gates
2. Extensions of notice periods
3. Redemption fees
4. Swing pricing
5. Dual pricing
6. Anti-dilution levies
7. Redemptions in kind

The Consultations also cover temporary suspensions of subscriptions, which the Directives separately require all UCITS and AIFs to implement, and redemptions in kind.

Building on the definitions of the LMTs in the Directives, the draft RTS cover the characteristics of nine LMTs and the draft Guidelines address the selection, activation, and

calibration of each. In addition, the Guidelines set forth general principles for LMT policy, including governance and disclosures.

ICI generally expressed support for the draft RTS and Guidelines, which broadly align with recent international work on LMTs<sup>[4]</sup> and acknowledge that there is no one-size-fits-all approach to LMTs that can be applied across all funds. Nevertheless, some of the proposed requirements are in tension with fund managers' need for flexibility. We noted concerns about these provisions, which typically went beyond the Directives, and proposed alternatives.

Our responses center around four overarching themes.

1. Use of LMTs should be consistent with the fund's policies and legal requirements. While this is generally a point of agreement with ESMA, ESMA asked several questions about the feasibility of using different approaches for funds. For example, we noted in response to some questions that we do not support requiring a fund to apply LMTs differently to share classes within the same fund, although a fund may determine do so where appropriate.
2. Mechanistic approaches lack flexibility and feasibility. We recommended revising provisions in the Consultations that take a mechanistic approach, particularly to activation thresholds and required calibration criteria. Instead, we encouraged the focus to be on the development of processes or frameworks that reflect the characteristics of the fund and provide criteria or factors fund managers would use to guide their LMT determinations.
3. Prescriptive requirements could constrain effective liquidity risk management. In some areas, the draft RTS and Guidelines included prescriptive provisions that go beyond the Directives and would constrain managers' ability to manage liquidity in the best interest of the fund. We objected to such provisions, such as the requirement that managers impose the estimated costs of liquidity, including market impact.
4. Disclosures to investors should avoid triggering opportunistic investor behaviour. Certain provisions in the Consultations would require disclosures that could trigger counterproductive effects, such as premature redemption activity in anticipation of LMT application. We recommended revisions that focus on general descriptions of factors that fund managers would use to guide their determinations, so that the disclosures would not undermine the efficacy of LMTs or investor protection.

Kirsten Robbins  
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#### Notes

[1] The full text of ICI's response is available [here](#).

[2] ESMA, [Consultation Paper on the Draft Regulatory Standards on Liquidity Management Tools under the AIFMD and UCITS Directive](#) (8 July 2024); ESMA, [Consultation Paper on the Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs](#) (8 July 2024). See Memorandum [#35773](#) for a more detailed summary of the Consultations.

[3] 2024/927 [Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and](#)

[loan origination by investment funds](#) (13 March 2024).

[4] 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).

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