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**France Invest's contribution to ESMA's consultation on draft  
Guidelines on Liquidity Management Tools of UCITS and open-  
ended AIFs**

France Invest would like to thank ESMA for the opportunity to contribute to its consultation on draft Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs.

In order to make long-term and active investments into unlisted businesses that require time to grow and evolve, VC/PE funds typically structure themselves as closed-ended AIFs with no redemption rights, which favours illiquid and large commitments from investors. Traditionally, these funds are aimed at investors that are either institutional (pension funds, insurers, banks, sovereign wealth funds, fund-of-funds...) or experienced (family offices, entrepreneurs...). Furthermore, most sales of VC/PE funds to retail investors are intermediated and/or in the form of packaged products, such as life insurance contracts through which insurance companies may provide some degree of liquidity to final clients.

This being said, the attractiveness of the VC/PE asset class and the desire from some investors to commit capital into start-ups and scale-ups are driving an increasing number of VC/PE managers to offer products that are more widely available to retail clients, e.g. ELTIFs. As retail clients generally require greater liquidity than institutional investors, open ended VC/PE funds (so called "evergreen funds" or "semi liquid funds") are becoming increasingly popular among retail clients, as well as insurers, due to their long-term nature and flexibility.

Unlike traditional VC/PE funds, evergreen funds do not have a fixed lifespan. They continuously raise and invest capital, providing ongoing opportunities for investors to enter and exit the fund, thus offering greater liquidity at the fund level, compared to closed-end funds. At the same time, they are designed for long-term investments, well-suited to long-term projects such as projects in renewable energy, infrastructure, and other sustainable sectors, aligning with the interests of investors looking for sustained growth over an indefinite period. Their purpose is to offer investors the potential for higher returns associated with private equity while providing a degree of liquidity not typically available in traditional private equity funds. For the fund manager to be able to maintain a long-term investment horizon without being forced to sell assets prematurely, these funds usually have restrictions on how much capital investors can withdraw at any given time. With their hybrid approach, semi-liquid structures offer access to the private equity asset class to a new range of clients with a different liquidity profile, with positive impact on the overall diversification of portfolios.

We warmly welcome the improvements to the AIFM regime introduced through the recent revision of the AIFM Directive, as they will offer an opportunity for our members to make greater use of the EU passport and to offer their products more widely to EU investors. In this context, it is of utmost importance that appropriate liquidity management tools are available to AIFMs and the Guidelines on Liquidity Management Tools under the AIFMD carefully designed.

General comments

- As our members are AIFMs which predominantly manage AIFs, **we do not have a broad view on the management of UCITS**. Therefore, our comments focus on draft RTS on Liquidity Management Tools under

the AIFMD.

- This being said, LMTs should be selected and designed depending in particular on the asset class, the investment strategy of the fund and the type of its investors, professional or not. For instance, protection issues are different for professional investors, which may contractually agree to specific liquidity arrangements when they invest in a fund.
- We would like to highlight the binary nature of the current definitions for open-ended and closed-ended funds, which fail to account for the concept of "semi-open" or "semi-closed" funds. For example, some funds, like UCITS, are highly liquid and allow investors to exit at any time, while, on the other hand, others are fully closed-ended, offering no exit opportunities at all until the fund's end of life. However, some other funds are essentially closed-ended even though they provide limited liquidity opportunities initially agreed upon with investors. These funds should not be subject to the same liquidity requirements as UCITS. Therefore, **it is important to differentiate between fully liquid funds and those offering limited exit opportunities, which should have greater flexibility regarding the tools used to manage liquidity risk.**
- ELTIFs are a specific type of AIFs and, as such, **evergreen ELTIFs should comply with the provisions of the AIFM regime.** Recital 31 of the ELTIF Regulation notes that "*where the rules or instruments of incorporation of an ELTIF provide for the possibility of redemptions during the life of that ELTIF, the provisions on liquidity risk management and liquidity management tools set out in Directive 2011/61/EU apply*". As a consequence, a **smooth articulation** between the two frameworks should be ensured.
- As the market for open ended AIFs develops, our members are gaining experience on the use of a variety of liquidity management tools (LMTs). However, **at this stage, we might not have a full and precise view on each and every tool listed in annex V of the AIFMD.** Currently, **we observe that suspensions of subscriptions, repurchases and redemptions as well as redemption gates and side pockets (on an ad hoc basis) are among the tools most frequently used by our members which manage semi liquid funds.** Some of our members may apply redemption fees. Adjustments to entry/exit prices seem rather difficult to put in place as far as VC/PE funds are concerned. As for swing or dual pricing, they do not appear appropriate to our asset class.
- Considering that suspensions of subscriptions, repurchases and redemptions and side pockets can only be used as complementary LMTs and that redemptions in kind are not applicable to all types of investors, in practice, **VC/PE managers are essentially left with a choice of LMTs between gates and extensions of notice period.** In other words, it will be difficult for them to work out an adequate combination of LMTs depending on the typology of investors, the asset class and investment strategy, etc.
- Therefore, it is of utmost importance that that **the implementation of tools as described in annex V of the AIFMD does not prevent the application of other additional liquidity management tools designed on a contractual basis** as set out in the documentation of the fund. Indeed, some investors may be willing to agree to specific contractual arrangements regarding liquidity. In other words, both types of tools (legal and contractual) should be available to AIFMs [and count toward the minimum required LMTs required from AIFMs managing those type of AIFs].

[Detailed comments](#)

## GENERAL PRINCIPLES

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 welcome the reiteration that the primary responsibility for liquidity risk management, as well as for the selection, calibration, activation and deactivation of LMTs is of the manager.

However, **we disagree that LMTs should be considered as an essential element of the fund's overall liquidity management framework.** A holistic approach should be taken. In our opinion, the diversity of types of AIFs and their distinct nature (as compared to UCITS) should be taken into account.

Also, the Guidelines should make clear that the list of elements in paragraph 17 is not exhaustive but indicative of the main considerations of a fund manager in the selection of LMTs.

In addition, **what is meant by "fund's structure" should be clarified.**

Furthermore, **cash flows generated by nature by the underlying assets as well as the type of investors** (HNWI vs. retail) **should be taken into account.** Indeed, depending on their type, investors may accept different liquidity terms, e.g. additional redemption fees or longer lock-up or notice periods, and invest in different share classes.

We therefore suggest rewording point 13 of the Guidelines (p.53) as follows:

*LMTs should be considered as an **essential** element of the fund's overall liquidity management framework, which should incorporate relevant provisions related to the fund's structure, investment strategy, **cash flows generated by the assets, investor type** and operational processes and procedures to manage liquidity.*

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)?

Yes, we agree that the distribution policy should be taken into account in the selection of the LMTs.

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?

As a preliminary remark, we fully agree that **fund managers should have the discretion to select additional LMTs and liquidity measures** to ensure the fund's overall resilience and ability to manage its liquidity. For many funds they manage, our members design the redemption policy of the fund on a contractual basis when the fund is designed.

As a general principle, **managers should not be constrained to selecting at least one quantitative LMT and at least one ADT.** Indeed, in practice, the list of LMTs presented in annex V of the AIFMD that "semi liquid" funds can choose from is shorter and it is likely many "semi-liquid" funds will end up with two quantitative LMTs i.e. redemption gates and extensions of notice periods.

We propose to **remove the suggestion that fund managers should consider the merit of selecting at least one quantitative LMT and one ADT** or to **clarify that for certain funds it may be appropriate to select two minimum mandatory LMTs from the quantitative-based LMT list.**

It should be clarified that "where appropriate" refers to situations whereby the list of LMTs available under annex V of the AIFMD is restricted in practice due to the specificities of the relevant fund.

Last, the Guidelines should clarify that **2 versions of a same LMT can be used**. For instance, 2 different redemption gates applicable in different conditions could be used to meet this requirement.

We propose rewording point 19 of the proposed Guidelines (p. 55) as follows:

*In the selection of the two minimum mandatory LMTs, managers should consider, where ~~appropriate~~ **the list of tools available in practice for a fund due to its specificities is sufficiently large**, the merit of selecting of at least one quantitative-based LMT (i.e.: redemption gates, extension of notice period), **possibly declined in 2 versions**, and at least one ADT (i.e.: redemption fees, swing pricing, dual pricing, ADL), 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, managers may consider whether to select one LMT to use under normal market conditions and one LMT to be used under stressed market conditions (for instance, one ADT to use for normal market conditions and one quantitative LMT to be used under stressed market conditions).*

**We disagree that the level of subscription and redemption orders received should be treated with the strictest confidentiality.** In our opinion, investors should be treated fairly and the obligation to provide them with the same level of information should be complied with. In other words, investors should not be treated differently, and they should be in a position to make informed decisions. For instance, smaller investors should be informed when a few larger investors plan to redeem their shares or units. Indeed, it would be counterproductive if these larger investors benefited from all the liquidity offered by the fund. Also, investors should be able to forecast whether a redemption fee will apply to their redemptions. LMTs will not be efficient if strict confidentiality is applied.

Moreover, it should be ensured that such confidentiality obligation articulates with the matching mechanism available under the ELTIF Regulation.

In other words, information on the activation of LMTs should not be disclosed however it should be possible to communicate with investors.

Last, although we can understand ESMA's concern regarding redemptions and its aim to possible avoid panic reactions from investors, **this disclosure issue is definitely not relevant to subscriptions.**

We propose rewording point 23 of the proposed Guidelines (p. 56) as follows:

*Managers should ensure that the level of ~~subscription and~~ redemption orders received is treated with the **strictest confidentiality appropriate level of disclosure vis-à-vis investors**, in order to avoid that some investors can benefit from information on the probability that LMTs may be activated.*

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

No, we do not see any merit in developing further guidance on the depositaries' duties. From an operational perspective, fund managers would not expect or require specific detailed guidelines on the depositaries' verification procedures around LMTs. Depositaries will put in place the procedures they deem appropriate.

## GOVERNANCE PRINCIPLES

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?

Yes, we generally 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. This being said, the list is extensive and overly prescriptive, and there is a risk that it will become impractical to implement. Most LMTs will be activated under very specific circumstances, which require a sufficient level of flexibility to ensure that one can act in the best interest of investors depending on the current circumstances. The methodology will vary across asset classes, with private markets being less automated. Therefore, the Guidelines should provide for sufficient flexibility in order for fund managers to determine the best use and combination of LMTs.

**We however disagree that the estimation methodology in LMT policies which include ADTs should be reviewed every 6 months.** Such review should be performed when needed, and not be required more frequently than on a yearly basis.

More generally, if a management liquidity policy is defined in the funds' documentation, it should not be needed at the level of the AIFM.

We propose rewording point 29 of the proposed Guidelines (p. 57) as follows:

*In case the manager has selected ADT(s) as LMTs, the LMT policy should document the nature of the costs taken into account, the rules regarding the distribution of these costs between entering, exiting or remaining holders, as well as the estimation methodology, which should be based on documented and justifiable criteria and reviewed **when needed, at least every six months annually**. Managers should document all methodologies and calculations in such a way as to allow traceability and ensure their logging.*

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.

**Apart from some technical elements which would benefit competitors (e.g. quantitative metrics), we have no objection to elements of the LMT policy (i.e. qualitative information) to be disclosed to investors.** In general, even though detailed information on the LMT policy is not publicly disclosed to all (over disclosure could result in investors being able to predict when a manager might use an LMT and encourage first movers), for example on the internet, investors will ask information in the course of their due diligence process.

## QUANTITATIVE-BASED LMTs

### SUBSCRIPTIONS, REPURCHASES AND REDEMPTIONS

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?

We acknowledge that suspensions of subscriptions, repurchases and redemptions (i.e. one of the LMTs included in the list, set out in annex V of the Directive, that AIFMs have to choose from) should only be used in exceptional circumstances. We welcome clarification on such situations, as it allows to increase legal certainty and to ensure a level playing field. This being said, it would be difficult to set out a precise definition that would encompass them all, as they are by nature impossible to foresee. Rather, we would suggest providing indicative examples of such situations. Also, circumstances specific to an asset class should be added to the examples provided by ESMA, which are limited to extreme situations/catastrophes.

In addition, we suggest specifying that suspensions are activated in exceptional circumstances “when the best interest of investors so requires”.

Furthermore, it should be ensured that **it is the AIFM which appreciates whether the impact on the fund’s ability to carry out normal business functions and activities is material or not**. We would like to note here that the events and/or environments which impact the fund are out of control of the AIFM.

We would therefore suggest rewording point 30 of the draft guidelines (p.58) as follows:

*Exceptional circumstances ~~can be defined as~~ include unforeseen events and/or operational/regulatory environments that impact materially on the fund’s ability to carry out normal business functions and activities and which would temporarily prevent the manager to meet the funding obligations arising from the liabilities side of the balance sheet. ~~A non-exhaustive list includes:~~ **Examples of such circumstances comprise:** asset valuation difficulties; severe liquidity issues (e.g.: due to margin calls, significant size withdrawal) where executing the sale of underlying assets could cause liquidity issues for the fund (e.g.: large discounts in asset sales, large dilution of remaining investors); critical cyber incident that impacts on the fund, the manager and/or fund’s services provider capacity to operate; unforeseen market closures, trading restrictions, closure of trading venues; severe financial and/or political crisis; identification of significant fraud; natural disaster; **circumstances specific to the asset class. Managers should consider the activation of suspension of subscriptions, repurchases and redemptions should be activated when the best interest of interest so requires.***

We would like to highlight that, **on the one hand, the suspension of subscriptions and, on the other hand, the suspension of repurchases and redemptions are decorrelated**. Subscriptions and repurchases/redemptions are two distinct mechanisms. While the suspension of redemptions is a liquidity management tool, the suspension of subscriptions can be used in certain situations, which are not necessarily liquidity crises, such as difficulties in valuing the assets of the fund or when the fund has reached its maximum size. For example, during the sanitary crisis, one of our members decided against suspending subscriptions into its debt fund specialised in aeronautic as it was important not to stop inflows.

[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?](#)

We understand that, when a suspension is activated, an exit plan should be prepared. However, in some circumstances, it may not be possible to plan the date when repurchases and redemptions will resume. For example, during the covid crisis, it was difficult to foresee how markets would evolve. We welcome that only “a tentative duration” of the use of the tool. It should be clarified that the timeline to resume normal operations should also be tentative.

We propose rewording letter c of point 32 of the proposed Guidelines (p. 59) as follows:

*c) a tentative duration of the use of suspension of subscriptions, repurchases and redemptions and a **tentative** timeline to resume normal operations (i.e.: re-open the fund for subscriptions, repurchases and redemptions);*

[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 do not have any specific comments on that list.

## REDEMPTION GATES

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

We wish to emphasize here again the importance of allowing AIFMs to implement contractual gates, in addition to those listed among the LMTs in Annex V of the Directive. These gates, which form part of their redemption policy, may be structural in nature and applied outside of exceptional circumstances.

Investment managers should have discretion to operate an appropriate trigger (to be detailed in the fund documentation) for the redemption gate, based on the operational model and liquidity of the fund.

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

Annex V of Level 1 AIFMD is silent on whether a redemption gate could operate as a day-to-day tool for managing the liquidity of a fund. We therefore consider that the Guidelines, as currently drafted, narrow the definition of Annex V of Level 1 AIFMD. We suggest for ESMA to recognise that "temporary" in this context means only the activation of the gate, not the fact that there might be permanent mechanism to restrict redemptions above a certain NAV threshold.

We would request that **the decision to carry non-executed orders forward is left at the discretion of the AIFM** and is not mandatory. For example, automatic carry forward is not something that all AIFMs will currently employ.

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.

Yes, we agree that **the use of redemption gates should not be restricted in terms of the maximum period over which they can be used**, neither for funds marketed to professional investors nor for funds marketed to retail investors. We fully agree that these matters should be determined by the manager on a case-by-case basis.

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 would like to comment on paragraph 39 of the draft guidelines. The obligation for managers to ensure that investors should be able to redeem their units or shares under normal market conditions may not be applicable to all types of funds. If it may be relevant to UCITS, it may not be appropriate for AIFs such as VC/PE funds. For the latter, managers should be required to ensure that investors should be able to redeem their units or shares **under conditions set out in the fund rules** (which may not be normal market conditions).

The RTS should not specify the methodology used to calibrate the activation threshold. Investment managers should have discretion to operate an appropriate trigger (to be detailed in the fund documentation) for the redemption gate, based on the operational model and liquidity of the fund.

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?

No, **we do not think that a fixed minimum threshold would be appropriate**. Rather, as there are a wide variety of funds, we think that this choice should be left to the manager, i.a. depending on the investment strategy of the fund (for instance, VC/PE funds invest in less liquid assets as compared to UCITS).

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?

Please see our answer to question 14. We do not think that a fixed minimum threshold would be appropriate for VC/PE funds (all the more, it should be noted that VC/PE funds, which invest in less liquid assets, do not deal daily).

#### EXTENSION OF NOTICE PERIODS

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?

Yes, we generally agree with the proposed criteria for the selection of the extension of notice period. VC/PE funds invest in less liquid assets and may need additional time to liquidate them.

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

Considering the wide variety of funds, depending on their underlying assets, their investment strategy, etc, it is not possible to define an appropriate minimum notice period in general. **We disagree that all VC/PE fund should have a notice period. It should be the responsibility of the AIFM to determine the relevance and length of the minimum notice period, if any, on a case-by-case basis**, depending on the fund's specificities. The capacity to provide liquidity to investors may be provided through one or more means should be considered in a holistic manner: a sound and reliable liquidity risk management relies on the correct articulation of different aspects.

We suggest rewording point 42 of the proposed Guidelines as follows:

*In light of the additional time that may be needed in order to liquidate the portfolio, the selection of the extension of notice periods is recommended for AIFs invested in less liquid assets and, particularly, for RE and PE funds which **should** already have in place an appropriate notice period that is in line with the level of liquidity of their assets under normal market conditions.*

In our view, the **extension of notice period may be an appropriate LMT** to select for VC/PE funds as they invest in less liquid assets and may need additional time to liquidate them.

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?

**It should be the responsibility of the AIFM to determine the relevance and length of any extension of notice period, on a case-by-case basis.** In any case, there should not be any standard/maximum extended notice period for VC/PE funds.



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

We generally agree with the proposed criteria for the activation of the extension of notice period.

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

#### REDEMPTIONS IN KIND

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

We suggest that paragraph 46 is amended to explicitly confirm that **redemption in kind can be selected as one of the two minimum required LMTs for funds that are marketed to both professional and retail investors**, where it is considered appropriate to do so by the fund manager.

This being said, we would like to highlight that redemptions in kind are one of the LMTs that managers can choose from the list of tools set out in annex V of the Directive. However, such redemptions should not prohibit the use of redemptions in kind as defined on a contractual basis in the fund documentation as part of the redemption policy of the fund.

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

We agree that **the activation of redemptions in kind should be activated at the discretion of the manager**, as foreseen in the fund's documentation. However, in our opinion, **it should be possible to activate them outside NAV calculation dates**. Indeed, it may take some time in practice to implement them. They could however be performed on the basis of the NAV.

Furthermore, we disagree that an independent third party should perform the valuation of the assets, in particular when redemptions in kind are operated at the NAV (it should be recalled that the NAV is the responsibility of the AIFM). Indeed, professional investors may not need such reassurance and this would imply unnecessary additional costs. Not mentioning that auditors/depositaries may not be willing to perform such valuation.

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

No. In our opinion, it should be possible to activate redemptions in kind outside NAV calculation dates. Indeed, it may take some time in practice to implement them. They could however be performed on the basis of the NAV.

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

This will hugely depend on the strategy and the composition of the fund so should be left to the fund manager's discretion.

Q25: How should redemptions in kind be calibrated?

#### **ANTI DILUTION TOOLS**

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.

Swing pricing, dual pricing and anti-dilution levies are ill suited to semi-liquid, private market fund strategies. Because semi-liquid funds hold, mostly, illiquid investments, it is not possible to get a pre-determined mechanism to adjust value of units based on liquidity. Redemption fees will be the only ADT relevant for VC/PE managers. As a consequence, cases whereby a VC/PE manager would consider the simultaneous activation of ADTs will probably be rather rare.

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?

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

### REDEMPTION FEES

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

Redemption fees will be the only ADT relevant for VC/PE managers.

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

We agree that managers should set activation thresholds at their own discretion.

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

It should be clarified that managers may set a fixed redemption fee that does not solely reflect the cost of liquidity but could also integrate for example transaction costs.

### SWING PRICING

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

Swing pricing is ill suited to semi-liquid, private market fund strategies. Because semi-liquid funds hold, mostly, illiquid investments, it is not possible to get a pre-determined mechanism to adjust value of units based on liquidity.

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

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?

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

### DUAL PRICING

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

Dual pricing is ill suited to semi-liquid, private market fund strategies. Because semi-liquid funds hold, mostly, illiquid

investments, it is not possible to get a pre-determined mechanism to adjust value of units based on liquidity.

#### ANTI DILUTION LEVY

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

Anti dilution levies are ill suited to semi-liquid, private market fund strategies. Because semi-liquid funds hold, mostly, illiquid investments, it is not possible to get a pre-determined mechanism to adjust value of units based on liquidity.

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

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

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

#### SIDE POCKETS

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?

We disagree with the definition of “exceptional circumstances” provided in the context of side pockets. We do not understand why it is different from that proposed in the context of suspensions of subscriptions, repurchases and redemptions. Indeed, side pockets and suspensions may apply to the same fund and such a difference would not be practical.

As explained in our response to question 7, if we welcome clarification on such situations, as it allows to increase legal certainty and to ensure a level playing field, it would be difficult to set out a precise definition that would encompass them all, as they are by nature impossible to foresee. Rather, we would suggest providing examples of such situations. Also, circumstances specific to an asset class should be added to the examples provided by ESMA, which are limited to extreme situations/catastrophes.

In addition, we suggest specifying that side pockets are activated in exceptional circumstances “when the best interest of investors so requires”.

Furthermore, it should be ensured that **it is the AIFM which appreciates whether the impact on the fund’s ability to carry out normal business functions and activities is material or not**. We would like to note here that the events and/or environments which impact the fund are out of control of the AIFM.

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.

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

We suggest that the Guidelines cater for the situation whereby the assets placed in the side pocket are reintegrated in the original portfolio.

#### **DISCLOSURE TO INVESTORS**

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

We are concerned that excessive disclosure in public reports of the actual factors and steps taken by funds in relation to the use of LMTs could result in negative outcomes, such as future first mover advantage, which could have long-term detrimental impacts on the liquidity of the fund. Disclosing general factors that have been used, rather than specific figures, or delayed disclosure after application, could help to mitigate this risk.

For funds that are closed-ended, a grandfathering clause should apply.

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?

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

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

For funds that are closed-ended, a grandfathering clause should apply.

## **COST BENEFIT ANALYSIS**

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

Q49. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the technical proposal develop by ESMA as regards the policy objecting of achieving a set of minimum standards by which all managers across Member States should provide disclosure to investors on the selection, activation and calibration of LMTs? Which other types of costs or benefits would you consider in that context?

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

## **Contact**

For further information, please feel free to contact Carine Delfrayssi, European and Regulatory Affairs at France Invest, at [c.delfrayssi@franceinvest.eu](mailto:c.delfrayssi@franceinvest.eu) or +33(0)1 47 20 99 79.

## **About France Invest**

Established nearly 40 years ago, France Invest brings together venture capital, private equity, infrastructure and private debt teams based in France, as well as the associated professions which support them. Its membership currently counts roughly 440 management firms and 200 associate members.

Private equity supports unlisted companies for a fixed period of time and provides them with the equity capital, through the acquisition of minority or majority stakes in their capital, needed to finance growth and transformation projects. It supports the creation of start-ups (venture capital), participates in the growth and transformation of many regional SMEs and mid-caps (growth capital) and contributes to the transfer of companies (replacement capital).

France Invest's members represent one of the main growth drivers for the French and European economy and support a significant portion of employment in France and Europe. In 2023, French private equity and infrastructure players invested €31 billion in 2,700 companies and infrastructure projects. They raised €33 billion from investors, half of which abroad (just under one third at EU level excluding France), which will be invested over the next 5 years<sup>1</sup>. In addition to that, in 2023, private debt players (structures financing companies and infrastructure projects) invested €14 billion in 387 transactions and raised €10 billion that will finance new transactions in the coming years<sup>2</sup>. European companies, in particular start-ups and SMEs, are the main recipients of our members' investments. Over the 2017- 2022 period, over 330 000 jobs were created in companies backed by French venture capital and private equity<sup>3</sup>.

In particular, during the pandemic, the venture capital and private equity industry has demonstrated its adaptability, supporting existing portfolio companies as and when needed, while continuing to invest in new businesses that require capital and operational expertise to grow.

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<sup>1</sup> <https://www.franceinvest.eu/activite-du-capital-investissement-francais-en-2023/>

<sup>2</sup> <https://www.franceinvest.eu/activite-des-fonds-de-dette-privée-en-france-en-2023/>

<sup>3</sup> <https://www.franceinvest.eu/croissance-et-creation-demplois/>