Draft Regulatory Technical Standards on LMT under the AIFMD and UCITS Directive

Key messages from AFG members

AFG welcomes this consultation and would like to emphasize on following key messages.

- **Liquidity risk (namely liquidity mismatch) is frequently mentioned as one of the main vulnerabilities which can be considered as a threat to the global financial stability. Among the NBFI universe, investment funds are clearly identified by international policy makers as one of the sectors where such vulnerabilities exist. AFG does not share this point of view for many reasons which are out of the scope of this consultation. However, having a European regulatory frame where LMT are uniformly defined and applied is necessary and can constitute a relevant argument for the policy makers.**

- **AFG shares the view that a common set of characteristics for LMT is necessary. However, the standardization process should not go too far. AFG believes that a minimum level of flexibility should be preserved. In order to ensure their efficiency, these tools must be adapted to each fund profile according to several criteria such as risk/return profile, type of asset classes, type of investors, distribution channel, operational constraints, …**

- **AFG provides some existing examples of combination of LMT (redemption fees + incentive notice period) which proved to be efficient.**

- **In order to cope with a liquidity crisis, the ability to activate LMT in a timely manner is key. Threshold calibrations and other characteristics should be correctly estimated by the fund manager (and potentially challenged by the NCA). For that reason, having in mind the need of harmonization, AFG believes that theses RTS (and the associated guidelines) should not be too prescriptive in order to maintain an essential level of reactivity.**

Characteristics of suspension of subscriptions, repurchases and redemptions

The characteristics of suspension of subscriptions, repurchases and redemptions would therefore be the following:

• The triggering event shall consist of exceptional circumstances and the decision shall be made in the best interests of investors.

• The fund is simultaneously and temporarily closed for subscriptions, repurchases and redemptions.

• Subscription, repurchase and redemption orders that have been placed but not executed before the fund manager suspends shall not be executed before the suspension of subscriptions, redemptions and repurchases is lifted.

• The fund is reopened simultaneously for subscriptions, redemptions and repurchases.

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

AFG response

AFG members agree with these characteristics, but they see merits, for certain circumstances, in having the funds closed only for redemptions. Please see detail below in Q5.

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.

AFG response

The orders collected before the suspension is announced must not be executed. For the avoidance of doubt, their cancelation should be validated by the manager in order to mitigate any operational risks.

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?

AFG response

The orders that have not been executed before the suspensions and that have been canceled with the validation of the manager should not be executed. Consequently, investors willing to subscribe or redeem should place new orders.

However, if the fund is reopened for subscription and redemption, AFG members wish to have the ability to keep these orders unchanged and execute them when the suspension is lifted. This option, chosen by the managers, should be duly documented in the legal documentation of the funds.

If the manager decides to opt for this mechanism, investors must be informed that they have the possibility to cancel their orders. They should also pay attention to the fact that the NAV can be impacted by the suspension and the fact that their orders, if not canceled, will not benefit from any priority compared to new order placed after the suspension is lifted.

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

AFG response

AFG sees merit in reopening the subscriptions before the redemptions. Money from subscription, if any, could be used to improve the liquidity profile of the fund. By purchasing liquid assets, the global dilution level will be reduced. Some internal tensions (eg, trash ratio limits) could be released. This could also provide to the manager additional time which could ultimately avoid an unwanted outcome (liquidation or side pocket). It allows also the manager to seek to new investors before the funds is totally reopened.

To conclude, allowing subscriptions can be seen as an intermediary step before the fund is totally reopened.

AFG would like to add that, as suspensions are publicly disclosed, investors willing to subscribe are well informed of the current situation of the funds before placing orders.

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

AFG response

The proposed characteristics are sufficient.

However, AFG believes that under specific circumstances, the suspensions of redemptions only is a feature to consider. Liquidity stress comes usually from an unbalanced situation between sellers and buyers on the underlying market. The possibility of allowing the subscription only can help to bring back balance and reduce the liquidity stress, to the ultimate benefit of the existing investors. This option could be suitable for AIFMs managing AIFs whose assets might be structurally illiquid/hard to liquidate (e.g.: Real Estate (RE) funds and/or Private Equity (PE) funds).

Naturally some preliminary conditions must be filled if subscriptions are still allowed.

The manager should continue to value the assets in the fund and publish a NAV to ensure a proper information to investors. The potential new investors must be fully informed of the situation of the fund and more generally the fund manager must take all the measures to ensure that an equal treatment between investors is respected.

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?

AFG response

AFG is of the view that the nature of the underlying assets matters more that the applicable directive. Fund managers should benefit from flexibility regarding the proposed characteristics with a differentiation between the suspension of the subscription and the redemption.

Many different circumstances can potentially lead to an activation of this LMT. The fund managers need to cope with the situation on case-by-case basis. They should be able to take the best decision for the investors.

But general principles must be respected:

- The comprehensive and fair information of the situation of the fund
- The equal treatment of the investors
- Acting for the best interest of the investors.

Redemption gates

the characteristics of redemption gates would include:

• The activation threshold, which triggers the possibility to temporarily activate this LMT. The activation threshold shall be expressed as percentage of the NAV of the fund for a given dealing day and determined as the net redemption orders at the level of the fund (except for ELTIF for which the activation threshold is determined in Article 18(2)(d) of the ELTIF Regulation as a maximum percentage of asset referred to in Article 50(1) of the UCITS Directive and in the upcoming Delegated Regulation).

• Investors have a temporary and partial restriction on their ability to redeem their units or shares from the fund.

The redemption gate level, which corresponds to the actual proportion of redemption orders executed for a given dealing date. The redemption gate level shall not be below the activation threshold.

• When activated, the same redemption gate level shall apply to all redeeming investors on pro rata basis of their redemption orders. In the case of funds with multiple share classes, the level of redemption gate shall be the same for all share classes.

• When the activation threshold is exceeded, the redemption gate may be either automatically activated or the fund manager/the responsible fund Board may decide whether or not to activate the redemption gate.

• The non-executed part of the redemption orders shall be carried forward to the next dealing date or may be cancelled at the initiative of investors.

• The fund manager/fund Board shall specify in advance whether the part of redemption orders that have not been executed and that have been carried forward to the next dealing date shall have any priority over new redemption orders submitted for execution at the next dealing date.

• The fund may still be open for subscriptions.

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

AFG response

AFG members agree with these characteristics.

Orders carried forward to the next dealing date shall have any priority over new redemption orders. This characteristic helps to mitigate arbitrage opportunities and systematic risk. However, when the gates have a maximum period, the remaining orders should logically be executed with priority in order to respect the end of the period.

It currently happened in France for some RE funds with a max period of 12 months.

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.

AFG response

In France, redemption gate thresholds are expressed in accordance with the draft RTS.

However, AFG sees merits in having the possibility to activate redemption gate when the aggregation of the latest redemption orders during a time period exceeds a level where the fund manager believes that the underlying market can no longer absorb the sales orders without a significant impact.

With that respect, the threshold level can be expressed as a percentage of the NAV considering the sum of net redemptions orders received on several dealing days included in a sliding window with a fixed length. (example: 10% for cumulative net redemptions received during the last 2 weeks)

This is particularly useful when, for instance, the latest net redemptions received stay just below the activation threshold. This feature considers the fact that the gate activation can also depend on the recent "history" of the fund.

This may not be seen as an unequal treatment of the shareholders as the gate is applied uniformly when activated.

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?

AFG response

No. Redemption gates should be activated case by case. Redemption gates offer a more flexible way to restrict the redemption compared to the suspension of subscriptions, repurchases and redemptions only used in exceptional circumstances. That being said, it's more appropriate to leave the decision of gates activation to asset manager.

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.

AFG response

AFG agrees with the question: no automatic activation should be permitted. And no differentiation between any type of funds should be made with respect to that point.

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.

AFG response

AFG agrees with the question.

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?

AFG response

AFG agrees that investors should have the right to cancel the non-executed part of their redemption orders except for funds with daily NAV.

AFG would like also to emphasis that even it a right is granted, the cancellation of the orders must be formally validated by the fund manager to become effective. He must have the choice to accept or reject cancellation requests. Investors should not decide as it is about "post cut-off" orders.

Naturally if the cancellation requests are accepted by the fund manager, all cancellation requests must be accepted and processed.

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?

AFG response

It depends on the constraint level given by the characteristics of redemption gates that will be defined in the RTS. If these characteristics give enough flexibility to the fund's managers, AFG believes that having different characteristics of redemption gates is useless.

Moreover, it will permit having a more streamlined and simpler piece of regulation.

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.

AFG response

AFG agrees that the redemption gate shall apply identically to all shares classes except for ELTIF where the delegated regulation is still under discussion.

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

Extension of notice periods

the characteristics of the extension of notice periods would include:

• The extension of the notice period that shall be the period of time that is added to the minimum notice period that investors shall respect when placing their redemption order. The sum of the extension of the notice period and the minimum notice shall be considered as the 'extended notice period'.

• Fund manager/ fund Board may decide to apply the extension of notice period for a determined period of time (i.e. for several consecutive dealing dates).

• The same extension of notice period shall apply to all redeeming investors and in the case of funds with multiple share classes, the same extension of notice period shall apply.

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

AFG response

Regarding notice period, in France, fund managers benefit from more flexible characteristics. Typically, for real estate funds, multiple lengths of notice period are proposed. Each extension of period of time is associated with a level or redemptions fee. Here is an example for one single share class :

Extended notice period	Redemption fees
1 week	9%
3 months	6%
6 months	3%
12 months	0%

Another example is the possibility to adapt the extension of notice period to the size of the redemption order. For example, an extension is applied for orders amount that exceed a level expressed in euro (100 000 € for example).

These examples of extension are automatically applied when the corresponding criteria is filled and are fully disclosed in the prospectus of the fund. The rationale is to incentive the investors to place its redemption order sufficiently in advance. We call them "incentive notice period" as opposed to "mandatory notice period". Usually, incentive notice period is reserved to the share classes dedicated to institutional investors.

In contrast with retail investors, institutional clients generally invest larger amounts and tend to redeem in significant amounts. They are also generally long term investors and are able to support notice periods. Incentive notice period proved to be an efficient tool, in normal market conditions. It allows the fund manager to cope with significant redemption orders because he/she has enough time to deal with the market participants and sell asset in an orderly and timely manner. It follows that retail investors are less impacted and more protected.

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.

AFG response

In France, different extensions of notice period per share class are allowed and AFG see merits preserving this flexibility as explained in the previous question.

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.

AFG response

The extension of notice period results from a change in the liquidity market conditions. The fund manager believes that he/she needs more time to sell asset in order to avoid having a price impact. It is difficult to forecast the length of a liquidity crisis. AFG propose to have a pre-defined period of time which could be renewable if liquidity market conditions stay deteriorated. AFG also propose to express the extension in number of dealing dates for the sake of clarity.

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?

AFG response

AFG believes that if a distinction should be made it must not depend on the investment strategies or the prevailing directive (UCITS or AIFMD). AFG is of the view that what really matters is the asset classes in which the fund invests. For example, micro capitalization equity can possibly be invested by UCITS funds or AIF.

Extensions of notice period are useful when the period of time to sell a part of the investment portfolio become longer. It can become longer because of a change in market conditions or because the part of illiquid assets rose recently in the investment portfolio.

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?

AFG response
AFG is of the view that this type of rules must be clearly disclosed in the fund documentation. From an operational perspective , AFG is aware that the collect of the orders could not be flexible enough especially for high volume of orders.

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

AFG response
AFG is of the view the chronology must be respected (by order of arrival) on order to avoid commercial problems.

Redemption fees

the characteristics of redemption fees would include:

Redemption fees correspond to transaction-based costs which are fixed or have low variation. Redemption fees are deducted from the money received by redeeming investors.

• Redemption fees are paid to the fund to the benefit of remaining investors.

• Redemption fees shall impose on redeeming shareholders or unit-holders the explicit and implicit estimated costs of portfolio transactions caused by redemptions, including any estimated significant market impact of assets sales to meet those redemptions.

• Redemption fees may apply to all redemption orders or only to redemption orders that exceed a certain threshold which can be expressed as a percentage of the NAV of the fund or as a number of shares/units redeemed by investors or both.

• Investors placing redemptions orders that correspond to a certain redemption fee level shall all be charged the same redemption fee.

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

AFG response
AFG agree with the description.

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

AFG response
AFG members are using other redemption fee mechanism as explained in the answer of Q16 or Q28. In association with incentive notice period, redemption fee can be a very efficient tool when institutional and retail investors share the same fund. In France, a progressive redemption fee is proposed and can depend on the length of extended notice period, the amount or the order or the length of detention. Redemption fee proved to be an efficient tool to incentive investors to act more responsibly regarding the liquidity profile of the fund, during the normal market conditions.

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?

AFG response
AFG believes that if a distinction should be made it must not depend on the investment strategies or the prevailing directive (UCITS or AIFMD). AFG is of the view that what really matters is the liquidity profile of the asset classes in which the fund invests.

Swing pricing

managers may also choose to apply different swing factors for net subscriptions and net redemptions.

• Therefore, the characteristics of swing pricing would include:

• The swing threshold ("full swing" or "partial swing").

• The swing factor which shall reflect the estimated cost of liquidity and used to adjust the NAV ("swung NAV").

• The swing factor shall impose on redeeming and subscribing shareholders or unit-holders the explicit and implicit estimated costs of portfolio transactions costs caused by subscriptions or redemptions, including any significant market impact of assets purchases or sales to meet those subscriptions or redemptions.

• For a given dealing date, if the net difference between redemptions and subscriptions results in net subscriptions, the swing factor is added to the NAV that is adjusted upward. On the contrary, for a given dealing date, if the net difference between redemptions and subscriptions results in net redemptions, a swing factor is deducted from the NAV that is adjusted downward.

• When activated, all transacting investors are transacting on the basis of the adjusted NAV (subscribing and redeeming investors). In the case of funds with multiple share classes, the same swing factor shall be applied.

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

AFG response

AFG agrees with the description.

AFG provides some comments on the difficulty of assessment of the market impact in its responses on the guidelines project.

Under both types of swing pricing, a fund manager may decide to adapt the swing factor or threshold definition depending on the net capital activity (commonly referred to as "tiered approach").

We would like to suggest that, in a ramp up period of the fund, the asset manager could temporarily deactivate the swing pricing, even if the swing pricing is one of the two selected LMTs. In addition to this, it should be possible to amend the threshold, and not only the factors, since the total effect is a combination of the factors and the factor. We understand that this ramp up period should be limited, and appropriate disclosure to investors should be in place

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

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?

AFG response

AFG believes that if a distinction should be made it must not depend on the investment strategies or the prevailing directive (UCITS or AIFMD). AFG is of the view that what really matters is the asset classes in which the fund invests. For example, AIF can be invested in very liquid assets.

AFG do not see merits in making a distinction as long as the characteristics stay at a general level.

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.

AFG response

AFG agrees that the same swing factor should be applied to all share classes. The swing factor must reflect the transaction costs of the underlying assets which are common to all shares classes.

However this rule could potentially have some exceptions. The swing factor assessment methodology is common to all shares classes but can be amended in some rare circumstances.

Some funds offer retail share classes and institutional share classes with different notice periods for retail and institutional investors. Institutional clients generally invest larger amounts and tend to redeem in significant amounts. They are also generally long term investors and are able to support notice periods. In contrast, retail investors are very granular with generally more smoothed redemptions behaviours and are also less used to notice period before redemptions. In a context of different notice period, AFG believes that the swing factor could potentially be adjusted accordingly. For an institutional investor, the notice period is usually longer. Accordingly, the fund manager benefits from a longer period to sell and the resulting market impact is reduced It. Then the swing factor should logically be reduced when the notice period is longer.

AFG believes that the general rule should be in favor of a same swing factor applied to all share classes. But a possibility of leeway should exist in some cases if needed.

Dual pricing

the characteristics of dual pricing would include:

• The method that would consist of one of the two following calculation methods: - The fund has two NAVs with one NAV calculated using the ask prices of the assets and one NAV calculated using the bid prices of the assets. Subscribing investors shall subscribe on the basis of the NAV calculated according to the ask prices and redeeming investors shall redeem on the basis of the NAV calculated according to the bid prices.

- The NAV of the fund, under which assets are priced, is adjusted by a factor that reflects the cost of liquidity. Subscribing investors shall subscribe on the basis of the NAV to which is added the adjusted factor and redeeming investors shall redeem on the basis of the NAV from which the adjusted factor is deducted.

• In the case of funds with multiple share classes, the same methods shall apply to all share classes.

Therefore, although dual pricing and swing pricing share the same objective of imposing transaction costs to investors, their mechanism is different. In particular, with swing there is only one NAV for all transacting investors (i.e. the “swung NAV”) whereas with dual pricing there are two NAVs (one for subscribing investors and one for redeeming investors).

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

AFG response

AFG is of the view that the dual pricing is theoretically interesting. But this tool is not available in France. AFG members do not have the perspective to provide an answer.

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

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?

ANTI-DILUTION LEVY

the characteristics of an anti-dilution levy would include:

• The level of the levy is expressed as a percentage of the redemption/subscription order.

• There can be a pre-determined activation threshold.

• For a given dealing date, if the net difference between redemptions and subscriptions results in net subscriptions, an anti-dilution levy will be charged to subscribing investors. Conversely, for a given dealing date, if the net difference between redemptions and subscriptions results in net redemptions, an anti-dilution levy will be charged to redeeming investors.

• When activated, all redeeming (or subscribing) investors shall be charged an anti-dilution levy. The amount of the levy charged to investors may be the same for all subscribing/redeeming investors or tailored to the exact transaction costs of the redeeming/subscribing investors if the fund manager is in capacity to quantify them exactly per investor.

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

AFG response

Anti-dilution levy (ADL) is an important and useful tool which will be well received in France when the operational conditions for its deployment are met.

AFG would like to mention two important elements:

- There is a specific rule regarding the ETF in France (AMF DOC 2017-05) which should be preserved.
- Insurance companies are sometime reluctant to invest in funds equipped with ADL because they are considered as exit fees. The RTS should clearly define ADL as a representation of the liquidity cost bear by the fund and not as exit fees.

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

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.

AFG response

Antidilution levy assessment methodology is common to all shares classes but can be amended in some rare circumstances likewise for the swing factor.

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?

AFG response

AFG believes that if a distinction should be made it must not depend on the investment strategies or the prevailing directive (UCITS or AIFMD). AFG is of the view that what really matters is the asset classes in which the fund invests. For example, AIF can be invested in very liquid assets.

AFG do not see merits in making a distinction as long as the characteristics stay at a general level.

REDEMPTIONS IN KIND

the characteristics of redemptions in kind would include:

• Redemptions in kind allows funds to avoid the sale of sizable blocks of securities in response to redemption requests and avoid significant transaction costs and market price impact, and protect remaining investors.

• Redemptions in kind shall only be used to meet redemption requests from professional investors.

. If the fund is solely marketed to professional investors or if the investment policy of the fund is to replicate the composition of a certain stock or debt securities index and that fund is an ETF fund, fund managers are not required to transfer assets to professional investors on a pro rata basis of the assets held by the fund. The same type of transfer of assets (i.e pro rata share or not) shall apply to all redeeming investors.

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

AFG response

AFG agree and would like to add all the professional investors that are concerned must be able to receive the assets transferred by the fund from an operational perspective.

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

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?

Side pockets

Two forms of side pockets would then be possible:

- Physical separation, under which
    - Either the assets for which there are valuation issues or legal uncertainty are transferred into a new fund, while the remaining assets, for which there are no issues, remain in the existing fund; or
    - the assets for which there are valuation issues or legal uncertainty remain in the existing fund, while the assets for which there are no issues are transferred into a new fund.
- Accounting segregation with assets for which there are valuation issues or legal uncertainty allocated to a dedicated share class of the fund.

in the case of UCITS, side pockets with physical separation of the assets shall only be done as follows:

• The assets for which there are no issues are transferred to a new UCITS created for the purpose of the operation (or merged into an existing UCITS); and

• The assets for which there are problems remain in the original UCITS that is closed for redemptions and subscriptions and put into liquidation.

The other characteristics of side pockets would be (for both physical separation and accounting segregation):

• The side pocket shall be closed-ended.

• Investors shall receive shares/units of the side pockets on a pro rata-basis of their holdings in the original fund.

• The fund manager shall manage the side pockets with the sole objective of being liquidated.

• Cash resulting from the sale of assets located in the side pocket shall not be reinvested and paid to investors.

• The fund manager shall allocate a proportion of liquid assets to the side pocket in order to fulfil any possible liabilities arising from the management of the side pocket.

The fund manager shall manage the rest of the fund according to the disclosed investment strategy.

New subscriptions and redemptions in the fund shall be executed on the basis of the assets of the funds from which assets of the side pocket are excluded.

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

AFG response

AFG agree with the description.

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.

AFG response

AFG do not agree and is in favor of keep the assets for which there are no problems in the existing UCITS. Keeping the initial fund is key because it is already passported in other countries and referenced by third party distributors.

On the contrary a newly created UCITS is more difficult to commercialize. Moreover, it could potentially received a portfolio where the liquidity presumption and risk diversification rules are not systematically respected. In the case of UCITS , a new kind of vehicle (an emanation of UCITS with the sole of objective of being liquidated) should be considered.

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.

AFG response

AFG is of the view that no distinction should be made.

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?

AFG response

In France, all share classes have access to a common pool of assets. And mutualizing different kind of assets can be potentially dangerous from a legal perspective. On the contrary, splitting the assets in two separate vehicles is more readable and much better for the investor's protection. And some modifications (merge, change of depositary, ...) could be difficult to achieve in the future.

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.

AFG response

AFG believes that there could be circumstances where a recovery of the asset in the side pocket is possible. In such case investors should benefit from it. A reintegration does not make sense because, since the separation, the base of investors have changed. However, if the recovery is obvious, the possibility to manage these assets with the approval or agreement of the regulator should be possible for the best interest of the shareholders of the side pockets.

Others questions

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?

AFG response

AFG believes that a too great level of harmonization and prescriptiveness for the characteristics of LMTs can be detrimental to the main objective: reaching an important level of LMT adoption across Europe with an effective use of it for the best interest of the investor which ultimately will foster the financial stability.

AFG believes that the market practices of the fund managers must be taken into account. With their experience, they are best placed to define the characteristics with the necessary leeway and flexibility to adapt these important tools to every situation.

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

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?

AFG response

AFG believes that a too great level of harmonization and prescriptiveness for the characteristics of LMTs can be detrimental to the main objective: reaching an important level of LMT adoption across Europe with an effective use of it for the best interest of the investor which ultimately will foster the financial stability.

AFG believes that the market practices of the fund managers must be taken into account. With their experience, they are best placed to define the characteristics with the necessary leeway and flexibility to adapt these important tools to every situation.

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