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AIFMD 2.0 – Draft RTS and Final Guidelines Published on Liquidity Management Tools

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On 15 April 2025, the European Securities and Markets Authority ("**ESMA**") published draft regulatory technical standards (the "**Draft RTS**") and final guidelines (the "**Guidelines**") on Liquidity Management Tools ("**LMTs**"), as required under the revised Alternative Investment Fund Managers Directive (EU/2024/927) ("**AIFMD 2.0**").

Under AIFMD 2.0, ESMA is required to develop:

- regulatory technical standards to specify the characteristics of the liquidity management tools set out in Annex V of AIFMD 2.0; and
- guidelines on the selection and calibration of liquidity management tools by alternative investment fund managers ("**AIFMs**") for liquidity risk management and mitigating financial stability risk.

The Draft RTS and Guidelines have been published following a consultation period by ESMA. The amendments introduced following the consultation are broadly seen as positive developments from ESMA, introducing greater flexibility for alternative investment funds ("**AIFs**") in several cases.

Draft RTS

Some of the key provisions set out in the RTS include:

Redemption Gates

Redemption gates must have an activation threshold and apply to all investors. In the Draft RTS, ESMA has introduced flexibility in expressing activation thresholds for redemption gates. For AIFs, thresholds can be expressed in a percentage of the net asset value ("**NAV**"), in a monetary value (or a combination of both), or in a percentage of liquid assets. In addition, either net or gross redemption orders shall be considered for the determination of the activation threshold.

ESMA has also introduced a new alternative method for the application of redemption gates – redemption orders below or equal to a certain pre-determined redemption amount can be fully executed while orders above this amount are subject to the redemption gate. The purpose of this mechanism is to avoid small redemption orders being affected by larger redemption orders, that drive the amount of orders above the activation threshold.

Side Pockets

ESMA did not include any provisions in the Draft RTS relating to the management of side pockets, as ESMA concluded there was no mandate within the empowerment of the Draft RTS to allow them to do so.

Applicability of LMTs to Share Classes

The previously published version of the Draft RTS included provisions on the application of LMTs to share classes, requiring the same level of LMTs to be applied to all share classes (e.g. when AIFMs extend the notice period of a fund, the same extension of notice period shall apply to all share classes). ESMA has removed these provisions from the Draft RTS.

Use of other LMTs

Recital 25 of the Draft RTS clarifies that additional LMTs not selected in Annex V of AIFMD 2.0 may be used. These may include, for example, “soft closures” that consist of suspending only subscriptions, only repurchases or redemptions of the AIF.

Other Provisions

Other topics covered in the Draft RTS include swing pricing, dual pricing and anti-dilution levies, as well as redemptions in kind.

Guidelines

Some of the key provisions set out in the Guidelines include:

Selection of LMTs

In the selection of the two minimum mandatory LMTs in accordance with AIFMD 2.0 (set out in Annex V of AIFMD 2.0), ESMA states that AIFMs 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 levies), 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.

Governance Principles

AIFMs should develop an LMT policy, which should form part of the broader fund liquidity risk management process policy document, and should document the conditions for the selection, activation and calibration of LMTs. AIFMs also should develop an LMT plan, that should be in line with the LMT policy, prior to or immediately after the activation of suspensions of subscriptions, repurchases and redemptions and prior to the activation of a side pocket.

Disclosure to investors

AIFMs should provide disclosures to investors on the selection, activation and calibration of LMTs in the fund documentation, rules or instruments of incorporation, prospectus and/or periodic reports.

Depositaries

Depositaries should set up appropriate verification procedures to check that AIFMs have in place documented procedures for LMTs.

Other Provisions

The Guidelines also include certain other provisions that impose restrictive obligations on the selection, activation and calibration of LMTs (for example, preventing the systematic activation of redemption gates for funds marketed to retail investors).

Next Steps

The European Commission has three months (i.e. until 15 July 2025) to adopt the Draft RTS, although this period can be extended by one month. The European Commission also has the ability to amend the Draft RTS as required.

Once adopted by the European Commission, the Draft RTS will come into force 20 days following publication in the Official Journal of the European Union.

The Guidelines will be applicable from the day after the Draft RTS comes into force, although AIFMs of funds existing before the date of application of the Guidelines will have a 12-month grace period.

For further information, please reach out to the Proskauer UK Regulatory team.

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