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AIFMD 2.0 Implementation: Draft Rules on Loan Originating Funds and Liquidity Management Tools

April 2025

The European Securities and Markets Authority ("**ESMA**") has progressed Level 2 measures under the revised Alternative Investment Fund Managers Directive ("**AIFMD 2.0**"), which is due to apply from April 2026.

AIFMD 2.0 will introduce a new pan-European harmonised loan origination funds framework (see our briefing note Loan Origination under AIFMD 2.0). In December 2024, ESMA launched a consultation on implementing measures addressing open-ended loan originating alternative investment funds ("**AIFs**"). On 15 April 2025, ESMA published draft regulatory technical standards ("**RTS**") and draft guidance on the use of liquidity management tools ("**LMTs**") by AIFMs of open-ended AIFs and UCITS, supplementing the Level 1 requirement to choose at least two LMTs from a specified list.

Loan Originating Funds

The December 2024 consultation set out draft RTS specifying the requirements with which loan originating AIFs must comply to maintain an open-ended structure. AIFMD 2.0 requires that loan originating AIFs must be closed-ended, unless their alternative investment fund manager ("**AIFM**") can demonstrate to its home national competent authority ("**NCA**") that their liquidity risk management system is compatible with the AIF's investment strategy and redemption policy. In drafting the RTS, ESMA assessed the existing AIFMD Level 2 provisions on liquidity management, with which all open-ended AIFs must comply, to establish whether there were any gaps in the existing Level 2 requirements on liquidity management that would need to be addressed to account for the specificities of open-ended loan origination AIFs.

Overview of Proposed Requirements

Redemption Policy	AIFMS must define an appropriate redemption policy, taking into account a number of factors set out in the RTS, including the frequency of redemptions offered, the proportion of liquid assets maintained, and the targeted investor base and investor concentration.
Liquid Assets	AIFMS must determine the appropriate proportion of liquid assets that open-ended loan originating AIFs must aim to hold in order to comply with redemption requests, considering the factors set out in the RTS including the redemption policy of the AIF, the portfolio diversification and liquidity profile of the assets held, and the length of notice and the settlement period, where applicable. The draft RTS provide that the expected cash flow generated by the loans granted by the open-ended loan originating AIF will be considered as liquid. Other investments made by the AIF may also be considered liquidity if the AIFM can demonstrate that these investments can be converted to cash over the duration of the notice period, to meet redemption requests, without significantly decreasing their value.
Liquidity Stress Testing	AIFMs must carry out liquidity stress tests through the life of the AIF based on the requirements in the RTS, including that such tests should be conducted at least quarterly, and that assets and liabilities should be test separately and the results of those tests combined.
Liquidity Management Tools	AIFMs must be able to demonstrate to NCAs that they have selected the appropriate liquidity management tools ("**LMTs**") .
Ongoing Monitoring	AIFMs must monitor on an ongoing basis a number of specified elements, including the minimum level of liquid assets, expected cash flows and potential future liabilities and the maturity of loans.

ESMA found no gaps in the existing Level 2 measures and proposed that the RTS would provide a harmonised implementing framework tailored to the specificities of open-ended loan originating AIFS, setting out the parameters / elements that AIFMs managing open-ended loan originating AIFs must take into account when applying the AIFMD Level 2 provisions, so that they can demonstrate to NCAs that the loan originating AIFs they manage can maintain an open-ended structure.

The consultation closed on 12 March 2025 and the responses have been published on ESMA's website. The Irish Funds response to the consultation submitted that the RTS for open-ended loan originating AIFs should not in any way differentiate these funds from other AIFs by introducing additional liquidity management requirements that are specific to these funds. It noted that this was in keeping with the core principles of the EU's Savings and Investments Union, including the simplification of the regulatory framework for firms and businesses. Irish Funds agreed with ESMA's view that the AIFM is best placed and the most appropriate entity to determine whether any minimum proportion of liquid assets should be maintained by an open-ended loan originating AIF. However, it argued strongly against the underlying assumption that each open-ended loan originating AIF should maintain a minimum proportion of liquid assets above zero.

ESMA intends to finalise the draft loan origination RTS by Q3 / Q4 2025.

Level 2 Measures on LMTs

The revised AIFMD and UCITS Directive provide that ESMA must develop draft RTS to determine the characteristics of LMTs available to AIFMs managing open-ended AIFs and to UCITS. Following a consultation period that ran from July 2024 to October 2024, ESMA has now published its final report setting out the draft RTS on LMTs (see our earlier briefing note). ESMA has made a number of amendments to the RTS following feedback to the consultation paper.

- **Flexibility for Redemption Gates**

  The final draft RTS provide that, for AIFs, the activation threshold for redemption gages must be expressed in a percentage of the NAV of the AIF, or in a monetary value (or a combination of both), or in a percentage of liquid assets. For UCITS, ESMA has not amended the draft RTS specifying that the activation threshold should be expressed only in a percentage of NAV of UCITS.

  ESMA has also introduced flexibility with respect to the redemption orders to be considered for the calculation of the activation threshold to account for different market practices. Both the final draft RTS for UCITS and AIFs provide that either net or gross redemption orders may be considered for the determination of the activation threshold.

  The final draft RTS also provide for an alternative method for the application of redemption gates, such that redemption orders below or equal to a certain pre-determined redemption amount can be fully executed, while redemption orders above this redemption amount are subject to the redemption gate.

- **Application of LMTs to Share Classes**

  ESMA has removed the provisions requiring the same level of LMTs to be applied to all share classes.

- **Application of Rules on Redemption in kind to Exchange Traded Funds**

  Feedback to the consultation had alerted ESMA to the unintended consequences of the rules on redemption in kind for the functioning of the primary market of exchange traded funds ("**ETFs**"). ESMA has acknowledged the issue and included a new provision in the RTS clarifying that the rule on the pro-rata approach in the case of redemption in kind does not apply to authorised participants and market makers operating on the primary market of ETFs.

The draft LMT RTS have been submitted to the European Commission ("**Commission**") for adoption. The Commission must take a decision on whether to adopt the RTS within three months of submission, extendable for a further one month.

Guidelines on LMTs

The revised AIFMD and UCITS Directive provide that ESMA must develop guidelines on the selection and calibration of LMTs by UCITS and AIFMs of open-ended AIFs for liquidity risk management and mitigating financial stability risks. The guidelines are required to recognise that primary responsibility for liquidity risk management remains with the UCITS and AIFM. The guidelines are also required to include indications as to the circumstances in which side pockets can be activated. The final report outlines the modifications to the guidelines as a result of the feedback received to the consultation. The guideline on the merit of selecting at least one anti-dilution tool and at least one quantitative LMT has been retained, whereas the guidelines on governance principles, disclosure to investors and depositaries have been deleted. ESMA has also recognised the manager's responsibility on the selection, activation and calibration of LMTs.

ESMA will publish translations of the guidelines after the adoption of the RTS by the Commission, after which national competent authorities will have two months to notify ESMA whether they comply or intend to comply with the guidelines. Managers of funds existing before the date of application of the guidelines should apply these guidelines in respect of those funds after 12 months from the date of application of the RTS.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

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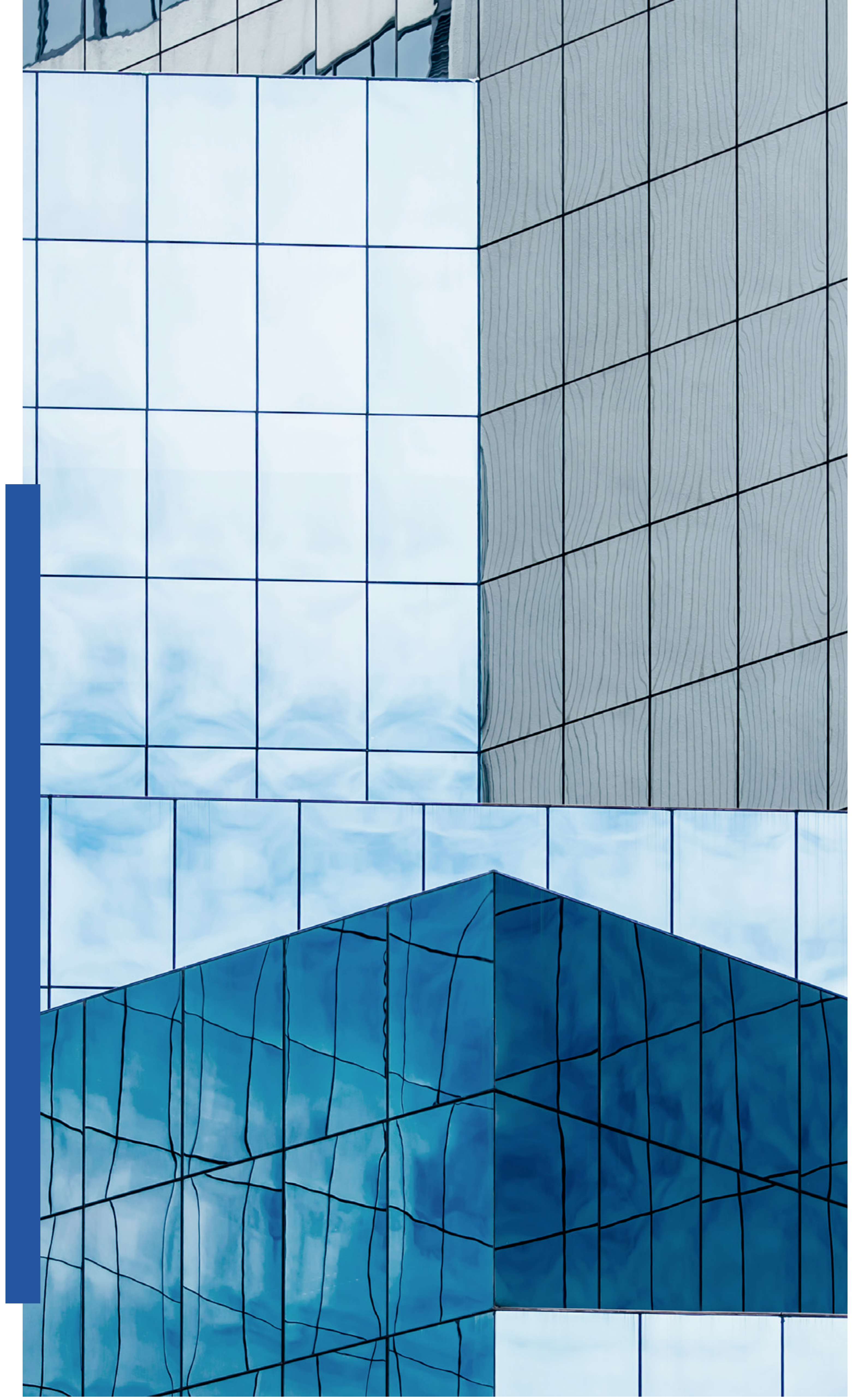

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