

ESMA Consults on Requirements for Open-Ended Loan Originating Funds

20 December 2024

On 12 December 2024, the European Securities and Markets Authority (“ESMA”) published a consultation paper (the “Consultation”) on regulatory technical standards (the “RTS”) on open-ended loan originating funds under Directive 2011/61/EU (“AIFMD”). Earlier this year, AIFMD received an update that contains a specific regime for loan originating alternative investment funds (“LO AIFs”) as well as other AIFs that engage in loan origination (see our Debevoise In Depth [here](#)). Under that regime, LO AIFs shall generally only be closed-ended. However, open-ended LO AIFs are possible if the “liquidity management system is compatible with [the LO AIFs’] investment strategy and redemption policy”. ESMA stresses that managers of open-ended LO AIFs “shall be able to demonstrate to the competent authorities of their home member states why the LO AIF they intend to manage can be open-ended”. The RTS shall substantiate these requirements by providing an implementing framework specifying the elements that the relevant AIFMs must be able to demonstrate to their national competent authorities (“NCAs”).

The Consultation is open for comments until 12 March 2025. ESMA will consider the feedback received and expects to submit the final RTS for approval by the European Commission by Q3/Q4 2025. It can therefore be reasonably expected that the RTS will come into effect in 2026.

Overview. The RTS expect managers of open-ended LO AIFs to have a sound liquidity management system, which shall entail (i) an appropriate redemption policy, (ii) appropriate availability of liquid assets, (iii) regular liquidity stress testing and (iv) ongoing liquidity monitoring. The requirements in the RTS are intentionally formulated broadly to give NCAs the possibility to decide on a case-by-case basis.

Redemption Policy and Availability of Liquid Assets. The RTS give managers a range of topics to consider for the redemption policy of their open-ended LO AIFs. Among those topics are the targeted credit quality of the loans, the portfolio diversification, the minimum holding period for investors or expected incoming cash flows. The topics listed in the RTS are explicitly non-exhaustive, i.e. NCAs may be able to decide that a redemption policy is not appropriate for reasons not covered in the RTS. For the

determination of an appropriate proportion of liquid assets, the RTS follow the same logic. While topics such as those listed for the redemption policy above shall be taken into account, the list is not comprehensive, so that NCAs may have further requirements beyond the RTS.

Liquidity Stress Testing and Ongoing Liquidity Monitoring. Managers shall conduct a liquidity stress testing with conservative scenarios at least quarterly (higher or lower frequencies shall however be possible). For modalities of the liquidity stress testing, the RTS refer to ESMA’s “Guidelines on Liquidity Stress Testing in UCITS and AIFs” that contain a dedicated section for LO AIFs (see [here](#)—Section V. 1.14.). Ongoing liquidity monitoring shall *inter alia* cover the maturity of loans granted, the level of leverage, the amount of subscriptions and redemptions or the expected cash flows and future liabilities. As the list of topics for ongoing liquidity monitoring is again not exhaustive, NCAs may have stricter requirements for their jurisdiction or for specific investment strategies.

Conclusion. If the RTS came into effect as drafted in the Consultation, NCAs would have significant freedom to interpret the requirements for sound liquidity management of open-ended LO AIFs. This freedom has the potential to create legal uncertainty as NCAs can come to different conclusions on the same topics, and could make some jurisdictions more attractive than others for open-ended LO AIFs. This goes well against the notion of AIFMD as a harmonized framework for alternative investment funds in the European Union. It can be expected that the industry will call for more legal certainty in the course of the Consultation.



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