

**Public consultation by the AMF on the terms for implementing
gates in UCITS and AIFs**

1. Goals and practical arrangements for this consultation

1.1. Goals

Following the entry into effect of the Bill on Transparency, Anti-Corruption and Economic Modernisation, which was adopted by France's National Assembly on 8 November 2016, the ability to introduce gates, or restrictions on redemptions of shares or units, currently available to funds of alternative funds, professional investment funds and real estate collective investment undertakings (OPCIs), will be extended to other open-ended funds. The AMF General Regulation is required to determine the situations and conditions in which a fund's instruments of incorporation may provide for redemptions to be provisionally gated when warranted by exceptional circumstances and if this is in the best interest of holders or the public.

The AMF is therefore holding a public consultation to gain feedback from interested parties about its draft regulations and instruction on gating mechanisms. Interested parties are invited to respond and provide their feedback on the AMF's proposals.

1.2. Who is this consultation aimed at?

This consultation is aimed at:

- Investors and their representatives
- Investment management companies
- Distributors, including financial investment advisers and banking networks
- Professional associations
- Consumer associations
- Legal firms, and particularly firms that work within the financial industry.

1.3. Response procedure and deadline

This consultation will end on **Friday 30 December 2016**. Participants are invited to send their responses and comments to the following address: directiondelacomunication@amf-france.org

2. Backgrounder

To allow UCITS to introduce gates in a liquidity crisis, the Bill on Transparency, Anti-Corruption and Economic Modernisation creates a new sub-paragraph supplementing Articles L. 214-7-4 (on open-ended investment companies – SICAVs) and L. 214-8-7 (on common funds – FCPs) of the Monetary and Financial Code¹, which states:

For SICAVs: "(...) It [the AMF General Regulation] shall also determine the situations and conditions in which a SICAV's articles of association may provide for share redemptions to be provisionally gated when warranted by exceptional circumstances and if this is in the best interest of shareholders or the public";

And

For FCPs: "(...) It [the AMF General Regulation] shall also determine the situations and conditions in which a fund's rules may provide for unit redemptions to be provisionally gated

¹ These articles already authorise the AMF General Regulation to determine other situations and conditions in which a UCITS' articles of association or rules may provide, as need be, for the issuance of shares or units to be provisionally or permanently suspended.

when warranted by exceptional circumstances and if this is in the best interest of unitholders or the public".

New identically-worded sub-paragraphs also supplement:

- Articles L. 214-24-33 (SICAVs) and L. 214-24-41 (FCPs) of the Monetary and Financial Code applicable to retail investment funds (FIVGs) and, by reference, to private equity funds (FCPRs, FCPIs and FIPs), professional private equity investment funds and employee investment undertakings; as well as
- Articles L. 214-67-1 (SPPICAVs) and L. 214-77 (real estate funds) of the Monetary and Financial Code applicable to OPCIs and, by reference, to professional OPCIs.

3. Proposals being put forward for consultation

This consultation is chiefly focused on the terms for implementing redemption gates in UCITS, FIVGs, private equity funds (FCPRs, FCPIs and FIPs), professional private equity investment funds and employee investment undertakings, as detailed in the two new articles added to the AMF General Regulation and in a separate instruction (3.1).

It is also proposed to amend the implementation terms for OPCi redemption gates (3.2).

3.1. Terms for implementing redemption gates in UCITS, FIVGs, private equity funds (FCPRs, FCPIs and FIPs), professional private equity investment funds and employee investment undertakings

Pursuant to the above mentioned provisions, the AMF General Regulation is required to determine the situations and conditions in which management companies may introduce and use gates. It is proposed that the AMF General Regulation shall refer to an AMF instruction as regards the practical procedures.

In accordance with the terms of the draft put forward for consultation, the AMF General Regulation:

- specifies the situation(s) constituting "*exceptional circumstances*" in which gates may be activated, by providing a non-exhaustive list;

First and foremost, these situations include those where, regardless of the day-to-day implementation of the management strategy, redemption requests are such that they may not be honoured under conditions that uphold the interest of holders and ensure their fair treatment, in view of the liquidity conditions of the assets of the SICAV, the fund, or one of its sub-funds. Unusual liquidity conditions for the fund's assets are therefore required, coupled with substantial redemption requests;

- establishes the principle of restricting redemption requests in the same proportion for all holders;
- prohibits the granting of priority rights to gated orders that are resubmitted at subsequent net asset values (NAVs);
- requires management companies that decide to activate gates to inform the AMF and holders of this.

As it stands, the draft does not include an obligation for the management company inform the public (potential subscribers) that it has decided to provisionally gate redemptions for a given fund.

- **Do you think that it would be appropriate for the public to be informed that the gating mechanism has been activated, and, if so, how (real time, ex post, as part of an annual disclosure)?**

Without setting the threshold for activating gates, the AMF General Regulation would establish the criteria and calculation components.

As regards implementation procedures and in particular those dealing with the subsequent handling of unfilled redemption orders, the AMF General Regulation would indicate that these are to be precisely determined and detailed in the rules or articles of association. For funds that calculate NAVs very frequently (more than once a week), gated orders would be automatically carried forward and irrevocable.

The AMF General Regulation should also oblige management companies to determine ex ante a maximum duration for the gate.

In accordance with the terms of the draft put forward for consultation, the instruction:

- specifies the disclosure obligations towards both holders and the AMF placed on management companies (i) when they decide to introduce a gating mechanism to their funds and (ii) when they activate the gate;
- provides guidance as to appropriate thresholds based on the frequency with which the NAV is calculated;
- specifies possible order handling procedures;
- sets maximum lengths of time for gates based on NAV frequencies.

3.2. Terms for implementing redemption gates in OPCIs and professional OPCIs

OPCIs and professional OPCIs already have the gates provided for Articles 422-134² and 422-134-1³ of the AMF General Regulation.

Without calling the existing mechanism into question, and for clarification purposes, it is proposed to amend the provisions of Article 422-134-1 as follows:

"Pursuant to Articles L. 214-61-1, L. 214-67-1 or L. 214-77 of the Monetary and Financial Code, redemption requests may be gated if the articles of association or rules of the OPCi provide for this. The articles of association or the rules and the prospectus of the OPCi shall specify:

- 1° *The circumstances in which the OPCi may exercise this option;*
- 2° *The procedures for exercising this option;*
- 3° *The procedures for informing holders.*

The procedures for applying this article are set down in an AMF instruction."

² Art. 422-134 of the AMF GR: "The redemption of holder units specified in Article L. 214-45 of the Monetary and Financial Code may be suspended if the OPCi's articles of association or rules provide for this and the redemption request exceeds 2 per cent of the number of the OPCi's shares or units. In this case, the OPCi prospectus shall specify:

1° *The objective conditions constituting grounds for not executing the holder's redemption requests; / 2° The possibility of asset management companies staggering performance of the redemption request and all related conditions; / 3° How the holder is to be informed."*

³ Art. 422-134-1 of the AMF GR: "The redemption of holder units specified in Article L. 214-61-1 of the Monetary and Financial Code may be suspended if the articles of association or rules of the OPCi allow for this. In this case, the OPCi prospectus shall specify:

1° *The circumstances in which the OPCi may exercise this option; / 2° The procedures for exercising this option; / 3° The procedures for informing holders if redemption of shares or units is suspended."*

The new provision would be applicable to professional OPCIs under Article 423-12 of the AMF General Regulation.

Furthermore, given the specific qualities of real estate assets, while it may be right to limit the scale of redemptions, the level of the restriction must remain appropriate for retail investors.

The AMF therefore wishes to amend its policy regarding the terms of application for this mechanism, as detailed in AMF Position-Recommendation DOC 2011-25⁴, by stating that:

"In the case of OPCIs marketed to retail investors, gating thresholds should enable holders to be repaid up to 5% of the fund's net assets every month, and redemption requests should be executed within one year at most."

Interested parties are asked to provide their feedback on the following drafts.

⁴ AMF Position-Recommendation DOC 2011-25 – Guide to monitoring collective investment undertakings. §1.4 – Due diligence to conduct when setting up gates in OPCIs, professional OPCIs, professional investment funds and funds of alternative funds.

Annex 1 – New articles for the AMF General Regulation

1. UCITS

Within "Sub-section 1 - Subscription and redemption conditions" of "Section 2 - General Rules" of the sole chapter of Title I of Book IV of the AMF General Regulation, it is proposed to add a new Article 411-20-1, worded as follows:

Article 411-20-1

"Pursuant to the final sub-paragraph of Article L. 214-7-4 and the final sub-paragraph of Article L. 214-8-7 of the Monetary and Financial Code, the UCITS may provide for redemptions of shares or units to be provisionally gated when warranted by exceptional circumstances and if this is in the best interest of holders or the public. This shall be the case in particular where, regardless of the day-to-day implementation of the management strategy, redemption requests are such that they may not be honoured under conditions that uphold the interest of holders and ensure their fair treatment, in view of the liquidity conditions of the assets of the SICAV, the fund, or one of its sub-funds, or where redemption requests are presented under circumstances that could interfere with market integrity.

Redemption requests shall then be gated in the same proportions for all affected holders. Requests that are not executed and resubmitted at a later centralisation date shall have no priority over new requests submitted at that later centralisation date.

The management company informs the AMF and holders of the decision to gate redemptions.

The rules of the FCP or articles of association of the SICAV shall define precisely how the gate is to be applied and, in particular:

- 1) *They set the threshold beyond which gating of redemptions arising at the same centralisation date may be decided;*

This threshold should be justified with regard to the frequency with which the NAV is calculated, the management stance and the liquidity of assets held by the UCITS; it shall correspond to the ratio between:

- *the difference observed, at the same centralisation date, between the amount or number of shares or units of the UCITS whose redemption is requested, and the amount or number of shares or units of the same UCITS whose subscription is requested; and*
- *the net assets or the total number of shares or units of the UCITS or sub-fund in question.*

This threshold is determined on the basis of the last published NAV or the last estimated value calculated by the management company or the number of shares or units in circulation observed at the establishment date.

- 2) *They indicate, by way of derogation to Article 411-68, the procedures whereby the UCITS carries forward the portion of unexecuted redemption requests to the next centralisation date or cancels them. However, if the UCITS calculates its NAV more than once a week, the portion of unexecuted redemption requests is automatically carried forward to the next centralisation date, and the order pertaining thereto is irrevocable;*
- 3) *They restrict gating to a maximum number of NAV calculations over a given period.*

The procedures for applying this article are set down in an AMF instruction."

2. FIVGs, private equity funds open to retail investors and employee investment undertakings

Within "Paragraph 1 – Subscription and redemption conditions" of "Sub-section 2: General Rules" of "Section 1: FIVGs" of "Chapter II: Funds open to retail investors" of Title II of Book IV of the AMF General Regulation, it is proposed to add a new Article 422-21-1, worded as follows:

Article 422-21-1

"Pursuant to the final sub-paragraph of L. 214-24-33 and the final sub-paragraph of Article L. 214-24-41 of the Monetary and Financial Code, the retail investment fund may provide for redemptions of shares or units to be provisionally gated when warranted by exceptional circumstances and if this is in the best interest of holders or the public. This shall be the case in particular where, regardless of the day-to-day implementation of the management strategy, redemption requests are such that they may not be honoured under conditions that uphold the interest of holders and ensure their fair treatment, in view of the liquidity conditions of the assets of the SICAV, the fund, or one of its sub-funds, or where redemption requests are presented under circumstances that could interfere with market integrity.

Redemption requests shall then be gated in the same proportions for all affected holders. Requests that are not executed and resubmitted at a later centralisation date shall have no priority over new requests submitted at that later centralisation date.

The management company informs the AMF and holders of the decision to gate redemptions.

The rules of the FCP or articles of association of the SICAV shall define precisely how the gate is to be applied and, in particular:

- 1) *They set the threshold beyond which gating of redemptions arising at the same centralisation date may be decided;*

This threshold should be justified with regard to the frequency with which the NAV is calculated, the management stance and the liquidity of assets held by the fund; it shall correspond to the ratio between:

- *the difference observed, at the same centralisation date, between the amount or number of shares or units of the fund whose redemption is requested, and the amount or number of shares or units of the same fund whose subscription is requested; and*
- *the net assets or the total number of shares or units of the fund or sub-fund in question.*

This threshold is determined on the basis of the last published NAV or the last estimated value calculated by the management company or the number of shares or units in circulation observed at the establishment date.

- 2) *They indicate, by way of derogation to Article 422-46, the procedures whereby the fund carries forward the portion of unexecuted redemption requests to the next centralisation date or cancels them. However, if the fund calculates its NAV more than once a week, the portion of unexecuted redemption requests is automatically carried forward to the next centralisation date, and the order pertaining thereto is irrevocable;*
- 3) *They restrict gating to a maximum number of NAV calculations over a given period.*

The procedures for applying this article are set down in an AMF instruction."

3. Funds of alternative funds and professional investment funds (FPVGs)

Regarding funds of alternative funds

It is proposed to state expressly that the new Article 422-21-1 does not apply to funds of alternative funds, by amending Article 422-250 of the AMF General Regulation to read:

Article 422-250

*"Unless provided otherwise, Chapter I of this Title and Section 1 of this Chapter apply to funds of alternative funds subject to Article L. 214-139 of the Monetary and Financial Code, with the exception of Articles **422-21-1**, 422-83 and the second and third sub-paragraphs of Article 422-81. [...]"*

Regarding FPVGs

It is proposed to state expressly that the new Article 422-21-1 does not apply to FPVGs, by amending Article 423-1 of the AMF General Regulation to read:

Article 423-1

*"Unless provided otherwise, Chapter I and Section 1 of Chapter II of this Title apply to professional investment funds subject to Article L. 214-143 of the Monetary and Financial Code, with the exception of Articles **422-21-1**, 422-83 and the second and third sub-paragraphs of Article 422-81. [...]"*

4. Professional private equity investment funds

In the absence of a reference to "Section 1: FIVGs" of "Chapter II: Funds open to retail investors" of Title II of Book IV of the AMF General Regulation, it is proposed to state expressly that the new Article 422-21-1 applies to professional private equity investment funds.

An Article 423-55 could be added after Article 423-54 of the AMF General Regulation:

Article 423-55

"Article 422-21-1 shall apply."

5. OPCIs and OPPCIs

It is proposed to amend the provisions of Article 422-134-1 as follows:

Article 422-134-1

"Pursuant to Articles L. 214-61-1, L. 214-67-1 or L. 214-77 of the Monetary and Financial Code, redemption requests may be gated if the articles of association or rules of the OPCi provide for this. The articles of association or the rules and the prospectus of the OPCi shall specify:

1°) The circumstances in which the OPCi may exercise this option;

2°) The procedures for exercising this option;

3°) The procedures for informing holders.

The procedures for applying this article are set down in an AMF instruction."

Annex 2 - AMF Instruction DOC-2016-XX

Procedures for setting up gates

References: Articles L. 214-7-4, L. 214-8-7, L. 214-24-33 and L. 214-24-41 of the Monetary and Financial Code and Articles 411-20-1 and 422-21-1 of the AMF General Regulation

This instruction applies to management companies managing a UCITS, a retail investment fund (FIVG), a private equity fund (FCPR, FCPI or FIP), a professional private equity investment fund or an employee investment undertaking, where they are considering setting up gating mechanisms.

It supplements AMF Instructions DOC-2011-19, DOC-2011-20, DOC-2011-21 and DOC-2012-06.

It does not apply to funds of alternative funds, professional investment funds, specialised professional funds, OPCIs and professional OPCIs⁵.

The introduction of gates makes it possible to spread redemptions across several NAVs in situations where redemptions exceed a certain level, determined on an objective basis.

The approach employed to manage liabilities should be compatible with the gates introduced. In this regard, before introducing gates, the management company should contact its depositary and affected service providers to ensure that the proposed arrangements are compliant in terms of processing flows and informing holders.

While gating should not be designed as a routine liquidity management tool, it should make it possible to avoid the outright suspension of redemptions provided for in the first sub-paragraph of Articles L. 214-7-4, L. 214-24-33, and L. 214-67-1 of the Monetary and Financial Code.

1. *Description of the gating mechanism in the prospectus*

The way that gates work should be precisely described in the prospectus (particularly in the rules or articles of association) and, if applicable, the KIID of affected collective investment undertakings.

2. *Information for holders in the event of changes to the rules or articles of association of an existing collective investment undertaking to include the option of gating redemptions (not applicable to FPCIs)*

The introduction or modification of gates in the rules and articles of association of a collective investment undertaking should be **approved by the AMF and then be the subject of a specific disclosure to holders, who may exit the undertaking without charge.**

⁵ See AMF Position-Recommendation DOC 2011-25 – Guide to monitoring collective investment undertakings, §1.4 – Due diligence to conduct when setting up gates in OPCIs, professional OPCIs, professional investment funds and funds of alternative funds.

3. *Threshold beyond which the gate may be activated*

- a) Definition of the threshold in the articles of association or rules of the collective investment undertaking

The threshold beyond which the gate may be activated should be justified with regard to the frequency with which the NAV is calculated, the management stance and the liquidity of assets held by the collective investment undertaking. Its level should not be such that it calls into question the possibility for a holder to redeem shares or units under normal market conditions.

For a collective investment undertaking whose NAV is established monthly, this requirement is deemed to be met if the threshold is set at 20% of net assets. A gate set at 0.5% on each daily NAV would no longer enable the holder to redeem shares or units.

For illustrative purposes, the following table gives activation thresholds deemed to comply with this requirement:

NAV frequency	Gate threshold (as a percentage of NAV)
Daily	5%
Weekly	10%
Bimonthly	15%
Monthly	20%

- b) Calculating the threshold in the event of gating

As a reminder, the threshold for activating gates corresponds to the ratio between:

- the difference observed, at the same centralisation date, between the amount or number of shares or units of the collective investment undertaking whose redemption is requested, and the amount or number of shares or units of the same collective investment undertaking whose subscription is requested; and
- the net assets or the total number of shares or units of the collective investment undertaking or sub-fund in question.

The level of orders that will not be executed should be determined immediately following the centralisation date, so as to inform affected unitholders or shareholders promptly and above all to enable them to revoke, if they so wish and when this is provided for by the rules or articles of association, an order as regards the portion that will not be executed and in compliance with notice periods.

For collective investment undertakings with several classes of units, the threshold for activating gates should be the same for all classes. The calculation for gate activation is performed once the order centralisation process is completed but redemptions net of subscriptions are expressed in terms of their amount (number of shares multiplied by the last NAV) then compared to net assets at the last NAV for the entire collective investment undertaking and not compared to the NAV of the class.

Insofar as an indicative NAV has been determined, it may be used to measure the threshold. In general, the management company should make the corrections that it deems necessary to determine the reference net assets by taking account of information that it has become aware of since the last time the NAV was calculated. However, net redemptions (numerator) and net assets (denominator) should be calculated in the same manner and notably on the basis of the same NAV.

Round-trip transactions, for a given number of units, based on the same NAV and for a given holder or beneficiary, are not included when determining gates. They may not be subject to redemption splitting where the prospectus provides for this. This provision makes it possible to ensure that an investor carrying out a round-trip transaction does not see his or her redemption order split since a subscription order of an equivalent amount is neutralising the impact of that redemption order on the collective investment undertaking.

4. *Triggering gates and informing the AMF*

The management company is responsible for activating or not activating the gates provided for in the prospectus. To take the decision to activate the mechanism, it must demonstrate that this is "*warranted by exceptional circumstances and [...] in the best interest of [holders or shareholders] or the public*". The AMF General Regulation states that "*This shall be the case in particular where, regardless of the day-to-day implementation of the management strategy, redemption requests are such that they may not be honoured under conditions that uphold the interest of holders and ensure their fair treatment, in view of the liquidity conditions of the assets of the SICAV, the fund, or one of its sub-funds, or where redemption requests are presented under circumstances that could interfere with market integrity*".

When redemption requests exceed the activation threshold stipulated in the rules or articles of association, the management company may decide to honour redemption requests exceeding the gate and therefore partially execute orders that could be blocked. For example, if redemption requests relating to a collective investment undertaking are at 15% whereas the threshold for activating the gate stands at 10% of net assets, the management company might decide to honour redemption requests up to 12.5% of net assets (and therefore execute 83.3% of redemption requests instead of 2/3 were it to strictly apply the 10% gating threshold).

The activation (or non-activation when the threshold set down in the rules and articles of association is reached) **decision and terms should be documented** by the management company, and these documents must be made available to the AMF. In particular, when activating a gate, the management company should provide evidence of the assessment of market conditions that informed its decision.

Furthermore, gates must not be "negotiable" by holder or shareholder for the same NAV. The management company should implement gates in a way that upholds fair treatment of holders and avoid the risk of conflicts of interest. The management company should be able to provide evidence to support the terms of its decision on this point also.

Once it has effectively gated redemption requests, the management company should **inform the AMF promptly of this**. Recall that Articles L. 621-13-2 and L. 621-13-3 of the Monetary and Financial Code state that the AMF may "*require the gating or suspension of redemptions of units or shares of a collective investment undertaking to be ended or the use of such gates or suspensions to be temporarily limited in the interest of unitholders, shareholders or the public*".

5. *Informing holders when gating redemptions.*

If a portion of their order was not executed, holders must be **informed individually of this** as soon as possible, so that they can revoke or confirm the remainder of their order at the next NAV, if the rules or articles of association of the collective investment undertaking allow for order revocability.

The activation of a gate should be the subject of a disclosure **to all unitholders or shareholders by any other means**.

6. *Maximum duration of gates*

Gates may only be introduced on a temporary basis. If gating continues, the management company must consider the need to suspend redemptions outright or liquidate the collective investment undertaking.

Furthermore, if orders that are carried forward do not have priority rights, an order could theoretically be carried forward and spread across a large number of NAVs. Accordingly, shareholders and holders need transparency on the gate's duration.

The rules or articles of association of the collective investment undertaking should therefore stipulate the maximum length of time for which the collective investment undertaking may gate redemption requests. This duration, expressed in numbers of NAVs to which the gate may be applied, may not exceed the number of NAVs mentioned in the following table, based on the frequency of the collective investment undertaking's NAV calculation:

NAV frequency	Maximum number of NAVs to which a gate may be applied	Estimated maximum gate time
Daily	20 NAVs over 3 months	1 month
Weekly	8 NAVs over 6 months	2 months
Bimonthly	5 NAVs over 6 months	2.5 months
Monthly or less	3 NAVs over 6 months	3 months

7. *Processing and carrying forward of unexecuted orders*

Orders exceeding the gating threshold may not be executed. Order reduction rules should ensure that exiting holders are fairly treated.

The management company should determine and specify in the rules or articles of association of the collective investment undertaking whether unexecuted orders will be cancelled or carried forward to the next NAV, having regard to the overall liquidity management scheme. It should also take account of the risk that carry forward procedures might encourage holders to place redemption requests early or to submit larger orders than they would otherwise have done because they know that orders will be partially executed. Moreover, as regards the possibility of revoking unexecuted orders, the management company should check the operational feasibility of the selected arrangements with affected parties (depository, transfer agent, etc.).

The processing and carry forward procedures established by the management company should meet the following criteria:

- Redemption orders should be executed in the same proportion for all holders requesting redemption since the last centralisation date;
- Unexecuted redemption orders are cancelled or automatically carried forward to the next NAV or, under terms set down in the rules or articles of association, revoked by holders. Cancellation and revocation are not possible if the NAV is established more than once a week;
- Carried forward orders do not have priority over new redemption orders submitted for execution at this NAV. If redemptions are split again at this NAV, they shall be split according to the same conditions as new orders. This prevents holders wishing to exit the collective investment undertaking from being penalised by the existence of redemption orders placed earlier by other holders. It also reduces the risk that holders will have an incentive to place redemption orders early to lock in certain benefits.

Whether or not it is permitted to revoke a portion of an unexecuted order should be determined based on NAV frequency and with regard to notice requirements. The management company should therefore establish operating procedures to allow it to identify redemption orders that are carried forward or resubmitted in compliance with notice requirements.

8. *Cancellation of orders ex post and information about the level of orders.*

The management company should ensure that there is no possibility of modifying orders after the centralisation date, including through cancellation requests, which could be considered as equivalent to late trading. The management company should not provide information about the level of incoming subscription and redemption orders that might enable holders to obtain information about the likelihood that gates might be activated.