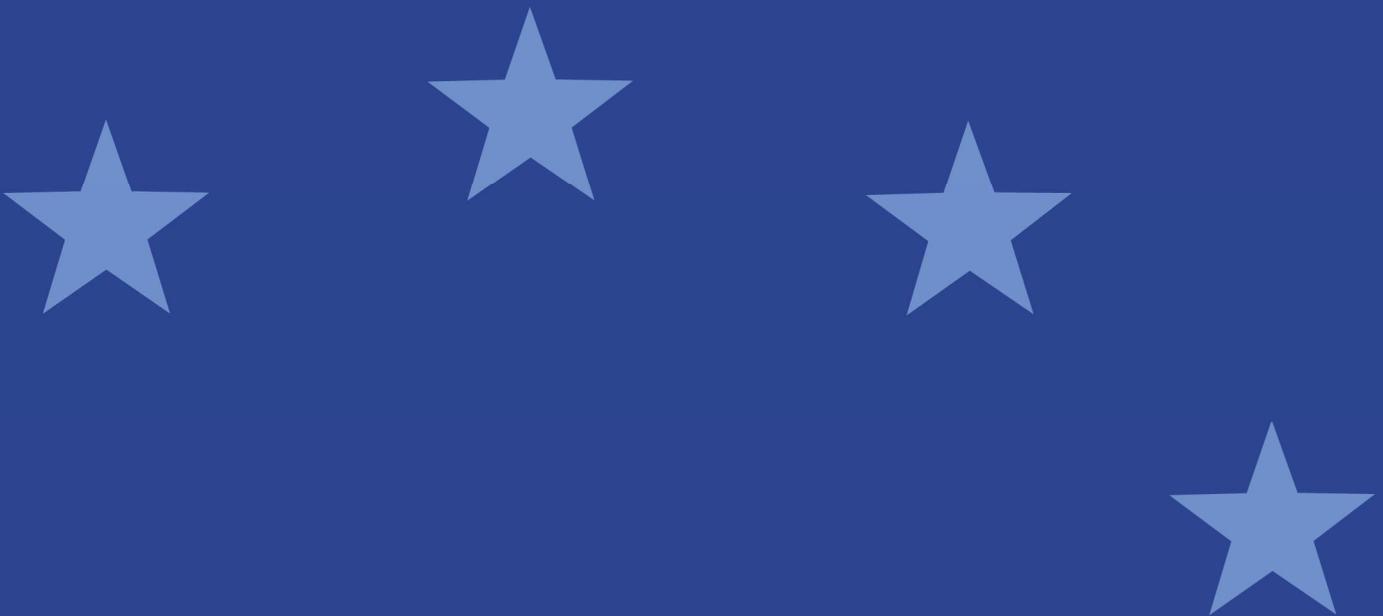




European Securities and  
Markets Authority

## Reply form for the Consultation Paper on Benchmarks Regulation



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on the European Single Electronic Format (ESEF), published on the ESMA website.

### *Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_CP\_BMR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

### **Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_CP\_BMR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA\_CP\_BMR\_XXXX\_REPLYFORM or

ESMA\_CP\_BMR\_XXXX\_ANNEX1

### **Deadline**

Responses must reach us by **30 June 2016**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input/Consultations'.



### ***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### ***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## Introduction

*Please make your introductory comments below, if any:*

<ESMA\_COMMENT\_CP\_BMR\_1>

Amundi is the No.1 European Asset Manager and in the Top 10 worldwide with AUM close to €1,000 billion worldwide at the end of March 2016.

Located at the heart of the main investment regions in more than 30 countries, Amundi offers a comprehensive range of products covering all asset classes and major currencies. Amundi has developed savings solutions to meet the needs of more than 100 million retail clients worldwide and designs innovative, high-performing products for institutional clients which are tailored specifically to their requirements and risk profile.

The Group contributes to funding the economy by orienting savings towards company development.

Amundi is a constant user of benchmarks not only for ETFs and index funds that replicate the performance of an index but also as a reference for measuring the performance of actively managed portfolios. We have experienced a very rapid rise of costs relating to the use of benchmarks and we believe that administrators should be aware of their responsibilities. We welcome the publication of the benchmark regulation (BMR) and consider it as a major step towards better transparency and governance of indices. We would not understand if its implementation would lead to an increase in cost.

One of our main concerns with BMR is not within the scope of the present consultation. It is the necessity for ESMA to **revisit its guidelines on ETFs and other UCITS issues**, ESMA/2014/937, in order not to require asset managers to conduct due diligences on issues that are addressed by BMR. It would be very helpful to ask administrators to self-assess whether their indices are compliant with the guidelines and to have this information accessible on the website which will centralize the list of indices compliant with BMR. The publication of this indicator on the list should be conclusive. In any case we understand that users of a benchmark produced by an administrator referenced on ESMA's website can consider this benchmark as compatible with BMR without having to undertake superfluous additional controls.

With respect to the specific issues discussed in the present consultation paper, Amundi's view may be summarized as follows:

- a general approbation of the work made by ESMA and most of its conclusions ; a pragmatic approach is appropriate in a matter where judgment can be exercised to take into consideration local or regional specificities;
- the **grand-fathering clause** allowing funds (that reference benchmarks that will prove non-compliant) to continue protects a fundamental right of investors; in our view, the default option should be for NCAs to allow grandfathering without time limitation and that option should not need any justification and apply as the default option;
- we need a safe harbour to confirm that **bespoke indices** that are communicated to a limited number of persons (including regulated entities) who pledge confidentiality through the signature of a NDA are not made available to the public;
- the switch from one index to a new BMR-compliant index, should be made easy in terms of communication to investors : a simple advertisement on the website of the asset manager and a news paper announcement should be sufficient;
- when assessing the amount under management that references an index, we would recommend to have one and same process for UCITS and AIFs.

We now turn to our detailed responses.

<ESMA\_COMMENT\_CP\_BMR\_1>

**Q1: Do you agree with the conditions on the basis of which an index may be considered as made available to the public?**

<ESMA\_QUESTION\_CP\_BMR\_1>

We do not share ESMA's view to consider that indices which are accessible only through the payment of a subscription are made available to the public. Free access is part of public access. Secondary dissemination of those licensed indices is subject to close scrutiny by administrators who want to protect what they consider as their intellectual property and subscribers are usually prevented from circulating information on the indices they have subscribed to. If it is the case, there is no possibility to have a dissemination to an indeterminate nor a very large number of persons. We realise that we have a better access to information on indices if we are one of a limited number of subscribers than if we are one of the public at large. Considering distribution through subscriptions as 'made available to the public' might in our view reduce the information that will be accessible to a lower level of quality and implication by the index administrator. Of course if there is no restriction to the further secondary dissemination of the index by a subscriber the index will be made available to the public, indirectly.

Amundi has a further demand that relates to the use of 'bespoke' indices. We consider that by nature these indices that are tailored to meet the needs of a limited number of customers who will each sign a confidentiality agreement (NDA) should be confirmed as not 'made available to the public'. We feel in that respect that § 21 page 12 brings confusion on the issue. We would suggest that §21 and/or the draft technical advice itself specifically confirm the safe harbour that bespoke indices are not made available to the public when dissemination is subject to a NDA. A second sentence should be added to §21 : *this is a rebuttable presumption and, for example when users sign a NDA the index cannot be considered as made available to the public.*

<ESMA\_QUESTION\_CP\_BMR\_1>

**Q2: Do you agree with the proposed specification of what constitutes *administering the arrangements for determining a benchmark*?**

<ESMA\_QUESTION\_CP\_BMR\_2>

Yes. We also concur on the opinion expressed in §38 that governance and control are not part of the provision of a benchmark but are a separate issue, highly relevant though.

<ESMA\_QUESTION\_CP\_BMR\_2>

**Q3: Do you agree that the 'use of a benchmark' in derivatives that are traded on trading venues and/or systematic internalisers is linked to the determination of the amount payable under the said derivatives for any relevant purpose (trading, clearing, margining, ...)?**

<ESMA\_QUESTION\_CP\_BMR\_3>

Amundi agrees that the calculation of margin calls either bilateral or in the framework of a CCP amounts to a use of benchmark under b of article 3(1) point 7 of BMR when they relate to derivatives having that index or combination of indices as underlying. We consider that the obligation to exchange variation margins under EMIR make it clear that, indirectly, trading of such derivatives is also included in the scope.

<ESMA\_QUESTION\_CP\_BMR\_3>

**Q4: Do you have any comments on the proposed specification of issuance of a financial instrument?**

<ESMA\_QUESTION\_CP\_BMR\_4>

We agree that "issuance" should be considered restrictively as the fact to transfer money to the issuer and include the initial offering of an instrument.

<ESMA\_QUESTION\_CP\_BMR\_4>

**Q5: What are your views on the transitional regime proposed to assess the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds in the case where the regulatory data is not available or sufficient?**

<ESMA\_QUESTION\_CP\_BMR\_5>

Amundi agrees with the pragmatic approach that ESMA chooses for the transition period before full implementation of EMIR and MIFID data. We insist on the fact that we want this transitional regime to be limited in time and that there should be no further constraints for asset managers than those resulting from the EMIR and MIFID reporting. In particular we do not see any requirement in the regulation that asset managers who provide extensive reporting could be under an obligation to confirm or justify in any manner their use of benchmarks in terms of amounts under management. Furthermore, we do not agree with the suggestion in §86 to rely on data from info-providers. Though it might be a reasonable proxy for a transitional period, it should not be considered in the longer run as a stable position: these providers want to impose their format and should not be given even the appearance of a legal basis for that.

<ESMA\_QUESTION\_CP\_BMR\_5>

**Q6: Do you agree with the measurement performed at a specific point in time for assessing whether a benchmark hits the thresholds specified in Article 20(1) to be considered as critical?**

<ESMA\_QUESTION\_CP\_BMR\_6>

Yes, we agree and believe ESMA's approach to be totally justified : when considering the level of the thresholds exact figures with frequent up-date is not necessary. We believe that the addition of data with slightly different dates is not an issue. As far as funds are concerned, we would like to be able to use the same process for UCITS and AIFs and report the latest available NAV at the reference date, year-end for example. We take the opportunity of this answer to express our agreement on the pragmatic solution suggested by ESMA with regard to reference to a combination of indices.

<ESMA\_QUESTION\_CP\_BMR\_6>

**Q7: What are your views on the use of licensing agreements to identify financial instruments referencing benchmarks? Would this approach be useful in particular in the case of investment funds?**

<ESMA\_QUESTION\_CP\_BMR\_7>

Amundi does not support the idea to refer to the licensing agreements to identify funds referencing benchmarks. The definition of use of benchmark in the regulation is far from being identical to that of the licensing contracts. The more so in France, where the NCA has constantly put pressure for the mention of a benchmark in funds prospectuses as a means to provide clear information to investors even for actively managed funds. The appropriate reference in our view is to be found in data exchanged with the NCA based on the most recent NAV at the foreseen date and their aggregation at the European level.

<ESMA\_QUESTION\_CP\_BMR\_7>

**Q8: Do you agree with the criteria proposed? Do you consider that additional criteria should be included in the technical advice?**

<ESMA\_QUESTION\_CP\_BMR\_8>

Amundi first agrees with the foreword of the draft technical advice: the list is non-exhaustive, the criteria should be considered jointly, not all criteria are always relevant. This statement is probably more important than the list of criteria. Hence, we think that ESMA has done a good job in the definition of criteria that will help in the assessment of benchmarks' criticality under article 20(1) (c) (iii).

<ESMA\_QUESTION\_CP\_BMR\_8>

**Q9: Do you think that the concept of "significant share of" should be further developed in terms of percentages or ranges of values expressed in percentages, to be used for (some of) the criteria based**

**on quantitative data? If yes, could you propose percentages of reference, or ranges of values expressed in percentages, to be used for one or more of the proposed criteria?**

<ESMA\_QUESTION\_CP\_BMR\_9>

Despite the fact that the wording “significant share” will reduce harmonisation among Member States when assessing benchmarks, Amundi agrees that the concept is a fair reference. NCAs will be able to exercise judgement and we trust it will be properly done, be it only because justifications have to be given.

<ESMA\_QUESTION\_CP\_BMR\_9>

**Q10: Do you agree with the suggested indicators for objective reasons for endorsement of third-country benchmarks?**

<ESMA\_QUESTION\_CP\_BMR\_10>

Yes.

<ESMA\_QUESTION\_CP\_BMR\_10>

**Q11: Do you agree with the criteria, included in the draft technical advice, that NCAs should use when assessing whether the transitional provisions could apply to a non-compliant benchmark? Could you suggest additional criteria?**

<ESMA\_QUESTION\_CP\_BMR\_11>

For Amundi the question of the grand-fathering clause for existing benchmarks is of prime importance. Client’s interest is first in our approach. And those investors who have decided to refer to an index should be granted the possibility to keep their holding as long as they wish. Thinking of indices produced by local exchanges in third countries, we even doubt that future distribution of funds referencing non-compliant benchmark should be stopped. In most funds, there is no legal possibility to force an investor either out of the fund (and we do not want it either) or to change benchmark. The discussion in §152 on the materiality of the change of value of the benchmark is out of scope when we face such a hard legal issue. In that respect, we consider that the usual solution should be for NCAs to allow investors to keep without limitation their holdings in the fund with the non-compliant benchmark and that no justification should be needed for that attitude. Conversely, any other position should be explained and justified by NCAs.

Let us turn to a couple of technicalities. First, we need a golden source that lists the compliant indices and that would provide information on those in the process of agreement and of application of transitional provisions. We welcome the initiative of ESMA in §160 to publish documents that will help stakeholders. Second, when a fund will change benchmark in order to comply with BMR, we suggest that the information to the public be made in the easiest possible way, typically through website and newspaper announcement.

<ESMA\_QUESTION\_CP\_BMR\_11>