

Submitted online at www.esma.europa.eu

The Investment Association

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Dear Sir or Madam

RE: Draft technical standards under the Benchmarks Regulation

The Investment Association is delighted to provide input to your consultation.

As users, rather than contributors to, or producers of, benchmarks, our members are mainly concerned with the elements of this consultation paper concerning their access to the benchmarks needed to operate their businesses. As such, many of the chapters relating to the internal governance processes, while obviously of importance in the production of reliable and accurate benchmarks, are of less direct relevance to asset and fund managers.

Yours faithfully

Adrian Hood

Regulatory and Financial Crime Expert



ANNEX I

CONSULTATION RESPONSE

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association is the trade body that represents UK investment managers, whose 200 members collectively manage over £5.5 trillion on behalf of clients.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The UK is the second largest investment management centre in the world and manages 37% of European assets.

More information can be viewed on our [website](#).

CHARACTERISTICS OF THE OVERSIGHT FUNCTION

Q1: DO YOU CONSIDER THE NON-EXHAUSTIVE LIST OF GOVERNANCE ARRANGEMENTS TO BE SUFFICIENTLY FLEXIBLE? ARE THERE ANY OTHER STRUCTURES WHICH YOU WOULD LIKE TO SEE INCLUDED?

Q2: DO YOU SUPPORT THE OPTION FOR THE OVERSIGHT FUNCTION TO BE A NATURAL PERSON WHO IS NOT OTHERWISE EMPLOYED BY THE ADMINISTRATOR?

Q3: DO YOU SUPPORT THE CONCEPT OF OBSERVERS AND THEIR INCLUSION IN THE OVERSIGHT FUNCTION?

Yes, this seems reasonable, and may often be appropriate.

PROCEDURES REGARDING THE OVERSIGHT FUNCTION



Q4: DO YOU THINK THAT THE DRAFT RTS ALLOWS FOR SUFFICIENT PROPORTIONALITY IN THE APPLICATION OF THE REQUIREMENTS? IF NO, PLEASE EXPLAIN WHY AND PROVIDE PROPOSALS FOR INTRODUCING GREATER PROPORTIONALITY.

Q5: DO YOU HAVE ANY OTHER COMMENTS ON THE OVERSIGHT FUNCTION (COMPOSITION, POSITIONING AND PROCEDURES) AS SET OUT IN THE DRAFT RTS?

Fund managers are an important category of benchmark users and their representation in the oversight function committee of a benchmark would be an important added value for safeguarding the users' interests, the appropriate level of transparency, the better understanding of market reality that users expect the benchmark to reflect and the control of sound policies on conflicts of interest and fee policies.

We would, therefore, propose a change to the first paragraph of the Annex to the draft RTS:

An independent oversight committee consisting of a balanced representation of stakeholders including **users of benchmarks, in particular supervised entities such as UCITS and AIFs representatives** that use the benchmark, contributors and other external stakeholders such as market infrastructure operators and other input data sources, as well as independent members and staff of the administrator that are not directly involved in the provision of the relevant benchmarks or any related activities;

APPROPRIATENESS AND VERIFIABILITY OF INPUT DATA

Q6: DO YOU AGREE WITH THE APPROPRIATENESS AND VERIFIABILITY OF INPUT DATA THAT THE ADMINISTRATOR MUST ENSURE ARE IN PLACE? PLEASE ELABORATE.

While we note Articles 4 and 7, restricting the effect of the RTS on regulated data benchmarks and significant benchmarks respectively, the RTS should also spell out the fact that none of it will apply to administrators of non-significant benchmarks, as mandated by Article 11(5) of the level one text.

FRONT OFFICE CONTRIBUTIONS

Q7: DO YOU AGREE WITH THE INTERNAL OVERSIGHT AND VERIFICATION PROCEDURES THAT THE ADMINISTRATOR MUST ENSURE ARE IN PLACE WHERE CONTRIBUTIONS ARE MADE FROM A FRONT-OFFICE FUNCTION IN A CONTRIBUTOR ORGANISATION? PLEASE ELABORATE.

KEY ELEMENTS OF THE METHODOLOGY



Q8: DO YOU AGREE WITH THE LIST OF KEY ELEMENTS PROPOSED? DO YOU CONSIDER THAT THERE ARE ANY OTHER MEANS THAT COULD BE TAKEN INTO CONSIDERATION TO ENSURE THAT THE BENCHMARK'S METHODOLOGY IS TRACEABLE AND VERIFIABLE?

It does not appear that there are currently any references to elements necessary to enable UCITS managers to discharge their responsibilities under the 'ESMA Guidelines for competent authorities and UCITS management companies'.

Access to this information should not be dependent on the willingness of the benchmark administrator to offer it up. We would request that ESMA align the RTS transparency requirements with the requirements under the ESMA Guidelines. Particularly that the elements from title XIII (Guidelines 49 to 62) of the ESMA Guidelines are included in the list of the minimum elements that should be disclosed.

INTERNAL REVIEW AND APPROVAL OF THE METHODOLOGY

Q9: DO YOU AGREE WITH THE ELEMENTS OF THE INTERNAL REVIEW OF METHODOLOGY TO BE DISCLOSED? DO YOU CONSIDER THAT THERE ARE OTHER ELEMENTS OF INFORMATION REGARDING THE PROCEDURE FOR INTERNAL REVIEW OF METHODOLOGY THAT SHOULD BE INCLUDED?

PROCEDURE FOR MATERIAL CHANGE OF METHODOLOGY

Q10: DO YOU AGREE WITH THE PROCEDURE FOR CONSULTATION ON MATERIAL CHANGES TO THE METHODOLOGY?

We agree with ESMA's approach, particularly the need for a consultation prior to any material change being applied to the methodology.

CODE OF CONDUCT

Q11: DO YOU AGREE WITH THIS APPROACH? PLEASE EXPLAIN YOUR RESPONSE.

It should, perhaps, be made clear, in the draft RTS, that it will not apply to regulated data benchmarks.



Q12: DO YOU AGREE WITH THIS APPROACH? WHAT ARE THE DIFFERENT CHARACTERISTICS OF CONTRIBUTORS THAT SHOULD BE TAKEN INTO CONSIDERATION IN THIS RTS? HOW SHOULD THOSE CHARACTERISTICS BE TAKEN INTO ACCOUNT IN THE PROVISIONS SUGGESTED IN THIS DRAFT RTS? PLEASE GIVE EXAMPLES.

Q13: SHOULD THE SUBSTANTIAL EXPOSURES OF INDIVIDUAL TRADERS OR TRADING DESK TO BENCHMARK RELATED INSTRUMENTS APPLY TO ALL TYPES OF BENCHMARKS FOR ALL CONTRIBUTORS?

Q14: DO YOU AGREE WITH THE PROPOSALS FOR THE REPORTING OF SUSPICIOUS TRANSACTION IN THIS DRAFT RTS? PLEASE EXPLAIN YOUR ANSWER.

Q15: ARE THERE ANY PROVISIONS THAT SHOULD BE ADDED TO OR AMENDED IN THE DRAFT RTS TO TAKE INTO CONSIDERATION THE DIFFERENT CHARACTERISTICS OF BENCHMARKS? PLEASE GIVE EXAMPLES.

It should be made clear that the draft RTS will not apply to regulated data benchmarks.

Q16: DO YOU HAVE ANY FURTHER COMMENTS OR SUGGESTIONS RELATING TO THE DRAFT RTS ON THE CODE OF CONDUCT?

GOVERNANCE AND CONTROL REQUIREMENTS FOR SUPERVISED CONTRIBUTORS

Q17: DO YOU AGREE WITH THE DRAFT TECHNICAL STANDARDS IN RELATION TO THE GOVERNANCE AND CONTROL ARRANGEMENTS FOR SUPERVISED CONTRIBUTORS TO BENCHMARKS? PLEASE PROVIDE REASONS.

Q18: IN PARTICULAR, CAN YOU IDENTIFY SPECIFIC ASPECTS OF THE DRAFT REGULATION THAT SHOULD BE APPLIED DIFFERENTIALLY TO DIFFERENT SUPERVISED CONTRIBUTORS IN PARTICULAR IN TERMS OF DIFFERENCES IN INPUT DATA PROVIDED AND METHODOLOGIES USED, THE RISKS OF MANIPULATION OF THE INPUT DATA AND THE NATURE OF THE ACTIVITIES CARRIED OUT BY THE SUPERVISED CONTRIBUTORS?

CRITERIA FOR THE ASSESSMENT BY NATIONAL COMPETENT AUTHORITIES

Q19: DO YOU AGREE WITH ESMA'S SPECIFICATIONS OF THE CRITERIA?

COMPLIANCE STATEMENT



Q20: DO YOU AGREE WITH THE CONTENT AND STRUCTURE OF THE TWO COMPLIANCE STATEMENT TEMPLATES? IF NOT, PLEASE EXPLAIN.

We regret that ESMA propose a single compliance statement composed of multiple core sections referring to identifiable group of benchmarks (either belonging to the same family or not). The proposal in the Discussion Paper, of a statement per benchmark/family of benchmarks, would be more user-friendly, as it would allow for a direct reading and understanding of the core characteristics of a benchmark, rather than requiring users to determine whether any provisions are dis-applied and, if so, for which benchmarks. This would end up contradicting the notion of transparency from the end-investor perspective that the compliance statement is here to serve.

We would urge ESMA to revert to requiring a compliance statement to refer to a single benchmark or family of benchmarks.

BENCHMARK STATEMENT

Q21: DO YOU AGREE WITH THE PROPOSED SPECIFICATIONS OF THE CONTENTS OF A BENCHMARK STATEMENT?

As is stated at paragraph 175, the benchmark statement is intended to be a tool for users of benchmarks to differentiate between different benchmarks, and to understand their risks.

It is important that the benchmark statement is as user friendly as possible, taking into account the nature of the users. As many of these are UCITS managers, it is important that the benchmark statement include the information necessary for them to comply with their obligations under the ESMA Guidelines for competent authorities and UCITS management companies of 1 August 2014.

Q22: DO YOU AGREE WITH THE PROPOSED SPECIFICATIONS OF THE CASES IN WHICH AN UPDATE OF SUCH STATEMENT IS REQUIRED? DO YOU HAVE ANY FURTHER PROPOSALS? PLEASE EXPLAIN.

It may be important for a benchmark statement to be revised or updated in light of external factors, such as the way in which the benchmark is being used.

AUTHORISATION AND REGISTRATION OF AN ADMINISTRATOR

Q23: DO YOU AGREE WITH THE GENERAL APPROACH TO DISTINGUISH THE CONTENTS OF THE APPLICATION WITH REFERENCE TO THE CASES OF AUTHORISATION OR REGISTRATION?

We agree with the general approach in differentiating between the need to be registered, authorised or subject to material change procedures.

It is most important that this process is completed in time that all appropriate benchmarks and administrators are published in the ESMA Register in time for the Regulation coming into effect, i.e. by 1 January 2018. This would help to alleviate the concern of the users of benchmarks that there may be benchmarks on which they are relying, which may not be available to them under the terms of the Regulation.



Q24: ARE THE GENERAL AND FINANCIAL INFORMATION REQUIREMENTS DESCRIBED APPROPRIATE FOR AUTHORISATION APPLICATIONS? ARE THE NARROWER REQUIREMENTS APPROPRIATE FOR REGISTRATION APPLICATIONS?

These do seem reasonable and proportionate.

Q25: ARE THE REQUIREMENTS COVERING THE INFORMATION ON THE APPLICANT'S INTERNAL STRUCTURE AND FUNCTIONS APPROPRIATE?

These do not seem to be disproportionate.

Q26: ARE THE REQUIREMENTS DESCRIBED DEALING WITH THE BENCHMARKS PROVIDED APPROPRIATE? IN PARTICULAR, IS THE WAY IN WHICH THE COMMODITY BENCHMARKS REQUIREMENTS ARE HANDLED ACCEPTABLE?

These seem reasonable. It will be important that applicants are clear on the amount of detail expected to be supplied for each of the requirements.

It would be useful if ESMA could provide some further clarity around what they mean by 'synthetic description'.

Q27: IS THE SPECIFIC TREATMENT FOR A NATURAL PERSON AS APPLICANT APPROPRIATE?

Q28: DO YOU AGREE WITH THE PROPOSALS OUTLINED FOR REQUIREMENTS FOR OTHER INFORMATION?

It is inevitable that there will be specific circumstances in which the competent authority requires further information particular to the case. They should always have the power to require this information, but not misuse this capability to impose unwarranted delays or difficulties on applicants.

RECOGNITION OF AN ADMINISTRATOR LOCATED IN A THIRD COUNTRY



Q29: DO YOU AGREE WITH THE APPROACH FOLLOWED IN THE DRAFT RTS AS REGARDS THE GENERAL INFORMATION THAT A THIRD-COUNTRY APPLICANT SHOULD PROVIDE TO THE COMPETENT AUTHORITY OF THE MEMBER STATE OF REFERENCE?

We agree that the information should be aligned with that required of EU based benchmark providers.

We particularly agree with the proposals to allow applicants to rely on independent assessments of compliance with IOSCO Principles.

Q30: DO YOU AGREE WITH THE APPROACH FOLLOWED IN THE DRAFT RTS AS REGARDS THE INFORMATION THAT A THIRD-COUNTRY APPLICANT SHOULD PROVIDE IN ORDER TO EXPLAIN HOW IT HAS CHOSEN A SPECIFIC MEMBER STATE OF REFERENCE AND WHICH ARE THE IDENTITY AND ROLE OF THE APPOINTED LEGAL REPRESENTATIVE IN SUCH STATE?

Q31: DO YOU AGREE WITH THE APPROACH FOLLOWED IN THE DRAFT RTS AS REGARDS THE INFORMATION THAT A THIRD-COUNTRY APPLICANT SHOULD GIVE AROUND THE BENCHMARKS IT PROVIDES AND THAT ARE ALREADY USED OR INTENDED FOR USE IN THE UNION? IN PARTICULAR, DO YOU AGREE WITH THE PROPOSALS REGARDING THE INFORMATION TO BE PROVIDED ON THE TYPES AND THE CATEGORIES TO WHICH THE BENCHMARKS BELONG TO?

We note that the type of third country benchmarks (i.e. critical, significant or non-significant) will determine the amount of information required by the competent authority. We assume that, when it comes to assessing the type of benchmarks, the monetary thresholds will remain the same as for those for benchmarks based within the EU.

We welcome the explicit confirmation, in Annex I(10)(i), that the monetary amounts, for calculating the thresholds, would reflect the use of the benchmark within the EU, not its use globally.