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| 15 February 2016 |

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| Reply form for the  Discussion Paper on Benchmarks Regulation |
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| Date: 15 February 2016 |

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\_DP\_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\_DP\_BMR \_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_DP\_BMR \_XXXX\_REPLYFORM or

ESMA\_DP\_BMR \_XXXX\_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

***Deadline***

Responses must reach us by 31 March 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\_ DP\_BMR\_1>

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 120 members operating for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI has been following closely the Benchmarks Regulation particularly concerning the non-significant benchmarks and welcomes the opportunity to answer ESMA’s discussion paper on Benchmarks Regulation (DP).

AMAFI considers that it is essential to ensure that constraints on non-significant benchmarks are proportionate and not unnecessarily too cumbersome. Indeed, too many constraints on non-significant benchmarks could affect European investment firms’ service offering and could profit to non-European investment firms.

The implementation of monitoring measures is difficult and it’s going to take a long time. In order to be ready at time, the final draft of the Benchmarks regulation should be published as soon as possible.

<ESMA\_COMMENT\_ DP\_BMR\_1>

1. Do you agree that an index’s characteristic of being “made available to the public” should be defined in an open manner, possibly reflecting the current channels and modalities of publication of existing benchmarks, in order not to unduly restrict the number of benchmarks in scope?

<ESMA\_QUESTION\_DP\_BMR\_1>

AMAFI would be in favor of a clear definition of “made available to public” with some consistency with other existing regulation like Prospectus Directive.

If the index is available without any restriction on the website of the producer of the index or in any mass media / well known financial provider, the information is deemed to be public.

<ESMA\_QUESTION\_DP\_BMR\_1>

1. Do you have any proposals on which aspects of the publication process of an index should be considered in order for it to be deemed as having made the index available to the public, for the purpose of the BMR?

<ESMA\_QUESTION\_DP\_BMR\_2>

AMAFI proposes that “publication” of a benchmark would mean the disclosure by an administrator, either through print or electronically, in a freely available and unrestricted manner. <ESMA\_QUESTION\_DP\_BMR\_2>

1. Do you agree with ESMA’s proposal to align the administering the arrangements for determining a benchmark with the IOSCO principle on the overall responsibility of the administrator? Which other characteristics/activities would you regard as covered by Article 3(1) point 3(a)?

<ESMA\_QUESTION\_DP\_BMR\_3>

The only point we would like to emphasise is that the responsibility regarding the dissemination should be restricted to the dissemination for which the administrator has a direct control.

<ESMA\_QUESTION\_DP\_BMR\_3>

1. Do you agree with ESMA’s proposal for a definition of issuance of a financial instrument? Are there additional aspects that this definition should cover?

<ESMA\_QUESTION\_DP\_BMR\_4>

We strongly support aligning definitions to comparable standards as in MiFID II

<ESMA\_QUESTION\_DP\_BMR\_4>

1. Do you think that the business activities of market operators and CCPs in connection with possible creation of financial instruments for trading could fall under the specification of “issuance of a financial instrument which references an index or a combination of indices”? If not, which element of the “use of benchmark” definition could cover these business activities?

<ESMA\_QUESTION\_DP\_BMR\_5>

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<ESMA\_QUESTION\_DP\_BMR\_5>

1. Do you agree with the proposed list of appropriate governance arrangements for the oversight function? Would you propose any additional structure or changes to the proposed structures?

<ESMA\_QUESTION\_DP\_BMR\_6>

The principle of proportionality should be reinforced in the way the administrators can implement all appropriate arrangements. In particular where control organization – under the supervision of compliance or independent risk management - is strong enough for the concerned risk, it should be able to replace formal dedicated committees and to use existing governance bodies

<ESMA\_QUESTION\_DP\_BMR\_6>

1. Do you believe these proposals sufficiently address the needs of all types of benchmarks and administrators? If not, what characteristics do such benchmarks have that would need to be addressed in the proposals?

<ESMA\_QUESTION\_DP\_BMR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_7>

1. To the extent that you provide benchmarks, do you have in place a pre-existing committee, introduced through other EU legislation, or otherwise, which could satisfy the requirements of an oversight function under Article 5a? Please describe the structure of the committee and the reasons for establishing it.

<ESMA\_QUESTION\_DP\_BMR\_8>

As far as we are aware, most of the investment firms have pre existing committee in accordance the IOSCO principles

<ESMA\_QUESTION\_DP\_BMR\_8>

1. Do you agree that an administrator could establish one oversight function for all the benchmarks it provides? Do you think it is appropriate for an administrator to have multiple oversight functions where it provides benchmarks that have different methodologies, users or seek to measure very different markets or economic realities?

<ESMA\_QUESTION\_DP\_BMR\_9>

AMAFI considers that an administrator could establish one oversight function for all the benchmarks it provides. It is not possible for administrators to have different oversight functions by type of benchmarks, methodologies or users. Rather than to have multiple oversight functions, we should have one oversight function which shall adjust its monitoring system for each different benchmarks, users, methodologies

<ESMA\_QUESTION\_DP\_BMR\_9>

1. If an administrator provides more than one critical benchmark, do you support the approach of one oversight function exercising oversight over all the critical benchmarks? Do you think it is necessary for an oversight function to have sub-functions, to account for the different needs of different types of benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_10>

NA

<ESMA\_QUESTION\_DP\_BMR\_10>

1. Where an administrator provides critical benchmarks and significant or non-significant benchmarks, do you think it should establish different oversight functions depending on the nature, scale and complexity of the critical benchmarks versus the significant or non-significant benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_11>

NA

<ESMA\_QUESTION\_DP\_BMR\_11>

1. In which cases would you agree that contributors should be prevented from participating in oversight committees?

<ESMA\_QUESTION\_DP\_BMR\_12>

AMAFI considers that contributors shall not participate in oversight committees except if they are directly interested in the functioning of the indices; e.g. a contributor providing direct contribution to the administrator (euribor/libor contribution).

<ESMA\_QUESTION\_DP\_BMR\_12>

1. Do you foresee additional costs to your business or, if you are not an administrator, to the business of others resulting from the establishment of multiple oversight functions in connection with the different businesses performed and/or the different nature, scale and type of benchmarks provided? Please describe the nature, and where possible provide estimates, of these costs.

<ESMA\_QUESTION\_DP\_BMR\_13>

The implementation of a new regulation automatically generates additional economic costs for the business. In general, these costs are incurred by the clients at some point in the future.

It also involves spending time to implement new cumbersome measures. However, this cost is difficult to quantify. This is why the regulation must remain proportionate to the risk it intends to cover.

<ESMA\_QUESTION\_DP\_BMR\_13>

1. Do you agree that, in all cases, an oversight function should not be responsible for overseeing the business decisions of the management body?

<ESMA\_QUESTION\_DP\_BMR\_14>

AMAFI agrees

<ESMA\_QUESTION\_DP\_BMR\_14>

1. Do you support the proposed positioning of the oversight function of an administrator? If not, please explain your reasons why this positioning may not be appropriate.

<ESMA\_QUESTION\_DP\_BMR\_15>

AMAFI agrees

<ESMA\_QUESTION\_DP\_BMR\_15>

1. Do you have any additional comments with regard to the procedures for the oversight function as well as the composition and positioning of the oversight function within an administrator’s organisation?

<ESMA\_QUESTION\_DP\_BMR\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_16>

1. Do you agree with the proposed list of elements of procedures required for all oversight functions? Should different procedures be employed for different types of benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_17>

1. Do you agree with the proposed treatment of conflicts of interest arising from the composition of an oversight function? Have you identified any additional conflicts which ESMA should consider in drafting the RTS?

<ESMA\_QUESTION\_DP\_BMR\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_18>

1. Do you agree with the list of records to be kept by the administrator for input data verification? If not, please specify which information is superfluous / which additional information is needed and why.

<ESMA\_QUESTION\_DP\_BMR\_19>

We do not understand why we will have to keep record of “substantial exposures of individual traders or trading desks to benchmark related instruments, as well as changes therein”. Such information are not requested in the level one text and we do not understand the link with the verification of input data…

<ESMA\_QUESTION\_DP\_BMR\_19>

1. Do you agree that, for the information to be transmitted to the administrator in view of ensuring the verifiability of input data, weekly transmission is sufficient? Would you instead consider it appropriate to leave the frequency of transmission to be defined by the administrator (i.e. in the code of conduct)?

<ESMA\_QUESTION\_DP\_BMR\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_20>

1. Do you agree with the concept of appropriateness as elaborated in this section?

<ESMA\_QUESTION\_DP\_BMR\_21>

AMAFI agrees

<ESMA\_QUESTION\_DP\_BMR\_21>

1. Do you see any other checks an administrator could use to verify the appropriateness of input data?

<ESMA\_QUESTION\_DP\_BMR\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_22>

1. Would you consider it useful that the administrator maintains records of the analyses performed to evaluate the appropriateness of input data?

<ESMA\_QUESTION\_DP\_BMR\_23>

AMAFI rather considers it optional that the administrator maintains records of the analyses performed, as long as it stands ready to provide timely to the regulator a satisfactory explanation of such analyses.

<ESMA\_QUESTION\_DP\_BMR\_23>

1. Do you see other possible measures to ensure verifiability of input data?

<ESMA\_QUESTION\_DP\_BMR\_24>

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<ESMA\_QUESTION\_DP\_BMR\_24>

1. Do you agree with the identification of the concepts and underpinning activities of evaluation, validation and verifiability, as used in this section?

<ESMA\_QUESTION\_DP\_BMR\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_25>

1. Do you agree that all staff involved in input data submission should undergo training, but that such training should be more elaborate / should be repeated more frequently where it concerns front office staff contributing to benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_26>

Training should be adequate to be able to perform relevant duties and implement processes. No further guidance needed.

<ESMA\_QUESTION\_DP\_BMR\_26>

1. Do you agree to the three lines of defence-principle as an ideal type of internal oversight architecture?

<ESMA\_QUESTION\_DP\_BMR\_27>

AMAFI agrees

<ESMA\_QUESTION\_DP\_BMR\_27>

1. Do you identify other elements that could improve oversight at contributor level?

<ESMA\_QUESTION\_DP\_BMR\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_28>

1. Do you agree with the list of elements contained in a conflict of interest policy? If not, please state which elements should be added / which elements you consider superfluous and why.

<ESMA\_QUESTION\_DP\_BMR\_29>

AMAFI considers that the conflict of interest policy should follow existing requirements and be enhanced if necessary to address specific conflicts related to benchmarks. However, to avoid duplicates and ensure that information remains centralized, there should not be a separate conflict of interest policy dedicated to benchmarks. Indeed, when the firms are already subject to conflict of interest policy under other regulations, conflicts related to benchmarks shall fall under general policy of conflict of interest.

<ESMA\_QUESTION\_DP\_BMR\_29>

1. Do you agree that where expert judgement is relied on and/or discretion is used additional appropriate measures to ensure verifiability of input data should be imposed? If not, please specify examples and reasons why you disagree.

<ESMA\_QUESTION\_DP\_BMR\_30>

AMAFI agrees only if such measures are suggested and not imposed.

<ESMA\_QUESTION\_DP\_BMR\_30>

1. Do you agree to the list of criteria that can justify differentiation? If not, please specify why you disagree.

<ESMA\_QUESTION\_DP\_BMR\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_31>

1. Do you agree to the list of elements that are amenable to proportional implementation? If not, please specify why you disagree.

<ESMA\_QUESTION\_DP\_BMR\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_32>

1. Do you agree to the list of elements that are not amenable to proportional implementation? If not, please specify why you disagree.

<ESMA\_QUESTION\_DP\_BMR\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_33>

1. Do you consider the proposed list of key elements sufficiently granular “*to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts*”?

<ESMA\_QUESTION\_DP\_BMR\_34>

While we agree that the list of elements is generally relevant, we think that only the methodology of benchmarks based on contributions should entail the minimum quantity and quality of input data and describe the verification procedures on input data. For other indices, such verification procedures on input data are part of an overall review process, per the IOSCO principles, and not relevant to each index methodology.

<ESMA\_QUESTION\_DP\_BMR\_34>

1. Beyond the list of key elements, could you identify other elements of benchmark methodology that should be disclosed? If yes, please explain the reason why these elements should be disclosed.

<ESMA\_QUESTION\_DP\_BMR\_35>

Discretion should be left to the administrator to meet its overarching duty for transparency.

<ESMA\_QUESTION\_DP\_BMR\_35>

1. Do you agree that the proposed key elements must be disclosed *to the public* (linked to Article 3, para 1, subpara 1, point (a))? If not, please specify why not.

<ESMA\_QUESTION\_DP\_BMR\_36>

AMAFI does not agree. For proprietary indices such key elements must only be disclosed to clients but in any case not to the general public. In the methodology there are intellectual properties and those methodologies cannot be disseminated to everyone. It is very important to consider that making available important parts of methodologies to the general public for proprietary indices would create an intellectual property leak and a competitive disadvantage for European based administrator compared to others.

<ESMA\_QUESTION\_DP\_BMR\_36>

1. Do you agree with ESMA’s proposal about the information to be made public concerning the internal review of the methodology? Please suggest any other information you consider useful to disclose on the topic.

<ESMA\_QUESTION\_DP\_BMR\_37>

We consider that the information to be made public should be limited to the existence of a review process and its general characteristics and we do not consider it necessary to make public the names and titles of individuals involved in the review process.

<ESMA\_QUESTION\_DP\_BMR\_37>

1. Do you agree with the above proposals to specify the information to be provided to benchmark users and, more in general, stakeholders regarding material changes in benchmark methodology?

<ESMA\_QUESTION\_DP\_BMR\_38>

We consider that the information to be made public should be limited to the existence of a procedure to address material changes in benchmark methodology, and its general characteristics. In addition, the relevant stakeholders should be interpreted as the index licensee and not the general public

<ESMA\_QUESTION\_DP\_BMR\_38>

1. Do you agree, in particular, on the opportunity that also the replies received in response to the consultation are made available to the public, where allowed by respondents?

<ESMA\_QUESTION\_DP\_BMR\_39>

AMAFI does not agree

<ESMA\_QUESTION\_DP\_BMR\_39>

1. Do you agree that the publication requirements for key elements of methodology apply regardless of benchmark type? If not, please state which type of benchmark would be exempt / which elements of methodology would be exempt and why.

<ESMA\_QUESTION\_DP\_BMR\_40>

As per above, the methodologies of benchmarks that are not based on contribution of input data should not have to entail the minimum quantity and quality of input data or to describe the verification procedures on input data.

<ESMA\_QUESTION\_DP\_BMR\_40>

1. Do you agree that the publication requirements for the internal review of methodology apply regardless of benchmark type? If not, please state which information regarding the internal review could be differentiated and according to which characteristic of the benchmark or of its input data or of its methodology.

<ESMA\_QUESTION\_DP\_BMR\_41>

As per above, we consider that, regardless of benchmark type, the information to be made public should be limited to the existence of a review process and its general characteristics.

<ESMA\_QUESTION\_DP\_BMR\_41>

1. Do you agree that, in the requirements regarding the procedure for material change, the proportionality built into the Level 1 text covers all needs for proportional application?

<ESMA\_QUESTION\_DP\_BMR\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_42>

1. Do you agree that a benchmark administrator could have a standard code for all types of benchmarks? If not, should there be separate codes depending on whether a benchmark is critical, significant or non-significant? Please take into account your answer to this question when responding to all subsequent questions.

<ESMA\_QUESTION\_DP\_BMR\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_43>

1. Do you believe that an administrator should be mandated to tailor a code of conduct, depending on the market or economic reality it seeks to measure and/or the methodology applied for the determination of the benchmark? Please explain your answer using examples of different categories or sectors of benchmarks, where applicable.

<ESMA\_QUESTION\_DP\_BMR\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_44>

1. Do you agree with the above requirements for a contributor’s contribution process? Is there anything else that should be included?

<ESMA\_QUESTION\_DP\_BMR\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_45>

1. Do you agree that the details of the code of conduct to be specified by ESMA may still allow administrators to tailor the details of their codes of conduct with respect to the specific benchmarks provided?

<ESMA\_QUESTION\_DP\_BMR\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_46>

1. Do you agree that such information should be required from contributors under the code of conduct? Should any additional information be requested?

<ESMA\_QUESTION\_DP\_BMR\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_47>

1. Are their ways in which contributors may manage possible conflicts of interest at the level of the submitters? Should those conflicts, where managed, be disclosed to the administrator?

<ESMA\_QUESTION\_DP\_BMR\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_48>

1. Do you foresee any obstacles to the administrator’s ability to evaluate the authorisation of any submitters to contribute input data on behalf of a contributor?

<ESMA\_QUESTION\_DP\_BMR\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_49>

1. Do you agree that a contributor’s contribution process should foresee clear rules for the exclusion of data sources? Should any other information be supplied to administrators to allow them to ensure contributors have provided all relevant input data?

<ESMA\_QUESTION\_DP\_BMR\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_50>

1. Do you think that the listed procedures for submitting input data are comprehensive? If not, what is missing?

<ESMA\_QUESTION\_DP\_BMR\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_51>

1. Do you agree that rules are necessary to provide consistency of contributors’ behaviour over the time? Should this be set out in the code of conduct or in the benchmark methodology, or both?

<ESMA\_QUESTION\_DP\_BMR\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_52>

1. Should policies, in addition to those set out in the methodology, be in place at the level of the contributors, regarding the use of discretion in providing input data?

<ESMA\_QUESTION\_DP\_BMR\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_53>

1. Do you agree with the list of checks for validation purposes? What other methods could be included?

<ESMA\_QUESTION\_DP\_BMR\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_54>

1. Do you agree with the minimum information requirement for record keeping? If not would you propose additional/alternative information?

<ESMA\_QUESTION\_DP\_BMR\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_55>

1. Do you support the recording of the use of expert judgement and of discretion? Should administrators require the same records for all types of benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_56>

1. Do you agree that an administrator could require contributors to have in place a documented escalation process to report suspicious transactions?

<ESMA\_QUESTION\_DP\_BMR\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_57>

1. Do you agree with the list of policies, procedures and controls that would allow the identification and management of conflicts of interest? Should other requirements be included?

<ESMA\_QUESTION\_DP\_BMR\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_58>

1. Do you have any additional comments with regard to the contents of a code of conduct in accordance with Article 9(2)?

<ESMA\_QUESTION\_DP\_BMR\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_59>

1. Do you agree with the above list of requirements? Do you think that those requirements are appropriate for all benchmarks? If not what do you think should be the criteria we should use?

<ESMA\_QUESTION\_DP\_BMR\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_60>

1. Do you agree that information regarding breaches to the BMR or to Code of Conduct should also be made available to the Benchmark Administrator?

<ESMA\_QUESTION\_DP\_BMR\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_61>

1. Do you think that the external audit covering benchmark activities, where available, should also be made available, on request, to the Benchmark Administrator?

<ESMA\_QUESTION\_DP\_BMR\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_62>

1. Do you agree with the proposed criteria for the specific elements of systems and controls as listed in Article 11(2)(a) to (c)? If not, what should be alternative criteria to substantiate these elements?

<ESMA\_QUESTION\_DP\_BMR\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_63>

1. Do you agree that the submitters should not be remunerated for the level of their contribution but could be remunerated for the quality of input and their ability to manage the conflicts of interest instead?

<ESMA\_QUESTION\_DP\_BMR\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_64>

1. What would be a reasonable delay for signing-off on the contribution? What are the reasons that would justify a delay in the sign off?

<ESMA\_QUESTION\_DP\_BMR\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_65>

1. Is the mentioned delay an element that may be established by the administrator in line with the applicable methodology and in consideration of the underlying, of the type of input data and of supervised contributors?

<ESMA\_QUESTION\_DP\_BMR\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_66>

1. In case of a contribution made through an automated process what should be the adequate level of seniority for signing-off?

<ESMA\_QUESTION\_DP\_BMR\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_67>

1. Do you agree with the above policies? Are there any other policies that should be in place at contributor’s level when expert judgement is used?

<ESMA\_QUESTION\_DP\_BMR\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_68>

1. Do you agree with this approach? If so, what do you think are the main distinctions – amid the identified detailed measures that a supervised contributor will be required to put in place - that it is possible to introduce to cater for the different types, characteristics of benchmarks and of supervised contributors?

<ESMA\_QUESTION\_DP\_BMR\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_69>

1. Do you foresee additional costs to your business or, if you are not a supervised contributor, to the business of others resulting from the implementation of any of the listed requirements? Please describe the nature, and where possible provide estimates, of these costs.

<ESMA\_QUESTION\_DP\_BMR\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_70>

1. Could the approach proposed, i.e. the use of the field total issued nominal amount in the context of MiFIR / MAR reference data, be used for the assessment of the “nominal amount” under BMR Article 13(1)(i) for bonds, other forms of securitised debt and money-market instruments? If not, please suggest alternative approaches

<ESMA\_QUESTION\_DP\_BMR\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_71>

1. Are you aware of any shares in companies, other securities equivalent to shares in companies, partnerships or other entities, depositary receipts in respect of shares, emission allowances for which a benchmark is used as a reference?

<ESMA\_QUESTION\_DP\_BMR\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_72>

1. Do you have any suggestion for defining the assessment of the nominal amount of these financial instruments when they refer to a benchmark?

<ESMA\_QUESTION\_DP\_BMR\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_73>

1. Do you agree with ESMA proposal in relation to the value of units in collective investment undertakings? If not, please explain why

<ESMA\_QUESTION\_DP\_BMR\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_74>

1. Do you agree with the approach of using the notional amount, as used and defined in the EMIR reporting regime, for the assessment of notional amount of derivatives under BMR Article 13(1)(i)? If not, please suggest alternative approaches.

<ESMA\_QUESTION\_DP\_BMR\_75>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_75>

1. Which are your views on the two options proposed to assess the net asset value of investment funds? Should you have a preference for an alternative option, please provide details and explain the reasons for your preference.

<ESMA\_QUESTION\_DP\_BMR\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_76>

1. Which are your views on the two approaches proposed to assess the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of an investment fund referencing a benchmark within a combination of benchmarks? Please provide details and explain the reasons for your preference. Do you think there are other possible approaches? If yes, please explain.

<ESMA\_QUESTION\_DP\_BMR\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_77>

1. Do you agree with the ‘relative impact’ approach, i.e. define one or more value and “ratios” for each of the five areas (markets integrity; or financial stability; or consumers; or the real economy; or the financing of households and corporations) that need to be assessed according to Article 13(1)(c), subparagraph (iii)? If not, please elaborate on other options that you consider more suitable.

<ESMA\_QUESTION\_DP\_BMR\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_78>

1. What kind of other objective grounds could be used to assess the potential impact of the discontinuity or unreliability of the benchmark besides the ones mentioned above (e.g. GDP, consumer credit agreement etc.)?

<ESMA\_QUESTION\_DP\_BMR\_79>

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<ESMA\_QUESTION\_DP\_BMR\_79>

1. Do you agree with ESMA’s approach to further define the above criteria? Particularly, do you think that ESMA should develop more concrete guidance for the possible rejection of the NCA under Article 14c para 2? Do you believe that NCAs should take into consideration additional elements in their assessment?

<ESMA\_QUESTION\_DP\_BMR\_80>

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<ESMA\_QUESTION\_DP\_BMR\_80>

1. Do you think that the fields identified for the template are sufficient for the competent authority and the stakeholders to form an opinion on the representativeness, reliability and integrity of a benchmark, notwithstanding the non-application of some material requirements? Could you suggest additional fields?

<ESMA\_QUESTION\_DP\_BMR\_81>

The identified fields seem to be sufficient, however we want to stress ESMA’s statement that the statement can refer to a family of benchmarks (DP § 258).

<ESMA\_QUESTION\_DP\_BMR\_81>

1. Do you agree with the suggested minimum aspects for defining the market or economic reality measured by the benchmark?

<ESMA\_QUESTION\_DP\_BMR\_82>

We agree with the suggested description of the type of market. However, the description of the market access and of the market participants cannot be established in absolute terms. Rather, the administrator should provide a description of the type of market (as detailed in the DP § 264) which is sufficient for stakeholders to assess the market access and the market participants at a given point in time, hence the circumstances under which the market or economic reality measured by the benchmark may become unreliable.

<ESMA\_QUESTION\_DP\_BMR\_82>

1. Do you think the circumstances under which a benchmark determination may become unreliable can be sufficiently described by the suggested aspects?

<ESMA\_QUESTION\_DP\_BMR\_83>

While aspects such as size and number of participants, or liquidity, are relevant to the above-mentioned review process, it is our understanding that such aspects are not always relevant and therefore they do not have to be described in each benchmark’s methodology.

<ESMA\_QUESTION\_DP\_BMR\_83>

1. Do you agree with the minimum information on the exercise of discretion to be included in the benchmark statement?

<ESMA\_QUESTION\_DP\_BMR\_84>

AMAFI considers that only the applicability element should be required. It should be left to the discretion of the administrator to justify that the discretion is necessary, or to describe the body which evaluates the exercise of discretion.

<ESMA\_QUESTION\_DP\_BMR\_84>

1. Are there any further precise minimum contents for a benchmark statement that should apply to each benchmark beyond those stated in Art. 15(2) points (a) to (g) BMR?

<ESMA\_QUESTION\_DP\_BMR\_85>

We do not see other minimum contents for the benchmark statement. Rather we question the possibility to describe in absolute terms the minimum data needed to determine the benchmark, or the controls and rules that govern the exercise of discretion, if any. Also, as per above, the disclosure of the existence of discretion should suffice, at least for administrators of non-significant benchmarks which are supervised entities: controls and rules that govern discretion are addressed in an administrator’s conflict of interest policy.

<ESMA\_QUESTION\_DP\_BMR\_85>

1. Do you agree that a concise description of the additional requirements including references, if any, would be sufficient for the information purposes of the benchmark statement for interest rate benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_86>

Such description should not apply to Regulated Data benchmarks, nor to benchmarks using different inputs, amongst which an interest rate component which is in fact merely an existing regulated interest rate benchmark. In fact such interest rate component should be viewed as a market data rather than an input data.

<ESMA\_QUESTION\_DP\_BMR\_86>

1. Do you agree that the statement for commodity benchmarks should be delimited as described? Otherwise, what other information would be essential in your opinion?

<ESMA\_QUESTION\_DP\_BMR\_87>

Such statement for commodity benchmark should not apply to non significant benchmarks

<ESMA\_QUESTION\_DP\_BMR\_87>

1. Do you agree with ESMA's approach not to include further material requirements for the content of benchmark statements regarding regulated-data benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_88>

AMAFI agrees and furthermore, as described above, in application of the proportionality principle, we would even differentiate further between different types of benchmarks, and exempt certain categories of benchmarks from the requirements previously described.

<ESMA\_QUESTION\_DP\_BMR\_88>

1. Do you agree with the suggested additional content required for statements regarding critical benchmarks? If not, please precise why and indicate what alternative or additional information you consider appropriate in case a benchmark qualifies as critical.

<ESMA\_QUESTION\_DP\_BMR\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_89>

1. Do you agree with the suggested additional requirements for significant benchmarks? Which of the three options proposed you prefer, and why?

<ESMA\_QUESTION\_DP\_BMR\_90>

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<ESMA\_QUESTION\_DP\_BMR\_90>

1. Do you agree with the suggested additional requirements for non-significant benchmarks? If not, please explain why and indicate what alternative or additional information you consider appropriate in case a benchmark is non-significant.

<ESMA\_QUESTION\_DP\_BMR\_91>

We appreciate the flexibility for administrators of non-significant benchmarks not to apply certain requirements, and we suggest that administrators disclose in the benchmark statement the elements of information described in option one.

<ESMA\_QUESTION\_DP\_BMR\_91>

1. Are there any further contents for a benchmark statement that should apply to the various classes of benchmarks identified in this chapter?

<ESMA\_QUESTION\_DP\_BMR\_92>

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<ESMA\_QUESTION\_DP\_BMR\_92>

1. Do you agree with the approach outlined above regarding information of a general nature and financial information? Do you see any particular cases, such as certain types of providers, for which these requirements need to be adapted?

<ESMA\_QUESTION\_DP\_BMR\_93>

We consider that much of the required information will be already well know by national competent authorities of Supervised Entities. Hence the requirements need to be adapted for such entities.

<ESMA\_QUESTION\_DP\_BMR\_93>

1. Do you agree with ESMA’s approach to the above points? Do you believe that any specific cases exist, related either to the type of provider or the type of conflict of interest, that require specific information to be provided in addition to what initially identified by ESMA?

<ESMA\_QUESTION\_DP\_BMR\_94>

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<ESMA\_QUESTION\_DP\_BMR\_94>

1. Do you agree with the proposals outlined for the above points? Do you see any areas requiring particular attention or adaptation?

<ESMA\_QUESTION\_DP\_BMR\_95>

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<ESMA\_QUESTION\_DP\_BMR\_95>

1. Can you suggest other specific situations for which it is important to identify the information elements to be provided in the authorisation application?

<ESMA\_QUESTION\_DP\_BMR\_96>

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<ESMA\_QUESTION\_DP\_BMR\_96>

1. Do you agree with the proposed approach towards registration? How should the information requirements for registration deviate from the requirements for authorisation?

<ESMA\_QUESTION\_DP\_BMR\_97>

We agree with the general approach and, as described in § 307 of the DP, we encourage ESMA to avoid any overlap between the information needed for authorization and that needed for registration.

<ESMA\_QUESTION\_DP\_BMR\_97>

1. Do you believe there are any specific types of supervised entities which would require special treatment within the registration regime? If yes, which ones and why?

<ESMA\_QUESTION\_DP\_BMR\_98>

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<ESMA\_QUESTION\_DP\_BMR\_98>

1. Do you have any suggestions on which information should be included in the application for the recognition of a third country administrator?

<ESMA\_QUESTION\_DP\_BMR\_99>

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<ESMA\_QUESTION\_DP\_BMR\_99>

1. Do you agree with the general approach proposed by ESMA for the presentation of the information required in Article 21a(6) of the BMR?

<ESMA\_QUESTION\_DP\_BMR\_100>

ESMA should ensure that there is no disadvantaged competitive consequences for the EU financial industry compared to non EU competitors, possibility to use a non EU & not approved benchmarks.

<ESMA\_QUESTION\_DP\_BMR\_100>

1. For each of the three above mentioned elements, please provide your views on what should be the measures to determine the conditions whether there is an ‘objective reason’ for the endorsement of a third country benchmark.

<ESMA\_QUESTION\_DP\_BMR\_101>

ESMA should ensure that there is no disadvantaged competitive consequences for the EU financial industry compared to non EU competitors, possibility to use a non EU & not approved benchmarks.

<ESMA\_QUESTION\_DP\_BMR\_101>

1. Do you consider that there are any other elements that could be taken into consideration to substantiate the ‘objective reason’ for the provision and endorsement for use in the Union of a third country benchmark or family of benchmarks?

<ESMA\_QUESTION\_DP\_BMR\_102>

ESMA should ensure that there is no disadvantaged competitive consequences for the UE financial industry compared to non EU industries, possibility to use a non EU & not approved benchmarks.

<ESMA\_QUESTION\_DP\_BMR\_102>

1. Do you agree that in the situations identified above by ESMA the cessation or the changing of an existing benchmark to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument which references a benchmark? If not, please explain the reasons why.

<ESMA\_QUESTION\_DP\_BMR\_103>

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<ESMA\_QUESTION\_DP\_BMR\_103>

1. Which other circumstances could cause the consequences mentioned in Article 39(3) in case existing benchmarks are due to be adapted to the Regulation or to be ceased?

<ESMA\_QUESTION\_DP\_BMR\_104>

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<ESMA\_QUESTION\_DP\_BMR\_104>

1. Do you agree with the proposed definition of “force majeure event”? If not, please explain the reasons and propose an alternative.

<ESMA\_QUESTION\_DP\_BMR\_105>

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<ESMA\_QUESTION\_DP\_BMR\_105>

1. Are the two envisaged options (with respect to the term until which a non-compliant benchmark may be used) adequate: i.e. either (i) fix a time limit until when a non-compliant benchmark may be used or (ii) fix a minimum threshold which will trigger the prohibition to further use a non-compliant benchmark in existing financial instruments/financial contracts?

<ESMA\_QUESTION\_DP\_BMR\_106>

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<ESMA\_QUESTION\_DP\_BMR\_106>

1. Which thresholds would be appropriate to foresee and how might a time limit be fixed? Please detail the reasons behind any suggestion.

<ESMA\_QUESTION\_DP\_BMR\_107>

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<ESMA\_QUESTION\_DP\_BMR\_107>

1. Is the envisaged identification process of non-compliant benchmarks adequate? Do you have other suggestions?

<ESMA\_QUESTION\_DP\_BMR\_108>

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<ESMA\_QUESTION\_DP\_BMR\_108>

1. Is the envisaged procedure enabling the competent authority to perform the assessment required by Article 39(3) correct in your view? Please advise what shall be considered in addition.

<ESMA\_QUESTION\_DP\_BMR\_109>

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<ESMA\_QUESTION\_DP\_BMR\_109>

1. Which information it would be opportune to receive by benchmark providers on the one side and benchmark users that are supervised entities on the other side?

<ESMA\_QUESTION\_DP\_BMR\_110>

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<ESMA\_QUESTION\_DP\_BMR\_110>

1. Do you agree that the different users of a benchmark that are supervised entities should liaise directly with the competent authority of the administrator and not with the respective competent authorities (if different)?

<ESMA\_QUESTION\_DP\_BMR\_111>

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<ESMA\_QUESTION\_DP\_BMR\_111>

1. Would it be possible for relevant benchmark providers/users that are supervised entities to provide to the competent authority an estimate of the number and value of financial instruments/contracts referencing to a non-compliant benchmark being affected by the cessation/adaptation of such benchmark?

<ESMA\_QUESTION\_DP\_BMR\_112>

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<ESMA\_QUESTION\_DP\_BMR\_112>

1. Would it be possible to evaluate how many out of these financial contracts or financial instruments are affected in a manner that the cessation/adaptation of the non-compliant benchmark would result in a force majeure event or frustration of contracts?

<ESMA\_QUESTION\_DP\_BMR\_113>

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<ESMA\_QUESTION\_DP\_BMR\_113>