



European Securities and
Markets Authority

Reply form for the Discussion 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_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 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 under the headings 'Legal notice' and 'Data protection'.

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_DP_BMR_1>

Amundi is the leading asset manager in Europe and ranks in the top 10 of the industry worldwide, with assets under management above € 985 billion at the end of 2015. 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 which are tailored specifically to the requirements and risk profile of institutional and corporate clients. Amundi is a listed company with Credit Agricole Group as its majority shareholder.

Amundi runs a successful ETF department which uses indices as its base material but more generally indices are widely used to communicate with clients. Through the reference to an index or combination of indices they have a direct understanding of the universe of investment and the level of risk and return that can be expected. In France, COB and AMF afterwards have insisted on the benefits for investors to be shown an index as reference to compare performances of a fund.

Amundi welcomes the benchmark regulation (BMR) which, through the supervision of administrators, will enhance public confidence in the financial markets. We feel that the definition of the role and the responsibilities of the administrator is a major step ahead. We totally agree with the proportionate approach taken by the legislators according to the criticality and the significance of the index. We support the decisions to consider more favourably indices based on transactions and regulated data (including NAV UCITS and /or FIA), to place specific attention on contributors in case of benchmarks relying on contributions, to recognise families of benchmarks and keep combination of indices out of scope...

However, Amundi has to express some fears and we would like to receive confirmation that they are unjustified:

- Guidelines ESMA: by far our main concern is about the consistency between BMR and ESMA *Guidelines on ETF and other issues on UCITS* published in December 2012, now ESMA 2014/937. These guidelines have imposed on UCITS managers to conduct due diligences in order to assess the compliance with a list of requirements expressed in chapter XIII, articles 49 to 62.. Some of these requirements are not in the power of the asset management company to comply with and that leads to very negative unintended consequences. We think that the introduction of BMR creates an opportunity to revisit the guidelines and choose whether (i) to delete those requirements of chapter XIII that were introduced as an emergency measure waiting for BMR to ensure that benchmarks are properly regulated, or (ii) to make administrators responsible for flagging their benchmarks that are compliant to ESMA's guidelines (the list of indices that are ESMA compliant should be made public through the website of ESMA). In order to illustrate the fact that some requirements of the guidelines are impossible for the UCITS manager to assess, we would mention the impossibility to investigate the absence of payment by potential index components to be included in the index (§ 59) or the absence of back filing (§60) or the independent audit required in §61... these are areas where the UCITS manager has to rely on declarations made by the administrator. The requirement would be far more relevant if the administrator had to affirm its compliance with these requirements to its supervisor and if asset managers as well as investors could rely on these official declarations. Another example of a negative consequence is to be found in § 49 of the guidelines which foresees the 20/35% ratio for an index to be eligible as benchmark in a UCITS. Many administrators do not include that parameter in their calculation and the guidelines impose on asset management companies to monitor the percentage on a continuous basis with no other possibility, in case of possible breach, but to ask for the tailor made version of the same benchmark with the inclusion of the 20/35 ratio. Of course that will have an undue impact on cost.
- Cost : the result of BMR should not be an increase in cost for users of benchmarks. At the end of the day, when considering funds, it is the unit holder who will pay the fee that administrators charge. These investors are not always aware that they happen to pay several times the access to the same indices. Some of them may even believe that benchmarks are public goods that are freely accessible.

- Transitional provisions, grandfathering: BMR should not have as a consequence the early termination of instruments that have as reference benchmarks that will not be compliant at the end of the 2 year period allowed for. Level 1 text foresees the case where compliance would result *in a force majeure event , frustrate or otherwise breach the terms of any existing contract*. We believe that this does not allow for a mandatory resolution of these former contracts within a delay and in case an amount threshold is no longer met. Grand fathering clause has to be available to keep existing contracts running till their maturity.
- Bespoke indices, public or restricted use: we believe that bespoke indices that are used on a restricted basis for funds that are subscribed by a limited number of investors who agree to keep confidential the access they have to one index are not within the scope of benchmarks made accessible to the public; hence, they should clearly be mentioned as out of scope of BMR.
- Disclosure (delay, weighting, duplication...): the issue of availability of the components of an index and their weighting crosses two of the preceding concerns, ESMA guidelines and cost. Guidelines ask for replicability of indices used in UCITS and that means access to their components and weightings. In practice the policies of administrators vary very much in that field ranging from total transparency (EuroMTS or Stoxx for example) to incomplete transparency that nearly amounts to opacity (for example, SP publishes composition and weightings without specifying the reference date on a webpage that varies very often and makes it impossible to have automatic requests) with various degrees of intermediate transparency rules. We support the idea that regulation should require total transparency on public indices at a reasonable cost and with no excessive delay. However, we understand that regulators have agreed to consider in BMR that the protection of intellectual property rights justifies the absence of total transparency. We expect guidelines to be reformed or amended on that point to gain consistency and take reality into consideration. The second impact is to be feared on the cost to timely access data of an index if disclosure is not mandatory but nevertheless a regulatory requirement .
- Third countries: Amundi reckons that many of the indices it uses are administered by entities based in third countries. It would be counterproductive to create an unlevelled playing field among indices according to whether their administrator is based in the EU and subject to BMR or not. Conversely, we do not want third country indices to be declared ineligible, as it would damage the variety of strategies which investors could be exposed to. We recommend that supervisors take a cautious approach based on reciprocity and rely on *Principles for the administration of benchmarks* drafted by IOSCO when assessing the eligibility of an index produced by a third country entity.

<ESMA_COMMENT_DP_BMR_1>

Q1: 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>

Publication is the first of three characteristics of an index. The other 2 are (i) the regular determination of the index (ii) based on the value of underlyings. Amundi believes that a proper balance must be reached when defining "made available to the public". On the one hand, we think that what is privately dealt and referred to is private and on the other hand we prefer the regulation to have a large scope to be effective and capture future innovative indices. If we understand ESMA's approach to analyse publication channels, ease of access, reliability of the publication process as expressed in §15, we would prefer ESMA to investigate further what is private. In our view availability to the public covers everything that is not specifically private. Communication to a limited number of persons which agree to confidentiality will not in that respect qualify as availability to the public. Confidentiality and exclusiveness amount to privacy and should remain out of scope. This is of relevance to allow tailor made bespoke indices to be used in total confidentiality for specific deals.

<ESMA_QUESTION_DP_BMR_1>

Q2: 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>

Amundi agrees that the circulation on the internet or in the press of the value of an index is not sufficient to consider that this index is made available to the public. The methodology, the universe or segment that the index intends to represent, the type of data used...are in our opinion a minimum necessary to make an index understandable and, hence, available to the public. We believe that the characteristics required in the brief on the methodology of the index in the regulation is a good proxy of what should be disclosed for public to have real access to an index. We feel uncomfortable with the suggestion in §18 that disclosure made for the exclusive usage of authorities may be taken into consideration : public access is not granted to data that are confidential and not readily accessible to the public.

<ESMA_QUESTION_DP_BMR_2>

Q3: 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>

Yes. Amundi believes that IOSCO Principles for benchmarks represent a good reference and we support the efforts made for their implementation in Europe and wish other countries will follow. On top of the areas covered by the 19 principles, Amundi believes that specific attention should be brought on the circuits for publication and the responsibilities involved. Market timing, embargo, appropriate diffusion lists... are issues that are of importance when administering a benchmark.

<ESMA_QUESTION_DP_BMR_3>

Q4: 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 agree with the mention that the issuance of a financial instrument is clearly made with an objective to finance the issuer when considering securities. We think that derivatives are contracted for or written but not issued. In our opinion ESMA should stick to the common sense affirmation that an issue brings cash to the issuer for the purpose of financing its activity. We do not support the addition of the last words in § 30

that foresee the hedging of a risk. Actually, definition of benchmark in Art 3(1) (5) covers in (c) financial contracts and we do not think necessary to distort the concept of issuance in that occasion. We also notice that funds are specifically mentioned in point (d) of the same article and should not be included in the definition of issuance in point (a).

<ESMA_QUESTION_DP_BMR_4>

Q5: 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>

No. The concept of issuance applies to securities and implies the collection of cash by the issuer in order to finance its activity. Derivative instruments are covered under (c) in the definition of use of Benchmark. It covers parties to the derivative which is the case for CCPs but not for market venues. But under (b) both CCPs and market operators may be caught as they calculate amounts payable under a financial instrument they offer trading in. Quotes of the instrument and prices shown on the market cannot exist without reference to the underlying index and they prepare transfers of cash amounts.

<ESMA_QUESTION_DP_BMR_5>

Q6: 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>

We believe that the text should be more specific and not confuse function and committee. On the one hand we believe that exactly like in the asset management industry, firms should organise for an independent oversight function with dedicated staff fully trained and competent that will operationally carry the necessary tasks as listed. On the other hand, we believe that it is advisable to establish different supervisory committees for different types of indices with a view to ensure an efficient governance of each family of benchmarks.

<ESMA_QUESTION_DP_BMR_6>

Q7: 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>

Amundi supports the proportionate approach that ESMA intends to follow.

<ESMA_QUESTION_DP_BMR_7>

Q8: 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_8>

Q9: 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 func-

tions where it provides benchmarks that have different methodologies, users or seek to measure very different markets or economic realities?

<ESMA_QUESTION_DP_BMR_9>

We believe that administrators should have flexibility when organising their oversight function and we support the fact that they may choose to differentiate or not and with different levels of granularity among the methodologies or types of indices. The relevant point is to ensure proper supervision for the benefit of benchmark users.

<ESMA_QUESTION_DP_BMR_9>

Q10: 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>

Amundi thinks that critical benchmarks will not be so numerous and will require such special care that it will be difficult for an administrator not to run a specific oversight committee for each individual critical benchmark or family of benchmarks. In most instances, the staff supporting the Committees will however be part of the same team and involved in the supervision of several indices.

<ESMA_QUESTION_DP_BMR_10>

Q11: 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>

We continue to believe that function and Committees are 2 different things. A unique independent oversight function is not only acceptable but probably advisable in order to share competences among members of the team and develop cross and comparative approach. Conversely, we expect oversight committees to be set up on a more granular level. Typically, critical indices should in our view be considered separately and for other indices we believe that the nature of the indices is more important than their classification as significant or not as we favour considering the technical expertise and not the legal framework.

<ESMA_QUESTION_DP_BMR_11>

Q12: In which cases would you agree that contributors should be prevented from participating in oversight committees?

<ESMA_QUESTION_DP_BMR_12>

Amundi considers that contributors are key actors in the process of running indices. In our opinion, it is highly relevant, for a governance purpose, that supervisory committees receive the view point of contributors. Like for any representative of stakeholders, contributors should be disqualified to participate in discussion where they are in conflict of interests.

<ESMA_QUESTION_DP_BMR_12>

Q13: 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>

As most asset managers, Amundi experienced a significant increase in the cost related to the use of benchmarks. This trend is obviously sustained by the limited number of providers of indices with a real franchise that will appeal to investors. However, we feel that, as part of the new regulatory framework established by the BMR, authorities should pay attention to the contractual relationships of administrators with their clients by suggesting standards for best practices. This is not limited to pricing policies but more generally to commercial practices as well as responsibilities and extent of intellectual property rights. As a rule we think that invoicing should not spread for the same service to cascade to several levels of users. Yes, we are concerned that administrators may take advantage of the new requirements imposed by the BMR to further increase their prices. We consider that the regulation has enshrined good practices that should not profoundly impact administrators in their daily work.

<ESMA_QUESTION_DP_BMR_13>

Q14: 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>

Yes, we support ESMA's view.

<ESMA_QUESTION_DP_BMR_14>

Q15: 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>

Yes.

<ESMA_QUESTION_DP_BMR_15>

Q16: 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>

There are limits in the comparison drawn between the oversight committee and other Committees like audit or remuneration committees. The latter ones are specific committees within the Board of directors to prepare its decisions. For the oversight committee it might be helpful to illustrate with possible positioning within the firm and in relationship with governance bodies.

<ESMA_QUESTION_DP_BMR_16>

Q17: 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>

Yes.

<ESMA_QUESTION_DP_BMR_17>

Q18: 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>

We consider though that, provided that they manage conflicts of interests, contributors should be encouraged to join oversight committees.

<ESMA_QUESTION_DP_BMR_18>

Q19: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_19>

Q20: 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>
Amundi supports the suggestion to leave it to a code of conduct to define the frequency of transmission of information. ESMA would simply make sure that it is not unrealistic.
<ESMA_QUESTION_DP_BMR_20>

Q21: Do you agree with the concept of appropriateness as elaborated in this section?

<ESMA_QUESTION_DP_BMR_21>
We expect that expert judgement in input data will be limited and unusual. We consider that contributors should not transmit data that rely on expert judgement but should make proposals relying on expert judgement in case of their impossibility to contribute data. Then it would be for the administrator to exercise expert judgement to decide whether and how it uses these proposals. Hence, the administrator would have full knowledge and responsibility for expert judgement embedded in the index.
<ESMA_QUESTION_DP_BMR_21>

Q22: 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>

Q23: 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>
From a user's point of view it is not useful, except in case when expert judgement is used where we believe that traceability of the process must be available. On a daily basis, compliance to procedures is audited and organised at the level of the firm.
<ESMA_QUESTION_DP_BMR_23>

Q24: Do you see other possible measures to ensure verifiability of input data?

<ESMA_QUESTION_DP_BMR_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_24>

Q25: 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>

Q26: 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>
As user of benchmarks relying on contributions, we believe that authorities should be attentive to maintain a sufficient number of contributions of quality. In other words we should keep a balance between ensuring the integrity and the relevance of the contributions through appropriate requirements and avoiding excessive burden that would disincentivize contributors. So we do believe that training is important but do not like the idea to impose constraints on the frequency and the level of the training; it should be left to the firms and ESMA could, in case of real need for clarification expressed by firms, issue guidelines afterwards.
<ESMA_QUESTION_DP_BMR_26>

Q27: Do you agree to the three lines of defence-principle as an ideal type of internal oversight architecture?

<ESMA_QUESTION_DP_BMR_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_27>

Q28: 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>

Q29: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_29>

Q30: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_30>

Q31: 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>

Q32: 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>

Q33: 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>

Q34: 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>

Amundi needs to be able to duplicate indices it refers to as a matter of control or as part of the process of a fund. Therefore the list of key elements as it stands is very disappointing since it does not include transparency on data. We insist on the fact that administrators should be obliged to provide full transparency without delay at reasonable price conditions.

We think that information should also include a description of an index as well as its objective and the universe of its components as well as the basis for their selection.

<ESMA_QUESTION_DP_BMR_34>

Q35: 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>

- Amundi is very surprised that ESMA does not link the proposed criteria with its own Guidelines on ETF (ESMA /2012/832 now ESMA/2014/937) and other UCITS issues. In these Guidelines ESMA imposes on asset managers which run UCITS to conduct due diligences in order to assess the eligibility of the proposed index or benchmark in the investment strategy of a UCITS. For many of the numerous items that have to be checked, asset managers are dependent on declarations made by benchmark administrators or their answer to the standard questionnaire elaborated by EFAMA, the professional association for European asset managers. We feel that BMR provides with a unique opportunity to put it straight and require administrators to provide information on items required under the guidelines to be assessed by asset managers or to flag the indices that are UCITS compliant. In particular the transparency on data and calculation methodology have to be communicated to asset managers. Amundi, hence, demands ESMA to bring some consistency in the regulation (i) in suppressing art 49 to 62 of the Guidelines or (ii) flagging UCITS compliant indices or (iii) by expanding the list of items to be disclosed and include the following data:
- For leveraged indices, information on the leverage contained, the volatility target (if any) and its recognition by an authority (if any), as well as if the index is subject to independent valuation and/or audit
- The composition and the underlying assets of the index, whether this composition complies with the UCITS diversification rules, the cap on the individual component weight (if any) and the inclusion of commodities and sub-categories of them.
- The market that the index represents and the percentage of the market or the underlying components, the performance of the representative group of underlying components in the case of an index meas-

- uring the performance, the sufficient liquidity of the underlying asset if the index is regularly reviewed or rebalanced and the sufficient liquidity of the underlying asset that can allow to replicate the index.
- The way index components are selected and on what basis these components are selected for the strategy.
 - Whether the index strategy is partly based on cash payment.
 - How frequently an index is rebalanced and whether the method used to select index constituents and to rebalance its composition are based on predefined rules.
 - If the index is published and the way that this is done (website, media, the frequency of the publishing) as well as the publication includes information on the index calculation methodology, the pricing procedure for individual components, the constituents and their weighting, any operational difficulties.
 - Index rebalancing, its frequency, costs and method.
 - If the weightings of the index components are published before the next rebalancing of the index
 - Whether the index provider is permitted to accept payments from potential index components for inclusion in the index.
 - Whether the administrator is prevented from any backfiling.
 - How the external audit is conducted.

We insist that in order to comply with ESMA guidelines as they exist today, that type of information is necessary and we think that BMR should require proper disclosure by the administrator.

<ESMA_QUESTION_DP_BMR_35>

Q36: 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>

Yes. However, we agree that publication could be reasonably delayed for the elements that allow replication and that the protection of intellectual property rights of the administrator could justify access to the complete methodology to be restricted to subscribers. We believe that BMR should list those items that the administrator should make available to the public and that ESMA should split the list of requirements in its Guidelines between those which relate to the responsibility and organisation of the administrator and those that are under the responsibility and organisation of the UCITS manager.

<ESMA_QUESTION_DP_BMR_36>

Q37: 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>

Yes.

<ESMA_QUESTION_DP_BMR_37>

Q38: 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>

Yes, Amundi agrees with the proposals concerning information due in case of material change in methodology. We specifically agree that the oversight committee, being seized of all changes and amendments to the methodology, should be very attentive to examine when a change is material.

<ESMA_QUESTION_DP_BMR_38>

Q39: 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>

Amundi believes that transparency is a powerful driver to enhance public confidence and supports the publication of comments.

<ESMA_QUESTION_DP_BMR_39>

Q40: 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>

Yes, we agree that one of the aims of the regulation is to provide users of benchmarks with appropriate information, irrespective of the type of benchmark. However other criteria may justify proportionality and differentiation.

<ESMA_QUESTION_DP_BMR_40>

Q41: 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>

Idem.

<ESMA_QUESTION_DP_BMR_41>

Q42: 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>

No. As a general view, we think that proportionality is an overarching principle of the European regulation that applies at all levels. Level 2 and 3 may introduce proportionality rules as long as they do not contradict level 1 requirements. Conversely, level 2 and 3 must conform to proportionality foreseen in level 1 text and effectively implement it.

<ESMA_QUESTION_DP_BMR_42>

Q43: 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>

Q44: 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>

Q45: 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>

Q46: 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>

Q47: 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>

Q48: 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>

Q49: 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>

Q50: 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>

Q51: 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>

Q52: 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>

Q53: 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>

Q54: 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>

Q55: 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>

Q56: 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>

Q57: 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>

Q58: 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>

Q59: 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>

Q60: 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>

Q61: 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>

Q62: 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>

Q63: 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>

Q64: 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>

Q65: 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>

Q66: 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>

Q67: 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>

Q68: 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>

Q69: 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>

Q70: 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>

Q71: 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>

Q72: 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>

Q73: 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>

Q74: 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>
Amundi agrees with ESMA that there would be unjustified inflation of amounts if assets of investment funds were double counted.
<ESMA_QUESTION_DP_BMR_74>

Q75: 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>
Amundi supports the transversal approach that consists in referring to EMIR to use the same definition.
<ESMA_QUESTION_DP_BMR_75>

Q76: 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>
Amundi suggests that the latest NAV that should be considered is the last one made available to the public through a report, either regulatory or commercial. In most cases the report is on a monthly basis and is published within the following month. That applies for most UCITS and AIFs but not all. We consider that notional value is meaningless for funds and that updating is not of the highest importance when estimating the global amount referring to a benchmark, especially since we share ESMA's approach to introduce some proportionality with higher standards for benchmarks closer to the threshold.
<ESMA_QUESTION_DP_BMR_76>

Q77: 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>

Intellectually we prefer to limit the amount considered for the determination of the threshold to the proportion of the NAV referenced to each index within a composite index. It limits double counting especially in case of a composite that includes a small proportion of numerous indices.

<ESMA_QUESTION_DP_BMR_77>

Q78: 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>

Q79: 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_79>

Q80: 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_80>

Q81: 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_81>

Q82: Do you agree with the suggested minimum aspects for defining the market or economic reality measured by the benchmark?

<ESMA_QUESTION_DP_BMR_82>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_82>

Q83: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_83>

Q84: Do you agree with the minimum information on the exercise of discretion to be included in the benchmark statement?

<ESMA_QUESTION_DP_BMR_84>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_84>

Q85: 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 understand that it is implied that the Benchmark statement will inform on the type and sector of the benchmark. For the interest of clarification it could be expressly mentioned.
More important is the fact that there should be an explicit mention on the compliance of the index with the requirement included in ESMA's guidelines. These require managers of UCITS to ensure eligibility of a benchmark and BMR is the best opportunity to demand administrators, who are responsible for the production of the benchmark, to affirm compliance and flag the concerned indices. Asset managers would rely on this statement when using such benchmarks in a UCITS. Alternatively the declaration made by administrators could be limited to those items that he has responsibility for, and the asset manager would conduct a due diligence limited to those other items that are accessible for assessment by it.
<ESMA_QUESTION_DP_BMR_85>

Q86: 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>
Yes.
<ESMA_QUESTION_DP_BMR_86>

Q87: 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>
Yes.
<ESMA_QUESTION_DP_BMR_87>

Q88: 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>
If we agree with ESMA's approach vis à vis regulated data benchmarks, we want ESMA to correct the error that appears in §272. It refers to net asset value of UCITS when the definition of regulated data benchmarks in Article 3 (1) item (20) (a) (ii) mentions "net asset value of investment funds". AIFs NAV may as well as UCITS ones be used as regulated data.
<ESMA_QUESTION_DP_BMR_88>

Q89: 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>

Q90: 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>
We prefer option 2 where the statement not to apply some provisions of the regulation is followed by a list of those provisions. It brings all necessary information and keeps the length of the statement to a minimum size.
<ESMA_QUESTION_DP_BMR_90>

Q91: 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 support option 2 as in the previous question.
<ESMA_QUESTION_DP_BMR_91>

Q92: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_92>

Q93: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_93>

Q94: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_94>

Q95: 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>

Amundi is attentive to the publication of key elements of the methodology as it is a determinant factor when considering compliance with ESMA's guidelines. We suggest that BMR modify the guidelines and that the authorisation process include the minimal requirements that ESMA expects from the administrator in terms of transparency. The administrator should flag the indices that comply with the guidelines.

<ESMA_QUESTION_DP_BMR_95>

Q96: 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>

Special situations should include cessation of the publication of a benchmark.

<ESMA_QUESTION_DP_BMR_96>

Q97: 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>

No, we think that by following the same process for registration and authorisation ESMA would not be in line with level 1 text that foresees 2 different procedures. We suggest that supervised entities being already controlled by a national authority should just be required to amend their existing file and ask for the extension towards administration of benchmarks. It would be a complement to the existing program of activities with a focus on governance and characteristics of indices. If indices are non-significant we could even imagine an on-line registration file for already supervised entities.

<ESMA_QUESTION_DP_BMR_97>

Q98: 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>

The administration of benchmark should be considered with a particular attention on potential conflicts of interests. If an asset manager applies for registration of non-significant benchmarks, it should establish an independent function separated from front office operations. For example we believe that a specialist team within the risk department is acceptable.

<ESMA_QUESTION_DP_BMR_98>

Q99: 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>

Amundi uses benchmarks and indices which are administered by third country entities to a large extent. This is the result of the organisation of the market for indices worldwide. We rely on very large international producers but also on local specialists, for example a market venue that may run one index only. They should not be confronted to excessive burden to be compliant with BMR. We strongly believe that the reference to IOSCO principles should define the level of expectation of ESMA when assessing recognition. We think that recognition should be subject to reciprocity, meaning that indices produced by European administrators should be locally recognised when ESMA recognises local producers and indices. This policy would help promoting the implementation of IOSCO principles, knowing that BMR is positioning Europe as a leader. We should avoid to turn that into a competitive disadvantage for European entities and therefore the transitional provisions, including grandfathering, are of utmost importance.

<ESMA_QUESTION_DP_BMR_99>

Q100: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_100>

Q101: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DP_BMR_101>

Q102: 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>
Globally, Amundi considers that endorsement is a good solution to introduce third country benchmarks in the EU as it goes further than recognition in terms of compliance with BMR. We believe that this procedure should be encouraged and that the interpretation of criteria such as “objective reason” should be flexible.
<ESMA_QUESTION_DP_BMR_102>

Q103: 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>
Yes, we agree that significant difference in value, unforeseen substitution of referenced benchmark and change of law represent cases of force majeure.
<ESMA_QUESTION_DP_BMR_103>

Q104: 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>
We believe that other cases may as well amount to force majeure within the meaning of Article 39 (3) of BMR. In particular we think that even if substitution were foreseen in the contract if it were detrimental to one party it could not be imposed and would result in a force majeure event. Furthermore, if the change of benchmark leads to the termination of the contract it would *frustrate or otherwise breach the terms of the contract* and be assimilated to force majeure.
<ESMA_QUESTION_DP_BMR_104>

Q105: 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>
Amundi agrees with the proposed definition but is worried that the concept of force majeure is not transversally aligned in all European regulations. The concept has been introduced by French code and jurisprudence on the basis of 3 characteristics: event which is unpredictable, irresistible and independent of

the victim's will. We think that the proposed definition refers to these criteria but suggest that practitioners may in the future rely on a common definition.

<ESMA_QUESTION_DP_BMR_105>

Q106: 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>

Force majeure events may last and frustration or breach of a contract that would result from a change of benchmark will reduce in volume but not disappear with time. If there is harm in changing index, it should be avoided and BMR can only apply to the future. We disagree with both options and ask for a grandfathering clause without time nor amount limitations.

<ESMA_QUESTION_DP_BMR_106>

Q107: 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>

We do not agree with the idea to introduce a threshold. As soon as one counterparty would be hurt by a substitution of indices, it is not a question of thresholds : qualitative issues cannot result in quantitative measures.

<ESMA_QUESTION_DP_BMR_107>

Q108: Is the envisaged identification process of non-compliant benchmarks adequate? Do you have other suggestions?

<ESMA_QUESTION_DP_BMR_108>

The process for authorisation of a benchmark involves on one side the administrator and on the other the NCA. They are the only ones to be aware of the result of the authorisation process. It is not foreseen that users will have official access to this information. They will consult the website of ESMA to see which benchmarks are compliant . This source will be effective for knowing, by deduction, which indices are non-compliant only at the end of the 2 year delay allowed for administrator to meet BMR obligations. Consequently, we think that the process as described by ESMA should not rely on users to help. Furthermore, supervised entities know their supervisor but the NCA in charge of the supervision of administrators has no legal basis to require entities not subject to its supervision to transmit information. It should transit through the NCA in charge of the supervised entity.

<ESMA_QUESTION_DP_BMR_108>

Q109: 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_109>

Q110: 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>

Benchmark users, in particular asset managers, will not be a reliable source of information. They will only provide a limited view of the universe of benchmarks. They should be considered as a supplementary source and a backup solution that will not allow a thorough and exhaustive approach.

<ESMA_QUESTION_DP_BMR_110>

Q111: 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>

No, supervised entities know their supervisor and keep in contact with it. They have no reason to be aware of who is the competent authority of the administrator of a benchmark, especially a non-compliant benchmark that will not be listed on ESMA's website.

<ESMA_QUESTION_DP_BMR_111>

Q112: 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>

When specifically asked by the NCA, Amundi will undoubtedly be able to answer and give indications on its use of non-compliant benchmarks. However Amundi will not be in a position to unilaterally assess which benchmarks are concerned: NCA's request must be precise and list all indices and benchmarks it requires information about. An asset manager will not be informed of the non-compliance of a benchmark before it can consult on ESMA's website the list of authorised indices and benchmarks.

<ESMA_QUESTION_DP_BMR_112>

Q113: 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>

Amundi is ready to prepare, and transmit to its supervisor, detailed information on the capacity to substitute indices to non-compliant benchmarks it uses. However, Amundi strongly believes that there is no alternative to unlimited grandfathering in order to continue the usage of benchmarks that fail to be compliant.

<ESMA_QUESTION_DP_BMR_113>