2016-03-31

**ESMA Discussion Paper on Benchmarks Regulation**

The Swedish Bankers´ Association represents the Swedish banking industry and is the administrator of STIBOR (the Stockholm Interbank Offered Rate). We welcome the opportunity to submit comments on the ESMA discussion paper on benchmarks regulation. Our comments are mainly written from the perspective of an administrator.

Initially the Swedish Bankers´ Association would like express our support for the key issues addressed by the European Banking Federation (EBF) in its response to the discussion Paper on Benchmarks Regulation.

**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?**

We are of the view that “being made available to the public” should be interpreted in a restrictive way in order to capture only those benchmarks which are intended to be used by the public. It must be possible to provide a benchmark to a limited group of customers and investors without having to comply with BMR.

**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?**

No.

**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´s proposal seems to go further than the level I text. It don´t seem in line with the level I text to widen the liabilities at level II.

**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´s proposal seems to go further than the level I text.

**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?**

No comments

**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?**

In par 36 it is stated that the oversight function is responsible for a number of activities which are listed. However, in par. 37 the main purpose of the oversight function is described as an effective challenge to the Board and in par 49 that the oversight function should operate as a consultative body. We agree with this structure. Our conclusion is that the Board of the administrator is legally responsible and that the benchmark methodology should be formally approved by the Board or the Management body.

According to our opinion the consultative role of the oversight committee can´t be combined with a duty to oversee any third party, to take actions for breaches of the code of conduct or to report contributor misconduct to the Competent Authority. Also when it comes to these matters the committee should only perform a consultative role and give advice to the management of the administrator. However, if the management don´t take due account of comments or advice by the committee, the committee as a last option must be able to report to the Competent Authority.

**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?**

No comments.

**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.**

As administrator of STIBOR (the Stockholm Interbank Offered Rate) we have established a committee consisting of representatives from the contributors and two independent members. This has been done in order to fulfil the EBA/ESMA recommendations.

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

Our opinion is that separate oversight functions are needed since each market has its own characteristics and the oversight function/committee must consist of (at least some) specialists in that area. However, we suggest that the administrator is given the flexibility to decide what is most appropriate.

**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?**

See our comments on Q 9. Sub-functions would be preferable.

**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?**

Yes

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

It is essential that the contributors participate in the committee since they have deep knowledge of the relevant market which is a necessity to have when considering for instance changes of the methodology and evaluate the effects on the market of new trends or incidents.

**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.**

Certainly there will be additional costs. The new regulatory demands mean that the number of staff members must increase, that new IT-systems must be developed, the remuneration of members of the oversight committee must increase etc. There will also be additional costs for legal advice and external auditors. At this stage it is not possible to estimate the costs since the level will depend on the delegated acts and technical standards. It is also crucial that it is clarified what kind of risks the administrator is exposed to and who can be held liable within the organisation of the administrator since increased risk-exposure will also drive the additional costs.

**Q14: Do you agree that, in all cases, an oversight function should not be responsible for overseeing the business decisions of the management body?**

Yes, it is important to have a distinction between the oversight function and the management body. Since it is said in the discussion paper that the oversight function is a consultative body it can´t at the same time be responsible for overseeing the management body. The question illustrates the need to clarify the roles and relationship between the oversight function and the management body. The committee should only be responsible for overseeing the benchmark.

**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.**

Yes.

**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?**

As we understand it, the effect of the proposal is that the management body and the Board of the administrator are those who will be legally responsible for the operation of the benchmark system. – Can the oversight committee be legally responsible for any part of the benchmark system?

**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?**

It should be possible to employ different procedures for different types of benchmarks.

**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?**

We question if contributors should be excluded from committee meetings since it is often relevant to have information from the contributors when evaluating submissions or incidents. One way of handling a conflict of interest might be to separate the discussion and the decision-making and only exclude the contributor in question when the decision is about to be taken.

**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.**

It is totally unnecessary that all this data is kept by the administrator. Most of the data listed in par 70 is generated by or used by the contributor and thus the record-keeping should be performed there. In many cases the listed data is already kept by the contributors and a “double record-keeping” would result in huge additional costs and no added value.

In some cases it might be more relevant that the record-keeping duty is outsourced by the administrator to the calculating agent.

This delegation of the record-keeping duty must be acceptable provided that the administrator has the right to require that the contributors and the calculating agent deliver any data needed. The Competent Authority would have the same right.

**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)?**

See Q 19.

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

Yes, but it must be possible to use expert judgements in the input data. That kind of judgements can’t be seen to objective and consistent all the time. It must be possible for the administrator to tailor the controls to each benchmark´s code of conduct/methodology and the data available.

**Q22: Do you see any other checks an administrator could use to verify the appropriateness of input data?**

If the record-keeping is performed by the contributors, the administrator can request a compliance report or a report from the internal audit. The contributor should store data according to instructions from the administrator. For instance the contributor should store data concerning the submissions in a logbook. This should be included in the code of conduct.

**Q23: Would you consider it useful that the administrator maintains records of the analyses performed to evaluate the appropriateness of input data?**

We reiterate: it must be possible to delegate the record-keeping function to the contributors and the calculating agent. It is in the administrator’s own interest to assess the appropriateness of the input data.

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

If the input data is of such a kind that it is possible to trade on it, one way to ensure the correctness of the data, is that the contributor has to be able to stand up for the submission. If the benchmark is intended to show the price level or the level of interest rates in a specific market, it could be a good control of the input data to ask the contributors to use their submissions as an offer in the market. That will hinder the contributor to leave false input data.

**Q25: Do you agree with the identification of the concepts and underpinning activities of evaluation, validation and verifiability, as used in this section?**

It seems to be relevant measures for evaluation, validation and verifiability.

**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?**

It must be in the contributor’s interest to have well educated staff. Our view is that it can be stated in the contributor´s own framework or policy document, that the staff involved in input data submissions should have suitable training for their tasks. It does not have to be in a formal regulation. We can´t see any reason to have different frequency for education of front office staff compared with back office staff.

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

Yes

**Q28: Do you identify other elements that could improve oversight at contributor level?**

No

**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.**

It is not a full time job to be a submitter. Thus a submitter must also be able to have other duties and a clear segregation is not realistic.

We are of the view that it is important that as an alternative to a physical separation it must be possible to have a closed electronic communication system between those involved in the submission process.

In the search to avoid conflict of interest there is a risk that that the quality of the contributions will suffer. This is an aspect of the regulation that will differ a lot depending on which kind of benchmark is at hand. When it comes to IBORs (interbank rate benchmarks) it is often suitable to have expert judgement to understand the market, the factors that lead to a contribution and to understand what an individual bank is ready to pay for funding. If this is not done by a person that is close to the market the judgements will be poor and the benchmark will after a while deteriorate. We believe that this is worse than some interference with conflict of interest. The negative effects are to a large extent mitigated by disclosure of conflicts of interest.

**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.**

Expert judgements can be based upon verifiable data. In the assessment of the contribution that the administrator conducts the judgements can be looked upon from the underlying data. Is the judgement a possible one according to the underlying data? Those kinds of tests are not necessary if the input data is just verifiable data from transactions in the market. We believe that it is not possible to regulate this for all kinds of benchmark. It must be something that the administrator has to handle in its assessments of the input data.

**Q31: Do you agree to the list of criteria that can justify differentiation? If not, please specify why you disagree.**

It should be possible for the administrator to define which criteria are the most appropriate, e.g. physical separation is not always possible and such a requirement could discharge relevant contributors. Instead it should be possible to have other measures to prevent physical closeness to be a major problem.

Some of the suggestions in par 111 could be unnecessary if the staff is thoroughly educated, e.g. the exchange of information is not necessarily prevented by physical separation. Education can often be much more effective than physical separation during working hours.

The suggestion on remuneration of staff seems to go much further than level I. However remuneration of staff involved in submitting data for benchmarks should be that they are able to get a bonus for not making mistakes and other similar matters.

**Q32: Do you agree to the list of elements that are amenable to proportional implementation? If not, please specify why you disagree.**

If the requirements listed are only guiding principles, they would be manageable. It is important to leave room to make a distinction between large and smaller markets and for small and few contributors.

**Q33: Do you agree to the list of elements that are not amenable to proportional implementation? If not, please specify why you disagree.**

Clear segregation of duties is not realistic since it is not a full-time job to be a submitter. The competence of the submitter and the quality of the submissions are improved if she/he is involved also in other activities within the contributor.

**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*”?**

It is important to understand that if a benchmark should represent a price level in a market it can´t be precise and free of subjectivity. A price in a market is a result of some actors’ subjective opinions. It is their collective view that results in a market price and that can be a benchmark.

Our interpretation of par 118-120 is that it is important that the method and the factors that drive the benchmark is presented but not exactly how these factors cooperate to end up in the benchmark. We believe that is reasonable. It will be possible for users to understand what the benchmark is made upon and what drives the benchmark.

**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.**

No

**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.**

It seems to be reasonable.

**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.**

Yes

**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?**

Yes

**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?**

Yes

**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.**

**Yes**

**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.**

No comment.

**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?**

No comment.

**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.**

N/A

**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.**

N/A

**Q45: Do you agree with the above requirements for a contributor’s contribution process? Is there anything else that should be included?**

Yes

**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?**

Yes

**Q47: Do you agree that such information should be required from contributors under the code of conduct? Should any additional information be requested?**

We can agree with what is stated in para.156-158 but we strongly oppose the proposal in para 159 that the administrator should approve the submitters. The submitter is employed by the contributor and it must be within the competence of the contributor as employer to appoint submitters in accordance with the code of conduct and the procedures stipulated by the administrator. The administrator can´t interfere in the relationship between the employer and the employee. This would be in conflict with the rules on the labour market. – In addition to these arguments it can be questioned if an approval by the administrator would add anything in practice since the administrator has to rely on the proposal and judgement maid by the contributor when it comes to the competence, expertise and suitability of an employee as a new submitter. It would be difficult for an administrator to make an independent judgement. The effect of this proposal would be an increased administrative burden, a prolonged procedure and no added value.

**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?**

It would be sufficient that this information is available upon request.

**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?**

See comment above.

**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?**

Yes, that seems relevant. But the information should not be supplied to the administrator. It is sufficient that it is kept by the contributor and can be delivered upon request.

**Q51: Do you think that the listed procedures for submitting input data are comprehensive? If not, what is missing?**

Yes, it is important that the input should be able to be submitted in different ways. One method can be the recommended but it must be allowed to use other methods to be able to handle different situations.

**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?**

It could be both, but only one place ought to be sufficient**.**

**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?**

A policy on how to use discretion are relevant. It would be sufficient to include this policy either in the methodology or in the code of conduct (for the contributor).

**Q54: Do you agree with the list of checks for validation purposes? What other methods could be included?**

Yes, we agree but with the important exception of par 165 regarding validation of input data. We oppose the suggestion that the signature should be made by a senior manager. If the 4-eyes principle requires a senior manager this could delay the benchmarks or be the basis of inconsistency in submitting data. The 4-eyes check should be performed by someone with sufficient insight in the market to make the control relevant. (No 165)

**Q55: Do you agree with the minimum information requirement for record keeping? If not would you propose additional/alternative information?**

It is important that these requirements can be in line with other record-keeping requirements so it won´t be needed to keep records twice and in different places. For front office staff it is common to keep records of for instance all communications. This record-keeping should be enough.

**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?**

No, it will be enough to have this kind of record-keeping for the use of expert judgement.

**Q57: Do you agree that an administrator could require contributors to have in place a documented escalation process to report suspicious transactions?**

Yes

**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?**

We believe that it is important to focus on the quality of the benchmark. To keep a high level of quality in the benchmark there could be some conflicts of interest. Especially if the benchmark should be based upon transaction data. The submitter must be able to do transactions and that means that the submitter will be exposed to the risk of being affected by others. But that is the idea of being in the market. If the submitters should be totally separated they will not be able to deliver relevant transaction data. We believe that the quality of the benchmark is more important than the risk of conflict of interest. There must, of course, be systems to identify and disclose the conflicts of interest.

**Q59: Do you have any additional comments with regard to the contents of a code of conduct in accordance with Article 9(2)?**

No

**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?**

Yes, we agree on a general level. We can´t judge if it is appropriate for all benchmarks.

**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?**

Yes

**Q62: Do you think that the external audit covering benchmark activities, where available, should also be made available, on request, to the Benchmark Administrator?**

Yes

**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?**

No comment.

**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?**

Yes

**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?**

It seems undesirable to delay the contribution, which is especially the case in respect to reference rates, where the time factor is crucial.

**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?**

No comment.

**Q67: In case of a contribution made through an automated process what should be the adequate level of seniority for signing-off?**

If the contribution is automated the sign-off action seems unnecessary.

However, we would like to comment on par 182 where it is stated that the submitter´s superior should sign-off on the contribution process. If this means that the superior should approve the contribution process as such it seems relevant but we strongly oppose it if the intention is that a superior should sign-off each individual contribution on a daily basis. It will not be possible for the contributors to organize their contribution process in such a way that the (a) superior is always available, since many submitters can be expected to have the same superior. It must also be stressed that the quality of the four-eye-principle can decrease if the sign-off shall be made by someone who is not up-dated on the relevant market and thus is not able to judge whether the contribution is correct or not. Our view is that the sign-off shall be made by members of the staff who also are submitters (on a rotating scheme) and thus have the relevant insight into the market.

**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?**

Yes

**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?**

No comment.

**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.**

Yes. The costs will be substantial, but it is not possible to give an exact estimate of the costs.

**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.**

No comment.

**Q72: Are you aware of any:**

**i) shares in companies,**

**ii) other securities equivalent to shares in companies, partnerships or other entities,**

**iii) depositary receipts in respect of shares,**

iv) **emission allowances**

**for which a benchmark is used as a reference?**

No comment.

**Q73: Do you have any suggestion for defining the assessment of the nominal amount of these financial instruments when they refer to a benchmark?**

No comment.

**Q74: Do you agree with ESMA proposal in relation to the value of units in collective investment undertakings? If not, please explain why**

No comment.

**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.**

No comment.

**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.**

No comment.

**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.**

No comment.

**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.**

No comment.

**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.)?**

No comment.

**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?**

No comment.

**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?**

No comment.

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

Yes. It would be positive if ESMA specifies that it is the market that the benchmark should describe and not the market where the benchmark is used.

**Q83: Do you think the circumstances under which a benchmark determination may become unreliable can be sufficiently described by the suggested aspects?**

Yes, if Liquidity (par 265 point 2) includes acute lack of participants in the market or other strange events that disrupt the market.

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

No comment.

**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?**

No

**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?**

Yes it would be sufficient.

**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?**

N/A

**Q88: Do you agree with ESMA's approach not to include further material requirements for the content of benchmark statements regarding regulated-data benchmarks?**

N/A

**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.**

All this is fine as long as the decision that the benchmark should be a critical benchmark is known before the statement should be addressed.

**Q90: Do you agree with the suggested additional requirements for significant benchmarks? Which of the three options proposed you prefer, and why?**

N/A

**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.**

N/A

**Q92: Are there any further contents for a benchmark statement that should apply to the various classes of benchmarks identified in this chapter?**

No

**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?**

Yes.

**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?**

No comment.

**Q95: Do you agree with the proposals outlined for the above points? Do you see any areas requiring particular attention or adaptation?**

No comment.

**Q96: Can you suggest other specific situations for which it is important to identify the information elements to be provided in the authorisation application?**

No comment.

**Q97: Do you agree with the proposed approach towards registration? How should the information requirements for registration deviate from the requirements for authorisation?**

N/A

**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?**

N/A

**Q99: Do you have any suggestions on which information should be included in the application for the recognition of a third country administrator?**

N/A

**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?**

N/A

**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.**

N/A

**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?**

N/A

**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.**

No comment.

**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?**

No comment.

**Q105: Do you agree with the proposed definition of “force majeure event”? If not, please explain the reasons and propose an alternative.**

No comments.

**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?**

No comment.

**Q107: Which thresholds would be appropriate to foresee and how might a time limit be fixed? Please detail the reasons behind any suggestion.**

No comment.

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

No comment.

**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.**

No comment.

**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?**

No comment.

**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)?**

No comment.

**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?**

No comment.

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?

No comment.

Contact person:

Tomas Tetzell

Chief legal counsel

Tomas.tetzell@swedishbankers.se