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| 1 June 2016 |

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| Reply form for the Consultation Paper on Benchmarks Regulation |
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| Date: 1 June 2016 |

Responding to this paper

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

*Instructions*

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

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

Responses are most helpful:

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

**Naming protocol**

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

ESMA\_CP\_BMR \_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_BMR \_XXXX\_REPLYFORM or

ESMA\_CP\_BMR \_XXXX\_ANNEX1

***Deadline***

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

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

***Publication of responses***

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

***Data protection***

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

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_BMR\_1>

Assogestioni welcomes the opportunity to reply to ESMA Consultation Paper on Benchmark Regulation (ESMA/2016/723). In general, we appreciate the adjustments made in the Draft Technical Advice compared to the version put up for discussion in the previous Discussion Paper.

In particular, we appreciate the duly consideration of the characteristics of the investment funds in drafting the technical advice.

Nevertheless, we would like to recommend ESMA to harmonize the text in some provisions as to ensure a general alignment for investment funds also, as explained in some of our replies.

<ESMA\_COMMENT\_CP\_BMR\_1>

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

<ESMA\_QUESTION\_CP\_BMR\_1>

N/A.

<ESMA\_QUESTION\_CP\_BMR\_1>

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

<ESMA\_QUESTION\_CP\_BMR\_2>

N/A

<ESMA\_QUESTION\_CP\_BMR\_2>

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

<ESMA\_QUESTION\_CP\_BMR\_3>

N/A

<ESMA\_QUESTION\_CP\_BMR\_3>

1. Do you have any comments on the proposed specification of issuance of a financial instrument?

<ESMA\_QUESTION\_CP\_BMR\_4>

In general, we agree with the proposed specification of “issuance of a financial instrument”. In particular, we agree with the exclusion of derivatives from the scope of this definition, being them now comprehended in the definition of “use of a benchmark” according to art. 3(1)(7)(b). Nevertheless, we would like to highlight that shares and units of investment funds should not be included, as derivatives, among those financial instruments in scope of “issuance” because funds are not issued.

Such an exclusion will not undermine the final scope of the regulation, as in our understanding, regardless of the juridical form of investment funds, they are already caught under the definition of “use of a benchmark” according to art. 3(1)(7)(e) of the Regulation.

We therefore propose the following change: “*The issuance of a financial instrument that references an index or a combination of indices is to be intended as the initial offering of the financial instrument types specified in paragraphs (1) to* ***(2)******~~(3)~~*** *within the list of Annex I, Section C, of Directive 2014/65/EU to third parties through negotiation on trading venues and/or systematic internalisers*”.

This change is aimed at eliminating the reference to para (3) of Annex I, Section C, of MiIFID II that covers collective investment undertakings.

<ESMA\_QUESTION\_CP\_BMR\_4>

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

<ESMA\_QUESTION\_CP\_BMR\_5>

In general, we agree with the proposals on the transitional regime as contained in point d) at p. 32 of the Draft Technical Advice. However, we suggest a more general approach on the source of the proxy information that may be used. It should be clarified that the collection of data and proxies should be derived also from NCAs, when such information is available to them. We believe this would be in the interest of a more comprehensive activity of data collection. We would therefore like to propose the following change:

“*Whenever data as set out above in paragraphs a), b) and c) is not available or not sufficient, when assessing benchmarks under the thresholds in Article 20(1) and Article 24(1)(a), the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds, or proxies for these values, such as open interest data, as reported by alternative private providers* ***or national competent authorities,*** *of information* ***already*** *available to administrators and competent authorities may be taken into account.*”

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<ESMA\_QUESTION\_CP\_BMR\_5>

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

<ESMA\_QUESTION\_CP\_BMR\_6>

Yes, we agree with the indications. However, we suggest to make reference to art. 22 of AIFMD rather than 19(10). The periodic report can in some cases be made available to investors and not public.

<ESMA\_QUESTION\_CP\_BMR\_6>

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

<ESMA\_QUESTION\_CP\_BMR\_7>

We do not agree with such a proposal.

First of all, we would like to stress that a reference to licensing agreements may emphasize the dominant position of benchmark administrators and in order to address this aspect, and to avoid possible undesirable effects on price control descending from the obligations set by the Regulators, we do not share the proposal.

Furthermore, the experience of our members with licensing agreements show that these agreements are not the proper tool to identify - for investment funds - the measurement of the reference value of a benchmark. Not all agreements contain such information, while not all of them are updated, as it is instead required by the benchmark regulation.

We suggest instead to use other type of proxies, such as those based on other available information (KIID, prospectus and periodic report

<ESMA\_QUESTION\_CP\_BMR\_7>

1. Do you agree with the criteria proposed? Do you consider that additional criteria should be included in the technical advice?

<ESMA\_QUESTION\_CP\_BMR\_8>

In general, we agree with the proposed criteria. However, we would like to remind that some provisions should be better harmonized. In particular:

1. **Lit. e), p. 42:** the first sentence “*the diversity of financial instruments and financial contracts should […]”* does not include “investment funds” for which a request for admission to trading on a trading venue has not been made, as they are not in scope of the definition of “financial instrument”.However, investment funds are expressly considered in the following sub-point (2). We would ask ESMA to align the provision. The same comment goes for point. 3.
2. **Lit (i), p. 43: “***The use of the benchmark by pension funds*”: in our understanding pension funds are not in the scope of the definition of “use of a benchmark” in the regulation. We understand the possible reason behind this inclusion, but, in any case, we suggest ESMA to exclude this criteria for the assessment of a critical benchmark.

<ESMA\_QUESTION\_CP\_BMR\_8>

1. Do you think that the concept of “significant share of” should be further developed in terms of percentages or ranges of values expressed in percentages, to be used for (some of) the criteria based on quantitative data? If yes, could you propose percentages of reference, or ranges of values expressed in percentages, to be used for one or more of the proposed criteria?

<ESMA\_QUESTION\_CP\_BMR\_9>

N/A.

<ESMA\_QUESTION\_CP\_BMR\_9>

1. Do you agree with the suggested indicators for objective reasons for endorsement of third-country benchmarks?

<ESMA\_QUESTION\_CP\_BMR\_10>

N/A.

<ESMA\_QUESTION\_CP\_BMR\_10>

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

<ESMA\_QUESTION\_CP\_BMR\_11>

We agree with the criteria and we appreciate that such list is a non-exhaustive list to allow NCAs appropriate level of discretion to assess whether the cessation or the changing of an existing benchmark to conform with the requirements of the benchmarks Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract which references such benchmark.

We also recommend ESMA to harmonize the text of the title (in bold) of para. 6.4 in order to ensure that the reference to funds is made correctly where a reference to “the rules of any investment fund” is missed, while para. 2. correctly refer also to them.

In any case we believe that it would be useful to include in the list another criterion, to also consider the case of administrators of non-EU benchmarks of regulated markets which decide not to apply for authorization and, thus, become non-compliant with the regulation. In this case the investment funds referencing them are left with a limited scope of alternatives, with the risk that none of them will be as representative of the market as the non-complying benchmark was. For example, a single emerging market fund may not be able to replace a national index provided by the Asian, African or American local stock exchange.

We propose the following wording: w*hether a benchmark administrator decides not to apply for authorization/registration leaving the financial contract, financial instrument or investment fund with alternatives not as appropriate as the one previously used.*

<ESMA\_QUESTION\_CP\_BMR\_11>