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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>

The European Federation of Energy Traders (EFET) welcomes the opportunity to participate in this consultation. EFET promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at [www.efet.org](http://www.efet.org).

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We agree that trading venues and clearing houses determine the amount payable under a financial instrument by referencing an index or a combination of indices and therefore, are covered by the term “use” of a benchmark.

Based on the consultation paper, we further understand that the trading itself by (supervised) entities in financial instruments referencing a benchmark through an EU trading venue (RM, MTF or OTF) and the holding of positions in such financial instruments do not constitute “use” of a benchmark under the BMR; and we are fully supportive of such a position. If such understanding turns out to be incorrect, we require additional and clear guidance from ESMA in this respect.

Secondly, it would be useful to have additional guidance on what should be understood as “engineering” the terms of a financial derivative contract referencing a BM and who should be engineering such terms in order to be captured by the BMR.

<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>

We fully agree with the draft technical advice specifying that the concept of “issuance of a financial instrument” is restricted to financial instruments as specified in § (1) to (3) within the list of Annex I, Section C of MIFID; and does not extend to derivatives included in §§ (4)-(10) of the same Annex I, Section C. In our view, this is the only correct reading possible, not only in the framework of BRM, but also in other regulatory areas.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BMR\_11>