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| 29 September 2016 |

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| Reply form for the  Consultation Paper on Benchmarks Regulation |
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| Date: 29 September 2016 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on the Benchmarks Regulation, 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

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 **02 December 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 Danish Bankers Association welcomes the opportunity to respond to ESMAs Consultation Paper on Benchmarks Regulation published 29 October 2016.

Form an overall perspective all the draft RTS seems to be well balanced and try to establish the crucial flexibility which is a precondition for well-functioning capital markets.

It is essential to balance the need for clear rules with the fact that the rules in the benchmark regulation have to cover a wide range of different administrators and contributors.

With this in mind the future RTS has to ensure at least the level of flexibility which is in the current drafts RTS.

TYPE YOUR TEXT HERE

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

1. Do you consider the non-exhaustive list of governance arrangements to be sufficiently flexible? Are there any other structures which you would like to see included?

<ESMA\_QUESTION\_CP\_BMR\_1>

The suggested list still leaves some flexibility. It should not be tightened further.

<ESMA\_QUESTION\_CP\_BMR\_1>

1. Do you support the option for the oversight function to be a natural person who is not otherwise employed by the administrator?

<ESMA\_QUESTION\_CP\_BMR\_2>

The option to appoint a natural person Oversight Function seems in certain cases to be relevant especially in the case of significant and non-significant benchmarks.

It would whoever seems to be sufficient to ensure that that particular person does not refer directly to the head of benchmark setting. The rule on banks complains functions could set the highest and relevant standard.

<ESMA\_QUESTION\_CP\_BMR\_2>

1. Do you support the concept of observers and their inclusion in the oversight function?

<ESMA\_QUESTION\_CP\_BMR\_3>

The oversight function could benefit from the inclusion of observers. The administrators should have the option of including observers on a permanent basis.

<ESMA\_QUESTION\_CP\_BMR\_3>

1. Do you think that the draft RTS allows for sufficient proportionality in the application of the requirements? If no, please explain why and provide proposals for introducing greater proportionality.

<ESMA\_QUESTION\_CP\_BMR\_4>

The suggested rules have a sufficient level of proportionality. The level of proportionality could be greater and should not be tightened.

<ESMA\_QUESTION\_CP\_BMR\_4>

1. Do you have any other comments on the oversight function (composition, positioning and procedures) as set out in the draft RTS?

<ESMA\_QUESTION\_CP\_BMR\_5>

It is important that an oversight function is able to oversee a family of benchmarks because the number of qualified members typically is limited. And if an oversight function is able to oversee a family of benchmarks the rules governing these benchmarks have to be similar. The rules created in accordance with art 5 in the benchmark regulation have to correspond with the rules governing the oversight function of reference rate benchmarks. If the rules correspond it will be possible to establish one oversight function for benchmarks where the submitters are banks. These benchmarks are very similar even though some are reference rate benchmarks and others are normal benchmarks. There are not many experts which would be the obvious members of an oversight function for this family of benchmarks (money market experts).

<ESMA\_QUESTION\_CP\_BMR\_5>

1. Do you agree with the appropriateness and verifiability of input data that the administrator must ensure are in place? Please elaborate.

<ESMA\_QUESTION\_CP\_BMR\_6>

To ensure valid input data it is important to enable the industry to create the best methodology of the benchmarks. This would sometimes mean that only estimated quotes are the most reliable source of information.

If the marked that the benchmark has to measure is no longer liquid it is very difficult to verify the input data by looking at the limited turnover. If the turnover is very limited the turnover which is in the market will not always be reliable. Other factors are often much better used to validate such a benchmark. The turnover can only be used to validate the benchmark as one factor out of many.

It will be very difficult for the administrator to get asses to some of the data listed in art. 3. This is especially the case in art 33 (f) ii). It is essential that the current wording of “may include” in the headline (f) is not changed into a mandatory requirement.

It should be possible for the administrator to receive a report from the contributors complains or similar instead of receiving the actual data. The duty to keep this record should only be required if the administrator finds this information useful in its oversight of the contributor. It would be much better if this requirement is placed in the bank itself and it would be an internal oversight function which would oversee this and report any irregularities.

<ESMA\_QUESTION\_CP\_BMR\_6>

1. Do you agree with the internal oversight and verification procedures that the administrator must ensure are in place where contributions are made from a front-office function in a contributor organisation? Please elaborate.

<ESMA\_QUESTION\_CP\_BMR\_7>

The rules could have the effect that some benchmarks are moved from the front office to submitters which do not have an in debt knowledge of the markets which they are supposed to measure. This could jeopardize the entire benchmark setting.

<ESMA\_QUESTION\_CP\_BMR\_7>

1. Do you agree with the list of key elements proposed? Do you consider that there are any other means that could be taken into consideration to ensure that the benchmark’s methodology is traceable and verifiable?

<ESMA\_QUESTION\_CP\_BMR\_8>

N/A

<ESMA\_QUESTION\_CP\_BMR\_8>

1. Do you agree with the elements of the internal review of methodology to be disclosed? Do you consider that there are other elements of information regarding the procedure for internal review of methodology that should be included?

<ESMA\_QUESTION\_CP\_BMR\_9>

N/A

<ESMA\_QUESTION\_CP\_BMR\_9>

1. Do you agree with the procedure for consultation on material changes to the methodology?

<ESMA\_QUESTION\_CP\_BMR\_10>

N/A

<ESMA\_QUESTION\_CP\_BMR\_10>

1. Do you agree with this approach? Please explain your response.

<ESMA\_QUESTION\_CP\_BMR\_11>

N/A

<ESMA\_QUESTION\_CP\_BMR\_11>

1. Do you agree with this approach? What are the different characteristics of contributors that should be taken into consideration in this RTS? How should those characteristics be taken into account in the provisions suggested in this draft RTS? Please give examples.

<ESMA\_QUESTION\_CP\_BMR\_12>

N/A

<ESMA\_QUESTION\_CP\_BMR\_12>

1. Should the substantial exposures of individual traders or trading desk to benchmark related instruments apply to all types of benchmarks for all contributors?

<ESMA\_QUESTION\_CP\_BMR\_13>

The requirement in art 6, 1, g) on the keeping of records of substantial exposures is an almost impossible to administration. If the contributors are to fulfil this requirement they will have to register all exposures. Either they keep record of all exposures or they don’t keep records. It is only afterwards they are able to evaluate if an exposure is substantial if they compare it to a certain event.

Another way forward is to identify an objective way to measure what “substantial exposure” should mean and then the trader or trading desk could administrate it much easier.

The requirement is so significant that it should only be used on critical benchmarks.

<ESMA\_QUESTION\_CP\_BMR\_13>

1. Do you agree with the proposals for the reporting of suspicious transaction in this draft RTS? Please explain your answer.

<ESMA\_QUESTION\_CP\_BMR\_14>

When it comes to contributors which are banks, reporting to the compliance function will always be the right way forward if someone has something suspicious to report. The compliance function will thereafter decide which next step if any will be the appropriate.

<ESMA\_QUESTION\_CP\_BMR\_14>

1. Are there any provisions that should be added to or amended in the draft RTS to take into consideration the different characteristics of benchmarks? Please give examples.

<ESMA\_QUESTION\_CP\_BMR\_15>

In general the RTS seems to have found an appropriate level of requirements.

<ESMA\_QUESTION\_CP\_BMR\_15>

1. Do you have any further comments or suggestions relating to the draft RTS on the code of conduct?

<ESMA\_QUESTION\_CP\_BMR\_16>

The draft RTS is very detailed. If feather details are added to the RTS it will limit the flexibility. In some aspect the RTS already goes as far as the level I text seems to permit. This is for instance the case in art 8 (1) a) vi) the level I text has decided that this requirement should only cover reference rates (in annex I)

It would seem to be sufficient if the requirements in art 8 could be covered by one single policy.

<ESMA\_QUESTION\_CP\_BMR\_16>

1. Do you agree with the draft technical standards in relation to the governance and control arrangements for supervised contributors to benchmarks? Please provide reasons.

<ESMA\_QUESTION\_CP\_BMR\_17>

It seems that the RTS is very detailed and should be sufficient to cover all the important aspects. Feather details would only be an additional burden.

In art. 2, 3), (a) in the draft regulation it is suggested that physical separation of submitters from other employees is the general rule. A reasonable number of contributors is however one of the most essential criteria for a valid benchmark. The rules should therefore reflect to fact that also smaller market participants have valuable input to a benchmark. If the submitters always have to be physical separated from other employees this will de facto forbid smaller market participants from being contributors. It is therefore essential to at least keep the wording “where reasonable practicable”.

<ESMA\_QUESTION\_CP\_BMR\_17>

1. In particular, can you identify specific aspects of the draft Regulation that should be applied differentially to different supervised contributors in particular in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors?

<ESMA\_QUESTION\_CP\_BMR\_18>

N/A

<ESMA\_QUESTION\_CP\_BMR\_18>

1. Do you agree with ESMA’s specifications of the criteria?

<ESMA\_QUESTION\_CP\_BMR\_19>

N/A

<ESMA\_QUESTION\_CP\_BMR\_19>

1. Do you agree with the content and structure of the two compliance statement templates? If not, please explain.

<ESMA\_QUESTION\_CP\_BMR\_20>

A template will be a welcome help to the industry.

<ESMA\_QUESTION\_CP\_BMR\_20>

1. Do you agree with the proposed specifications of the contents of a benchmark statement?

<ESMA\_QUESTION\_CP\_BMR\_21>

Yes

<ESMA\_QUESTION\_CP\_BMR\_21>

1. Do you agree with the proposed specifications of the cases in which an update of such statement is required? Do you have any further proposals? Please explain.

<ESMA\_QUESTION\_CP\_BMR\_22>

Yes. That said the wording in art 8 2, d) and art 8, 2) could be formulated in a simpler way which makes the requirements easier to understand.

<ESMA\_QUESTION\_CP\_BMR\_22>

1. Do you agree with the general approach to distinguish the contents of the application with reference to the cases of authorisation or registration?

<ESMA\_QUESTION\_CP\_BMR\_23>

In the draft regulation annex I 3) b) i) and ii) the senior management has to send in CV and criminal-record files. If these requirements have to be sent to the competent authority there has to be rules on how this information is used. For instance not all criminal-records are relevant (such as speeding tickets).

<ESMA\_QUESTION\_CP\_BMR\_23>

1. Are the general and financial information requirements described appropriate for authorisation applications? Are the narrower requirements appropriate for registration applications?

<ESMA\_QUESTION\_CP\_BMR\_24>

To ensure a consistent use of the regulation throughout the EU the rules have to reflect all the information the competent authority can request. The annexes should therefore be exhaustive.

<ESMA\_QUESTION\_CP\_BMR\_24>

1. Are the requirements covering the information on the applicant’s internal structure and functions appropriate?

<ESMA\_QUESTION\_CP\_BMR\_25>

N/A

<ESMA\_QUESTION\_CP\_BMR\_25>

1. Are the requirements described dealing with the benchmarks provided appropriate? In particular, is the way in which the commodity benchmarks requirements are handled acceptable?

<ESMA\_QUESTION\_CP\_BMR\_26>

N/A

<ESMA\_QUESTION\_CP\_BMR\_26>

1. Is the specific treatment for a natural person as applicant appropriate?

<ESMA\_QUESTION\_CP\_BMR\_27>

N/A

<ESMA\_QUESTION\_CP\_BMR\_27>

1. Do you agree with the proposals outlined for requirements for other information?

<ESMA\_QUESTION\_CP\_BMR\_28>

N/A

<ESMA\_QUESTION\_CP\_BMR\_28>

1. Do you agree with the approach followed in the draft RTS as regards the general information that a third-country applicant should provide to the competent authority of the Member State of reference?

<ESMA\_QUESTION\_CP\_BMR\_29>

N/A

<ESMA\_QUESTION\_CP\_BMR\_29>

1. Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should provide in order to explain how it has chosen a specific Member State of reference and which are the identity and role of the appointed legal representative in such State?

<ESMA\_QUESTION\_CP\_BMR\_30>

N/A

<ESMA\_QUESTION\_CP\_BMR\_30>

1. Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should give around the benchmarks it provides and that are already used or intended for use in the Union? In particular, do you agree with the proposals regarding the information to be provided on the types and the categories to which the benchmarks belong to?

<ESMA\_QUESTION\_CP\_BMR\_31>

N/A

<ESMA\_QUESTION\_CP\_BMR\_31>