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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>

A listed company since November 2015 with Crédit Agricole as its majority shareholder, Amundi is the largest European Asset Manager in terms of AUM, with over 1,050 billion euros worldwide. Headquartered in Paris (France), Amundi has six investment hubs located in the world’s key financial centers. Amundi is the trusted partner of 100 million retail clients, 1,000 institutional clients and 1,000 distributors in more than 30 countries. Amundi designs innovative, high-performing products and services for all these types of clients tailored specifically to their needs and risk profile.

With regard to Benchmark regulation, BMR, Amundi is attentive to the implementation and the consequences to a user of benchmarks. We use benchmarks either through derivative instruments that are linked to an index or as a reference for calibrating and measuring the performance of a portfolio. Typically, Exchange Traded Funds (ETF) duplicate the performance of an index or a combination of indices. But non ETF funds often compare their performance to a benchmark or a combination of benchmarks both in active and passive investment strategies. Indices happen to be an easy way to communicate with clients on the investment universe and the expected performance of a fund.

Amundi is pleased that, as clarified in recital 13, asset managers will not be considered administrators when they combine indices to build a composite or a currency hedged index or when they modify an index without introducing discretion nor input data that would amount to administration. Therefore, our comments are those of a user of indices and not an administrator nor a contributor. Consequently, we do not answer to all questions raised in the consultation paper. For example questions about the role of contributors or the procedure for authorization or registration as an administrator are not in our scope today.

Our main concerns can be summarized as follows:

1. **ESMA should revisit its guidelines on ETFs and other UCITS issues** of December 2012/ August 2014 (ESMA/2014/937) in order to take stock of the new framework created by BMR; some requirements of the guidelines should be withdrawn, the vast majority will be confirmed by BMR and a reference to the regulation and its provisions would help reducing the burden of compliance for asset managers; we urge ESMA to put a high priority on this review in its agenda;
2. The trend of costs and fees paid to administrators by asset managers has moved fast and higher; it surely reduces the performance for the end investor as it accounts to several basis points; on ETFs for example it may represent 20% of the fees kept by the asset manager; we expect authorities to control that the introduction of BMR will **not be a pretext for further increasing these fees** as it simply implements existing IOSCO principles;
3. It would be a pity to transfer the management of portfolios out of the EU in order to be able to use non-compliant indices; this is particularly true for benchmarks administrated in third countries; the introduction of a large grand fathering clause for existing funds is not sufficient to grant asset managers **sufficient advance notice by administrators of their intent** to ensure that existing benchmarks will be compliant on time;
4. As end investors we believe that we can positively contribute to the debate within the **oversight committee** of indices we use; we are ready to be associated in the governance of those indices;
5. Amundi does agree with the general approach taken by ESMA in these RTS which relies on **transparency and proportionality**; in some areas, like remuneration, exact weightings of components of an index or production of one compliance statement per benchmark, we even suggest more transparency.

<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>

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<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>

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<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>

We do not believe that observers are necessary to enhance proper governance. A committee is made of members - most with and some without voting rights, either in general or on specific conflicting issues. The chair may invite participants who are expected to leave after their presentation or will be authorised to stay during the whole meeting. There is no room for observers in-between. The non-competent authorities could either be non-voting members with a right to express views and not to vote or permanent invitees with no opportunity to speak except when invited to by the chair. We think that the RTS should suggest inviting some authorities if it is what ESMA aims at but should not introduce observers as a standard.

<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>

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<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>

Amundi insists on the benefits for a better governance of the participation of asset managers, who are investors and end users of benchmarks, to oversight committees. We think that it enlarges the view and diversifies the range of opinions in the committee. On costs and fees, investors are obviously not aligned with administrators. On many issues, like transparency, methodology or crisis management, the opinion of users of a benchmark is most valuable and informative to reach a proper decision. The set-up of a consultative advisory committee where asset managers would be invited to join is only an indirect and less efficient way to address the issue.

Otherwise, asset managers are subject to so many restrictive requirements in terms of remuneration that they feel that a simple transparency is the minimum that can be required from an administrator. We regret that, as explained in §25, ESMA renounced to transparency in this matter.

<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>

Yes, we agree that appropriateness and verifiability of input data is of utmost importance for the production of reliable indices. We share ESMA’s opinion that proportionality is necessary and for example that controls on regulated data can be more limited. We strongly believe that ESMA should reconsider its guidelines on ETFs and other UCITS issues of August 2014 and introduce the same proportionality in it when considering regulated benchmarks. The clarification brought by BRM on the different categories of indices and the different levels of risk that they represent demands major changes in the guidelines to gain some consistency.

<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>

We support the high level of oversight and verification that is expected from the administrator vis à vis contributors. We insist that the user of a benchmark is not in a position to make any assessment of the organisation and governance of contributors and should not be expected to do anything else but rely on the presumption that the administrator complies with BMR. As a consequence some provisions of the guidelines on ETFs and other UCITS issues are to be deleted.

<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>

ESMA limits the requirement to the principles when users need the detailed composition and weightings of an index to better monitor it and, for asset managers, to comply to ESMA’s guidelines. We know that administrators raised the question of intellectual property to dismiss a further transparency, but we still feel that ESMA has not gone far enough to ensure total market confidence through total transparency, which is the only way to have efficient controls by third parties. A small delay in the publication would have protected intellectual property in our opinion and satisfied the requirements imposed on asset managers under the guidelines on ETFs and other UCITS issues.

Amundi finds that ESMA is not consistent when asking asset managers to gain full transparency on indices before using them in a UCITS when, at the same time, it does not require full transparency from the administrator in the oversight process. If BMR at levels 1 and 2 does not impose full transparency on administrators how should asset managers, who have no leverage on administrators, be required in a level 3 guideline to gain full transparency ? If it is important it should be included in BMR so that administrators would not discuss the obligation imposed by regulators that are empowered to withdraw their authorization to produce indices. More specifically, we have strong doubts on the benevolence of administrators to comply with a regulation that goes further than their own regulatory framework. There is a high risk that BMR will be considered as the norm and that extra information will no longer be available for asset managers.

<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>

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<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>

Amundi totally supports ESMA when it disqualifies the argument that the necessity to react rapidly could prevent administrators from consulting before changing methodology. The activation of exceptional measures when circumstances impose it is not the same as a permanent change of methodology. We consider that a public consultation is necessary before substantially or significantly modifying the methodology of calculation of an index.

<ESMA\_QUESTION\_CP\_BMR\_10>

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

<ESMA\_QUESTION\_CP\_BMR\_11>

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<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>

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<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>

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<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>

No, we are not keen to develop a negative climate of suspicion and denunciation. A minimum safeguard should be introduced to prevent reporting totally unfounded subjective suspicion. Internal escalation procedures must be used first before gaining any substance that could lead to the decision to report transactions where there is a reasonable suspicion based on a proper inquiry.

<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>

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<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>

Amundi recommends that ESMA suggest administrators of non-critical indices that rely on contributions to consider the RTS when designing their own code of conduct.

<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>

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<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>

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<ESMA\_QUESTION\_CP\_BMR\_18>

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

<ESMA\_QUESTION\_CP\_BMR\_19>

Amundi would have preferred that ESMA’s position on the burden of proof expressed in §148 be included in the text of the RTS, possibly as a recital. We believe that the fact that the NCA that denies the benefit of a possible exemption to the administrator of a non-critical benchmark has to bring the evidence of a negative impact of the granting of this exemption is very important for the balance of BMR.

<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>

Amundi does not agree with the publication of one single compliance statement for all indices as foreseen in the RTS. From a user’s perspective it is not efficient not to have a short and clear statement per index. The proposed solution is not much easier for administrators since they will have to review the whole unique document as soon as there is a change, for example the introduction of a new index. The unique document is a source for many mistakes since the publisher will have to check that each index is properly reported among many different other ones that share the same characteristic for one item and may not for the following item. This presentation is inefficient and penalising for users who want to have a clear and immediate understanding of the regulatory requirements that apply or not to a given and identified index. Cross references and manipulation of tens (or hundreds) of pages is simply a denial of transparency. So paradoxical for a compliance statement! We recommend that ESMA come back to a more “user friendly” document, i.e. a compliance statement per index.

<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>

Amundi is convinced that the benchmark statement will be a very useful tool in the hands of investors. To be more informative, it should in our opinion identify at first sight those indices that rely on contributions. We know that it is not a category defined in BMR but we think that it is a characteristic of the utmost importance for investors and it should appear next to the categorisation of the index.

Furthermore, for asset managers it is a pity that there is no link between the benchmark statement and the items that have to be checked under ESMA’s guidelines on ETFs and other UCITS issues of August 2014. We suggest that a specific declaration should be made by administrators in the benchmark statement that they comply with the guidelines’ requirements and publish the required complementary information on such web page. The benchmark statement should flag those indices that can be used in UCITS. It can only be the responsibility of the administrator to determine whether its internal procedures enable the index to be UCITS compliant. Today, asset managers encounter difficulties in assessing the quality of the organisation and procedures of indices producers. These are largely confidential and administrators provide general statements that are worded in such a way that prima facie compliance can be assumed; but there is no endorsement by the administrator of any kind and its responsibility is not clearly engaged. It is a loophole in the efficiency of BMR not to require administrators to engage themselves on the compliance with existing regulations, such as ESMA guidelines (as long as they are not withdrawn). Asset managers are not in a position to audit the procedures and internal organisation of administrators and have to rely on their declarations. Administrators should be responsible for their declarations and subject to an obligation to issue a declaration of compliance/non-compliance with ESMA guidelines.

Another example of current difficulties resulting for asset managers from the guidelines relates to the ability to use the exception that enables an index to present a concentration of 20 % and in some circumstances even 35% on one of its components. If the administrator does not pledge that it will not go further than these limits, the asset manager that uses such an index in any UCITS will have to conduct a regular check on the composition of the index and to make a decision in case of breach. Not many administrators agree to include in their methodology a cap at the given 20 or 35% level. Administrators should be asked by ESMA to state in the benchmark statement whether or not they comply with this ratio. The introduction of a flag of compliance with UCITS rules would be the most efficient tool and it should appear on the central data base run by ESMA of all indices complying with BMR.

Finally, we are concerned that the benchmark statement should be a synthetic document. As is the case for DICI under UCITS, we believe that the standard benchmark statement should not exceed 2 pages. It implies that developments on the management of conflicts of interest for example be just mentioned and summarized in the statement and that a link with a web page be introduced. Thus, interested users could easily access more detailed information.

<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>

In order for users to know when the statement has been updated, we suggest that the date of publication be indicated on the statement. We consider as good practice that should be encouraged among administrators to review their statements annually (at least on the electronic version) and as soon as they are no longer appropriate.

<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_BMR\_26>

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

<ESMA\_QUESTION\_CP\_BMR\_27>

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<ESMA\_QUESTION\_CP\_BMR\_27>

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

<ESMA\_QUESTION\_CP\_BMR\_28>

In our view article 34 (4) of BMR is sufficiently explicit not to require any further comment. Thus, we do not understand the interest of § 235 and feel that it brings opacity. We fear it aims at trespassing the clear indications of level 1 text.

<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>

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<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>

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<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>

Amundi would like to insist on the importance of the grandfathering clause that should enable those who use or refer to a benchmark prior to 2020 that is produced by an administrator of a third country. Many indices are not produced by EU administrators today and the perspective of Brexit will even reinforce this feature. Asset managers have a duty towards their client investors to ensure continuity in the investment strategies that are conceived for long term investment. It is not a matter of a couple of years but it is a trust that has to develop over decades. We think on the one hand that third country administrators should not be in an advantageous position compared to EU ones and on the other hand that advance notice should be demanded from administrators as to their will to make their benchmarks will be compliant or not on time.

<ESMA\_QUESTION\_CP\_BMR\_31>