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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>

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>

CME Group broadly agrees with the proposed list of governance arrangements and considers it to be sufficiently flexible to implement in practice. However, we have some reservations regarding proposed provisions that seek to prohibit employees of the administrator who are involved in the provision of a benchmark from participating in the oversight function as permanent voting members (recitals 3, 7, Article 4(1)(b) of the draft RTS). We are of the opinion that this proposed provision introduces unnecessary restrictions as to the best use of internal resources of an administrator. Staff members involved in the provision of benchmarks have strong expertise and in-depth knowledge of the benchmarks and would be very well placed to provide useful contribution to the proceedings of the oversight function. We recognise that ESMA’s rationale behind the proposed limitations stems from considerations regarding the integrity of benchmarks and potential challenges regarding conflicts of interest but we are of the opinion that those can be effectively managed by appropriately drafted procedures governing the oversight function.

In addition, we are concerned that the proposed restriction of membership of the oversight function to persons not already sitting on the oversight function of another administrator (Article 4(1)(e) of the proposed RTS) will significantly limit the administrators’ ability to find suitable independent individuals with the necessary experience and expertise to sit on these committees. We note that this is already the case in the UK with only four authorised administrators. Given that the number of authorised administrators will increase substantially following the entry into force of the BMR, such restriction may cause significant challenges for administrators.

<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>

CME Group does not oppose the option for the oversight function to be a natural person provided it remains an option. We have consequently supported proportional application of the legislation and we appreciate ESMA’s efforts to reflect the principle of proportionality in the RTS. However, from a practical point of view, we question the ability of a single person to effectively conduct all the tasks that are expected from the oversight committee, in particular when that person is required to challenge the administrator on matters regarding the provision of the benchmark.

<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>

CME Group understands that it is ESMA’s intention to leave it up to the discretion of the oversight committee whether to include observers and which observers to include in which meetings. This includes the oversight function’s full discretion to set out members’ selection criteria. In other words, we understand that oversight committees would not be required to include observers such as representatives of public authorities. If this is the case, we support the possibility to invite observers to the meetings on case by case basis. It is in fact already a market practice that the oversight function invites external observers – usually representatives of national competent authorities - for certain meetings.

In addition, while we generally support participation of observers in the oversight function meetings, we believe that observers should comply with the same obligations around confidentiality as other members. The oversight function’s procedures should be able to require the same confidentiality obligations on external observers as on permanent members

<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>

CME Group agrees with ESMA’s proposal and is of the opinion that the draft RTS allows for sufficient proportionality in the application of oversight function requirements.

<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>

CME Group has no additional comments.

<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>

CME Group generally agrees with the proposal on appropriateness and verifiability of input data and feels that the changes made to ESMA’s approach are in-line with our comments to the earlier discussion paper.

<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>

CME Group understands the obligation on administrators in Article 11(3)(b) BMR is one to ensure that the contributor has certain procedures in place. However, in our view the proposed requirements in Article 6 of the draft RTS go beyond this and also requires the administrator to ensure that the contributor is complying with such policies. This is not the role of the administrator but of the internal compliance function of the contributor. For example, at the beginning of each sub-paragraph of Article 6, rather than using the words “Administrators shall ensure”, the wording ought to be “Procedures that ensure”. This would make it clearer that the administrators obligation is regarding the existence and content of the procedures rather than ensuring the application and enforcement of those procedures.

<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>

CME Group agrees with the proposed list of the key elements of a benchmark’s methodology that should be subject to disclosure. We have traditionally supported transparency in the provision of benchmarks and we believe that more transparency helps to enhance confidence of benchmark users. We have no additional suggestions regarding other elements that could be taken into consideration.

However, CME Group would like to reiterate its concerns regarding the proposed provisions that introduce a requirement for benchmark administrator to disclose the estimate size of the underlying market (Article 1(1)(2) of the draft RTS). In the absence of readily available and centrally managed market size data, the administrators may not be able to provide accurate estimates. Should ESMA wish to retain obligation to provide some information about estimated size of the underlying market, we suggest that the language of the proposed RTS is amended to reflect the fact that administrator is only required to use reasonable efforts to comply with this requirement, subject to the availability of market data.

CME Group would also welcome ESMA’s clarification of the meaning of “secured algorithm” as referenced in Article 2(1)(14) of the draft RTS. While we consider the fact that the administrator uses a “secured algorithm” as appropriate for public disclosure, we are of the opinion that this requirement should be interpreted narrowly, i.e. details of the algorithm as such should not be mandated for public disclosure.

<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>

CME Group agrees with the proposed list of the internal review of methodology that will be subject to disclosure requirements. We are of the opinion that the proposed list is already comprehensive and we have no further suggestions.

<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>

CME Group have previously expressed support for a solution requiring benchmark administrators to seek public input prior to adoption of major changes to the methodology and we agree with ESMA’s proposal included in the draft RTS.

<ESMA\_QUESTION\_CP\_BMR\_10>

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

<ESMA\_QUESTION\_CP\_BMR\_11>

CME Group believes that where possible, duplication of requirements should be avoided. In our view, the fact that each RTS can be waived independently should not prevent the use of cross-referencing to avoid unnecessary duplication of requirements across the RTS.

<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>

CME Group believes that the characteristics of a benchmark are more important than the characteristics of the contributor when determining the code of conduct requirements. We cannot see an obvious need for the code of conduct for a given benchmark to differ depending on the characteristics of the contributor. However, codes of conduct for different benchmarks may need to contain differing requirements depending on the characteristics of the benchmark such as the type of input data being provided and the benchmark’s calculation methodology.

<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>

CME Group favours a proportionate approach on whether records of such substantial exposures should be kept. Administrators would be best placed to determine what is the appropriate record keeping requirement to ensure the integrity of the benchmark. The RTS should therefore allow administrators to determine the extent of such record keeping.

<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>

Yes, to the extent they relate to suspicious input data (per the draft RTS) rather than suspicious transactions (per this question).

<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>

Please see response to question 16.

<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>

In the draft RTS it is currently unclear who has the training obligation in Article 9. This article should be amended so that it is clear that the obligation is either a requirement for training to be specified in the code of conduct (and so is an obligation of the administrator) or to ensure staff are trained (and so rests with the contributor). In either case, it should be clear that it is not an obligation of the administrator to ensure such training occurs as this is the responsibility of the contributor.

As a general comment, CME Group understands that the administrator’s obligation in respect of the code of conduct is to ensure that it exists and meets the requirements of the RTS. It is not the administrator’s responsibility to ensure that the code of conduct is being adhered to by the contributor and neither would it be possible for an administrator to do this on a day-to-day basis. For absolute clarity, CME Group believes that the RTS would benefit from additional wording (perhaps in a recital) clarifying these relative roles and responsibilities.

<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>

No response.

<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>

No response.

<ESMA\_QUESTION\_CP\_BMR\_18>

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

<ESMA\_QUESTION\_CP\_BMR\_19>

No response.

<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>

CME Group agrees with the proposed content and structure of the compliance statements for administrators of significant and non-significant benchmarks. We agree in particular that administrator of multiple benchmarks should be allowed to publish a single compliance statement that includes separate sub-sections referring to specific benchmarks.

<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>

While we agree that there may be some overlap between the information required to be included in the benchmark statement and the methodology, we understand that both documents are required to be published.

We query whether, for critical benchmarks, it is necessary to publish the names, principal activities and locations of the contributors as required by Article 5(g) of the draft RTS. First, while we appreciate that a critical benchmark is subject to mandatory administration and contribution requirements, we do not believe it is necessary to publish the identities of the contributors for this purpose and we fear that, to do so, may make some entities reluctant to become or remain a participant in a critical benchmark. We also note that the summary on page 100 of the consultation paper refers to “a description on an aggregate level, of major categories of the contributors to the benchmark and where they are located” whereas the RTS implies that each contributor’s principal activity and location would be published. We would suggest that the aggregate activity and location information should be sufficient, and without names.

<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>

No response.

<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>

CME Group appreciates ESMA’s effort to scale down the registration versus authorisation application requirements. However, we would welcome clarification whether provisions of Article 1(4) of the draft RTS apply only to the Annex I application, or equally to application for registration under Annex II. We are of the opinion that the latter should be also permissible.

<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>

CME Group welcomes adjustments in application forms for authorisation and registration in respect of the provision of general and financial information. We are of the opinion that the relevant information as included on both application forms are appropriate.

<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>

CME Group broadly agrees with ESMA’s proposal. However, we would like to reiterate our view that in respect of policies and procedures for checking and monitoring contributors’ adherence to the code of conduct, administrators should in no circumstances be put into the position of a quasi-regulator. It should remain the ultimate responsibility of the contributor’s compliance function to ensure adherence to the code of conduct. We are therefore of the opinion that, should nevertheless administrators be required to adopt policies and procedures for checking and monitoring contributors’ adherence to the code of conduct, it should be permissible to structure them on the basis of self-certification by contributors.

<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>

CME Group agrees with the proposed description of the benchmark.

<ESMA\_QUESTION\_CP\_BMR\_26>

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

<ESMA\_QUESTION\_CP\_BMR\_27>

No response.

<ESMA\_QUESTION\_CP\_BMR\_27>

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

<ESMA\_QUESTION\_CP\_BMR\_28>

CME Group broadly agrees with the proposals regarding provision of additional information. However, as the breadth of information included in the proposed application forms is already expansive, we are of the opinion that any request for additional information should be considered in the context of proportionate application of the BMR requirements to various types of benchmarks.

<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>

CME Group broadly agrees with ESMA’s proposal regarding the scope of information that will need to be provided by a third country benchmark administrator seeking recognition in the EU. We have consistently advocated the need to adopt workable third country regime for benchmarks in order to avoid creating unnecessary disruptions and market access barriers. We have argued that compliance with IOSCO principles, as certified by independent auditors, should be considered on outcome-basis and not necessarily as line-by-line requirement. We would like to reiterate all those points and encourage ESMA to allow flexible approach for national competent authorities (NCAs) in their assessment of applications by third country administrators.

<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>

CME Group agrees with the proposed procedure.

<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>

This comment should be read in conjunction with our comments made under Q29. While we broadly agree with the proposed scope of information that will have to be included in a third country administrator’s application for recognition in the EU, we are of the opinion that the requirements listed in Section B point (i) will be practically impossible to comply with. The difficulty stems from the lack of readily available and comprehensive data that administrators could use to measure the exposure of financial instruments, financial contracts and investment funds to a benchmark under its administration in order to assess whether its benchmark falls under significant / non-significant category. This is a problem equally faced by the EU benchmark administrators and it poses a re-occurring challenge for compliance with the BMR requirements. CME Group have previously commented extensively on the challenges relating to the measurement of benchmark exposures (see our response to 01 June 2016 ESMA Consultation Paper on the Benchmark Regulation). We would suggest that unless the administrator who makes reasonable effort, subject to data availability, is able to assess the category of its benchmark, all third country benchmarks should be provisionally deemed non-significant. This provisional assessment could be re-visited on a later stage once more data becomes available.

<ESMA\_QUESTION\_CP\_BMR\_31>