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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>

Dear Sirs,

IHS Markit is pleased to submit the following comments to the European Securities and Markets Authority (“***ESMA***”) in response to its Consultation Paper (***CP***) on Draft technical standards under the Benchmarks Regulation*.*

IHS Markit (Nasdaq: INFO) is a world leader in critical information, analytics and solutions for the major industries and markets that drive economies worldwide. The company delivers next-generation information, analytics and solutions to customers in business, finance and government, improving their operational efficiency and providing deep insights that lead to well-informed, confident decisions. IHS Markit has more than 50,000 key business and government customers, including 80 percent of the Fortune Global 500 and the world’s leading financial institutions. Headquartered in London, IHS Markit is committed to sustainable, profitable growth.

IHS Markit is a leading independent provider of fixed income and macroeconomic indices, calculating more than 17,000 indices globally. Our indices include the iBoxx bond indices, the iTraxx® and CDX® credit derivative indices.

**Comments**

Indices and benchmarks play an important role in enhancing transparency, liquidity and access in financial markets around the globe, they contribute to broadening the base of investable assets in the EU and are crucial elements driving economic development. We welcome the EU Benchmark Regulation (“***BMR***”) as an important framework to protect investors and restore confidence in benchmarks.

We have provided detailed answers on some of the questions but would like to make the following general points:

1. IHS Markit strongly supports the BMR and ESMA’s work but believes that the final rules need to be proportionate and workable across the very diverse universe of benchmarks;
2. we appreciate that ESMA have addressed a number of concerns the industry had about the practical application of the rules it is due to propose in the RTS; but
3. some concerns remain that ESMA’s rules do not reflect the full diversity of the benchmark industry and we have suggested some areas where the RTS could be altered to be clear that the flexibility and proportionality envisaged under the BMR and by ESMA can be applied with confidence.

<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>

IHS Markit appreciates and generally supports the flexibility ESMA provides for the oversight function. Although we do believe that the RTS could include reference to the use of independent index administration (for example in Article 4(2) as a potential way of resolving conflicts of interest), we welcome ESMA’s view that independent administration could be considered within the context of managing conflicts of interest under Article 4 of the BMR (CP Para 5).

<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 support the flexibility provided in not compelling nor forbidding any specific approach.

<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>

Please see Question 5.

<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>

Although we appreciate the flexibility foreseen in the RTS, we would encourage ESMA to ensure that the final rules are workable for all types of firms involved in benchmark administration. In particular, there are unlikely to be many people in smaller or more specialist benchmark firms who have relevant expertise but are not involved in the production or administration of benchmarks in any way. Many specialist benchmark firms do not have a financial interest in instruments referencing their benchmarks and so these firms are not subject to conflicts of interest inherent in other benchmark administrators. Specifically, we believe that senior staff in specialist benchmark firms would have important knowledge and expertise. If these individuals are not involved in the day to day administration of a particular benchmark, they should be encouraged to join the oversight function as voting members. Any approach that suggested such individuals were barred from the oversight function would be disproportionate and potentially counterproductive. We believe ESMA should clarify this in the RTS.

<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>

We agree that benchmark administrators should not be required to obtain all relevant data and instead should be able to ask for the data they require from contributors as and when needed.

More generally, it would be helpful if ESMA could clarify the situation around input data and data ‘readily available to an administrator’ as soon as possible (For example as in BMR Article 3(8)). IHS Markit would support the interpretation suggested by ESMA during the recent open hearing that input data is data prepared exclusively for purpose of contributing to the benchmark and, therefore, any other input falls into the category of ‘readily available to an administrator’.

<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>

As a specialist in Benchmark Administration, IHS Markit (and our clients using IHS Markit Independent Index Administration Services) is not subject to conflicts of interest because of front office activity. However, should contributions from front office functions be received, we would agree with the principle that extra checks should be made. Even so, it is important that the RTS should explicitly reflect a proportionate approach and ensure any measures to be implemented are in line with the risk posed by those individual contributions to the overall integrity of the Benchmark.

As an example, ESMA’s proposals would be extremely arduous and disproportionate if the Benchmark administrator was required to directly check enforcement in each contributor (especially if there were a large number of contributors, and the potential for a single contributor to affect the overall benchmark was limited) or, in extremis, if the benchmark administrator needed a physical presence (As suggested in Article 6(3)(d) in the draft RTS on Input Data (page 40)). Such requirements would often be unworkable and increase the likelihood of contributors stopping their contributions, which would be detrimental to the quality of benchmarks and so likely to work against the interests of the investors the regulation is intended to protect. Instead we would support a requirement that was more explicit that the administrator ought to be able to confirm enforcement of such requirements in the event that it had cause for concern that conflicts of interest might be impacting on the integrity of the benchmark and leading to investor detriment.

<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>

IHS Markit makes the index description and methodology for ‘Markit Proprietary Benchmark’ readily available on Markit’s public web site free of charge. Additionally, Markit has established an external challenge process on Benchmark determination that provides a standardised, rules-based and transparent process of dealing with index enquiries. We would strongly agree with ESMA that users should understand a benchmark and so support requirements for transparency about methodology unless there were compelling reasons why not to be transparent and such an approach would not lead to potential detriment for users of the benchmark.

<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>

ESMA rightly requires that, when methodologies are subject to material change, benchmark administrators should consult with stakeholders. In the draft RTS, ESMA requires administrators to “ensure that stakeholders are at a minimum informed” of the key elements of proposed methodology and to “inform stakeholders of the reasoning” (Draft RTS: Transparency of Methodology Article 3(1) – page 52). ESMA should be aware that it could be extremely onerous to require the administrator to actively identify and then inform all stakeholders whenever the methodology was due to change. We do not believe ESMA intends such an approach, but it would be useful to clarify that, similar to ESMA’s own consultations with stakeholders, administrators would need to ensure the relevant information was available and easily accessible for interested stakeholders.

<ESMA\_QUESTION\_CP\_BMR\_10>

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

<ESMA\_QUESTION\_CP\_BMR\_11>

As set out in our response to Question 6, it will be important for clarity to be provided around ‘readily available’ data and that a code of conduct is not required for the use of this data. This would ensure consistency between benchmarks and avoid an unworkable regime of requiring a code of conduct for data being produced for purposes other than the benchmark.

<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>

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<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>

The universe of benchmarks is extremely large and diverse so flexibility is important in the requirements to ensure the code of conduct works in a way that supports and adds value to each benchmark.

We would like to draw ESMA’s attention to the need for a sensible and proportionate approach to expectations around benchmark administrators ensuring adherence to the code of conduct. As an example, for benchmarks which rely on a large number of contributors and where a single contributor is unlikely to significantly affect the index, the benchmark administrator should be able to rely upon the annual attestation of a contributor that the code of conduct has been complied with. If each contributor must be actively monitored it will obviously consume time and resources that could be better used monitoring the quality of the Benchmark. Of course, benchmark administrators should be able to closely monitor contributors’ adherence to the code of conduct where it is appropriate. However, the RTS should be clear that this is at the discretion of the administrator, where there are reasonable grounds for doing so and where such a process would not jeopardise a contributor’s willingness to continue submitting to a benchmark. This will help reduce the likelihood that contributors would cease submissions, something that would be detrimental to the quality of the benchmark. It would be helpful if this was made clear in the RTS.

<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>

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<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>

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<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>

We generally support the draft RTS on the Benchmark Statement, but there are two areas where we have cause for concern. First, ESMA proposes including in the Benchmark Statement an “outline, on an aggregate level, the professional profiles of the contributors to the benchmark and explain, where applicable, why the benchmark is predominantly based on contributions by non-supervised entities” (Draft RTS: Benchmark Statement – Article 4(f). Page 106).

We believe that this requirement could be onerous and would be superfluous given the requirements to provide information on the methodology elsewhere. It also does not appear to be foreseen in Article 27 of the BMR and is therefore at odds with ESMA’s statement that “the RTS per se does not include additional elements in the benchmark statement, but rather specifies how the elements in Article 27 must be incorporated in practice in the published benchmark statement” (CP Page 169).

Second, ESMA proposes that the benchmark statement indicates the benchmarks qualification (critical, significant and non-significant) (Draft RTS: Benchmark Statement – Article 5(a), 6(1), 7(1). Page 106-107). IHS Markit would like to remind ESMA the difficulty of gaining accurate figures around the usage of benchmarks and would ask that the RTS specify that these figures can be done on a best effort basis, as ESMA has done for the authorisation process (see Question 28) (Draft RTS: Authorisation and Registration – Recital 9. Page 117).

<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>

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<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>

We agree that there should be minimal duplication and that authorisation and registration should be a “one-off” process. However, we would be concerned if previously supervised firms were able to follow the abbreviated registration process for significant benchmarks even though, as they are more likely to have a financial interest in the benchmark, there are more likely to be conflicts of interest. We would therefore encourage ESMA to allow competent authorities to add further requirements to the registration process or streamline the authorisation process where potential conflicts of interest might or might not exist.

<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>

In respect of commodity benchmarks, IHS Markit would like to see ESMA providing more specific clarity across its proposed RTSs about where they do not apply to commodities benchmarks. In the RTS under discussion here, for example, this could be done by adding a new Article 1(4)(d) (CP Page 118):

*“ for commodity benchmarks subject to Annex II of Regulation (EU) No 2016/2011, the external audit provided for in Annex II (18)”.*

We would also support similar clarifications in other relevant RTS.

<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>

ESMA proposes that, during the authorisation process, the administrator indicates the category of the benchmark. We appreciate ESMA’s clarification here that the information can be supplied as “assessed to the best of the knowledge of the applicant administrator” (Draft RTS: Authorisation and Registration – Recital 9. Page 117). This should also be introduced in other RTS where the administrator is required to estimate usage.

<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>

ESMA’s intention in the draft RTS Article 1(4) appears to be to help the applicant avoid the need to duplicate information that was contained in either a report by an independent auditor or certification by a third country competent authority (CP Page 142). To require both would seem disproportionate and contrary to the objective of reducing the burden (For example, CP para 253). To add clarity, we would recommend separating Article 1(4) (a) and (b) by inserting “*or”* between them.

<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>

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<ESMA\_QUESTION\_CP\_BMR\_31>