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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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

Appropriateness and verifiability of input data must represent the foundation of every benchmark and we strongly agree with the provisions of the RTS.

Starting from a common set of minimum requirements, administrators’ checks should be calibrated and adapted to the specificities of each benchmark. The list of minimum actions must include a list of records to be kept, frequent transmission of information by contributors, explicit information on how to manage the use of experts’ judgement (if any), active quality check including daily comparison, market monitoring and periodic review of the contributor conflicts of interest policy especially if the input data is contributed by a front office member.

Depending on the benchmark’s importance and complexity the administrator should perform deeper checks on the input data. As we suggested in the previous consultations, it could be worth exploring if access to repositories of regulatory of data (EMIR/MMSR/CSDs or other repositories) by administrators could allow further checks.

<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 agree with the general view that the contributions made by a front office member imply more risks but we strongly believe that, if a transparent internal oversight architecture is built and managed properly, this modus operandi could add value to the contribution process. Anyhow, the administrator must take steps in order to ensure that the three lines of defence are in place within the contributor organization.

Moreover, we want to stress that on top of all the formal procedures it is essential to maintain a continuous dialogue between the administrator and the contributor in order to identify any organizational change that could possibly affect the integrity of the benchmark contribution process.

<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>

We agree with the list of key elements proposed, though we think that the more elements get disclosed to facilitate the comprehension of the methodology the better it is. We underline the importance of a periodical review of those elements but we want to stress that the number of elements should always be enough to guarantee that the users understand how the methodology would react to adverse market conditions.

<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>

We are in favour of a periodic review of the methodology in order to make it fit better to changing economic/financial conditions. The number of elements of the internal review to be disclosed by the administrator appears to be sufficient to guarantee a shared and transparent comprehension of the process and decision.

<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>

We believe that, in addition to the periodic review of the design of the methodology, administrators should contemplate in their policy an emergency/contingency consultation process that would enable them to react to possible unexpected adverse scenarios affecting the benchmark.

<ESMA\_QUESTION\_CP\_BMR\_10>

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

<ESMA\_QUESTION\_CP\_BMR\_11>

Yes, we do agree with this approach since the clarity and comprehensiveness of any single RTS is of pivotal prominence, even if it would be desirable to minimize areas of overlapping.

<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>

We agree on the proposal of considering aspects other than the regulated nature of contributors for differentiating the provisions established by the RTS on the Code of conduct. Even if a non-EU supervised contributor could apply for some flexibility according to the principle of proportionality, that shouldn’t be the case for requirements established via the code of conduct. Other criteria such as the size of the contributor organization, its market share or volume of activity on the benchmark underlying should be taken into consideration in relation to differentiating the requirements.

<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>

Yes, the exposure of individual traders/desk should be monitored and subject to adequate internal procedures with regards to all kind of 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>

We agree with the escalation process proposed above: once considered appropriate by the senior management, audit and compliance departments, the information regarding suspicious transaction should be reported to administrator of the benchmark and its relevant competent authority.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>