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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***

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# Introduction

Please make your introductory comments below, if any:

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

S&P Global welcomes the opportunity to provide comments to ESMA’s Consultation Paper on Draft Technical Standards under the Benchmarks Regulation (CP).

S&P Global is the parent company of S&P Dow Jones Indices (S&P DJI) and S&P Global Platts (Platts), which both produce and distribute benchmarks for the financial and commodity markets. Formed in 2012 by combining the S&P Indices business and the Dow Jones Indexes, S&P DJI is a leading provider of financial market indices which include the Dow Jones Industrial Average ®, established in 1896, and the S&P 500 ®, established in 1957. Platts is the leading independent provider of information and benchmark prices for the commodities and energy markets. Platts’ coverage includes oil and gas, power, petrochemicals, metals, agriculture and shipping.

Both Platts and S&P DJI are independent and separate from market participants, product providers and government entities. They do not participate in the markets they measure and have no vested interest in the value of any indices or price assessments they produce.

We hope that our comments and suggestions on ESMA’s CP are helpful.

If you have any questions on the issues raised, or if you would like to discuss any points further please contact: Joe DePaolo, Chief Legal Officer, S&PDJI & Associate General Counsel, S&P Global, at

joseph.depaolo@spglobal.com or 001 212-438-3651; or, Pierre Davis, Chief Legal Officer, S&P Global Platts & Associate General Counsel, S&P Global, at pierre.davis@spglobal.com

<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>

Yes, we believe that the proposed approach is sufficiently flexible. We appreciate ESMA’s consideration that the mandate regarding composition be flexible “to allow administrators to select a structure most appropriate to their businesses” as set forth in Paragraph 3 of the CP. The five examples include a diverse set of arrangements with, in particular, the ability for an “oversight function consisting of multiple committees, each performing a subset of the oversight responsibilities and tasks…” as set forth in Paragraph 5 of the Annex to the draft regulatory technical standards (RTS) for the oversight function and also include flexibility with regard to the composition of the oversight function to avoid conflicts of interest.

<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>

Yes, we are supportive.

<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>

Yes, we are supportive of observers being permitted to attend meetings of the oversight committee “at the discretion of the oversight function only” as set forth in Paragraph 16 of the CP. It is important to stress the need that this be at the discretion of the oversight function and that a clear distinction be made between observers and members. For example, in some instances, like in the case of commodities benchmarks subject to Title II, ESMA’s request that representatives of contributors, whether supervised or unsupervised, be included in the oversight functions, may not be feasible and may create, rather than diminish, conflicts of interest.

In this regard, we suggest that Article 3 paragraph 1 b) includes the underlined wording as follows: “*criteria to select members of the oversight function, including evaluation of members’ expertise and skills and the time commitments required, and where appropriate to identify appropriate observers that may be permitted to join some meetings of the oversight function*

<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>

We generally support ESMA’s proportional and flexible approach but we are concerned by Article 3 par 1 (a) as regards *“the recording and publication of minutes of the meetings or decisions of the oversight function.*” These minutes could include sensitive, confidential information and we believe that such a requirement would be disproportionate. We would like to suggest that the minutes should not be made public but that any such information be made available to the relevant NCA unless it is legally protected from disclosure. We also want to stress the importance of ensuring any external members, including contributors of regulated data, be included only at the discretion of the administrator.

<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>

We agree with ESMA’s proposed approach to allow administrators to have flexibility and discretion over the structure of the oversight function so that the administrator can determine which would be most appropriate for their business, including the possibility for administrators “to operate multiple committees which carry out separate tasks and together form the oversight function for specific benchmarks” (Paragraph 5 of the Annex of RTS: Oversight Function). We appreciate ESMA’s position that the structure and composition of the oversight function “be determined by the administrator based on the nature, scale and complexity of the provision” of its benchmarks (Paragraph 1 of Article 1 of RTS: Oversight Function).

However, we believe it should be clear that administrators implementing an oversight function comprised of multiple committees responsible for separate tasks may include one committee responsible for governing the methodology and questioning/assessing/challenging analytical or editorial decisions made during the benchmark determination process working with other committees that are restricted from challenging any analytical or editorial decisions made by the governance body as its members are not equipped to do so. Further, the concept of “challenge” does not appear in the Level 1 text of BMR and the relevant Recital 21 of BMR notes that the independent function is intended *“to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight*”. In line with the Level 1 text of the BMR, we believe that this should be the oversight function’s main purpose. We also note that the Level 1 text excludes certain provisions for certain types of Benchmarks, including that Title II does not apply to the Article 19 Commodities Benchmarks produced by Platts.

<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 generally agree with the appropriateness of input data but do not believe verifiability should be required for input data that is either regulated data or readily available data.

With respect to appropriateness of input data, administrators should be responsible for selecting input data that represents the market or economic reality the benchmark intends to measure. Administrators should also select the data that is both available and best represents such reality. In some instances and for certain types of benchmarks, a hierarchical approach that is transparent through a methodology statement is the appropriate approach. This approach is also used in the IOSCO Principles for Financial Benchmarks.

With respect to verifiability of input data, we strongly believe that verification should not be required for input data that is either regulated data or readily available data. These data sets are not contributions.

Recital 12 of BMR provides that *“When a benchmark is determined on the basis of readily available data, the source of such data should not be considered to be a contributor*.” In the definitions of BMR, Article 3 paragraph 1 (8) provides that “‘*contribution of input data’ means providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose*.” However, the main body text of this draft RTS and its Recitals do not make any reference to readily available data. We believe this could represent an important oversight.

In order to avoid legal uncertainty and ensure a consistent interpretation by all the NCAs, we propose to have the terms “input data readily available” clarified in a Recital of this RTS as follows:

“*In compliance with what is required under Recital 12 and Article 3, paragraph 1(8) of Regulation (EU) 2016/1011, input data that is readily available to an administrator is not considered to be a contribution. Input data readily available means data available to an administrator obtained via subscription or public source, that cannot be modified or deleted in the transmission phase and which was not provided for the specific purpose of determining the benchmark*.”

There may also be instances, such as with commodities benchmarks subject to Title II of the BMR, in which “formal checks” may not be feasible. For example, if formal checks require additional interactions with the source of the input data it would not be feasible in instances where input data is obtained from a wide range of entities, including non-supervised entities, in multiple jurisdictions. It should therefore be clarified that the verifiability of the input data, including more extensive checks for non-transaction data, be limited to activities which can be performed by the administrator. For example, Article 3, Paragraph 2(f)(v)(3)-(4) may not be feasible in all instances, as in the case when the administrator may not have available to it “relevant communications between the submitter and approvers within the contributor (if applicable).”

<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 note that the RTS does not apply to Article 19 Commodity Benchmarks. Indeed, none of the Articles and corresponding RTS of Title II would apply to Article 19 Commodity Benchmarks.

For any Commodity Benchmarks subject to Title II, we would caution that any requirements contained in the RTS corresponding to Articles in Title II of the Regulation that are inconsistent with Annex II of the Regulation could diminish voluntary contributions to Commodity Benchmarks and therefore potentially reduce the ability for Commodity Benchmark administrators to produce robust independent benchmarks which increase market transparency.

<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 proposed key elements as Article 1 of the RTS: Transparency of methodology captures the concept the key element be included “as applicable to the relevant benchmark and input data used”. In addition, we appreciate the ability for administrators of significant benchmarks “to opt out from the disclosure of certain elements of the methodology” (Paragraph 92 of the CP). Transparency is essential to benchmarks but methodologies should include only that information applicable to the relevant benchmark and input data it uses.

<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>

Yes. The elements included under article 2 of the RTS: Transparency of methodology are appropriate for disclosure.

<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>

Article 4 (1) of the draft RTS provides that the comments received by the Administrator when consulting on a proposed material change as well as the responses shall be published in full except where confidentiality has been requested. We strongly believe that: (1) an administrator should have the discretion to publish the comments to ensure it is able to eliminate those comments that are irrelevant or inexplicable; and (2) administrators should be allowed to publish those comments/responses it deems appropriate for disclosure in summary or aggregated format which is more appropriate and user friendly to explain the rationale that leads to a change of methodology; and (3) the comments in full could be provided to the NCA upon its request. We note that the IOSCO Principles do not require all comments to be published in full.

<ESMA\_QUESTION\_CP\_BMR\_10>

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

<ESMA\_QUESTION\_CP\_BMR\_11>

As mentioned in our reply to Q6, Recital 12 of BMR provides that *“When a benchmark is determined on the basis of readily available data, the source of such data should not be considered to be a contributor*.” In the definitions of BMR, Article 3 par 1 (8) provides that “‘*contribution of input data’ means providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose*.” However, the main body text of this draft RTS and its Recitals do not make any reference to it.

As provided by BMR, we strongly believe that the code of conduct should not be required for input data that is “readily available” in the same way it is not required for regulated data. In order to avoid legal uncertainty and ensure a consistent interpretation by all the NCAs, we propose to have the terms “input data readily available” clarified in a Recital of this RTS as follows:

“*In compliance with what is required under Recital 12 and Article 3, paragraph 1(8) of Regulation (EU) 2016/1011, input data that is readily available to an administrator is not considered to be a contribution. Input data readily available means data available to an administrator obtained via subscription or public source, that cannot be modified or deleted in the transmission phase and which was not provided for the specific purpose of determining 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>

As mentioned in our reply to Q6 and Q11, Recital 12 of BMR provides that *“When a benchmark is determined on the basis of readily available data, the source of such data should not be considered to be a contributor*.” In the definitions of BMR, Article 3 par 1 (8) provides that “‘*contribution of input data’ means providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose*.” However, the main body text of this draft RTS and its Recitals do not make any reference to it.

As provided by BMR, we strongly believe that the code of conduct should not be required for input data that is “readily available” in the same way it is not required for regulated data. In order to avoid legal uncertainty and ensure a consistent interpretation by all the NCAs, we propose to have the terms “input data readily available” clarified in a Recital of this RTS as follows:

“*In compliance with what is required under Recital 12 and Article 3, paragraph 1(8) of Regulation (EU) 2016/1011, input data that is readily available to an administrator is not considered to be a contribution. Input data readily available means data available to an administrator obtained via subscription or public source, that cannot be modified or deleted in the transmission phase and which was not provided for the specific purpose of determining the benchmark*.”

<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>

We agree provided all elements are considered collectively.

<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>

Yes.

<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 do not agree with the requirement to provide duplicative information in separate documents; however, with the exception of the points set forth herein, we are generally comfortable with the various disclosure elements across both the methodology document and the benchmark statement.

* Recital 5 of the draft RTS provides that *“Where a benchmark exhibits the characteristics of two different types of benchmarks (e.g. a commodity benchmark which is a regulated data benchmark), all the specific provisions set up in the RTS apply in parallel to provide the stakeholders with comprehensive information on the benchmark’s characteristics.”* We believe that the example provided on commodity benchmarks is not accurate as it would be disproportional and not aligned to Article 19 – BMR which provides that if the commodity benchmark is a regulated data benchmark it will fall under the latter category.
* Article 1, Paragraph 1(c) – it may be very difficult to obtain the information necessary to ascertain such things as the size of the measured market, potential participants and barriers to market access.
* Article 1, Paragraph 2 – depending on the universe, one cannot always determine the minimum size of the measured market. In addition, although the degree of liquidity may be considered in developing and maintaining a methodology, it will be difficult to include a static statement about the degree of liquidity required.
* Article 1, Paragraph 4(c) – this is a concept best addressed by the product issuer or investment fund.
* Article 4 (f) provides for the requirement to explain “why the benchmark is predominantly based on contributions by non-supervised entities”. We believe that such a requirement would be beyond and inconsistent with the Level 1 text. Indeed, Article 19 of the BMR provides that Annex II shall apply instead of Title II to commodity benchmarks “unless the benchmark in question is a regulated data benchmark or is based on submissions by contributors the majority of which are supervised entities.” To ensure alignment with Article 19-BMR, we propose the wording of Article 4(f) to be amended as follows: “*outline, on an aggregate level, the professional profiles of the contributors to the benchmark and explain, where applicable, why the benchmark is OR IS NOT predominantly based on contributions by ~~non-~~supervised entities.”*

<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>

We agree with the first three proposed specifications under Article 8, Paragraphs 2(a)-2(c) but do not understand what is contemplated under Article 8, Paragraph 2(d).

<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>

Yes a distinction may be made; however, although distinct regimes may be called for in the Level 1 BMR text both the procedures and the information required to fulfil them must be aligned as contemplated in Article 34, paragraph 4 (“The applicant shall provide all information necessary to satisfy the competent authority that the applicant has established, at the time of authorisation or registration, all the necessary arrangements to meet the requirements laid down in this Regulation”). Extraneous information requests should be avoided in both cases. We strongly believe that the application for authorization/registration should focus on organizational aspects whereas compliance/benchmark statements etc. would be made available anyway to the NCAs for their ongoing supervisory task on benchmarks.

In addition, in line with a proportional application of the BMR, it should be clear that the information required in either authorisation or registration should align with the type of administrator (e.g. independent index providers) and the type of benchmarks provided.

<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>

The information provided in the application for authorization should be specified on the basis of enabling competent authorities to assess whether the applicant is suitable for authorization. We believe that the financial information requirements are unnecessary and disproportionate. Full disclosure of financial information is not proportional or justified by the Level 1 text of BMR, except for critical/systemically important benchmarks. Further, if financial information is required it should be limited to that which is included in an administrator’s regularly filed reports.

<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>

Not all of the requirements are consistent with the obligations in other parts of the BMR, in particular stating the “the integrity and reliability of the benchmark’s determinations” and the “internal reporting of infringements”.

ESMA states that an application for registration would only require “abbreviated information” on internal control structure, oversight and accountability frameworks.

In line with our response to Question 23, if independent benchmark providers, which are not currently supervised entities, seeking authorization for the first time are required to provide information on these aspects of the benchmark determination process then other benchmark providers should be required to do the same and to meet the same standards. If they are not considered essential then the information burden on non-supervised applicants undergoing authorization should also be reduced to ensure general proportionality.

It is not clear how the information contained in the RTS on the remuneration policy is relevant to being compliant with the Regulation. The Level 1 text of the BMR itself does not require this information to be provided. The BMR only requires an administrator to ensure “the removal of any direct link between the remuneration of employees involved in the provision of input data and the remuneration of, or revenues generated by, persons engaged in another activity, where a conflict of interest may arise in relation to those activities”. Details on how this direct link has been removed should be sufficient in the application rather than having to provide a full remuneration policy for persons directly and indirectly. We therefore suggest that point 5(c) of Annex I be amended to reflect the intent of the Level 1. The “structure” of the remuneration policy, as is required in under point 5(b) of the Annex to ESMA’s draft RTS on recognition of a third country applicant, should be sufficient for EU applicants.

Finally, while we understand NCAs require these applications to assess the administrators, the applications will contain sensitive, proprietary and confidential information and therefore should not be made public.

We believe that information contained in an assessment by an independent external auditor of compliance with the relevant IOSCO principles should be listed in the RTS as being able to demonstrate fulfilment of certain informational requirements in the Annex where there is overlap with the RTS.

ESMA’s RTS for recognition allows the use of IOSCO audits where the information it contains overlaps with the information required for recognition under the RTS. However, the RTS for EU applicants does not contain a similar provision. We note that nothing in the Level 1 BMR text would prevent IOSCO audits being used by EU applicants to demonstrate compliance with the authorization or registration requirements to the extent that they can. For example information contained in an IOSCO audit may also demonstrate compliance with the organizational structure and governance, conflicts of interest, internal controls, and methodology of the BMR. This would help reduce needless and burdensome duplication.

We therefore call on ESMA to include the same treatment for EU applicants as provided for third country applicants under Article 1(4) of the draft RTS on Recognition in the draft RTS for Authorization and Registration where an existing and verified source for this information exists in the form of an IOSCO audit.

<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>

We welcome ESMA’s acknowledgement in sections 225 to 227 and 230 to 231 of the Consultation Paper that it is important to ensure the RTS are geared towards “reducing duplication” and that exemptions and information requested on the benchmark statement can be included during the single application process.

We also welcome the provision under point 9 of Annex I of the RTS themselves which indicates that “any additional information relevant to this application” may be provided. We believe that this should include the latest IOSCO audit which an applicant has undergone where the information it contains may be relevant to the application process. We believe that the results of any third party audit an administrator conducted in connection with its adherence to the IOSCO Principles for Financial Benchmarks or the PRA Principles should be able to be included. In line with ESMA’s desire to avoid duplication we believe that an IOSCO audit should be cited.

To avoid further duplication, Draft RTS Article 1 paragraph 4 should include the following addition: *d. for commodity benchmarks subject to Annex II of Regulation (EU) No 2016/2011, the external audit of compliance envisaged by Article 18 of Annex II.*

<ESMA\_QUESTION\_CP\_BMR\_26>

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

<ESMA\_QUESTION\_CP\_BMR\_27>

We do not believe that natural persons should be subject to a regime which is less stringent than those for other benchmark providers. All administrators should be required to meet the standards as set out in the Regulation. This requires that all applicants provide information to the relevant NCA for an impartial and full assessment to be made of an applicant’s ability to meet the requirements as set out in the Regulation. The Level 1 text of the Regulation does not call for specific treatment for natural persons. We therefore do not believe that this is appropriate.

<ESMA\_QUESTION\_CP\_BMR\_27>

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

<ESMA\_QUESTION\_CP\_BMR\_28>

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<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>

We believe that the information to be provided as set out in Annex I of the draft RTS is quite burdensome and lacks proportionality in particular as regards a full disclosure of financial information (including forecasts), and detailed information on senior management. In addition, certain information required goes beyond the Level I text; for example, detailed internal controls descriptions for benchmarks not subject to those requirements.

However, we very much welcome that in Article 1(4) of the RTS on Recognition ESMA has ensured that an independent external audit of compliance with IOSCO principles can substitute for information required in an application which is listed in the annex. Notwithstanding the points raised above, this provision should ensure that the process is less likely to be “uselessly burdensome”, as ESMA points out (paragraph 253 of the CP), where an existing and verified source for this information exists. We also welcome ESMA’s stated intent to provide legal certainty and a common approach for third country applicant providers (paragraph 244 of the CP) based on the RTS across Member States.

We also believe that Article 1 paragraph 4 (a) and (b) should be separated by inserting “OR” to be aligned with the level 1 text of BMR and to prevent the misinterpretation to require both the external audit and certification. See below the proposed drafting change.

*4. The applicant shall not be required to provide information in accordance with Annex I to the extent that the information is contained in:*

*a. an assessment by an independent external auditor of compliance with the IOSCO Principles for financial benchmarks or for PRAs, as applicable;* ***OR***

*b. the certification provided by the competent authority of the third country where the applicant is located, attesting compliance with the IOSCO Principles for financial benchmarks or for PRAs, as applicable.*

<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>

Yes, this appears consistent with Article 32(4 and 5) of the BMR.

<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>