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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>

MSCI appreciates the opportunity to respond to ESMA’s consultation.

MSCI is a leading global provider of investment decision support tools, including equity indexes, real estate indexes, portfolio risk and performance analytics, credit analytics and environmental, social and governance (“ESG”) data and research. Our products and services address multiple markets, asset classes and geographies and are licensed to a diverse institutional investor client base, including asset owners, such as pension funds, endowments, foundations, central banks, family offices and insurance companies; institutional and retail asset managers, such as managers of pension assets, mutual funds, exchange traded funds (“ETFs”), real estate, hedge funds and private wealth; and financial intermediaries, such as banks, broker-dealers, exchanges, custodians and investment consultants.

MSCI is headquartered in New York, with research and commercial offices around the world. MSCI Inc. is a US public company, incorporated in Delaware and listed on the New York Stock Exchange (ticker symbol: MSCI). MSCI is an independent index provider and does not have any stock exchange, asset manager, broker dealer, bank, or trading/clearing facility in its corporate group. MSCI does not create, market, trade or clear securities or financial products. MSCI has over 6000 customers worldwide.

MSCI’s flagship equity indexes include the MSCI global equity indexes. The MSCI global equity Indexes have been calculated for more than 40 years, and today MSCI calculates over 180,000 equity indexes per day. MSCI global equity index families include country and regional indexes, size indexes (large cap, small cap, and micro-cap), sector indexes, style (value/growth) indexes, strategy indexes, thematic indexes and ESG indexes. MSCI also calculates custom indexes at the request of clients, by applying client screens and constraints to MSCI global equity Indexes.

In addtion, MSCI calculates commercial real estate indexes and separate indexes are published for 25 national real estate investment markets as well as global and European composites. MSCI has been calculating real estate indexes for over 30 years.

In July 2014, 2015 and 2016, MSCI announced that it successfully completed an assurance review of its implementation of the IOSCO Principles for Financial Benchmarks. MSCI has engaged PricewaterhouseCoopers LLP (PwC) to perform the reviews. The full reports, including the PwC assurance review, are available at [www.msci.com/products/indexes/regulation.html](http://www.msci.com/products/indexes/regulation.html) for MSCI equity indexes and select IPD real estate indexes and benchmarks.

<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 agree that the list of governance arrangements is sufficiently flexible, provided that they are actually optional and not mandatory. While the commentary does seem to indicate that, we wish to point out that the language of the actual technical standards in some areas seems stronger and could be interpreted as mandatory. Also, instead of the administrator having control of who it chooses to invite to the governance committees and allowing the administrator to choose, it seems to give a broad and unlimited number of third parties the right to be considered. We believe the following changes would need to be made to avoid confusion and inconsistent interpretations:

* In the introduction in Section (6), the phrasing “It is therefore appropriate that they be considered” should be changed to “It is therefore appropriate that they may be considered.”.
* In Section 5 (Article 1) we believe that “shall consider” needs to be changed to “may consider”, because it seems that the benchmark administrator is forced to consider (i.e., “shall consider”) clients (which we believe would introduce conflicts of interest), competitor benchmarks owned by exchanges (which would be unacceptable) and investors in funds tracking benchmarks who (like clients) are direct beneficiaries of decisions relating to the benchmark and with whom it would not be appropriate to discuss price sensitive information about benchmark changes before the rest of the market.
* In Section 7 (Article 1) it’s not clear whether including staff is required or optional.
* The introduction in Section 9, and in Section 9, Article 1 with respect to observers, it seems to indicate that observers have the absolute right to join governance committees forcing administrators to review consider their application. The observers do not need to have any qualifications, knowledge, or expertise. They may only have an “interest” which contradicts the requirements in Section 4 (Article 1) requiring skills, knowledge, and expertise. There are also no limits on the numbers that can apply. This seems anomalous. It also seems unnecessary given that the regulators are already regulating the administrator. Instead we believe that the administrator should have the right to invite observers, but not that an unlimited number of observers can exercise their rights to join. We believe this should be corrected:
	+ The focus of the introduction in Article 9, should be switched from “Observers may also join…if they have an interest in the benchmark” to “Administrators may consider inviting observers to join…”
	+ The focus of Article 9 (Article 1) should be switched from the observers having an absolute right to join (“Observers shall be permitted”) to administrators having the right to consider inviting observers.

In Section 1(c) (Article 4), it should be clarified that this refers to third party members and not internal members of the administrator, otherwise as read you could have an anomalous situation where the head of an IT department could not vote on a decision that impacts IT.

<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>

<ESMA\_QUESTION\_CP\_BMR\_2>

1. Do you support the concept of observers and their inclusion in the oversight function?

<ESMA\_QUESTION\_CP\_BMR\_3>

We do not support the inclusion of observers in the oversight function. Firstly, given that administrators are already regulated, it is unclear to us why a public authority would be an observer in an oversight function. Secondly, because oversight committees have access to price sensitive data, we do not think it is appropriate to allow any third parties on our index oversight committees. It is also not clear to us, as public authorities, who the observers would actually be (e.g., what level of which government). It is not clear why any of those parties should be part of a benchmark administrator’s governance procedures. We further note that observers do not need to have any qualifications, knowledge, or expertise. They may only have an “interest” which contradicts the requirements in Section 4 (Article 1) requiring skills, knowledge, and expertise. There also appear to be no limit on the numbers that can apply. We believe instead that the administrator should have the right to invite observers, not that the observers have the absolute right to join. <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>

Yes, we agree that the list of governance arrangements is sufficiently flexible, provided that they are actually optional and not mandatory. While the commentary does seem to indicate that, we wish to point out that the language of the actual technical standards in some areas seems stronger and could be interpreted as mandatory. Also, instead of the administrator having control of who it chooses to invite to the governance committees and allowing the administrator to choose, it seems to give a broad and unlimited number of third parties the right to be considered. We believe the following changes would need to be made to avoid confusion and inconsistent interpretations:

* In the introduction in Section (6), the phrasing “It is therefore appropriate that they be considered” should be changed to “It is therefore appropriate that they may be considered.”.
* In Section 5 (Article 1) we believe that “shall consider” needs to be changed to “may consider”, because it seems that the benchmark administrator is forced to consider (i.e., “shall consider”) clients (which we believe would introduce conflicts of interest), competitor benchmarks owned by exchanges (which would be unacceptable) and investors in funds tracking benchmarks who (like clients) are direct beneficiaries of decisions relating to the benchmark and with whom it would not be appropriate to discuss price sensitive information about benchmark changes before the rest of the market.
* In Section 7 (Article 1) it’s not clear whether including staff is required or optional.
* The introduction in Section 9, and in Section 9, Article 1 with respect to observers, it seems to indicate that observers have the absolute right to join governance committees forcing administrators to review consider their application. The observers do not need to have any qualifications, knowledge, or expertise. They may only have an “interest” which contradicts the requirements in Section 4 (Article 1) requiring skills, knowledge, and expertise. There are also no limits on the numbers that can apply. This seems anomalous. It also seems unnecessary given that the regulators are already regulating the administrator. Instead we believe that the administrator should have the right to invite observers, but not that an unlimited number of observers can exercise their rights to join. We believe this should be corrected:
	+ The focus of the introduction in Article 9, should be switched from “Observers may also join…if they have an interest in the benchmark” to “Administrators may consider inviting observers to join…”
	+ The focus of Article 9 (Article 1) should be switched from the observers having an absolute right to join (“Observers shall be permitted”) to administrators having the right to consider inviting observers.

In Section 1(c) (Article 4), it should be clarified that this refers to third party members and not internal members of the administrator, otherwise as read you could have an anomalous situation where the head of an IT department could not vote on a decision that impacts IT.

<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 have no other input.

<ESMA\_QUESTION\_CP\_BMR\_5>

1. Do you agree with the appropriateness and verifiability of input data that the administrator must ensure are in place? Please elaborate.

<ESMA\_QUESTION\_CP\_BMR\_6>

Yes, for the most part. However, we have a few concerns that we wish to highlight.

1. We believe that the concept of “contribution of input data” which does not apply to “readily available” input data needs to be clarified so that the requirements for “contribution of input data” do not bleed over creating anomalous (if not impossible) obligations with respect to input data readily available. It would be helpful if those delineations were more clear so that the following clauses do not apply to contributions of readily available input data:
	1. Sections 7, 8, 9, 10, and 12 of the Introduction. (Administrators have no way of forcing contributors of readily available data to implement policies including employment/disciplinary policies). While these obligations may already naturally apply to contributors that are supervised entities in the EU (including through other EU legislation), the EU cannot expect administrators (private companies) worldwide to force non-EU non-supervised contributors to comply with these EU rules and effectively take on the role of a quasi-regulator.)
	2. Section 2(f) (Article 3) (See above.)
2. In Section 2 (Article 2), we’re not sure why there is a specific requirement for “metadata” as “summaries of data”. Data can be collected with submitters simply completing all the fields in a submission form which represents the entire data, not a summary or representation of it. Using the term “metadata” risks being too prescriptive.
3. When referring to verifiability, it is important to acknowledge the standard practice of performing that through outlier checks/mismatch checks on datasets vs. verifying every single data item for every contributor which would be impossible where there are thousands of data points.
4. In Section 2 (Article 3) we believe that “where appropriate” should be added to “where applicable”. Something may applicable but completely impractical, causing unacceptable delay or cost.

Please note that there is remains an ambiguity in the regulation and technical standards between contributions of factual data/data that has an independent purpose and estimates/data submitted solely for the purpose of benchmark calculation. It should be clarified in either as part of Level 2 (if possible) or Level 3 that contributions of factual data/data that has an independent purpose is considered “readily available”. It would also be helpful to ensure that third country stock exchange data is considered either regulated data or readily available and that third country stock exchanges are not required to sign codes of conduct. Clarifying this in Level 2 (if possible) or as part of a Level 3 FAQ as soon as possible would help ensure consistency across national competent authorities.

<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 wish to have the definition of front office clarified, e.g., the front office of an EU supervised entity with a trading function, otherwise the definitions and requirements are anomalous if it applies to non-supervised entities. For example, marketing departments of real estate managers who may contribute factual commercial real estate input data (such as office building square footage or cash flows) to commercial real estates indexes should not be caught by the “front office” definitions/obligations. Front office only makes sense in the context of front office trading functions.

<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>

 Generally, yes. However we believe that Section 1(9) (Article 1) should be clarified so that it does not require the administrators to publicly disclose the benchmark constituents/weights themselves as that goes against the Level 1 text and the deletion of the original Article 16.

<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 in general.

<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>

Yes, in general we agree with the procedure in Article 3. However there are a few points we wish to raise.

1. Under Section 1 (Article 3) it should be clear that consultations are not required for market disruption or other urgent issues. There may not be time to consult. Announcements of changes can be made but in these types of events there is no time for the usual extensive consultation.
2. We do not agree with publishing the comments or the responses. The changes should be announced with the rational, but publishing the comments themselves and forcing the administrator to respond to each comment and publish those responses should be optional. We believe that requiring publication of both comments and responses would lead to unacceptable levels of lobbying by the clients and industry bodies on benchmark changes and would jeopardize and threaten the independence of the benchmark administrator. Instead, administrators could make all comments available to the national competent authority upon request.

<ESMA\_QUESTION\_CP\_BMR\_10>

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

<ESMA\_QUESTION\_CP\_BMR\_11>

A major ambiguity needs to be clarified to understand how these sections/obligations work. Because it very seriously impacts implementation of the regulation by the industry, we believe what needs to be clarified as soon as possible, is that contributions of factual data/data that have an independent purpose (e.g., not estimates submitted for the purpose of benchmark calculation) as well as stock exchange data from exchanges that are outside the definition of Section 3(24) of the regulation (i.e., may not have a finally agreed equivalence arrangement, etc.) are considered “readily available” (or that third country stock exchange data is considered regulated data). If that is not clarified, then Articles 2, 5, 6, 7, 8 and 9 become impossible obligations for administrators. Contributors of factual data with independent purpose (readily available data) are just collecting the data and submitting it. They are not creating the data itself, (e.g., square footage of commercial buildings and cash flows of commercial buildings for commercial real estate indexes or stock prices of a frontier market exchange), so the obligations placed on contributors are anomalous and impossible and the obligation for the administrator to require it is impossible. Also, if this is not clarified with respect to third country stock exchange data, then this could impact third country investment opportunities for European investors. Third country stock exchanges cannot be forced to sign codes of conduct with benchmark administrators, and if they refuse then EU users cannot be prohibited from using third country benchmarks (or any regional or global composites). That will impact current financial products and investment strategies as well as future financial products and investments strategies.

Most of these sections are either leaning towards or specifically mention trades/traded data from EU supervised contributors/mandatory contributions, and that is not the case with all benchmarks to which these provisions may apply. Further, there doesn’t seem to be proportionality to address that. A few examples include:

* Section 4 of Article 2, Section 1 of Article 7 assume contributors have a compliance department.
* Section 3 of Article 5 specifically mentions trades (and that is preceded by “shall include”).
* Section 1(b) of Section 8 presumes the contributor has internal or external risk management audits.

For Article 6, the record keeping the requirements should be applied depending on the type of data (i.e. where applicable/appropriate). It presumes traders are involved and that is not the case with all benchmarks.

For Article 8, requirements such as recruitment policies remuneration polices, trader exposures, etc. may work for EU supervised entities that are submitting mandatory contributions but will not work with respect to non-EU contributors especially if they are not regulated financial institutions where these concepts are more natural. The danger here is that by applying standards of the financial industry to other types of industries, those parties will just stop contributing because the requirements are just too onerous. They will still produce the data, but they just won’t contribute it and we will have less transparency in traditionally opaque markets as a result.

<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>

Yes we agree that the characteristic of the contributors is important. We feel that a bit more work needs to be done to address that. It seems that most of the requirements are assuming supervised contributors/mandatory contributions. However, that will not be the case for all benchmarks to which these provisions may apply.

A major ambiguity needs to be clarified to understand how these sections/obligations work. Because it very seriously impacts implementation of the regulation by the industry, we believe what needs to be clarified as soon as possible, is that contributions of factual data/data that have an independent purpose (e.g., not estimates submitted for the purpose of benchmark calculation) as well as stock exchange data from exchanges that are outside the definition of Section 3(24) of the regulation (i.e., may not have a finally agreed equivalence arrangement, etc.) are considered “readily available” (or that third country stock exchange data is considered regulated data). If that is not clarified, then Articles 2, 5, 6, 7, 8 and 9 become impossible obligations for administrators. Contributors of factual data with independent purpose (readily available data) are just collecting the data and submitting it. They are not creating the data itself, (e.g., square footage of commercial buildings and cash flows of commercial buildings for commercial real estate indexes or stock prices of a frontier market exchange), so the obligations placed on contributors are anomalous and impossible and the obligation for the administrator to require it is impossible. Also, if this is not clarified with respect to third country stock exchange data, then this could impact third country investment opportunities for European investors. Third country stock exchanges cannot be forced to sign codes of conduct with benchmark administrators, and if they refuse then EU users cannot be prohibited from using third country benchmarks (or any regional or global composites). That will impact current financial products and investment strategies as well as future financial products and investments strategies.

Most of these sections are either leaning towards or specifically mention trades/traded data from EU supervised contributors/mandatory contribution, and that is not the case is not the case with all benchmarks to which these provisions may apply. Further, there doesn’t seem to be proportionality to address that. A few examples include:

* Section 4 of Article 2, Section 1 of Article 7 assume contributors have a compliance department.
* Section 3 of Article 5 specifically mentions trades (and that is preceded by “shall include”).
* Section 1(b) of Section 8 presumes the contributor has internal or external risk management audits.

For Article 6, the record keeping the requirements should be applied depending on the type of data (i.e. where applicable/appropriate). It presumes traders are involved and that is not the case with all benchmarks.

For Article 8, requirements such as recruitment policies remuneration polices, trader exposures, etc. may work for EU supervised entities that are submitting mandatory contributions but will not work with respect to non-EU contributors especially if they are not regulated financial institutions where these concepts are more natural. The danger here is that by applying standards of the financial industry to other types of industries, those parties will just stop contributing because the requirements are just too onerous. They will still produce the data, but they just won’t contribute it and we will have less transparency in traditionally opaque markets as a result.

<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>

No, because this situation does not apply to all benchmarks. Real estate benchmarks do not consist of data provided by traders. As mentioned above, most of these sections are either leaning towards or specifically mention trades/traded data from EU supervised contributors/mandatory contribution, and that is not the case with all benchmarks to which these provisions may apply

<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, provided that in all cases the contributor should be primarily responsible for (and for reporting) the data they are submitting to the benchmark administrator. The benchmark administrator can only check those data points against past submissions and cannot determine if data is “suspicious”. Benchmark administrators can only determine if data is anomalous.

<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>

A major ambiguity needs to be clarified to understand how these sections/obligations work. Because it very seriously impacts implementation of the regulation by the industry, we believe what needs to be clarified as soon as possible, is that contributions of factual data/data that have an independent purpose (e.g., not estimates submitted for the purpose of benchmark calculation) as well as stock exchange data from exchanges that are outside the definition of Section 3(24) of the regulation (i.e., may not have a finally agreed equivalence arrangement, etc.) are considered “readily available” (or that third country stock exchange data is considered regulated data). If that is not clarified, then Articles 2, 5, 6, 7, 8 and 9 become impossible obligations for administrators. Contributors of factual data with independent purpose (readily available data) are just collecting the data and submitting it. They are not creating the data itself, (e.g., square footage of commercial buildings and cash flows of commercial buildings for commercial real estate indexes or stock prices of a frontier market exchange), so the obligations placed on contributors are anomalous and impossible and the obligation for the administrator to require it is impossible. Also, if this is not clarified with respect to third country stock exchange data, then this could impact third country investment opportunities for European investors. Third country stock exchanges cannot be forced to sign codes of conduct with benchmark administrators, and if they refuse then EU users cannot be prohibited from using third country benchmarks (or any regional or global composites). That will impact current financial products and investment strategies as well as future financial products and investments strategies.

Requirements for supervised contributors should solely be included in Article 16 and should not be applied to benchmark administrators via codes of conduct. This is especially important given that contributions may be made by supervised contributors or unsupervised contributors for the same benchmark and only one code of conduct will apply to a benchmark (i.e., different codes of conduct cannot apply to the same benchmark). Applying the requirements of EU supervised contributors to non-EU/non-supervised contributors will not work, and it will reduce the contributions made by the non-EU/non-supervised contributors.

<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>

We believe this clause should apply only to “contributions of input data” and not readily available data.

It would also be helpful to exclude administrators from this requirement if their data is used in the calculation of another benchmark because the administrators benchmark is already regulated under the regulation.

<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>

We believe this clause should apply only to “contributions of input data” and not readily available data.

It would also be helpful to exclude administrators from this requirement if their data is used in the calculation of another benchmark because it cannot be that the same data has two different standards apply to it. For benchmark administrators, data is provided on a subscription basis to clients through datafeeds. Administrators are not “submitters”. Data files are permissioned and distributed electronically. As such, these sections are anomalous with respect benchmark administrators.

<ESMA\_QUESTION\_CP\_BMR\_18>

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

<ESMA\_QUESTION\_CP\_BMR\_19>

Because this allows regulators to treat competitive benchmarks differently, national competent authorities can wind up creating an unlevel playing field across competitors. If a national competent authority chooses to apply these clauses and require the administrator to comply with extra obligations, we believe that there should be some control mechanism in place to address this risk, e.g., the national competent authority has to escalation such situation to ESMA for approval with respect to the market impact issues, the administrator has the right to appeal, etc.

<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>

Generally, yes, and we appreciate ESMA’s efforts to reduce the administrative burden. We believe that additional changes can be made to ensure compliance statements do not need to be constantly updated. Given that some benchmarks that may bounce up and down around the EUR50B threshold on a semi-annual basis, we believe it would be helpful if there were a way to update the compliance statements with reference to particular benchmarks without having to resubmit the entire compliance statement. It’s likely the case that administrators may have some non-significant benchmarks and some significant benchmarks and instead of submitting two new statements each time a benchmarks shifts from being a significant to an non-significant benchmark (or vice versa), it would be helpful if administrators could provide an appendix listing any indexes that changed categories. For example, a benchmark administrator could provide an updated appendix stating for the period xxx, abc benchmark falls within the definition of significant instead of non-significant and our compliance statement for significant benchmarks applies.

To avoid confusion, we believe that it also needs to be clear that benchmarks can be identified on an benchmark family basis, to avoid confusion. For example, the title in B of Annex I say “significant **benchmarks listed** below”, etc. We believe is should say “benchmarks or benchmark families”.

<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>

Generally, we applaud (and appreciate) ESMA’s efforts to reduce the administrative burden associated with benchmark statements, especially with the ability to refer to other documents available to the public. There are a few areas however, where the RTS is more burdensome than the Level 1 text. We expect that is unintentional and hope it can be clarified. For example, the Level 1 text allows for a benchmark statement per family. However, the RTS requires identifiers to be added. Benchmarks can be added frequently to a family and requiring individual benchmark identifiers on benchmark statements will require benchmark administrators to update the statements on a constant basis. Also, if sources can be described (e.g., stock exchange price data from the relevant market) instead of specifically identified (e.g., listing each stock exchange globally), that would be helpful. Finally, while this may be obvious, it would be helpful if it were clarified that only those changes to the benchmark/methodology **that impacted the statements in the benchmark statement** would require the benchmark statement to be updated, otherwise it could be interpreted that all benchmark statements have to be reissued every time there is a minor change to a methodology or at each index rebalancing.

<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>

Generally, we applaud (and appreciate) ESMA’s efforts to reduce the administrative burden associated with benchmark statements, especially with the ability to refer to other documents available to the public. There are a few areas however, where the RTS is more burdensome than the Level 1 text. We expect that is unintentional and hope it can be clarified. For example, the Level 1 text allows for a benchmark statement per family. However, the RTS requires identifiers to be added. Benchmarks can be added frequently to a family and requiring individual benchmark identifiers on benchmark statements will require benchmark administrators to update the statements on a constant basis. Also, if sources can be described (e.g., stock exchange price data from the relevant market) instead of specifically identified (e.g., listing each stock exchange globally), that would be helpful. Finally, while this may be obvious, it would be helpful if it were clarified that only those changes to the benchmark/methodology **that impacted the statements in the benchmark statement** would require the benchmark statement to be updated, otherwise it could be interpreted that all benchmark statements have to be reissued every time there is a minor change to a methodology or at each index rebalancing. As such, Article 8(1) should be pared back to the content in the benchmark statement. Note it’s not clear what Section 2(d) Article 8 means.

<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 believe that authorization and registration should have the same governance/oversight requirements especially because of the concerns around self-indexing. For example, it is important for investors to know what governance/ walls are in place between benchmark calculation and fund/financial product management/pricing and whether those functions are separate and independent or not. For natural persons, it seems that remuneration should be addressed somewhere and that there should be more information required about governance/conflicts of interest.

<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>

Financial disclosures should be in line with the company’s regular financial reporting requirements. We also believe that financial forecasts should be deleted. If this is a one-off process, the national competent authority can review the last 3 years of accounts to determine the company’s financial position. Further, if this information can be made public, then we have additional concerns because forecasts are commercially sensitive and also potentially price-sensitive.

<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>

We noticed one point that seems to be different from the Level 1 text. There is a reference to marketing benchmarks in Annex 1, Section 4(c). We do not see how or why marketing departments and any departments related to marketing (such as sales departments) are relevant because they are not making any decisions relating to the benchmark design, calculation or maintenance. It may be that the reference is in relation to the definition of front office, but that’s very specific to trading functions where the front office is contributing data, and that is not relevant to organizations without trading functions or to the administrator’s application.

<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 greatly appreciate ESMA’s efforts to avoid duplication and yes we agree with most of the requirements. One area of concern is the requirement to provide contracts to the national competent authority. The agreements may contain clauses prohibiting disclosure without the other party’s consent and may contain commercially sensitive information. We would request that commercially sensitive information be permitted to be redacted from the agreements before they are provided.

<ESMA\_QUESTION\_CP\_BMR\_26>

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

<ESMA\_QUESTION\_CP\_BMR\_27>

For natural persons, it seems remuneration should be addressed somewhere and that there should be more information required about governance/conflicts of interest.

<ESMA\_QUESTION\_CP\_BMR\_27>

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

<ESMA\_QUESTION\_CP\_BMR\_28>

Yes.

<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>

Financial disclosures should be in line with the company’s regular financial reporting requirements. We also believe that financial forecasts should be deleted. If this is a one-off process, the national competent authority can review the last 3 years of accounts to determine the company’s financial position. Further, if this information can be made public, then we have additional concerns because forecasts are commercially sensitive and also potentially price-sensitive.

There also needs to be a way to provide updates on significant and non-significant benchmarks given that some benchmarks that may bounce up and down around the EUR50B threshold on a semi-annual basis.

<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>

There also needs to be a way to provide updates on significant and non-significant benchmarks given that some benchmarks that may bounce up and down around the EUR50B threshold on a semi-annual basis. <ESMA\_QUESTION\_CP\_BMR\_31>