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| 29 September 2017 |

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| Response form for the Consultation Paper on  draft guidelines on non-significant benchmarks |
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| Date: 29 September 2017 |

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 30 November 2017.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the form “Response form\_Consultation Paper on scrutiny and approval”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) 🡪 ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).
* Please do not remove tags of the type <ESMA\_QUESTION\_GBMR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_ GBMR \_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_GBMR\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page 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. 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 not to disclose the response 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 heading ‘Data protection’.

Who should read this Consultation Paper

This Consultation Paper may be of particular interest to administrators of benchmarks, contributors to benchmarks and users of benchmarks as well as to any market participant who is affected by the Benchmarks Regulation.

# General information about respondent

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| Name of the company / organisation | Federation of European Securities Exchanges |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_GBMR\_1>

**Introductory remarks**

The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives and commodities through 20 Full Members from 29 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE represents public Regulated Markets, which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2016, FESE members had 8,982 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe’s capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,291 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers.

FESE is registered in the European Union Transparency Register with number 71488206456-23.

**Summary FESE response**

Overall, FESE agrees with the draft guidelines on non-significant benchmarks published by ESMA, however, in terms of the scope of input data further clarification is necessary.

Data from regulated trading venues (within and outside the EU) should be considered regulated data and trading venues should not be considered contributors.

Moreover, FESE considers it important that a proportionate approach is selected since the guidelines will apply to non-significant benchmarks.

<ESMA\_COMMENT\_GBMR\_1>

1. : Do you have any views on the content of the draft guidelines on the oversight function for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_1>

In principle, there is merit to the content of the oversight function to take the form of a separate committee within the organisational structure of the administrator. For regulated data benchmarks, we support the option to include external representatives as members of the oversight function. We support this being optional and not mandatory, as inclusion of external representatives could introduce conflicts of interest to benchmark administration. In particular, we would have had concerns about mandatory inclusion of representatives from other, competing trading venues on the oversight committee. For instance, parties could have gained access to price sensitive information (such as planned index changes) before other market participants. The BMR Level 1 text does not require external parties to be included in the oversight and therefore requiring this in Level 3 would have been against the Level 1 text.

<ESMA\_QUESTION\_GBMR\_1>

1. : Do you have any views on the content of the draft guidelines on input data for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_2>

In terms of the scope of input data we feel further clarification is necessary to determine that data from regulated trading venues within and outside the EU will be considered regulated data and that trading venues should not be considered contributors.

Benchmarks based on regulated data are subject to a proportionate framework that acknowledges that the input data is transaction based, already subject to stringent regulatory requirements and that these benchmarks are therefore less prone to manipulation. Today, benchmark administrators often obtain data from trading venues via market data providers that provide the technical link between the venue and administrator without making any alterations to the raw and unprocessed data. Such practices should be deemed to fall within the scope of a regulated data benchmark, specifically meeting the requirement for the data to be taken ‘entirely and directly from the trading venue’ so long as the data is provided in a raw and unprocessed state.

A regulated data benchmark is based on (post-trade) transparent transaction data published by trading venues and made available to the public. Therefore, regulated data can be considered to be ‘readily available’. Using regulated data as input data for a benchmark can, for that reason, not be considered as data that is being contributed as defined in Article 3(1)(8). Trading venues whose data is being used for purposes of a benchmark cannot be considered a (supervised) contributor for that purpose.

<ESMA\_QUESTION\_GBMR\_2>

1. : Do you think the proposal to include in the guidelines a requirement for the three levels of control functions appropriate for administrator of non-significant benchmarks?

<ESMA\_QUESTION\_GBMR\_3>

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<ESMA\_QUESTION\_GBMR\_3>

1. : Do you agree with the content of the draft guidelines on the transparency of the methodology for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_4>

FESE overall agrees with the draft guidelines on the transparency of the methodology for administrators of non-significant benchmarks. However, regarding point 1 I, FESE would like to point out that liquidity should always be assessed in a proportionate manner, taking into consideration the specificities of the relevant market. In emerging markets, liquidity and trading activity can be rather volatile and this should not necessarily impact the provision of indices based on these markets, especially when the related benchmarks are classified as non-significant

<ESMA\_QUESTION\_GBMR\_4>

1. : Do you think the proposal to include in the guidelines a requirement for publishing or making available to the public “a description of specific events that may give rise to an internal review including any mechanism used by the administrator to determine whether the methodology is traceable and verifiable” is appropriate for administrator of non-significant benchmarks?

<ESMA\_QUESTION\_GBMR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GBMR\_5>

1. : Do you agree with the content of the draft guidelines on governance and control requirements for supervised contributors to non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_GBMR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GBMR\_6>

1. : Do you think that the proposal to include in the guidelines a requirement of establishing, where appropriate, a physical separation of submitters from other employees of the supervised contributor is suitable also for supervised contributors to non-significant benchmarks?

<ESMA\_QUESTION\_GBMR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_GBMR\_7>