



European Securities and
Markets Authority

Response form for the Consultation Paper on draft guidelines on non-significant benchmarks



Responding to this paper

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

1. respond to the question stated;
2. contain a clear rationale; and
3. 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:

4. 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 → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
5. 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.
6. 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.
7. 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.
8. Upload the form containing your responses, in Word format, to ESMA’s website (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 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

Name of the company / organisation	Amundi
Activity	Investment Services
Are you representing an association?	<input type="checkbox"/>
Country/Region	France

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_GBMR_1>

Amundi is the largest non-US asset manager and ranks among the top ten worldwide in terms of Assets under Management. Following the acquisition of Pioneer Investments, Amundi manages 1 400 billion euros at the end of September 2017. With offices in 37 countries in Europe, Asia, Middle East and the Americas Amundi has 6 investment management hubs. It services more than 100 million retail clients and offers dedicated investment solutions to thousands of institutions through a diversified expertise on active and passive strategies on securities as well as real and alternative assets.

Amundi is not an administrator nor a contributor of benchmarks and does not intend to become one. Amundi uses benchmarks (see article 3 (7) of BMR) when measuring the performance of an investment fund with a view to compute performance fees to define the asset allocation or to track its return. It also uses benchmarks out of the scope of the Benchmark regulation for the mere purpose of providing synthetic information to investors and facilitate their understanding of the type of risk and return they may expect from their investment. In that case none of the 3 conditions foreseen in article 3 (7) (e) in the definition of use of a benchmark in measuring the performance of a fund is met.

Amundi is very concerned with the details of the implementation of the BMR, the more so when the date of implementation nears. We feel that many decisions have to be made in a very short delay to be compliant and consider that level 3 indications are still to be provided that should be implemented from January 2018. We believe that during the transition period will be used to solve remaining issues and consider that full compliance will not be able on before the finalization of the Register of European administrators and third country benchmarks that ESMA has to establish, that is not before May 2020.

With regards to non-significant benchmarks, Amundi has the opinion that:

- Proportionality is totally justified and should apply not only on those areas where level 1 text explicitly calls for it but also in all circumstances where it makes sense, since it is a general principle that has to apply in all EU regulation and empowers ESMA to adapt the level 1 text without contradicting it;
- When the level 1 text allows for optionality of some requirements it should be expressed as an advertisement at the beginning of each section that is optional. Furthermore, it should be clear that this option is totally in the hand of the administrator and is not subject to any condition; the discretionary nature of these options should be reaffirmed in the guidelines;
- ESMA guidelines on ETFs and other UCITS issues require asset managers to have an access to the methodology of the benchmark that is larger than what administrators are due to publish under BMR; we consider that it is urgent to introduce consistency and that ESMA review its ETFs and other UCITS issues guidelines;
- We wonder whether ESMA intends to publish further guidelines to cover specificities of commodity and interest rate 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>

The proposed guidelines on the oversight function count 4 sections. The first one is about the composition of the oversight function. It is made clear that it can be held by one single person, but all the following discussion relies on the hypothesis that it will not be the case. We are quite satisfied that the oversight function be composed by one unique person, who has no direct conflict of interest and believe that it could be the standard for non-significant benchmarks. In the second § of this first section 'entities contributing net asset values of investment funds to regulated-data benchmarks' are suggested as participants in the oversight function. Amundi considers that this wording is misleading as it could be interpreted as meaning that asset managers are contributors of data used for the calculation of a benchmark, which is not the case. We manage portfolios, an administrator is in charge of the valuation under our supervision and publishes NAVs that are regulated data. There is no contribution in this case. Fundamentally, asset management firms like Amundi could appreciate to join an oversight board if and only if confidentiality rules are not too stringent and properly designed not to forbid a representative to continue developing its expertise in the field of benchmarks in his or her firm.

In the third paragraph, the most important part is the last sentence. It should be put in the first place as an introduction stating clearly that administrators of non-significant benchmarks can choose to be exempted from all the following suggestions.

<ESMA_QUESTION_GBMR_1>

2. : 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>

The second section of the guidelines on the quality of input data is optional for administrators of non-significant benchmarks. In the first section the same applies for items a) and b). We think that the warning that is placed at the end of each section should appear as an introduction, especially for section 2 where the whole section is not mandatory. This section counts too many requirements to be attractive. We would recommend to simplify the guidelines and introduce real proportionality instead of being close to a replication of the RTS for significant and critical benchmarks. Amundi is again concerned that the use of the verb 'contribute' in section 1 c), which is not optional, may suggest that NAVs or other regulated data could be produced by contributors in the meaning of BMR.

We also ask ESMA to change in section 2 b) v the terms "actual or material conflicts of interests" that appear twice be replace by 'actual or potential material' or simply 'material' as rightly underlined in § 50. In other words actual and immaterial conflicts of interests are not within the scope and the proposed wording would include them. It has to be rephrased.

<ESMA_QUESTION_GBMR_2>

3. : 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>

No, we think that proportionality should apply. For non-significant benchmarks we think that the administrator should take reasonable steps to assess the quality of the contributions and that guidelines should not impose a 3 level control. Furthermore this section being optional, we recommend that the guidelines include an advertisement that it is entirely up to the administrator to choose not to comply and that there is

no condition to be met nor explanation to be provided to any authority in case the decision is taken to opt out.

<ESMA_QUESTION_GBMR_3>

- 4. : 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>

On the transparency of the methodology, Amundi totally agrees that there should not be much difference between what applies to non-significant and other types of benchmarks. Transparency is not negotiable and there is no room for proportionality when describing the methodology. However, see our comments concerning the internal review of the methodology requirements in section 2 of the guidelines under the following question.

Amundi further thinks that what is required under section 1 should be conceived as a description of the methodology that is sufficient to properly inform users of the benchmarks and especially investors in funds that use these benchmarks. To be more specific, Amundi urges ESMA to review the guidelines on ETFs and other UCITS issues (ESMA/2014/937/EN) that require asset managers to carry due diligences on indices that they will use as benchmarks in the management of a UCITS that exceed the extent of the information made available by administrators under BMR. Post BMR there is an urgent need for a clarification introducing consistency between BMR and UCITS rules. Amundi totally supports EFAMA's initiative in that field.

<ESMA_QUESTION_GBMR_4>

- 5. : 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>

No, it is the item where we think that proportionality should be introduced. Amundi has a strong view that what is most relevant is to have an advance notice of any change in the methodology and a detailed explanation of the rationale and the impact for users of this or these changes. We would recommend section 3 of the guidelines to be reinforced and mention the necessity of (i) an advance notice sufficient to allow users to consider a change of benchmark, (ii) an explanation and a rationale for the change, (iii) an exact description of changes and (iv) an assessment of expected impact on users. Under section 2, we prefer a generic requirement for administrators to regularly review benchmarks without any further specific requirement. We recommend to delete item b) in section 2.

<ESMA_QUESTION_GBMR_5>

- 6. : 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>

Being neither an administrator nor a contributor, Amundi is not directly concerned by the implementation of the guidelines on governance and control for supervised contributors. However, we would like to share 3 general comments:

- We recommend ESMA to put the advertisement that section 2 is optional at the beginning of the section;
- In section 3 a) we are satisfied that only material conflicts of interests have to be identified and insist that the adequate correction be made in the guidelines on input data (see question 2);
- In section 5 b) we do not understand the discrepancy between the same requirement under RTS for significant and critical benchmarks and the guidelines on non-significant benchmarks; we oppose the introduction of the second phrase “so as to check whether the consistency on the use of expert judgement referred to in the previous point did took (*sic*) place and, if not take remedial actions” Being more requiring and prescriptive for non-significant benchmarks is contrary to the proportionality principle and we ask for the deletion of this phrase.

<ESMA_QUESTION_GBMR_6>

7. : 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>

No, we do not support the idea that ESMA impose such a physical separation. Actually, we would not oppose a recommendation to consider it where appropriate but cannot follow the suggestion to introduce a requirement together with the judgement whether it is or not appropriate: it would in the end only create legal uncertainty.

<ESMA_QUESTION_GBMR_7>