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| Response Form to the Consultation Paper  |
| Draft Regulatory Technical Standards under the Benchmarks Regulation |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 May 2020.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_CP\_BRTS\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. 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.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_BRTS\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_BRTS\_ABCD\_RESPONSEFORM.
5. 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 MiFIR report on Systematic Internalisers in non-equity instruments”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically 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 [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

This paper may be specifically of interest to administrators of benchmarks, contributors to benchmarks and to any investor dealing with financial instruments and financial contracts whose value is determined by a benchmark or with investment funds whose performances are measured by means of a benchmark.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Bloomberg LP |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | UK |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_CP\_BRTS\_1>

Bloomberg Index Services Limited (with its affiliates, “Bloomberg”) offers an innovative perspective on the traditional world of indexing, providing independent and unbiased indices that are broadly available. With expertise in capital markets, technology, data, pricing, analytics, distribution and research, Bloomberg indices provide the global investment community with comprehensive solutions to fulfill their benchmarking needs.

Bloomberg recognises the increasingly important role benchmarks play in the global financial system and the need to ensure that the benchmarks produced are robust, reliable, accurately represent their intended market interests and not subject to manipulation. We welcome the opportunity to respond to ESMA’s draft technical standards under the Benchmarks Regulation.

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_CP\_BRTS\_1>

**Questions**

1. : Do you agree with the governance arrangements set above? Do you have any additional suggestions? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_1>

Yes, the governance arrangements are clear. When reviewing our governance arrangements and conducting our conflicts of interest assessments, we are mindful of the group structure and resulting relationships, which drive our policies and procedures aimed at understanding and mitigating risks associated with conflicts of interest.

<ESMA\_QUESTION\_CP\_BRTS\_1>

1. : Do you agree that administrators should have in place a remuneration framework?

<ESMA\_QUESTION\_CP\_BRTS\_2>

Yes, this is appropriate.

<ESMA\_QUESTION\_CP\_BRTS\_2>

1. : Do you agree that the same requirements should apply to an administrator that is a natural person? Please elaborate.

<ESMA\_QUESTION\_CP\_BRTS\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BRTS\_3>

1. : Do you think that other conditions should be taken into account to ensure that the methodology complies with the requirements of the BMR? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_4>

We do not believe additional conditions should be taken into account. However, like much of the Level 1 text and related Level 2 rules, the requirements seem to presume the inherent risks of a panel-based interest rate benchmark like those that gave rise to the incidents requiring the development of the IOSCO principles and the EU BMR. More broadly-diversified, transparent, market indices do not have the same exposures, so it is key that administrators be able to appropriately differentiate their approach across index families and asset classes.

<ESMA\_QUESTION\_CP\_BRTS\_4>

1. : Do you consider that additional requirements are needed to ensure that the methodology is traceable and verifiable? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_5>

No.

<ESMA\_QUESTION\_CP\_BRTS\_5>

1. : Do you think that the back-testing requirements are appropriate? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_6>

We believe it would be helpful to have more guidance around the definition of 'back-testing', as it is not sufficiently clear whether this refers to daily post-calculation validation of a calculated index level or to the periodic recalculation of historical index levels. In addition, it would be helpful if ESMA could clarify what it considers appropriate transaction data for different types of benchmarks/asset classes for the envisaged back-testing in these cases and what the expectations are when transaction data is not available in sufficient quantity to perform these calculations. For example, input data for fixed income indices may be provided by a third-party pricing provider whose prices may rely on a mix of transactional data, including executed trades, executable bids/offers and/or indicative quotes; whereas futures or equity prices will generally be sourced from the respective exchange.

In practical terms, for either definition of 'back-testing', we believe that a proportionate approach is appropriate and in line with the Level 1 text. Otherwise, requiring daily 'back-testing' for each benchmark could present benchmark administrators with an overly burdensome requirement that may be of little benefit to users and may not be practicable across all benchmarks, given that some benchmark administrators have thousands of benchmarks in their inventory. Accordingly, to the extent daily post-calculation validation would become a requirement, it would be appropriate for this requirement to apply only to critical benchmarks and to take into consideration the diversity in nature and complexity of affected benchmarks and underlying markets.

Like back-testing, obligations to conduct stress-testing should also take proportionality into consideration and should not unduly require administrators to test for unknown (and potentially unknowable) future events. For example, depending on the nature, use, complexity and scale of a benchmark and its underlying market, annual stress testing in conjunction with the benchmark’s methodology review that is based on historical market fluctuations (or within a standard deviation of recent fluctuations) might be a reasonable approach and/or in the event underlying market circumstances otherwise warrant (e.g., when underlying market structures undergo fundamental changes). In any event, this requirement should only apply to significant and critical benchmarks.

<ESMA\_QUESTION\_CP\_BRTS\_6>

1. : Do you agree with the requirements set out above? Do you have any additional suggestions? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_7>

It is important to keep in mind, however, that Article 14 of the Level 1 text addresses 'manipulation or attempted manipulation of a benchmark'. Many independent benchmark administrators provide broadly diversified indices, many with thousands (even tens of thousands) of constituent securities within them. To provide the best product for their users, as well as to comply with Article 11 validation and verification requirements, such administrators go to great lengths to ensure input data is robust, accurate and free from error of whatever cause (manipulation or otherwise). To require administrators to attempt to determine for each outlier detected during its QA processes whether it was the result of attempted manipulation of that instrument or some other, benign cause in situations where there can be no meaningful effect on the benchmark level places administrators in the role of regulated trading venues but without access to the relevant sources necessary to make proper determinations. After all, many benchmark administrators obtain input data from external pricing providers/sources and may not have full visibility into the underlying transactions, executable or indicative quotes, etc. that are used to construct the prices that are delivered.

Accordingly, it is key that surveillance, monitoring and reporting obligations remain fastly tethered to potential manipulation of the benchmark. After all, it is the benchmark level, not any underlying constituent, that serves as the reference within financial instruments and/or as the basis of passive fund products that brings such benchmark in-scope of the BMR. Not only would surveillance, monitoring and reporting requirements that extend beyond the benchmark level be out of scope and the intent of the BMR, it would likely strain the limited resources of administrator personnel as well as the NCAs, since a safe compliance approach may be to over-report outliers, resulting in a great number of false positives NCAs would need to evaluate.

Of course, under Article 11, the administrator nevertheless has obligations to scrutinize the input data it receives as part of its validation and verification procedures to ensure the integrity of the benchmark. A proportionate approach may be to supplement existing Article 11 processes to determine what kinds of additional checks, tolerances and/or thresholds might be appropriate to determine potential manipulation (as opposed to ordinary error) in light of the assessed risk of manipulation of such benchmark.

<ESMA\_QUESTION\_CP\_BRTS\_7>

1. : Do you agree with the systems suggested for the surveillance of market manipulation? In particular, do you think that an automated system should be required only when it appears to be adequate according to the nature, scale and complexity of the benchmark? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_8>

Administrators should retain discretion to design and adopt systems and controls to guard against potential manipulation of their benchmarks– whether such systems be automated, manual or some combination thereof—based on the use, scale and nature of the benchmark and its underlying market. I.e., the administrator’s assessment of manipulation risk should drive the type of systems and controls necessary, but not the type of entity

In line with our response to Q7 above, the systems and controls should be calibrated with the goal of flagging potential instances of benchmark manipulation, not simply any outlier constituent security. Benchmark administrators have limited resources and must weigh the cost of treating every deviation of input data that warrants scrutiny (as part of its Article 11 requirements, which may or may not be material to the overall benchmark level) as potential 'market' manipulation at the expense of focusing on the overall integrity of the benchmark.

Furthermore, when designing the systems and controls, we feel it is appropriate to consider whether the input data is 'readily available' versus being a ‘contribution of input data’. Similar to 'regulated-data', input data that is 'readily available' is available for broader use by various market participants. As such, this data is substantially less susceptible to manipulation (as it is much more likely to be detected). Therefore, we believe it would be appropriate to have a surveillance program that takes into account the vulnerability assessed to the type of input data.

<ESMA\_QUESTION\_CP\_BRTS\_8>

1. : Do you think that other criteria should be considered in relation to the transition of the provision of the critical benchmark to a new administrator? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BRTS\_9>

1. : Do you think that other criteria should be considered in relation to the cessation of the provision of a critical benchmark? Please specify.

<ESMA\_QUESTION\_CP\_BRTS\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BRTS\_10>

1. : Do you agree with the criteria under which competent authorities may require changes to the compliance statement? Please specify

<ESMA\_QUESTION\_CP\_BRTS\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BRTS\_11>

1. : Do you agree with the criteria under which competent authorities may require changes to the control framework requirements? Please specify

<ESMA\_QUESTION\_CP\_BRTS\_12>

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<ESMA\_QUESTION\_CP\_BRTS\_12>