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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**

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| Name of the company / organisation | European Fund and Asset Management Association (EFAMA) |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Belgium |

**Introduction**

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

<ESMA\_COMMENT\_CP\_BRTS\_1>

EFAMA is pleased to submit its response to the ESMA consultation on draft RTS under the Benchmarks Regulation (BMR). As background, EFAMA is the voice of the European investment management industry, representing 28 member associations, 59 corporate members and 22 associate members. At the end of 2018 total net assets of European investment funds reached EUR 15.2 trillion. These assets were managed by almost 62,000 investment funds, of which more than 33,000 were Undertakings for Collective Investments in Transferable Securities (UCITS) funds, with the remaining funds composed of Alternative Investment Funds (AIFs). We support the goal of BMR to establish a regulatory framework for indices and benchmarks. The BMR strengthens the confidence in the financial markets and helps to prevent manipulation of financial indices. Therefore, we welcome the initiative started by the ESAs to further modernise the benchmark framework.

As an important group of benchmarks users, we would like to make the following comments:

* As further expanded under Q. 9, it is important to **keep the right balance between the regulatory obligations for benchmark administrators to tackle potential conflicts of interest and risks for misconduct and avoiding excessive burden and costs** that will be ultimately passed over to users of benchmarks and end clients. We have indeed experienced a significant increase of costs related to use of indices and the access to their underlying data & methodology (about three times more compared to 10 years ago). We would encourage ESMA to reflect on price lists, cost disclosure and the prohibition of certain licence practices – in particular the (early) termination of data licences by benchmarks administrators in case of pricing policy or data policy changes.
* We would also encourage further reflections on the **ESMA Register**, in particular around its transparency and usability. The ESMA Benchmark register should be a centralized benchmark log. Benchmarks should be listed in addition to the administrator, so that users could search for either the administrator or the benchmark. They should also be able to see all the benchmarks being provided by a specific administrator. However, should this prove too difficult to implement, a second best option could be that the respective administrators be required to maintain a list of all the benchmarks provided by the approved legal entity on their website with a direct link available via the ESMA Register. Also, the ESMA register should include a research functionality which enables supervised entities to identify in a user friendly way individual indices provided by EU/Non-EU authorized/registered/endorsed administrators. An identification code of each benchmark (e.g. ISIN, Ticker) should be provided in the register. Supervised entities should also be able to search for indices based on historical data.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BRTS\_1>

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

<ESMA\_QUESTION\_CP\_BRTS\_2>

We would agree that administrator should have in place a remuneration framework designed to prevent the incentives for personnel involved in the provision of a benchmark to manipulate the benchmark, in particular in the context of the administrators forming part of larger groups involving also companies entering into financial transactions based on the relevant benchmark. Even where an administrator is already subject to other, sector specific remuneration framework by virtue of being a part of a larger group**, they should still be subject to additional rules preventing specific risk of manipulation linked to the benchmarks administered by the administrator**.

<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 support the proposals set out in the consultation paper. Users of the benchmarks have to rely on the transparent methodogy provided by regulated benchmark administrators. Any discretion in the application of the methodology – as established by the Regulation - should be made transparent to the users of benchmarks as they use benchmarks in their investment process.<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BRTS\_5>

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

<ESMA\_QUESTION\_CP\_BRTS\_6>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Whilst it is welcome that accessibility of a benchmark post transition, including whether such benchmark is to be available free of charge or against a payment of a fee, is already one of the criteria proposed by ESMA, it would be important that in this context the relevant competent authorities examine not only the fee, if any, levied to obtain the current value of the benchmark but also the overall fee structure applicable to the benchmark and proposed by a prospective administrator, including any fee charged for using the benchmark within the meaning of the Benchmarks Regulation or referencing the benchmark within the meaning of the KIIDs Regulation (as interpreted by the ESMA Q&A on UCITS) and thus disclosing the benchmark in offering materials, KIIDs or prospectuses of investment funds.

Most benchmark administrators have included in their offers new fees related to ad hoc services, such as re-distribution. Data collected by one of our members from a representative sample of asset managers indicate that benchmark costs have tripled over the last ten years (in contrast with asset managers revenues which have stabilised since 2015). During the last five years, and also after the BMR came into force, costs increased according to the same source by 64% (13% on an annual average), a value much higher than the increase of assets under management over the same period. The price increases observed are transversal among all administrators (between 20% and 274% during the 5 years period)

<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>

We agree with the criterias that Competent Authorities and benchmark administrators should take into consideration in order to assess if a critical benchmarks needs be ceased or transferred to a new administrator. The critical benchmark should be ceased or transferred to a new administrator only on a basis of a valid assessment.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BRTS\_12>