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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 | IHS Markit |
| 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>

IHS Markit (NYSE:INFO) is a world leader in critical information, analytics and solutions for the major industries and markets that drive economies worldwide. The company delivers next-generation information, analytics and solutions to customers in business, finance and government, improving their operational efficiency and providing deep insights that lead to well-informed, confident decisions. Headquartered in the UK with offices in 10 EU Member States, IHS Markit has more than 50,000 key business and government customers, including 80 percent of the Fortune Global 500 and the world’s leading financial institutions.

IHS Markit is a leading benchmark administrator. IHS Markit Benchmark Administration Ltd. (IMBA UK) has been FCA authorised since July 2018, and Markit N.V. (IMBA EU) received AFM authorisation in December 2019. These administrators provide more than 29,000 benchmarks across financial, economic and commodity underlyings, including proprietary benchmarks and benchmarks administered for clients. Benchmarks are a crucial contributor to the functioning of EU economy and financial markets, particularly as they are increasingly used to provide EU investors with lower cost, diverse investment strategies. EU regulation has an important role to play in supporting the development of a robust market, which will ultimately lead to increased engagement in capital markets in the EU and beyond. We believe that BMR has made a positive contribution to these objectives.

IHS Markit appreciates the opportunity to provide its comments regarding ESMA’s Consultation Paper (CP) on its draft Regulated Technical Standards (RTS) under the Benchmark Regulation (BMR). Although we generally support the draft RTSs, we would like to make the following general points that ESMA should focus when drafting the final draft RTS for the European Commission:

1. ESMA should ensure the proportionality foreseen at level 1 of the BMR is reflected in the final draft RTS, particularly around governance and back-testing;
2. as proposed in the CP, the back-testing requirements would be extremely onerous and, for many indices, would be of limited value to users. We would urge ESMA to revisit these requirements; and
3. for the avoidance of confusion, all the draft RTS relating to Title II of the BMR should specifically clarify that they do not apply Annex II. Currently only the draft RTS on reporting infringements specifically explains this.

<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>

Generally we agree with the approach taken by ESMA in the CP and draft RTS on governance. We particularly agree that robust governance arrangements are necessary to prevent manipulation of benchmarks (para 3) and that such arrangements should be in line with the nature scale and complexity of the benchmarks (para 5) and that the RTS should be proportionate (para 11).

However, ESMA states (para 5) that the most stringent requirements should apply to administrators with different types of benchmarks (i.e. non-significant, significant or critical). We would urge ESMA to recognise that there are many times more non-critical benchmarks than critical, and administrators may have only one or a small number of benchmarks that are critical and many more that are not. In such arrangements administrators my chose to have enhanced governance structures for their critical benchmarks while taking advantage of BMR proportionality for non-critical benchmarks. This would also ensure administrators focus their resources on their largest benchmarks. Therefore, we would recommend ESMA reflect this in its final report.

Furthermore, we believe that conflicts of interest reflect are a key driver of risks of manipulation. This is particularly true if an administrator is also providing financial instruments that reference its benchmarks. Therefore, we would expect, in line with the principle proportionality, governance arrangements to mitigate the conflict of interest risks to be more stringent if such a financial interest exists. Conversely, if a benchmark provider has no financial interest in the benchmark, we would expect much lighter requirements to reflect the lower risks.

<ESMA\_QUESTION\_CP\_BRTS\_1>

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

<ESMA\_QUESTION\_CP\_BRTS\_2>

ESMA outlines that a remuneration framework is needed to minimise conflicts of interest (para 14). However, BMR level 1 is already clear that administrators should be mitigating conflicts of interest and, therefore, we do not believe that further regulatory specification or framework is required. Furthermore, the draft RTS specifies that the framework should ensure that remuneration is appropriately set (Article 1(5)). It is unclear what this would mean in practice and such a regulation should not prescribe where ‘appropriate remuneration’ is decided, especially if a benchmark administrator is part of a wider group or has operations in numerous locations. Therefore, we would recommend ESMA removes the requirement for a ‘remuneration framework’ and that, focussing on conflicts of interest in line with BMR level 1, the draft RTS Article 1(5) reads: ‘*Administrators shall ensure that the remuneration of the persons involved in the provision of the benchmark is not subject to conflicts of interest*’.

<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>

IHS Markit welcomes ESMA’s efforts to ensure that benchmark methodologies are robust, reliable and transparent. We also agree that, for many benchmarks, a robust methodology should focus on transaction data where it is available (for example, para 31).

However, ESMA should recognise that there may be differing approaches to meeting the objectives of a benchmark and that innovation and changing markets often necessitate novel approaches. It should, therefore, ensure that the RTS provide clarity for the benchmark user but are equally flexible and proportionate to ensure methodologies can work practically and be improved.

We would, therefore, recommend some points of clarification for the final report and draft RTS:

* ESMA introduces a concept of eligible and non-eligible transactions (for example in Recital 3) which does not seem to be applicable in this context. In practice, benchmark administrators will often establish a waterfall of different input data sources, where the move from one to the next is triggered based on the availability of a type of data source. The concept of eligible and non-eligible transactions is not consistent of this approach;
* A benchmark methodology should not be required to incorporate ‘all factors…that are relevant’ (Article 1(1)). This could lead to disproportionate cost sourcing any data that might have even the smallest relevance. It is also unclear what ‘an assessment of the relationship between the key assumptions used and the sensitivity of the benchmarks computed’ actually means in practice (Article (1(2)).
* Although we agree that in many circumstances transaction data would be the most robust measure for a benchmark, it would not always be available or appropriate. Therefore Article 1(3) should read: ‘…*uses transaction data where available* ***and appropriate****’*.
* Define what ‘systemic anomalies’ means in Article 3(2)(d).

<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>

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<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 that ESMA's suggested approach to back-testing is highly problematic, not reflective of the functioning of index methodologies and creates a significant burden for administrators without corresponding benefits. Our concerns are set out below.

General approach

ESMA's thinking seems to be based on the assumption that an index is a construct where assumptions are made in the methodology that could later be tested, similar to a forecasting model. For such an approach, the actual outcomes could later be compared with the outcome of an index. However, this is not how indices typically function. An index methodology is designed to produce a figure today based rules and available input data, when looking at this level tomorrow there is often no way to test whether it was ‘accurate’ or not.

Frequency of back-testing

The CP appears to call for back-testing on a frequency at least identical to the frequency of the calculation (para 39, Article (3)(2)(e)). Given that many indices are calculated daily, this would be very onerous and problematic and not in line with the BMR level 1 text (where Article 12(1)(c) states that back-testing should be performed ‘where appropriate’). The draft RTS appears to require continuous testing of historical index levels, which would need a disproportionate amount of data and analytical resource. Furthermore, it is not something that benchmark users would make use of nor benefit from. Such requirements are unnecessary and could threaten the economic sustainability of many benchmarks. The frequency of any back-testing should be set by the administrator as appropriate.

Use of transaction data for back-testing

ESMA's suggestion to back-test against transaction data is flawed (for example, para 38, RTS Recital 1). If the index does not consider transactions as inputs, it is most likely because there are too few transactions or the ones that are available might not be sufficiently representative. Back-testing against transactions would not provide meaningful results in such a situation. In contrast, where transaction levels are used as inputs, requiring validation against transactions would not provide any meaningful results either – they would just recalculate the same levels.

Appropriateness

Any requirement to back-test against transaction data should depend not only on whether transaction data is available, but, most importantly, on whether it is appropriate to be used. In cases where transaction data is not used because the benchmark administrator has determined that it is not representative, back-testing against transaction data will deliver results that are, at best, meaningless or, at worst, misleading.

Recommendation

Although the RTS acknowledge that transaction data should be used ‘where appropriate’, the drafting of the CP and draft RTS strongly suggests that regulators should expect that it will be used if possible. However, in many cases it will not be appropriate and the final report and draft RTS should be very clear on the flexibility available to administrators. Therefore, we recommend that ESMA provide benchmark administrators with the clear flexibility to decide whether back-testing is feasible, the data set to be used and the appropriate frequency.

<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>

Generally we support the framework for reporting of infringement set out in the CP, which should reinforce good practice that exists in many administrators. We believe the systems and controls described in the CP (paras 65-70) for data integrity will also form a significant part of the systems and controls for manipulation and reporting under Article 14(1) (which references MAR), something helpfully acknowledged by ESMA (para 70).

Article 1 exempts regulated data benchmarks from the RTS on the grounds that the data is already subject to regulation and supervision ensuring integrity and transparency of the input data and so the input data is more verifiable in character (as explained in Recital 2). Many benchmarks will make use of data from regulated sources in combination with other inputs. Technically these benchmarks do not meet the definition of regulated data benchmark but the RTS should be clear that administrators should not need to comply with this RTS in respect of input data from regulated sources as described in BMR Article 3(1)(24).

<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>

We strongly support the proportionate approach outlined in the CP that the level of monitoring should be appropriate for and proportionate to the nature, scale and complexity of the benchmark (para 77).

<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>

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<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>

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<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>

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<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>