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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 | London Stock Exchange Group |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | International |

**Introduction**

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

<ESMA\_COMMENT\_CP\_BRTS\_1>

LSEG welcomes the opportunity to respond to ESMA’s consultation on the draft RTS. Our key points are:

* Mandatory administration of a critical benchmark - we are supportive of ESMA’s comprehensive criteria for NCAs to consider in case a critical benchmark is transitioned to a new administrator.
* Methodology - as discussed in the ESMA open hearing, the RTS should be in line with the EU BMR Level 1 Article 12.1.c which mentions backtesting as a potential method of validation only ‘where appropriate’. Backtesting is more likely to be appropriate for new benchmarks. We ask for ESMA to clarify that the ‘assessment’ in paragraphs 36 and 40 does not require a benchmark administrator to perform a suitability assessment which is the role of an investment manager.
* Reporting of infringements - EU BMR Level 1 refers to manipulation or attempted manipulation of a benchmark. The proposed additional RTS requirements should focus on the benchmarks where the risk of manipulation is highest. As discussed in the ESMA open hearing, proportionality would be achieved by limiting the RTS scope to contribution-based benchmarks.
* Governance - we support some of the proposed governance arrangements. As there are comprehensive EU BMR Level 1 requirements and IOSCO principles, we do not think that additional EU BMR requirements are needed to ensure the remuneration of staff is appropriately set and not subject to conflicts of interest.

 <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>

The proposed governance arrangements appear broadly sensible. As a UK authorised administrator, FTSE International Limited will also need to be compliant with the Senior Managers Regime from December 2020.

We suggest that the provisions in the proposed Article 2 should apply to the persons accountable for the various elements rather than to those responsible or involved in the different elements. This would allow flexibility for firms of different sizes who may in some cases have fora or committees responsible for carrying out activities, with an individual retaining accountability.

<ESMA\_QUESTION\_CP\_BRTS\_1>

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

<ESMA\_QUESTION\_CP\_BRTS\_2>

EU BMR already requires benchmark administrators to have an effective conflicts of interest framework. This should be comprehensive in scope to capture all material conflicts and required mitigation, including the potential conflict mentioned in the draft RTS regarding the remuneration of staff involved in the provision of a benchmark.

The IOSCO Principles specify that staff participating in benchmark determination should not be “directly or indirectly rewarded or incentivised by the levels of the Benchmark.” Beyond this, it does not appear that there is a need for additional EU BMR requirements for a remuneration framework to manage this specific conflict 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>

Yes, the same requirements should apply to an administrator who is a natural person.

<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 believe that the EU BMR Level 1 requirements regarding methodologies are comprehensive and proportionate.

We are concerned that the ESMA proposal (paragraph 36) that an administrator should ensure that the methodology includes at least: “an assessment of the adequacy and appropriateness of the historical values of a benchmark …” could be construed as suggesting that the benchmark administrator should test the appropriateness of a benchmarks for an investment strategy.

Determining the appropriateness of the historical values of a benchmark for a particular use should be the role of the investment manager acting as fiduciary. A benchmark administrator’s role should be limited to the determination of an index based on a clearly set out methodology. We request for ESMA to clarify the scope of the ‘assessment’ mentioned in paragraph 36.a.

<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>

We would request for ESMA to clarify what is meant by “traceable” and “verifiable”. We understand “traceable” to mean that the historic values of the benchmark can be reconstructed using the recorded input data (constituent prices), input parameters (including constituent weights) and the published benchmark methodology; we understand verifiable to mean that users of the benchmark agree with its published performance, e.g. because their passive portfolios exhibit the same daily performance as the benchmark.

With regard to verifiability, we note that benchmarks that are “used” in the EU are being continuously verified by those “users” Asset managers, with the help of their custodians, will be checking the relative performance of the benchmark and their investment fund, or financial instrument, on a daily basis. If they consider a benchmark value to be incorrect, perhaps because they dispute the price of a constituent, they will challenge the administrator. Administrators should have published governance arrangements in place to deal with such challenges.

With regard to the use of backtesting as a specific mechanism to assist in the validation of a benchmark (paragraphs 28 and 39), we suggest ESMA should recognise EU BMR Level 1 Article 12.1.c which mentions backtesting as a potential method of validation only ‘where appropriate’. We do not consider backtesting using transaction data to be appropriate for assessing the validity of any benchmark that has been calculated using transaction data as the “observed” and “expected” outcomes referred to in paragraph 39 would, by definition, be identical.

It also may not be appropriate to assess the validity of benchmarks constructed from committed or uncommitted quotes by backtesting using transaction data if the underlying market is thinly traded. In such cases, it is better to account for any relevant transaction data in determining the value of each constituent at the time of the calculation of the benchmark, and not to recalculate the benchmark using historic transaction prices as those benchmark values could likely not have been replicated in practice.

<ESMA\_QUESTION\_CP\_BRTS\_5>

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

<ESMA\_QUESTION\_CP\_BRTS\_6>

In line with our response to question 4, we are concerned that the requirement for administrators to assess a benchmark’s backtesting results using clear statistical tests (paragraph 40) could be inferred to mean that administrators are assessing the suitability of a benchmark for an investment strategy. Benchmark administrators do not perform the same activity as investment advisers. Investment managers and other users should conduct their own due diligence on a benchmark and its suitability before it is “used” within the EU.

It is however reasonable to require benchmark administrators to calculate pro-forma historical values of a newly created benchmark, and specifically for the broadest benchmark within a family rather than for every conceivable alternative.

Benchmark administrators can use historical calculation to evidence the robustness of a benchmark and the absence of systemic anomalies. The administrator could, in addition to the historical values, provide pro-forma statistics including returns (by year or quarter), standard deviation, maximum drawdown and Sharpe ratio. These statistics could also be calculated for hypothetical scenarios such as a market crash, volatility spike, credit blow out although we question the usefulness of such statistics if these scenarios are not standardised and are not, therefore, comparable. These statistics would be provided to benchmark users to assist them in their assessment of a benchmark’s suitability for the use they have in mind.

For long standing benchmarks, we question the usefulness of conducting backtests in hypothetical scenarios. For example, standard, capitalisation-weighted benchmarks such as the FTSE UK All Share and the Russell 3000 have been in place for many years, in some cases decades, and have been through many real-life tests, most recently in the exceptionally volatile period in March of this year; we are not aware of any standard benchmarks that could not be determined in this period. The significant value of assets that are managed against these benchmarks is testament to the robustness of their methodologies and their resiliency in times of stress.

<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>

Existing EU BMR requirements apply for benchmark administrators of all benchmarks. ESMA’s proposed additional requirements should be reserved for those types of benchmarks where the risk of manipulation of the benchmark is significant, for example interest rate benchmarks and benchmarks that use contributions of input data. As discussed in the open hearing, we suggest that ESMA apply proportionality and make this scope clear.

<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>

Benchmark administrators are already required through EU BMR and EU Market Abuse Regulation (MAR) to consider the risks of benchmark manipulation.

For benchmarks based on input data derived from models or third-party sources, we agree that the administrator should have systems and controls in place for establishing the integrity of the input data, for example by comparison with alternative sources or pricing methodologies.

For benchmarks based on transaction prices, including transaction prices sourced from venues other than those specified in Article (3)(24)(a) of the Regulation, the primary responsibility for the surveillance of a market lies with the trading venues. This type of surveillance should monitor for suspicious, manipulative trading activity intended to influence the price of benchmark constituents. Benchmark administrators are not best placed to undertake such surveillance and do not have access to the underlying data.

Benchmarks constructed using contributions of input data are at most risk of manipulation. For these benchmarks we consider the surveillance and reporting requirements of the RTS to be proportionate. We therefore suggest that the scope of the RTS with respect to surveillance and reporting in paragraph 62 be explicitly limited to contribution-based benchmarks.

<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>

This appears to be a comprehensive list of criteria to be considered by NCAs in case a critical benchmark is transitioned to a new administrator. We particularly support that the new administrator should be authorised and supervised, and already have experience in providing benchmarks. Potentially the NCA should also consider the reason behind the transition and if there are any risks associated with this.

We agree that the impact on market infrastructures should be assessed by NCAs.

<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>

This appears to be an appropriate list of criteria to be considered by NCAs in case of the cessation of provision of a critical benchmark. There could be more clarity on the interoperability of alternative benchmarks in case there are a range of market solutions.

We would also encourage the NCA to consider the reason behind the cessation and any risks arising from this. We agree that the impact on market infrastructures should be assessed by NCAs.

We believe that these proposed additional powers for NCAs are only appropriate regarding the provision of critical benchmarks.

<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>

No comment

<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>

No comment.<ESMA\_QUESTION\_CP\_BRTS\_12>