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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 | Refinitiv Benchmark Services (UK) Limited |
| 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>

Refinitiv Benchmark Services (UK) Limited (“RBSL”), a wholly owned subsidiary of Refinitiv, is currently authorised by the Financial Conduct Authority (“FCA”) to perform the benchmark administration function.

Since 2018, the FCA has authorised RBSL as a regulated administrator of benchmarks under the EU Benchmark Regulation (“BMR”), which has included the following:

WM/Reuters London 4pm Closing Spot Rates;

Canadian Dollar Offered Rate (“CDOR”);

Canadian Offered Repo Rate Average (“CORRA”);

Saudi Arabian Interbank Offered Rate (“SAIBOR”).

As of December 2019, RBSL has extended its administration of BMR compliant indices and benchmarks to include:

WM/R Spot, Forward and NDF benchmark rates;

TR/CoreCommodity CRB Index; and

TR Convertible Indices.

RBSL welcomes and in principle supports the measures to bring indices used as benchmarks in financial instruments and financial contracts into the wider regulatory framework. Market participants around the world must be able to have confidence that these indices are calculated accurately and reliably and that there is an effective governance and scrutiny regime for contributors that seeks to ensure that inputs are reflective of market conditions.

**About Refinitiv**

Refinitiv is one of the world’s largest providers of financial markets data and infrastructure, serving over 40,000 institutions in approximately 190 countries. It provides leading data and insights, trading platforms, and open data and technology platforms that connect a thriving global financial markets community - driving performance in trading, investment, wealth management, regulatory compliance, market data management, enterprise risk and fighting financial crime.

<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>

We believe it is crucial for benchmark administrators to have robust governance arrangements in place which are the cornerstone of the provision of reliable benchmarks and we welcome the opportunity to provide comments on the proposed Regulatory Technical Standards (RTS).

We would like to point out the potential for confusion within the proposed RTS around the accountability requirements.

Indeed, we would welcome clarification on the differences between the proposed Article 1.1 requiring all decisions taken regarding the provision of the benchmark to have an accountable person and Article 2.1.a. of the same RTS requiring such person for decisions which could have a significant impact on the provision of the benchmark. We believe there could be some confusion on the level of granularity required in order to determine which decisions should be attributed to an accountable person. We would suggest that only decisions with significant impacts are subject to this requirement.

In addition, and as already pointed out by ESMA under paragraph 6, benchmark administrators are already required to implement a control and accountability framework in relation to dedicated areas of the BMR. RBSL would welcome clarification as to how these new accountability requirements would complement the existing frameworks.

Overall and as Q3 suggests, the requirements set out in this RTS may not be applicable to all benchmark administrators or may be too granular in some instances. We would like to point out that proportionality is one of the core elements of the BMR and is key to the everyday supervision of the provision of benchmarks. Benchmark administrators can be widely different and covering different kinds of family and types of benchmarks therefore we believe flexibility and proportionality should be allowed in the implementation of the RTS.

<ESMA\_QUESTION\_CP\_BRTS\_1>

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

<ESMA\_QUESTION\_CP\_BRTS\_2>

We agree that a remuneration framework is an important part of conflict of interest management and is one of the tools available to administrators to ensure the integrity of the provision of benchmarks. We would like to point out that similar requirements already exist in the BMR under Article 5.7(b) to (e) and believe these requirements are sufficient and proportionate in addressing conflict of interests and persons involved in the provision of benchmarks.

<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>

<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 think that other conditions should be taken into account but we would like to comment on paragraph 30 of the consultation and the following statement: “Methodologies are generally based on assumptions that consist of assuming a behaviour for the sake of simplifications of the methodology while in reality behaviour is different”. Whilst assumptions can be used in methodologies, they are not a common feature of methodology across all types and families of benchmarks. It is important to note that most assumptions are non-material in nature otherwise a benchmark may not be accurately representing the underlying economic reality. We would suggest integrating proportionality in this requirement by suggesting that key assumptions should be subject to assessment *where applicable* i.e. where indeed key assumptions are used in the methodology.

We also have more detailed comments on Article 1 and 2 of the proposed RTS:

On Article 1, we agree that transaction data is a robust source of input for the calculation of a benchmark but not always the best source of input data. Input data, as per the definition in the BMR can be transaction data but also quotes which, in some instances, are more representative than transactions. We would suggest that ESMA takes this into account in the drafting of Article 1.3 and recommend the usage of transaction data “where available and appropriate”.

On Article 2, we urge ESMA not to make a distinction between expert judgement and discretion. Expert judgement is already defined in the BMR and is a key definition ensuring a harmonised application of the BMR and a central definition to benchmark supervision. Discretion is not defined in the BMR and a lack thereof would potentially harm the uniform application and understanding of the BMR. In addition, we do not see a material difference between the definition of expert judgement and discretion since expert judgement is defined as the exercise of discretion as per Article 3(13) of the BMR. For instace, we struggle to see the difference between the proposed Article 2.1.c and the definition of expert judgement.

On article 2.1.b: expert judgement is not always based on an algorithm or an exact/pre-defined methodology as it could be dependent on the drivers leading to the need for expert judgement, such as market conditions, liquidity or a technical failure. We would suggest that policies or guidelines should be better tools to describe the usage of expert judgement in the provision of benchmarks.

On Article 4, ‘stress testing’ can include a very wide and deep spectrum of work including hypothetical scenarios, historical stresses, reverse stress testing and sensitivity analysis. Undertaking all this analysis across all benchmarks would require significant investment by benchmark administrators in terms of quantitative modelling, resources and IT development. We consider this requirement to be a disproportionate burden, particularly given the resilience of the benchmark industry despite the recent and ongoing COVID-19 situation, which in many respects is the most severe but plausible multi-factor stress test imaginable. We urge ESMA to further clarify what it expects benchmark administrators to do in this regard in order establish a proportionate approach.

<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>

Back-testing is a widely used tool for ensuring benchmark methodologies are representative of the underlying market they seek to measure. We consider it appropriate for back-testing to continue to be a part of establishing a robust methodology for benchmarks, particularly at the inception of a new product or when considering a material change to the benchmark methodology. Back testing is also likely to be more valuable for certain types of benchmarks than others, for example contribution-based benchmarks may benefit from it more than passive transactions-based benchmarks.

A limitation of back-testing is that it is always subject to the availability of input data to create historical benchmark values and the availability of comparable rates or prices to provide a means for interpreting the historical benchmark. If a historical benchmark cannot be generated, then alternative methods might be appropriate. For example, a prototype benchmark could be published for a period of time to enable analysis to be performed and seek feedback in order to assess the quality of the benchmark and the methodology. However, in our view, ongoing and additional back-testing requirements beyond what is already performed is not adding incremental value.

In light of such limitations, we would suggest adding alternative and equally appropriate solutions to the back testing requirements such as prototype benchmarks.

We also believe that some flexibility should be introduced in the proposed Article 3.2 (c) and (e):

* On Article 3.2 (c): “clear statistical tests that would help assess the back-testing results” are subject to the availability of comparable references to provide meaningful tests.
* On article 3.2 (e): the frequency of testing cannot always be identical to the frequency of the benchmark in particular where transaction data is derived from real-time high frequency data.

<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>

We agree that automated system should be required only when it appears to be adequate according to the nature, scale and complexity of the benchmark. The draft RTS already exempts regulate-data benchmarks and commodity benchmarks from the its scope but we also believe further consideration should be given to non-significant benchmark in the spirit of proportionality of the BMR.

<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>

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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>

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>