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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 | STOXX Ltd. |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | Switzerland |

**Introduction**

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

<ESMA\_COMMENT\_CP\_BRTS\_1>

STOXX Ltd. is a global index provider, currently calculating a global, comprehensive index family of over 10,000 strictly rules-based and transparent indices. It is best known for the leading European equity indices EURO STOXX 50®, STOXX® Europe 50, and STOXX® Europe 600. Its offering ranges from equity to fixed-income, strategy to sustainability, and multi-factor to thematic indices. STOXX Ltd. is part of Qontigo, Deutsche Börse Group (“DBG”). Qontigo provides DBG’s indices (STOXX and DAX) and Axioma’s portfolio-construction and risk analytics tools.

STOXX Ltd. welcomes the opportunity to provide comments on the Benchmarks Regulation (BMR) draft RTS. BMR applies to all benchmarks, however, different types of benchmarks pose different types of risks to the markets. BMR acknowledged that regulated data benchmarks are less prone to manipulation. Nevertheless, experience with its application has shown that the framework does not differ much from that of other types of benchmarks. In this context, it could be argued proportionality in the suggested RTS could be strongly accented as regulated data benchmarks are mostly suggested to be covered by the same provisions as other benchmarks. STOXX Ltd. would therefore support changes to the draft RTS to better reflect benchmarks’ respective risk profiles.

<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 agree.

<ESMA\_QUESTION\_CP\_BRTS\_1>

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

<ESMA\_QUESTION\_CP\_BRTS\_2>

The BMR regulation is very clear regarding handling of risk of conflict of interest there is no need for further elaborations nor separate framework.

As currently drafted, Article 1(5) may be problematic for benchmark administrators which are part of a wide corporate group which sets remuneration policies centrally. The respective article should be modified as follows:

“*5. Administrators shall ~~establish a remuneration framework to~~ ensure that the remuneration of the persons involved in the provision of the benchmark is appropriately set and 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>

No additional requirements needed.

<ESMA\_QUESTION\_CP\_BRTS\_4>

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

<ESMA\_QUESTION\_CP\_BRTS\_5>

No additional requirements needed.

<ESMA\_QUESTION\_CP\_BRTS\_5>

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

<ESMA\_QUESTION\_CP\_BRTS\_6>

No, we do not think the back-testing requirements are appropriate, they need to be more specific. Please see below for details:

Article 36.a of the RTS / Article 3.1 of the relevant Draft Regulation requires further details in order to become actionable. How is the “*assessment of the adequacy and appropriateness of the historical values of the benchmark*” to be performed? What are the criteria for the assessment? Input data utilized in a back-test are not estimated by the benchmark administrator, but typically sourced from exchanges via data providers. Article 39 of the RTS / Article 3.2 of the relevant Draft Regulation: “*The back-testing against available transaction data should be an ex-post back-testing which compares the observed outcome of the level of the benchmark based on transaction data to the expected outcome derived from the use of the methodology.*” is unclear. The back-test is by definition executed by applying the methodology to past transaction data (or the input data stated in the methodology) and is performed before the benchmark goes live. Once the index is live, there cannot be any difference between the live index data and a back-test performed on the same live period, since the algorithm and data are the same.

What is to be understood under “*the expected outcome derived from the use of the methodology*”?

Article 40. of the RTS / Article 3.2 of the relevant Draft Regulation is not clear as to what the index provider is asked to do and what the aim is, therefore, the requirement cannot be properly assessed.

In particular, the statement “*In order for the back-testing to be meaningful and the methodology to be reviewed, if needed, following the back-testing results, the administrator should consider clear statistical tests to assess the back-testing results. The administrator should have a documented process regarding the action it would take depending on the results of the back-testing on a case by case basis.*” requires further explanation as to how this should be actioned, i.e. what type of statistical tests are expected to be performed in order to validate the back-test with regards to the application of the methodology to input data. Input data utilized in a back-test are not estimated by the benchmark administrator, but typically sourced from exchanges via data providers.

Article 44 of the RTS / Article 4 of the relevant Draft Regulation: “*The administrator should ensure that the methodology is resilient to adverse market conditions and therefore the benchmark would not loose representativeness or be ceased in such circumstances.*” should be put into context. Benchmarks that are built as portfolios of tradeable securities make use of input data typically provided by exchanges in the form of traded prices, quotes or settlement data and thus should intrinsically reflect the evolving underlying economic reality also in adverse market conditions.

The benchmark provider should have in place an effective governance framework that allows them to take decisions tailored to the nature of the exceptional and unforeseeable circumstances: this is the sole solution that truly allows an index to remain resilient and representative in exceptional circumstances.

Back-test should be executed by applying, to the largest extent possible, the same methodology that will applied by the index when live. Input data should hence be of the same nature as prescribed by the methodology. Deviations may be allowed in case the required type of data is not available historically or the costs associated with their purchase are deemed not proportionate.

<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>

As set out at the beginning of the chapter ‘4 Reporting of infringements (Article 14 BMR)’ in the Consultation Paper Draft Regulatory Technical Standards under the Benchmarks Regulation (‘Consultation Paper’), “Article 14 of the BMR “Reporting of Infringements” provides for different obligations to enable the administrator to identify infringements, especially with regard to benchmark manipulation, and report them to the competent authority.

We believe that it is self-evident that a benchmark administrator will strive to do the utmost to provide reliable and accurate benchmarks. In order to be able to do so, a benchmark administrator thus needs to screen the input data used to ensure its integrity. In this context, the BMR states that a benchmark administrator should be able to ‘identify and report to the competent authority any conduct that may involve manipulation or attempted manipulation of a benchmark, under Regulation (EU) No 596/2014’. Notably, the BMR refers to manipulation or attempted manipulation of a benchmark.

This means a manipulation or attempted manipulation of the benchmark itself. Hence, the benchmark administrator is to identify manipulation or attempted manipulation in the sphere of the benchmark administrator. The benchmark administrator can only perceive a manipulation or attempted manipulation in the sphere that it controls. This also follows from applying the proportionality principle to the benchmark administrator’s obligations in the context of Art. 14.

A benchmark administrator can, however, not be expected to monitor all events (including manipulation or attempted manipulation) on the markets, e. g. exchanges, which could ultimately and indirectly have an influence on the value of a benchmark.

Benchmark administrators obtain data from other sources that corroborate the input data, they can e.g. compare the values received from vendors for the calculation of indices against public sources e.g. against data from APAs and information vendors. Benchmark administrators can e.g. monitor price jumps; prices after jumps are not used until data has been checked.

However, benchmark administrators are not in a position to establish market surveillance processes which detect any potential input manipulation that could influence the calculation of an index. In this context, the information accessible to a benchmark administrator should be taken into account. A benchmark administrator does only have access to data from vendors or publicly available data.

<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>

Please see the previous answer under Question 7.

<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>

We agree.

<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>

We agree.

<ESMA\_QUESTION\_CP\_BRTS\_12>