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| Response Form to the Consultation Paper  |
| ESMA’s technical advice to the Commission on fees for benchmark administrators under BMR |

**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 **6 November 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\_TAFE\_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\_TAFE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TAFE\_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 ESMA’s technical advice to the Commission on fees for benchmark administrators under BMR”).

**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 | Barclays |
| Activity | Banking sector |
| Are you representing an association? |[ ]
| Country/Region | International |

**Introduction**

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

<ESMA\_COMMENT\_CP\_TAFE\_1>

Barclays welcomes the opportunity to comment on the above consultation paper.

Barclays provides clients globally with access to quantitative investment strategies. This includes a diverse family of systematic non-discretionary trading strategy indices available across multiple asset classes. A number of these indices fall within the definition of Benchmarks according to the EU Benchmarks Regulation (BMR). Barclays Bank PLC (BBPLC) is regulated by the UK’s Financial Conduct Authority as a benchmark administrator for the purposes of BMR. BBPLC currently provides non-significant benchmarks, as defined in BMR.

As an overall comment, we note that BMR captures a very broad range of benchmarks, and accordingly applies a tailored set of obligations based on whether the benchmarks in question are critical, significant or non-significant taking into account their overall impact in the EU. To this end we include in our response below some suggestions on how this differentiated treatment can be carried forward into the process for the calculation of fees for Benchmark Administrators to ensure these are allocated proportionately to the significance of the benchmark activity being overseen, and also are not unduly based on other regulated activity undertaken by a firm for which regulatory fees may already be incurred.

<ESMA\_COMMENT\_CP\_TAFE\_1>

**Questions**

Q1: Do you agree with the approach for determining the recognition fee for third country administrators? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_1>

Q2: Do you think that the recognition fee should include a proportionality element? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_2>

Barclays believes that the principle of proportionality, embedded in the BMR, should be carried forward into the calculation of fees. In particular, fees should take into account the number of benchmarks offered by the administrator, and whether they are significant or non-significant.

<ESMA\_QUESTION\_CP\_TAFE\_2>

Q3: Do you agree with the approach for determining the authorisation fee for critical benchmarks? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_3>

Q4: Do you think that a different authorisation fee should apply when ESMA has to establish a college of supervisors for the critical benchmark? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_4>

Q5: Do you agree with the proposed first-year fee arrangements? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_5>

Q6: Do you agree with the proposed definition of annual supervisory fee for administrators of a critical benchmark supervised by ESMA? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_6>

Q7: Do you agree with the proposed definition of annual supervisory fee for recognised third country administrators? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_7>

Barclays has a number of concerns with the proposed structure and level of fees outlined in the consultation paper. The separation of ESMA’s supervisory fees into a fixed amount for critical benchmark administrators and a variable amount for third country administrators means that third country administrators would be liable for all variations in ESMA’s costs, which might lead to unduly high costs relative to the risks posed by the activity being supervised. Further, the calculation of “turnover” is potentially very complex. Lastly, the minimum fee of EUR 30,000 is somewhat high, especially when considered in comparison to equivalent fees for CCPs.

As a result, Barclays is concerned that the proposals outlined in the paper risk disincentivising the provision of benchmarks in the EU by third country administrators other than the largest firms, or those whose business model is substantially dependent upon benchmark provision. Alternatively they may push up the costs of such provision. Either outcome would be to the detriment of EU investors.

<ESMA\_QUESTION\_CP\_TAFE\_7>

Q8: Do you agree with the proposed approach to determine the applicable turnover? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_8>

Barclays does not agree that fees for benchmark administration in the EU should be based on measures of global turnover as outlined in the paper. Such an approach would not adequately take into account the relevant activity for which registration in the EU is required, or the extent of likely supervision required by ESMA. Benchmark administration may form only a small component of the overall activity of a firm, and furthermore a firm’s provision of benchmarks in the EU may form only a small proportion of its overall benchmark activity. For benchmarks provided by investment banks, revenues from benchmark provision *per se* are, in general, not separable from revenues from a bank’s trading and sales of financial instruments and products linked to that bank’s benchmarks. The inclusion of all such revenues in the fee calculations would result in an unlevel playing field between banks and entities whose revenues are wholly derived from benchmark provision.

Furthermore, attempting to make a separation of such revenues would be complex and entail ambiguity. The definition of ‘benchmark’ in the EU Benchmarks Regulation leaves ambiguous what might be meant by benchmark activity outside the EU. In particular, we think it highly questionable that such an approach would be amenable to a formal audit process. We are hence concerned about any proposed approach that would necessitate the provision of audited turnover data solely for the purposes of the fee calculation, as this would entail further costs and complexity for firms.

We also note that entities operating on a global basis and undertaking multiple forms of regulated activity will already be subject to a range of fees and levies in respect of this activity and as such measures based on turnover will likely lead to some form of double-charging.

If ESMA is obliged to use a purely financial measure of turnover, then we suggest that the appropriate measure is revenue from licensing of benchmarks within the EU.

If ESMA is able to use a broader measure we would recommend an alternative approach that would base fees on the number of benchmarks administered by a firm, and additionally take into account whether the benchmarks are critical, significant or non-significant. Fees would thereby be based on a sliding scale, with administrators offering a small number of non-significant benchmarks paying lower fees than administrators offering a large number of non-significant benchmarks, and those offering significant or critical benchmarks paying the highest level of fees. To simplify calculations, ESMA could introduce bands, with distinct fee levels set for provision of, for instance, ranges of 1-50, 51-500 or more than 500 non-significant benchmarks. Given the smaller number but greater importance of significant and critical benchmarks, these should not require differentiation by count and administrators offering 1 or more significant or 1 or more critical benchmarks could instead each be placed in a separate band attracting higher fees for this activity. This would lead to a 5 band model:

1. Number of non-significant benchmarks
	1. 1 to 50:
	2. 51 to 500:
	3. More than 500:
2. Number of significant benchmarks
	1. More than zero:
3. Number of critical benchmarks
	1. More than zero:

Numbers of benchmarks could be counted on the basis of unique index identifiers (such as Bloomberg tickers). A band structure would serve to mitigate issues associated with establishing if/when an index is deemed a benchmark as defined under BMR.

The fixed fee levels for each of the five bands would be re-set each year so as to aim to cover ESMA’s total costs. The lowest level band, for provision of fewer than 51 non-significant benchmarks, should be set at a lower level than under the current proposals, at no more the EUR 20,000.

Such a structure would be simple, verifiable and reflective of relevant EU benchmark activity and importance.

<ESMA\_QUESTION\_CP\_TAFE\_8>

Q9: Do you agree with the proposed approach for the supervisory fees related to preparatory work? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_9>

Q10: Do you agree with the proposed timing of payment of recognition and authorisation fees? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_10>

Q11: Do you agree with the proposal to not reimburse administrators in case they decide to withdraw their application for recognition / authorisation before the end of the assessment by ESMA? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_11>

Q12: Do you agree with the proposed timing of payment of annual supervisory fees? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_12>

Q13: Do you agree with the proposed approach defining the reimbursement of costs to a national competent authority in case of delegation of tasks by ESMA under Article 48m of BMR? Please elaborate.

<ESMA\_QUESTION\_CP\_TAFE\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TAFE\_13>