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| Response Form to the Consultation Paper  |
| Guidelines on methodology to be used in exceptional circumstances and amendment to the guidelines on non-significant benchmarks |

**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 **30 April 2021.**

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\_GMEC\_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\_ GMEC \_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ GMEC\_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” 🡪 “Guidelines on methodology to be used in exceptional circumstances and amendment to the guidelines on non-significant benchmarks”).

**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 | Europe |

**Introduction**

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

<ESMA\_COMMENT\_CP\_GMEC\_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 European Benchmark Administrator (BMA). 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 30,000 benchmarks across financial, economic and commodity underlyings, including proprietary benchmarks and benchmarks administered for clients.

Benchmarks are a crucial contributor to the functioning of the 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, transparent market. IHS Markit appreciates the opportunity to provide its comments regarding the ESMA’s consultation and draft guidelines on methodology to be used in exceptional circumstances and amendment to the guidelines on non-significant benchmarks.

IHS Markit supports policymakers’ overall objectives of ensuring that EU benchmarks are robust, transparent with appropriate governance arrangements. However, we are not convinced that the approach taken by various BMAs during the of the market volatility in 2020 has provided evidence of significant failings of the current BMR methodology and governance framework. We, therefore, find it difficult to understand the justification for ESMA’s proposed guidance, which seems duplicative and potentially disproportionate and might only result in creating confusion. Proportionality is at the heart of the BMR framework and any ESMA guidance should respect this principle.

Furthermore, the proposed guidance could limit a BMA’s discretion to ensure the functioning of a benchmark in exceptional circumstances. While appropriately identifying and mitigating the risks around discretion, the BMR framework explicitly recognises the important role that discretion can play in the administration of benchmarks (for example, Recitals 13, 17, 18 and Articles 12(1)(b), 27(1)). We would be concerned that a potentially inflexible framework for exceptional circumstances could limit a BMA’s ability to ensure the functioning of the benchmark for its users and other stakeholders during a period of market stress. This may not be ESMA’s intention, but we are concerned that, as proposed, this may be the outcome of ESMA’s guidance.

During the market volatility in 2020, BMAs such as ourselves, used the discretion the BMR regulatory framework provided to ensure the continued functioning, accuracy and integrity of our benchmarks, the overall objective of the BMR legislation. Consultation and feedback were sought whenever the timescales allowed. On some occasions this involved a temporary deviation from the standard approach to rebalancing, which was done in consideration of all market participants and without knowledge, and irrespective of, any particular positions being held by market participants. In such cases, our methodologies were clear that the BMA had the ability to make such changes when exceptional circumstances demanded it. Without the ability to exercise discretion, there would be serious questions as to whether accuracy and integrity (the BMR’s primary objective as set out in Article 1 of the level 1 regulation) could be maintained for benchmarks during genuinely exceptional circumstances.

<ESMA\_COMMENT\_CP\_GMEC\_1>

**Questions**

1. : Do you have any views on the content of the draft guidelines on the details of any methodology to be used to determine a critical or significant benchmark in exceptional circumstances? Would you suggest including any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_CP\_GMEC\_1>

IHS Markit strongly supports the need to ensure that benchmarks have robust, transparent methodologies. However, we are concerned that the draft guidelines would add duplicative requirements that might lead to confusion and suboptimal outcomes for the users of benchmarks. We believe that the policy objectives expressed in the consultation are already sufficiently covered in the BMR.

For example, Article 12(1)(d) of the BMR requires BMAs to use methodologies that allow for calculation of the benchmark in the widest possible circumstances. This means that methodologies should already contain provisions to determine how a benchmark would be calculated during exceptional circumstances. In line with BMR Article 12(3), many BMAs adopt a waterfall approach that sets out how a benchmark should be calculated when circumstances mean that the usual source of input data is inadequate. There are also rules around methodologies set out in BMR RTS (EU2018/1641) and further changes are pending as published by ESMA in its Final Report of September 2020 under Article 12(1).

The use of discretion to ensure that benchmarks remain accurate and robust in exceptional circumstances, including through temporary changes to elements of a methodology (including rebalancings), is foreseen in our index-related documentation. It is, therefore, made clear that there may be some exceptional circumstances when we would need to apply discretion to ensure the continued accuracy and integrity of a benchmark (a key objective of the BMR as set out in Article 1). Consequently, it seems unclear how the proposed guidelines would add value. Furthermore, by their very nature, exceptional circumstances are unpredictable and could impact a benchmark in different ways. Therefore, strictly defining such a framework may seriously undermine the ability of BMAs to manage such circumstances.

<ESMA\_QUESTION\_CP\_GMEC\_1>

1. : Would you suggest including any additional elements to be taken into account for identifying the overarching principles of the exceptional circumstances? Please explain.

<ESMA\_QUESTION\_CP\_GMEC\_2>

IHS Markit believes that the volatility in financial markets that occurred in the first half of 2020 represented truly exceptional events. We also believe that the regulatory framework established after the global financial crisis, including the BMR, helped ensure markets and financial institutions continued to function and be able manage risk. There is little evidence of widespread concern related to benchmarks that would call for further specification of existing BMR rules around methodologies. More specifically, it is unclear what ESMA is referring to with its assertion that the approaches taken may have “discriminated between different types of investors” (para 2). To the contrary, it was the ability to apply discretion provided under the BMR that ensured BMAs could cope with the disruption caused and that the vast majority of benchmarks continued to function during this period, to the benefit of all users.

As set out in our response to Q1, we believe that the current BMR provisions are adequate to ensure transparent and robust methodologies while allowing BMAs the flexibility to deal with genuinely exceptional circumstances – which by their nature are impossible to predict comprehensively.

<ESMA\_QUESTION\_CP\_GMEC\_2>

1. : Do you have any views on the content of the draft guidelines on the material changes to the methodology used to determine a critical or significant benchmark? Would you suggest including any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_CP\_GMEC\_3>

IHS Markit remains fully committed to transparency and believes engagement with, and the feedback of, users and market participants is crucial to ensure robust benchmarks that maintain market confidence. Our methodologies set out how our benchmarks will be calculated and our Methodology Change and Cessation policy specifies our approach to methodology changes. However, our index-related documentation makes it clear that there may be some exceptional circumstances when we will need to apply discretion to ensure, in line with the objectives of the BMR (for example, Article 1), the continued accuracy and integrity of the benchmark.

As stated above, we believe that the BMR demonstrated its effectiveness during the market volatility of the first half of 2020 and that further specification of its provisions is not justified. IHS Markit, along with many other BMAs, always looks to consult with benchmark users and market participants including providing adequate timeframes for any consultation. We also consulted with users in relation to our suggested approach to rebalancing at the end of March 2020. However, BMAs need to have the flexibility to balance the need for consultation and feedback (with adequate timelines) with the need to act at the appropriate time to protect the functioning of a benchmark in genuinely exceptional circumstances, particularly when changes are only being made on a temporary basis. It is, of course, impossible to outline comprehensively how such exceptional circumstances will be dealt with ex-ante.

Therefore, in line with our responses to Q1 and Q2, we believe Article 13 of the BMR and the relevant RTS provide a clear and accountable framework for BMAs and further guidance is not required.

<ESMA\_QUESTION\_CP\_GMEC\_3>

1. : Do you have any views on the content of the draft guidelines on the oversight function for critical and significant benchmarks? Would you suggest to include any additional elements or to delete one of the elements proposed? Please explain.

<ESMA\_QUESTION\_CP\_GMEC\_4>

IHS Markit and many other BMAs strongly support the requirements for an appropriate and effective oversight framework provided by Article 5 of the BMR and the related RTS (EU2018/1637). We are unaware of evidence that the provisions have proved inadequate and that justify the additional amendments being proposed by ESMA in the draft guidance. Furthermore, such guidance may limit the discretion BMAs need to design the most appropriate arrangements – as recognised in Recital 2 of the relevant RTS.

Many EU BMAs provide benchmarks that are used for a huge range of purposes across the globe. It is not, therefore, feasible nor proportionate to have an oversight committee that could effectively and practically scrutinise provision of our benchmarks whilst having a ‘complete overview and understanding’ of users, uses and contributors. Such guidance would clearly call into question the principle of proportionality, a key principle of the BMR, especially given the broad scope of the BMR and lack of specific evidence that such a change would be justified. This would also incur greater costs for EU BMAs than many BMAs in other jurisdictions who are operating under frameworks such as IOSCO principles and are still able to offer benchmarks in the EU.

<ESMA\_QUESTION\_CP\_GMEC\_4>

1. : Do you have any views on the content of the draft guidelines on the record keeping requirements? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

<ESMA\_QUESTION\_CP\_GMEC\_5>

IHS Markit supports the need for appropriate record keeping and that important decisions are properly recorded. However, we believe the intention of the guidance is already adequately captured by Article 8 of BMR, which applies at any time, not only during exceptional circumstances.

<ESMA\_QUESTION\_CP\_GMEC\_5>

1. : Would you suggest to further specify any additional elements of the regulatory framework with regard to the use of an alternative methodology in exceptional circumstances? Please explain.

<ESMA\_QUESTION\_CP\_GMEC\_6>

As discussed in our responses above, we believe that the framework provided by the current BMR as well as associated RTS and guidance is adequate to ensure that the regulation’s policy objectives are met in a proportionate and effective way. The volatility of the first half of 2020 has not provided compelling evidence that further specification is needed. There are also new provisions around benchmark governance that are expected to be adopted by the European Commission (as proposed by ESMA in its final report of September 2020). Therefore, we believe that additional measures would be superfluous and may even be duplicative and confusing to market users and BMAs alike as well as, potentially, curtailing a BMA’s ability to apply discretion to ensure the accuracy and integrity of the benchmark.

<ESMA\_QUESTION\_CP\_GMEC\_6>

1. : Do you have any views on the content of the draft guidelines amending the guidelines on non-significant benchmarks in respect of any methodology to be used in exceptional circumstances and the oversight function? Would you suggest to include any additional elements or to delete one of the elements proposed? Please explain.

<ESMA\_QUESTION\_CP\_GMEC\_7>

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