



European Securities and
Markets Authority

Response Form to the Consultation Paper

**Review of the RTS on the form and content of an application for recognition
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 September 2022**.

All contributions should be submitted online at 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 under the heading "Your input – Open Consultations" →

“Consultation on the Review of the RTS on the form and content of an application for recognition under the Benchmarks Regulation”).

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 under the heading [Legal Notice](#).

Who should read this paper

This paper may be specifically of interest to to third country administrators of benchmarks.

General information about respondent

Name of the company / organisation	Fastmarkets
Activity	Non-financial counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	UK

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_BRTS_1>

Fastmarkets is a media publisher with over 130 years of specialist commodity and price reporting agency (PRA) expertise. Since 1882, we have worked with those involved in the buying, selling and trading of commodities to deliver market-reflective prices and insights. In October 2018, we have rebranded to unify our PRA businesses (Metal Bulletin, American Metal Markets, Fastmarkets, Industrial Minerals, RISI, FOEX, Random Length, etc) under the umbrella name of Fastmarkets.

Our global editorial team of over 160 price reporters provide over 5,000 proprietary prices, which are used as reference or benchmark in both physical and financial contracts. We have a number of prices used for settlement by global exchanges in cash-settled contracts. Our pricing data is backed by transparent methodologies and robust pricing processes and our key prices have been externally audited as compliant with the IOSCO Principles for PRAs.

Fastmarkets Benchmark Administration Oy (FBA) has been authorised in Finland by FIN-FSA as a benchmark administrator subject to the BMR's Annex II regime for commodity benchmarks.

Fastmarkets response to the ESMA Consultation

We have just one point to make in relation to the Consultation.

Fastmarkets requests ESMA to revise its proposed RTS to provide a framework suitable for the recognition of third country administrators of commodity benchmarks.

As now drafted, ESMA's proposals require all applicants to demonstrate compliance with BMR Title II which, with the exception of article 10 on outsourcing, does not apply to commodity benchmark administrators subject to the separate Annex II regime. However, such administrators have precisely the same needs as administrators of financial benchmarks to *"know in advance the full list of documents, data and information to be submitted in order to obtain the recognition"*¹. In their current form, ESMA's proposed RTS unfortunately do not address this need, resulting in uncertainty and confusion for applicants.

We believe there are two possible approaches to correct this omission. One option could be for ESMA to introduce separate RTS, similar to ESMA's proposed RTS for administrators of financial benchmarks, but instead referencing the individual provisions of BMR Annex II rather than Title II.

A second, and shorter approach, could be to adapt article 2(7) of Delegated Regulation (EU) 2018/1646, which provides that an administrator of commodity benchmarks:

"shall specify how the requirements set out in Annex II ...are implemented for any commodity benchmark subject to Annex II instead of Title II ...pursuant to Article 19 of [the BMR]."

Fastmarkets stands ready to assist ESMA in any way that is useful to build an appropriate framework for the recognition of third country administrators of commodity benchmarks.

<ESMA_COMMENT_CP_BRTS_1>

¹ Page 13 Consultation Paper. Section 3.3. Preliminary Cost-benefit analysis. Final sentence under "Benefits"

Questions

Q1 : Do you agree on the proposed changes stemming from the ESAs review?

<ESMA_QUESTION_CP_BRTS_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_1>

Q2 : Do you agree on the proposed changes to the Article 2? Do you have any other suggestions?

<ESMA_QUESTION_CP_BRTS_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_2>

Q3 : Do you agree with the amendments to the RTS as regards the general information that a third-country applicant should provide to ESMA?

<ESMA_QUESTION_CP_BRTS_3>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_3>

Q4 : Do you agree with the amendments to the RTS as regards the organisational structure and governance that a third-country applicant should provide to ESMA?

<ESMA_QUESTION_CP_BRTS_4>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_4>

Q5 : Do you agree with the amendments introduced regarding the self-declaration and the criminal-record file of the members of the management body and the oversight function? Do you think that other information should be requested?

<ESMA_QUESTION_CP_BRTS_5>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_5>

Q6 : Do you agree with the amendments to the RTS as regards the link to the level 1, level 2 and level 3 requirements?

<ESMA_QUESTION_CP_BRTS_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_6>

Q7 : Do you agree with the amendments to the RTS as regards the reference to the BMR requirement for completeness?

<ESMA_QUESTION_CP_BRTS_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_BRTS_7>

Q8 : Do you agree with the amendments to the RTS as regards the further specification of the information technology systems and the outsourcing?

<ESMA_QUESTION_CP_BRTS_8>

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Q9 : Do you have any other suggestions of amendments to the RTS?

<ESMA_QUESTION_CP_BRTS_9>

As we explain in more detail in our Introductory Comments, Fastmarkets is concerned by the absence of RTS suitable for an application by a third country administrator of commodity benchmarks covered by the BMR Annex II regime. As now drafted, ESMA's proposed RTS are based on compliance with the BMR's Title II regime which, with the exception of article 10, does not apply to such administrators.

In our Introductory comments, we have suggested two alternative options that ESMA might consider to address this omission.

<ESMA_QUESTION_CP_BRTS_9>