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| 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](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 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](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 to third country administrators of benchmarks.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Intercontinental Exchange (‘ICE’) |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | North-America |

**Introduction**

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

<ESMA\_COMMENT\_CP\_BRTS\_1>

Intercontinental Exchange, Inc. (“ICE”), on behalf of itself and its subsidiaries, appreciates the opportunity to comment on ESMA’s consultation on the ‘Review of the RTS on the form and content of an application for recognition under the Benchmarks Regulation’.

ICE is a provider of market infrastructure, data services and technology solutions to a broad range of customers including financial institutions, corporations and government entities. These products, which span major asset classes including futures, equities, fixed income and U.S. residential mortgages, provide our customers with access to mission critical tools that are designed to increase asset class transparency and workflow efficiency. While we report our results in three reportable business segments, we operate as one business, leveraging the collective expertise, particularly in data services and technology, that exists across our platforms to inform and enhance our operations.

* In our Exchanges segment, we operate regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial securities.
* In our Fixed Income and Data Services segment, we provide fixed income pricing, reference data, indices, analytics and execution services as well as global credit default swaps, or CDS, clearing and multi-asset class data delivery solutions.
* In our Mortgage Technology segment, we provide an end-to-end technology platform that offers customers comprehensive, digital workflow tools that aim to address the inefficiencies that exist in the U.S. residential mortgage market.

Our Fixed Income and Data Services business includes two benchmark administrators, ICE Data Indices, LLC (“IDI”) and ICE Benchmark Administration Limited (“IBA”) which offer benchmarks to EU customers.

IDI and IBA will be seeking Recognition under Article 32 of the Benchmarks Regulation (“BMR”).

<ESMA\_COMMENT\_CP\_BRTS\_1>

**Questions**

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

<ESMA\_QUESTION\_CP\_BRTS\_1>

ICE supports the proposed amendments by ESMA to the ‘RTS on the form and content of an application for recognition under the Benchmarks Regulation’ (hereafter “the RTS”) that stem from the ESA review. The suggested changes to the RTS are a natural consequence of the changes that have been introduced in the level 1 of the Benchmarks Regulation (‘BMR’).

<ESMA\_QUESTION\_CP\_BRTS\_1>

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

<ESMA\_QUESTION\_CP\_BRTS\_2>

ICE supports limiting the means of submitting applications for recognition under the BMR to electronic forms. Electronic submission of applications has become the industry standard and should provide further efficiencies for the application process with ESMA.

<ESMA\_QUESTION\_CP\_BRTS\_2>

1. : 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>

ICE supports the introduction of a requirement at applicant entity level to disclose adverse findings in civil proceedings and investigations by regulatory authorities.

In principle, ICE supports the proposed requirement that annual financial reports of applicant third country administrators or their publicly reporting parent company be provided to ESMA. However, to avoid an undesirable asymmetry with the information required for applications by EU based administrators, an identical requirement should apply to EU based administrators applying for registration and authorisation under the BMR.

<ESMA\_QUESTION\_CP\_BRTS\_3>

1. : 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>

ICE supports ESMA’s proposed methodology for the calculation of the number of full-time employees. We also support the introduction of a requirement to provide relevant CVs, but suggest limiting the scope of this requirement to the CVs of the management body. It is the administrator’s responsibility to determine that employees are experienced and able to meet the obligations under BMR. In addition, to avoid the unequal treatment of third country applicants, an identical requirement should be introduced for EU based administrators applying for registration and authorisation under the BMR.

<ESMA\_QUESTION\_CP\_BRTS\_4>

1. : 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>

ICE supports the introduction of a self-certification requirement as an amendment to Annex A (3)(g(ii) and would strongly advocate for the same requirements to apply to all administrators - third country and EU based.

ICE would also recommend that, for purposes of the self-declaration, the scope of the suitability assessment of the members of the management body and the oversight function be narrowed. Specifically, ICE would recommend limiting the scope to any conviction or offence committed in the last 10 years and to business or regulatory actions that relate solely to financial services. By limiting the scope, the administrator’s assessment can be made on the recent convictions, actions and/or offences that would better inform ESMA of the integrity, honesty and reputation of the members of the management body and the oversight function.

In addition, ICE does not support the amendments in Annex A (3)(g)(i), which would require the third-country applicant to provide a recent criminal-record file for the members of the management body and the oversight function. We do not believe that it is necessary to separately provide a criminal-record file when the self-declaration would disclose any relevant information.

ICE would also suggest that ESMA consider outlining these requirements in formal ESMA Guidelines or in technical standards rather than in the application regime.

<ESMA\_QUESTION\_CP\_BRTS\_5>

1. : 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>

ICE supports the amendments proposed by ESMA. The inclusion of the suggested references in the RTS provides more clarity to applicants.

<ESMA\_QUESTION\_CP\_BRTS\_6>

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

<ESMA\_QUESTION\_CP\_BRTS\_7>

ICE fully supports ESMA’s proposed amendments to the RTS as regards the reference to the BMR requirement for completeness.

<ESMA\_QUESTION\_CP\_BRTS\_7>

1. : 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>

ICE does not support adding further details on information technology systems and outsourcing to the application requirements for recognition. These additions would create an unfortunate precedent to seek to introduce new requirements through RTS provisions, that should have been agreed in the level 1 legislation. If ESMA does decide to add these requirements for applicants of recognition, it should not result in an undesirable asymmetry with the information required for applications by EU based administrators. Where possible third country and EU based applicants for registration and authorisation should be treated in an equal manner to avoid any potential competitive disadvantage.

<ESMA\_QUESTION\_CP\_BRTS\_8>

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

<ESMA\_QUESTION\_CP\_BRTS\_9>

There has been a lack of clarity about whether any new benchmark introduced by a recognised third country benchmark administrator would need to be the subject of a new application for recognition, which would need to be approved before the new benchmark could be used by supervised entities in the EU. We however understand that it is common practice by ESMA that a new application isn’t necessary for launching a benchmark if an administrator is already recognised and, instead, only an update to ESMA’s register is necessary. It would be helpful if ESMA would make this clear in the RTS.

<ESMA\_QUESTION\_CP\_BRTS\_9>