



European Securities and
Markets Authority

Reply form for the Consultation Paper on Benchmarks Regulation



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on the Benchmarks Regulation, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type < ESMA_QUESTION_CP_BMR_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_CP_BMR_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_CP_BMR_XXXX_REPLYFORM or

ESMA_CP_BMR_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach us by **02 December 2016**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.



Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 headings 'Legal notice' and 'Data protection'.



Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_BMR_1>

London Stock Exchange Group (“LSEG”) is a diversified international market infrastructure and capital markets business sitting at the heart of the world’s financial community. LSEG operates a broad range of international equity, bond and derivatives markets, offers post trade and risk management services, is a global leader in indexing and analytic solutions and a developer of high performance trading platforms and capital markets software. FTSE Russell is the brand name adopted for the index businesses that are owned and operated by LSEG and its applicable group undertakings.

FTSE Russell and LSEG support ESMA’s work on the Level 2 of the Benchmarks Regulation (“BMR”) and we appreciate that ESMA is following a tight schedule to produce the regulatory and implementing technical standards envisaged in the Level 1 draft text. In this response to the Consultation Paper (“CP”) published by ESMA on 29 September 2016, we offer our views, informed by our experience as a global index provider, on how we believe the various provisions of the Level 2 draft text could be calibrated. In many cases we build on our response to the ESMA BMR Discussion Paper (“DP”), which we submitted in March 2016.

1a. Key overarching themes of the response

Aside from responding to the questions raised in the CP, we have identified following three key points:

- **Information in authorisation process, compliance statement and benchmarks statement**

We would like to reiterate the difficulties the administrators will face while determining whether the benchmarks or families of benchmarks are significant or non-significant. This results from the fact that the reference value of a benchmark is difficult to determine and may fluctuate in such a way that a benchmark could move between the two. Given the amount of documentation where this information needs to be provided in (during the authorisation process, in the compliance statement and benchmarks statement) we are exploring a scenario where we opt-in to the higher requirements regime for significant benchmarks. We seek ESMA’s guidance on whether it is in any way contrary to the BMR to treat significant and non-significant benchmarks in the same manner. We would appreciate ESMA’s guidance on such arrangement.

- **Input data definition pertinent throughout the BMR**

Throughout the BMR, various requirements are posed on administrators and contributors/submitters of input data. We believe that without further guidance on what exactly constitutes input data, achieving compliance will be difficult. We understand ESMA may have limited mandate in terms of setting out exact conditions that would need to be met for data to be considered “input data” for the purposes of BMR, however we would like to bring to ESMA’s attention that there are crucial dependencies in the “Code of conduct” and “Governance and control requirements for supervised contributors” sections.

- **Recognition as a permanent solution for third country administrators**

The current language of the RTS on Recognition of third country administrators could be interpreted such that recognition is a temporary measure – Article 32(1) states “Until such time as an equivalence decision is adopted”. Should a third country jurisdiction find it difficult to achieve equivalence and should endorsement not be suitable due to the size of the business of the administrator, recognition will be the preferred way for a third country administrator. We believe that replacing this wording with the following “In the absence of an equivalence decision” would clarify that recognition might be a permanent solution for some administrators, if this is indeed ESMA’s intention.

1b. Executive summary of the response

- **Oversight function** – We broadly support the adjustments ESMA made as a result of the DP process. We believe in BMR helping to bring high standards of benchmarks governance to the market. We find the level of flexibility given to the administrator appropriate.

- **Input data** – We support ESMA differentiating between input data and front office contributed input data. We appreciate ESMA recognizing the different nature of various benchmarks and not imposing measures such as frequency of data checks. However, we fear that administrators will have difficulties complying if “input data” is not further clarified. For example, with respect to the “verifiability” requirement, for a benchmark we need a price and a quantity. If one comes from a source such as survey, does this constitute contribution of input data? We rely on ESMA to help clarify this in Level 3 guidelines or Q&A.
- **Transparency of methodology** – We find the level of flexibility given to the administrator appropriate. However we do not find it necessary to publish information relating to individual roles and appointments set out in this RTS Article 2(1)(i)c. We would suggest that it is more important for reassurance that appropriate policies are in place and steps are taken to identify and mitigate actual, potential or perceived conflicts of interest.
- **Code of conduct for contributors** – ESMA has recognized that it is necessary to strike the right balance between appropriate governance supported by, amongst other things, a code of conduct, and the need to ensure an appropriate level of contributions. If contributors are deterred from contributing input data to an administrator, for the purpose of the determination of a benchmark (particularly in circumstances where the contribution is ancillary to their business), the robustness of the benchmark is likely to be undermined.
- **Supervised contributors** – We appreciate ESMA clarifying that BMR already qualifies the requirement for individual sign-off as “where proportionate” and that ESMA has allowed for circumstances where sign-off might follow submission. We also support that ESMA’s approach to require clear rules and deadlines to be stated, but has not itself specified such rules or fixed deadlines.
- **Significant benchmarks** – We broadly agree with the proposed RTS.
- **Compliance statement** – We recognize ESMA’s effort to bring proportionate solutions, by introducing a single template (in fact two - for significant and non significant benchmarks). However we maintain that the intended distinction between significant and non-significant benchmarks is particularly problematic. The reference value of a benchmark may be very difficult to determine and may fluctuate such that a benchmark could move between categories causing the compliance statement to become out of date or inaccurate. Moving past the distinction between the two – we believe that the template of the compliance statement suggested by ESMA is appropriate. It mandates administrators to disclose all information relevant and allows fast and efficient assessment.
- **Benchmark statement** – We also agree with ESMA’s proposal to allow an administrator to exercise some discretion on whether to include certain information, subject to the availability of reliable data - we reiterate that benchmark administrators do not have all the necessary information, as foreseen in the DP. We also understand administrators would be allowed to include additional criteria for certain benchmarks. We appreciate the proportionality built in for the regulated data benchmarks.
- **Authorisation** - We strongly support the fact that authorisation will be a one-off procedure, at the organisational level of the administrator. We also support ESMA’s decision to require information on a benchmark family basis (for non-critical benchmarks). Further, we find that communicating material changes to the NCAs is entirely appropriate. We seek further advice on how to best define “material change” in the context of BMR. We would like to reiterate that for large administrators, the burden entailed in demonstrating whether particular benchmarks are non-significant or

significant may well lead those administrators to choose to administer those benchmarks to, at least, significant standard. Some large benchmark administrators may be publicly listed companies, for which the relevant financial information is readily available elsewhere; we suggest that this information can be provided by reference. Further, as a result of their regulation, publicly listed companies may find it difficult to fulfil the requirement to provide financial forecasts.

- **Third-country provisions** – We support ESMA choosing to draft RTS on recognition, as it has passporting rights attached. In general, we maintain that there should be a level playing field between EU and non-EU benchmarks administrators. The fact that the not-yet in use benchmarks would automatically be “non-significant” poses a difficulty if the administrator has an ambition to run all its benchmarks to a “significant” standard. We do have concerns that the third country competent authorities may be reluctant to be a party to any cooperation arrangement with the EU MS NCAs, as the regulatory regime around benchmarks globally is very slim. As raised above , we would also welcome clarification from ESMA that recognition can be a permanent solution for third country administrators.

<ESMA_COMMENT_CP_BMR_1>



Q1: Do you consider the non-exhaustive list of governance arrangements to be sufficiently flexible? Are there any other structures which you would like to see included?

<ESMA_QUESTION_CP_BMR_1>

Yes, we consider the non-exhaustive list to be sufficiently flexible, particularly given that it is expressed to be a non-exhaustive list. We do not anticipate the need for any other structures.

<ESMA_QUESTION_CP_BMR_1>

Q2: Do you support the option for the oversight function to be a natural person who is not otherwise employed by the administrator?

<ESMA_QUESTION_CP_BMR_2>

We recognise that ESMA is trying to build in proportionality where possible. While we find such an approach reasonable for the majority of the BMR provisions, in terms of governance and oversight in particular, we maintain that all benchmarks should be administered to the same overall standard. We agree with the respondents to the DP expressing concerns about the potential loss of continuity, but even more importantly, we believe that one person could not represent all the necessary checks and balances or be able to challenge the management effectively.

<ESMA_QUESTION_CP_BMR_2>

Q3: Do you support the concept of observers and their inclusion in the oversight function?

<ESMA_QUESTION_CP_BMR_3>

Yes, we consider it appropriate that observers could be included in the oversight function and be permitted to attend meetings, if they are able to contribute, whilst recognising that they shall not be permitted to vote at the meeting.

<ESMA_QUESTION_CP_BMR_3>

Q4: Do you think that the draft RTS allows for sufficient proportionality in the application of the requirements? If no, please explain why and provide proposals for introducing greater proportionality.

<ESMA_QUESTION_CP_BMR_4>

We consider that the flexibility in the structure of the oversight function allows for sufficient proportionality in discharging the obligations of the Regulation. We would not be supportive of any additional proportionality in this particular RTS.

<ESMA_QUESTION_CP_BMR_4>

Q5: Do you have any other comments on the oversight function (composition, positioning and procedures) as set out in the draft RTS?

<ESMA_QUESTION_CP_BMR_5>

We are pleased that ESMA recognises the fact that permanent and effective oversight arrangements ensuring the integrity of benchmarks – the oversight function – may consist of several bodies. We take note of the fact that it will be the NCAs who oversee this as a part of authorisation and supervision.

We support ESMA clarifying that it is the administrator's management body that has the decision-making power and holds the ultimate responsibility. We understand that ESMA is firm on the oversight function not being purely consultative and being charged with challenging this management body.

We appreciate the flexibility given to the administrator with regards to the composition of the oversight function (i.e. inclusion/exclusion of external members/committees providing expert advice based on potential conflict of interest, permitting observers etc.).



Whilst we agree that the BMR should be implemented in a proportionate manner, we maintain – as stated in our DP response – that all benchmarks should be administered to the same overall standard in terms of oversight. We do not envisage separate oversight functions for critical, significant and non-significant benchmarks. We do not support natural persons on their own acting as oversight functions.

We appreciate removal of the requirement to publish the names of members of the oversight function, in order to preserve its integrity.

Our further comments refer to points also raised during the public hearing ESMA organised on 8 November 2016.

We understood that a member of the administrator's management body can participate in meetings of the oversight committee, but should not be a permanent member of that oversight committee.

We understood that information sharing (such as minutes of meetings) between the oversight committee and the management body is not contrary to the RTS, and is therefore permitted.

We noted that independent external persons can be members of the oversight committee, but should not be members of such committees of other administrators.

<ESMA_QUESTION_CP_BMR_5>

Q6: Do you agree with the appropriateness and verifiability of input data that the administrator must ensure are in place? Please elaborate.

<ESMA_QUESTION_CP_BMR_6>

Yes, we consider that the administrator should be satisfied as to the appropriateness of input data and should undertake verification of the input data. However, we do have concerns as to the nature of these measures where:

(a) The input data is made up of non-price related data that is not readily available to the administrator. The significance of these types of contributions will vary according to the asset class or economic reality that the benchmark is seeking to measure; and

(b) The input data is made up of prices, but the prices come from trading venues outside the European Union and do not, therefore, fall within the definition of point 24 of Article 4(1) of Directive 2014/65/EU and for which the Commission has not adopted an implementing decision or considered it equivalent under Article 2a of Regulation (EU) No 648/2012.

Again, we emphasise that the way of implementing these provisions will be dependent on what specifically is captured under "input data".

<ESMA_QUESTION_CP_BMR_6>

Q7: Do you agree with the internal oversight and verification procedures that the administrator must ensure are in place where contributions are made from a front-office function in a contributor organisation? Please elaborate.

<ESMA_QUESTION_CP_BMR_7>

We believe it would be helpful in Article 5 to include the statement "Where input data is contributed from a front office function" as is the case in Article 6.

Whilst we recognise that it is important that the administrator requires the contributor to adhere to certain oversight arrangements, we consider the use of the word "ensure" not proportionate. The use of "ensure" suggests the administrator will need to take a far more proactive role in affecting the way the contributor's business is structured. For contributors for whom contribution of input data to benchmarks is not their primary business, or who are not supervised contributors, such a level of involvement in their business



may be unwelcome and may result in reduced contributions to benchmarks and possible unavailability of data for the determination of certain benchmarks.

We seek further clarity on the responsibilities of the administrator and the contributor. For example Article 6(2) states that the administrator shall ensure the first line of defence comprises staff who are aware of the input procedure and behavioural expectations. We believe that these requirements lie firmly with the contributor, and not the administrator.

<ESMA_QUESTION_CP_BMR_7>

Q8: Do you agree with the list of key elements proposed? Do you consider that there are any other means that could be taken into consideration to ensure that the benchmark's methodology is traceable and verifiable?

<ESMA_QUESTION_CP_BMR_8>

We agree with the list of key elements proposed and do not consider that there are any further elements that would need to be disclosed for users to understand how the benchmark is constructed and maintained.

<ESMA_QUESTION_CP_BMR_8>

Q9: Do you agree with the elements of the internal review of methodology to be disclosed? Do you consider that there are other elements of information regarding the procedure for internal review of methodology that should be included?

<ESMA_QUESTION_CP_BMR_9>

We agree with the elements of the internal review of methodology to be disclosed in principle. We do not, however, consider that the information relating to individual roles and appointment set out in Article 2(1)(i)(c) and (d) are necessary. We would suggest that it is more important for reassurance to be given that the policies are in place and that steps are taken to identify and mitigate actual, potential or perceived conflicts of interest.

<ESMA_QUESTION_CP_BMR_9>

Q10: Do you agree with the procedure for consultation on material changes to the methodology?

<ESMA_QUESTION_CP_BMR_10>

We agree with the procedure for consultation on material changes and the requirement to make responses to the consultation accessible either in full or by way of a feedback statement depending upon the category of benchmark.

We are pleased that ESMA acknowledges market participants' concerns on the adverse effects to publishing names of persons responsible for reviewing the methodology. We agree with ESMA limiting in the draft RTS the publication of information relating to the bodies or functions, to the role of the persons involved in the review and approval of the methodology, and to the general characteristics of the procedures for their nomination and removal.

We acknowledge that ESMA is of the opinion that its empowerment does not allow for the creation of an exemption to allow administrators to adapt a benchmark's methodology swiftly in response to sudden market events, or in case the administrator is required to change a benchmark's methodology after a decision by the competent authority.

<ESMA_QUESTION_CP_BMR_10>

Q11: Do you agree with this approach? Please explain your response.

<ESMA_QUESTION_CP_BMR_11>



Yes, we agree with the approach that both RTS should have sufficient detail to enable them to stand alone, so that if one RTS is waived, the other will still have full effect, even if that means some provisions will appear in both RTS.

<ESMA_QUESTION_CP_BMR_11>

Q12: Do you agree with this approach? What are the different characteristics of contributors that should be taken into consideration in this RTS? How should those characteristics be taken into account in the provisions suggested in this draft RTS? Please give examples.

<ESMA_QUESTION_CP_BMR_12>

Yes, we agree that there are other characteristics of contributors that are as important as their regulatory nature in the context of formulating the code of conduct.

Examples of different characteristics that should be taken into account are:

- Where the provision to the index provider is ancillary to the contributor's normal line of business, it would be more appropriate for the verification to be carried out by the benchmark administrator in accordance with the stated benchmark methodology. Under these circumstances, it should not be a requirement for the contributor's contribution process to be included in the code of conduct.
- Whether the contributor is providing data that, if provided within the Union, would be treated as regulated data. For example, if the New York Stock Exchange provides stock prices for an index, this might be considered a contribution. However, were such data to be provided by London Stock Exchange, it would be considered regulated data.

We appreciate ESMA's third country provisions, where the Code of Conduct requirement in such case needs to be "satisfied to the extent possible" – recital 30 of BMR L1, also CP para 106-109. It is important that ESMA maintains this language.

<ESMA_QUESTION_CP_BMR_12>

Q13: Should the substantial exposures of individual traders or trading desk to benchmark related instruments apply to all types of benchmarks for all contributors?

<ESMA_QUESTION_CP_BMR_13>

The RTS proposes that record keeping of such exposures is not required for non-significant benchmarks. We would suggest that it is the risk of the benchmark being manipulated rather than the benchmark's usage that is important. Therefore, we believe that the same requirement should apply to all types of benchmarks for all contributors.

<ESMA_QUESTION_CP_BMR_13>

Q14: Do you agree with the proposals for the reporting of suspicious transaction in this draft RTS? Please explain your answer.

<ESMA_QUESTION_CP_BMR_14>

Yes, we agree that it is important that all relevant parties are aware of actual or suspected infringements and it is appropriate that the contributor is required to report suspicious transactions, as they will most likely be the first party to become aware of such suspicious transaction.

<ESMA_QUESTION_CP_BMR_14>

Q15: Are there any provisions that should be added to or amended in the draft RTS to take into consideration the different characteristics of benchmarks? Please give examples.



<ESMA_QUESTION_CP_BMR_15>

We would not suggest any additional provisions.

<ESMA_QUESTION_CP_BMR_15>

Q16: Do you have any further comments or suggestions relating to the draft RTS on the code of conduct?

<ESMA_QUESTION_CP_BMR_16>

We are pleased that ESMA recognised that the controls around authorisation of submitters should be applied at the contributor's level rather than the administrator's level.

We encourage ESMA to develop the RTS in terms of standards for automated systems. There is an acknowledgement that data may be contributed in this manner, but Article 2 of the RTS dealing with Submitters is drafted on the basis of an individual providing data on behalf of the organisation (rather like a LIBOR situation). Again, we reinforce that the way of implementing these provisions will be dependent on what specifically is captured under "input data".

<ESMA_QUESTION_CP_BMR_16>

Q17: Do you agree with the draft technical standards in relation to the governance and control arrangements for supervised contributors to benchmarks? Please provide reasons.

<ESMA_QUESTION_CP_BMR_17>

We appreciate that ESMA has clarified that the BMR already qualifies the requirement for individual sign-off as being "where proportionate". ESMA has also specified that individual sign-off is only required for contributions to critical benchmarks, and has allowed for circumstances where sign-off might follow submission or may take the form of alerts in line with predefined parameters. We also support ESMA's requirement for clear rules and deadlines to be stated, but has not, itself, specified rules or fixed deadlines. We reiterate that this should be agreed through negotiations between the administrator and the contributor and in line with the applicable methodology, taking into account the type of input data.

<ESMA_QUESTION_CP_BMR_17>

Q18: In particular, can you identify specific aspects of the draft Regulation that should be applied differentially to different supervised contributors in particular in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors?

<ESMA_QUESTION_CP_BMR_18>

We support the proportionality suggested by ESMA, that the requirements for timing of sign-off and for re-assessment of submitters' suitability should apply only to critical benchmarks.

We re-iterate that the definition of contributions could capture data inputs other than estimates of prices or values of illiquid securities or interest rates. Contributions could include data items not readily available to the administrator that affect the quantity, rather than the price, of constituents to be included in a benchmark. Contributions might also include data items from specialist suppliers who do not consider provision of this data as their core business and who would not wish to be considered as contributors to benchmarks. Unless the definition of contributed data is clarified, we believe that ESMA will need to take into account the different characteristics of these benchmarks when considering contributions.

<ESMA_QUESTION_CP_BMR_18>

Q19: Do you agree with ESMA's specifications of the criteria?

<ESMA_QUESTION_CP_BMR_19>



In general, we agree with the provisions of the RTS. However, with such discretion given to NCAs, the BMR could be interpreted differently across Member States, creating an uneven playing field

On the particular points, we do not consider that the element in Article 1(1)(a)(iii) is justifiable, particularly as, in the way it is currently drafted, the benchmark could be different from a manipulated benchmark with a different administrator.

<ESMA_QUESTION_CP_BMR_19>

Q20: Do you agree with the content and structure of the two compliance statement templates? If not, please explain.

<ESMA_QUESTION_CP_BMR_20>

We recognise ESMA's effort to bring proportionate solutions by introducing a single template (in fact two - for significant and non significant). However we maintain that the intended distinction between significant and non-significant benchmarks is problematic. The reference value of a benchmark may be difficult to determine and may fluctuate in such a way that a benchmark could move between categories and cause the compliance statement to become out of date or inaccurate. We would like to explore whether it would be acceptable for an administrator to issue statements intended for significant benchmarks for both significant and non-significant benchmarks.

Regardless of the distinction between the two, we believe that the template of the compliance statement suggested by ESMA is appropriate. It mandates the administrator to disclose all relevant information and allows for fast and efficient assessment.

Articles 1(2) and 2(2) of the ITS require the administrator to amend the compliance statement immediately whenever any of the information included is no longer up to date and then publish the statement. We suggest that a requirement to amend the compliance statement "as soon as practicable" would be more appropriate. This would take account of the point above about benchmarks moving into and out of the significant and non-significant categories. Furthermore, in the case of a significant benchmark, if the compliance statement must be provided to the competent authority in accordance with Article 25(2), this seems a more practical provision.

<ESMA_QUESTION_CP_BMR_20>

Q21: Do you agree with the proposed specifications of the contents of a benchmark statement?

<ESMA_QUESTION_CP_BMR_21>

We are pleased that there is no mandatory link between benchmark and compliance statements. While they contain similar / same information, their intended purpose is different and their updates might need to follow a different timeline.

We understand why ESMA states that "cross reference to other documents should be as limited as possible". However, for non significant benchmarks, Article 1(7) allows reference to other publicly available sources. This would suggest that we would not be able to do so for significant benchmarks. We believe such referencing should be permitted if these referenced resources are administrator's sources (e.g. not directing to non administrator resources or websites).

We also agree with ESMA's proposal to allow administrator to exercise some discretion on whether to include certain information, subject to the availability of reliable data. We reiterate that benchmark administrators do not have all the necessary information. We also understand that administrators would be allowed to include additional criteria for certain benchmarks. We appreciate the proportionality built in for the regulated data benchmarks.

<ESMA_QUESTION_CP_BMR_21>

Q22: Do you agree with the proposed specifications of the cases in which an update of such statement is required? Do you have any further proposals? Please explain.



<ESMA_QUESTION_CP_BMR_22>

We find the conditions for updates reasonable.

<ESMA_QUESTION_CP_BMR_22>

Q23: Do you agree with the general approach to distinguish the contents of the application with reference to the cases of authorisation or registration?

<ESMA_QUESTION_CP_BMR_23>

We strongly support the fact that authorisation will be a one-off procedure, at the organisational level of the administrator. We also support ESMA's decision to require information on a benchmark family basis (for non-critical benchmarks). Further, we find that communicating material changes to the NCAs is entirely appropriate.

The Level 1 BMR makes the distinction between the two processes of authorisation and registration. We believe it makes sense for administrators of only non-significant benchmarks to enjoy the lighter regime of registration. However, we would like to suggest that the information required for the registration process in relation to the administration of non-significant benchmarks should be identical to that required when seeking authorisation. For example, we suggest that registering administrators should be required to provide the information in paragraph 6 of annex to the RTS on description of the benchmark, in the same way as those administrators seeking authorisation.

<ESMA_QUESTION_CP_BMR_23>

Q24: Are the general and financial information requirements described appropriate for authorisation applications? Are the narrower requirements appropriate for registration applications?

<ESMA_QUESTION_CP_BMR_24>

We believe that it is appropriate to ask for such information. However we would like to reiterate that some benchmark administrators may be publicly traded companies for which the relevant financial information is readily available elsewhere; in this case, we suggest that the authorisation procedure recognises this and that financial information could be provided by referencing a public document. We agree that supervised entities should not be required to submit organisational information already provided to the relevant NCA. As publicly listed companies, the administrators may find it difficult to fulfil the requirement to provide financial forecasts.

<ESMA_QUESTION_CP_BMR_24>

Q25: Are the requirements covering the information on the applicant's internal structure and functions appropriate?

<ESMA_QUESTION_CP_BMR_25>

We support the approach that inventory of conflicts and mitigation measures are only to be disclosed for critical benchmarks. Generally, we believe that the requirements on conflict of interest disclosure and management are appropriate.

<ESMA_QUESTION_CP_BMR_25>

Q26: Are the requirements described dealing with the benchmarks provided appropriate? In particular, is the way in which the commodity benchmarks requirements are handled acceptable?

<ESMA_QUESTION_CP_BMR_26>

We appreciate that ESMA recognises that duplication / providing same information in multiple processes should be avoided and permits pooling the information needed for the compliance statement, benchmark statement and the methodology. However, we would like to reiterate that for large administrators, the burden entailed in demonstrating whether particular benchmarks are non-significant or significant may



lead some administrators to choose to administer those benchmarks to, at least, significant standard.
<ESMA_QUESTION_CP_BMR_26>

Q27: Is the specific treatment for a natural person as applicant appropriate?

<ESMA_QUESTION_CP_BMR_27>

We do not support natural persons on their own acting as the oversight function.

<ESMA_QUESTION_CP_BMR_27>

Q28: Do you agree with the proposals outlined for requirements for other information?

<ESMA_QUESTION_CP_BMR_28>

We agree that ESMA could provide high-level guidelines or Q&A document on further communication between the administrator and the NCAs.

<ESMA_QUESTION_CP_BMR_28>

Q29: Do you agree with the approach followed in the draft RTS as regards the general information that a third-country applicant should provide to the competent authority of the Member State of reference?

<ESMA_QUESTION_CP_BMR_29>

We support ESMA's choice to draft RTS on recognition, as it has passporting rights attached. In general, we maintain that there should be a level playing field between EU and non-EU benchmarks administrators. We support ESMA striving to achieve this level playing field in its approach to this RTS, by aligning the length of the process to 120 days and by recognising an administrator's IOSCO statement of compliance as a supporting document to the application, but not granting recognition automatically.

However, we would like to point out following:

- The third country competent authorities may be reluctant to be a party to any cooperation arrangement with the EU MS NCAs, as the regulatory regime around benchmarks globally is very slim. The effects we described previously still hold. We believe that this would lead to less competition among the administrators and higher costs on the end user of benchmarks; as such process of recognition will necessarily add costs to the benchmarks value chain.
- Currently, in terms of language, the wording "Until such time as an equivalence decision is adopted" in Article 32(1) could be interpreted so as to give this provision a temporary character. Perhaps replacing this language with the following "In the absence of an equivalence decision" would clarify that recognition might be a permanent solution for some.
- Some large benchmark administrators may be publicly listed companies for which the relevant financial information is readily available elsewhere; in this case we suggest that the recognition procedure references this. Further, publicly listed companies may find it difficult to fulfil the requirement to provide financial forecasts (RTS Annex I Section A (3)).

<ESMA_QUESTION_CP_BMR_29>

Q30: Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should provide in order to explain how it has chosen a specific Member State of reference and which are the identity and role of the appointed legal representative in such State?

<ESMA_QUESTION_CP_BMR_30>

While we understand the need of the authorities to have a clearly designated counterparty representing the third country benchmarks administrator, we see the way envisaged by RTS as being problematic.



As an example, a “third country administrator” that is part of the “group” must seek recognition in an EU MS. As the “group” runs and operates an “EU supervised entity”, the EU MS is determined by the location of that “EU supervised entity”. This “EU supervised entity” will automatically become the legal representative of the “third country administrator”, responsible for the oversight function.

While we understand that this would be entirely suitable for groups operating one kind of business (i.e. benchmark administration in multiple jurisdictions), for a global diversified market infrastructure organisation involved in various businesses, this may not be a suitable solution. For example, the “EU supervised entity” might be dedicated to a completely different business, requiring different expertise and different governance arrangements; these competencies might be insufficient to fulfil the oversight function as envisaged in the RTS and indeed the supervised entity could face conflicts of interest in performing this function.

The fact that the not-yet in use benchmarks would be automatically “non-significant” poses a difficulty, if the administrator has an ambition to run all its benchmarks to a “significant” standard. We would appreciate clarification in the form of Level 3 guidelines or Q&A.

We support including the LEI in the process of applying for recognition, we believe this goes hand in hand with overall regulatory efforts.

<ESMA_QUESTION_CP_BMR_30>

Q31: Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should give around the benchmarks it provides and that are already used or intended for use in the Union? In particular, do you agree with the proposals regarding the information to be provided on the types and the categories to which the benchmarks belong to?

<ESMA_QUESTION_CP_BMR_31>

The fact that the not-yet in use benchmarks would automatically be “non-significant” poses a difficulty, if the administrator has an ambition to run all its benchmarks to a “significant” standard.

<ESMA_QUESTION_CP_BMR_31>