



European Securities and  
Markets Authority

## Reply form for the Discussion Paper on Benchmarks Regulation



15 February 2016

## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on the European Single Electronic Format (ESEF), 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\_DP\_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\_DP\_BMR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_DP\_BMR\_XXXX\_REPLYFORM or

ESMA\_DP\_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 31 March 2016.

All contributions should be submitted online at [www.esma.europa.eu](http://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](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## Introduction

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

<ESMA\_COMMENT\_DP\_BMR\_1>

FTSE Russell is the brand name adopted for the index businesses (see Annex A) that are owned and operated by London Stock Exchange Group and its applicable group undertakings. 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 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 technical advice and technical standards envisaged in the Level 1 draft text. In this response to the Discussion Paper published by ESMA on 15 February 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.

Aside from responding to the questions raised in the Discussion Paper, we would like to bring the following elements to ESMA's attention:

- **Thresholds and methods of assessment**  
We encourage ESMA to clarify:  
(a) the mechanism for calculating the quantitative threshold for characterising benchmarks; and  
(b) the division of responsibilities between the administrator, National Competent Authority (NCA) and ESMA in the process of assessment.  
We believe it will be equally difficult for the administrator and the NCAs to address this, as there is no obligation to inform the administrator about the benchmark/index being used in the manner set out in the Regulation, there is a general lack of data available for undertaking such assessments.
- **Opt-in to the "significant benchmarks" administrator regime**  
We encourage ESMA to allow administrators to opt-in to a "significant benchmark administrator" regime. We understand that classifying benchmarks as non-significant, significant, or critical was originally intended to comply with the principle of proportionality and ensure that smaller administrators are not disadvantaged. We fully support this principle, but as it is currently drafted, we believe that administrators of many non-significant benchmarks will choose not to apply the various exemptions as the requirements to do so would be more burdensome than complying with all the provisions. For example, the exercise of characterising the benchmarks will be challenging for an administrator as referred to in our first point above. Further, as an administrator would need to issue statements of non-compliance for every benchmark or benchmark family to which they have applied an exemption, this may prove more onerous than running the benchmarks to a higher standard, which – consistent with the IOSCO principles – many administrators already do.
- **Level-playing field for the Third Country administrators**  
We believe that third country administrators should have a comparable level of requirements for authorisation within the EU. We believe that complying with the IOSCO principles is a good foundation for any benchmark administrator. However, simple adherence should not replace a process comparable with the one that EU administrators seeking authorisation will have to follow.
- **Applying for authorisation at administrator level**  
We are in favour of applying for authorisation at administrator level, rather than at the individual benchmark or benchmark family level. This is to ensure that the application process is efficient and does not introduce regulatory uncertainty in the market. Such uncertainty could stem from regulators having difficulties dealing with the number of application received and their potential inability to process them in reasonable time.
- **Oversight function comprising multiple committees and bodies**



Consistent with the IOSCO principles, many administrators have already developed a strong governance framework comprising several specialist bodies that are specifically mandated to cover distinct requirements. Therefore, we believe that ESMA should allow flexibility and not mandate the oversight in the form of a single committee.

- **Deterring contributors based on requirements for input data**  
Throughout the Discussion Paper, ESMA sets out various requirements applicable to contributors. We want to draw ESMA's attention to the fact that such requirements are likely to be resisted by contributors and could even catalyse their withdrawal from the process, causing the quality of benchmarks to suffer. In some cases benchmarks could even become non-viable. The withdrawal of contributors would have a serious negative impact on the end users who may be denied access to low cost, index-based investment products. We therefore believe that the administrator should retain the authority to determine the modalities of various procedures (e.g. verifying the reliability of the contributed data, frequency of submission and others). This will allow the procedures to be tailored to the nature of the benchmark.
- **Nature of contributed input data**  
We believe that the definition of contributed data remains ambiguous. The Discussion Paper assumes that contributed data is to be interpreted as price or value estimates from parties that are potentially making markets in the benchmarks constituents. We encourage ESMA to further clarify what constitutes contributed data, as the Level 1 draft text could be interpreted more broadly to capture any data input from a specialised source, who might not intend to contribute data or consider themselves to be contributing data within the scope of the Regulation.
- **Transparency of methodology and associated risks**  
ESMA rightfully recognizes the risk of front-running if an index methodology is required to be published in great detail. For benchmarks consisting of relatively illiquid securities, if the methodology is disclosed in great detail, third parties may be able to profit, at the end-investor's expense, from the forecast liquidity demand arising from a forthcoming published benchmark rebalance by those seeking to capitalise on the known liquidity demands.
- **Additional point stemming out of Level 1: Definition of 'Regulated Data'**  
We understand the spirit of the Level 1 text, which aims to provide users and markets in general with benchmarks, based on quality, regulated data. However, the current drafting of "regulated data" definition, would potentially exclude regulated data from third countries – from trading venues of jurisdictions not benefitting from equivalence status under MiFID. Similar uncertainty surrounds the data coming from the data vendors. This would have unwelcome consequences, as the global equity benchmarks could no longer benefit from the regulated data exemption.

Whilst we understand that the IOSCO Principles are not legally binding, we urge ESMA to align the provisions of the Regulation to the IOSCO Principles for Financial Benchmarks in order to minimise the risk of unintended consequences.

Our response should be read together with following appendices, submitted as "ESMA\_DP\_BMR\_LSEG\_ANNEX":

- A: A brief explanation of the index business of LSEG operates under the brand name FTSE Russell
- B: FTSE Russell Organisation Structure
- C: FTSE Russell Index Governance
- D: Benchmark Modification Process

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About FTSE Russell, a part of London Stock Exchange Group (LSEG)  
EU Transparency Register: 550494915045-08 – contact: Ms. Beata Sivak: BSivak@lseg.com



FTSE Russell is a global index leader that provides innovative benchmarking, analytics and data solutions for investors worldwide. FTSE Russell calculates thousands of indexes that measure and benchmark markets and asset classes in more than 80 countries, covering 98% of the investable market globally.

FTSE Russell index expertise and products are used extensively by institutional and retail investors globally. Approximately \$10 trillion is currently benchmarked to the FTSE Russell indexes. For over 30 years, leading asset owners, asset managers, ETF providers and investment banks use FTSE Russell indexes to benchmark their investment performance and create ETFs, structured products and index-based derivatives.

A core set of universal principles guides FTSE Russell index design and management: a transparent rules-based methodology is informed by independent committees of leading market participants. FTSE Russell is focused on applying the highest industry standards in index design and governance, and embraces the IOSCO principles. FTSE Russell is also focused on index innovation and client collaboration as it seeks to enhance the breadth, depth and reach of its offering.

<ESMA\_COMMENT\_DP\_BMR\_1>

**Q1: Do you agree that an index’s characteristic of being “made available to the public” should be defined in an open manner, possibly reflecting the current channels and modalities of publication of existing benchmarks, in order not to unduly restrict the number of benchmarks in scope?**

<ESMA\_QUESTION\_DP\_BMR\_1>

We are in favour of the ultimate objective, to ensure the integrity of benchmarks. Whilst ESMA should not unduly restrict the number of benchmarks that fall within the scope of the BMR, ESMA should ensure that this is in line with the original goal of the BMR. As drafted, a large number of custom indices that are administered for a single client will fall within the scope. This may make the administration of such custom indices prohibitively expensive and operationally burdensome. Further, clients of such custom indices will want reassurance that an administrator complying with the BMR will not be required to divulge the clients’ intellectual property, nor include in the Benchmark Statement information that would damage the interests of an end investor. This could happen, for example, if the Benchmark Statement were required to provide sufficient detail that would enable front-running of rebalance trades by those seeking to capitalise on the known liquidity demands.

<ESMA\_QUESTION\_DP\_BMR\_1>

**Q2: Do you have any proposals on which aspects of the publication process of an index should be considered in order for it to be deemed as having made the index available to the public, for the purpose of the BMR?**

<ESMA\_QUESTION\_DP\_BMR\_2>

No. However, we would like to suggest that the Level 2 gives an administrator the prerogative to refuse to permit certain of its indices to be used as a benchmark. An administrator may calculate and publish certain indices that it does not consider appropriate for use as a benchmark, for example because such indices are calculated for the purposes of illustrating social or economic trends, or for the purposes of providing pre-trade transparency in certain illiquid instruments.

<ESMA\_QUESTION\_DP\_BMR\_2>

**Q3: Do you agree with ESMA’s proposal to align the administering the arrangements for determining a benchmark with the IOSCO principle on the overall responsibility of the administrator? Which other characteristics/activities would you regard as covered by Article 3(1) point 3(a)?**

<ESMA\_QUESTION\_DP\_BMR\_3>

We agree with ESMA’s proposal to align the administrative arrangements for determining a Benchmark with the IOSCO principle. The process of administering a Benchmark involves several separate processes as set out in the IOSCO Principles. In our view, the administrator should be defined as the body that controls the methodology. Some of these processes, such as data collection and benchmark dissemination, can be outsourced. This may lead to confusion as to which entity actually constitutes the administrator. Therefore, it would be helpful if ESMA defined which aspect of the administrative arrangements can be used to identify the administrator.

<ESMA\_QUESTION\_DP\_BMR\_3>

**Q4: Do you agree with ESMA’s proposal for a definition of issuance of a financial instrument? Are there additional aspects that this definition should cover?**

<ESMA\_QUESTION\_DP\_BMR\_4>

Yes, we broadly agree, but would appreciate more clarity. For derivatives traded on trading venues, to retain consistency with other EU legislation, we suggest ESMA looks for alignment with the current definition of “manufacturer” as in Regulation on packaged retail investment and insurance-based investment products (PRIIPs).



OTC traded derivatives that are defined in independent master agreements/documentation and can be traded directly, voice and/or on multiple trading venues cannot be considered "issued" by those venues. We ask ESMA to clarify the term "issuer" being used in connection to various OTC instruments.

In respect of an Administrator, we repeat our concern that an Administrator should have the right to explicitly prohibit the use of one of its indices as a Benchmark, including for reference by a financial instrument, if the Administrator believes the index to be unsuitable for those purposes.

<ESMA\_QUESTION\_DP\_BMR\_4>

**Q5: Do you think that the business activities of market operators and CCPs in connection with possible creation of financial instruments for trading could fall under the specification of "issuance of a financial instrument which references an index or a combination of indices"? If not, which element of the "use of benchmark" definition could cover these business activities?**

<ESMA\_QUESTION\_DP\_BMR\_5>

With regards to trading venues, the business activity of market operators in connection with the "issuance of financial instruments" should be limited to derivatives which refer to an index.

Financial instruments that are equities, bonds, ETFs, Depository Receipts, covered warrants, securitised derivatives etc. that may refer to an index should be considered to be "issued" by the person who is the issuer and not the trading venue. For such instruments, the trading venue is responsible for the listing and/or admittance to trading of the financial instrument, but not the "issuance". Whereas for derivatives, trading venues own and issue the contract specifications, subject to the approval of NCAs – thus, their business activity is related to creation of financial instruments for trading that falls under the specification of "issuance".

A CCP does not determine the indices used in the contracts it clears; its market participants do. We therefore do not believe that the registration of cleared contracts submitted by its participants should be classified as "issuance of a financial instrument". Rather, "use of benchmark" should be limited to the determination of the amount payable under a financial instrument.

<ESMA\_QUESTION\_DP\_BMR\_5>

**Q6: Do you agree with the proposed list of appropriate governance arrangements for the oversight function? Would you propose any additional structure or changes to the proposed structures?**

<ESMA\_QUESTION\_DP\_BMR\_6>

We believe that permanent and effective oversight arrangements are essential in order to ensure the integrity of benchmarks. However, we believe that the oversight function is best undertaken by several specialist bodies, and not just one. Please see our response to Question 8 for further details.

<ESMA\_QUESTION\_DP\_BMR\_6>

**Q7: Do you believe these proposals sufficiently address the needs of all types of benchmarks and administrators? If not, what characteristics do such benchmarks have that would need to be addressed in the proposals?**

<ESMA\_QUESTION\_DP\_BMR\_7>

Yes.

<ESMA\_QUESTION\_DP\_BMR\_7>

**Q8: To the extent that you provide benchmarks, do you have in place a pre-existing committee, introduced through other EU legislation, or otherwise, which could satisfy the requirements of an oversight function under Article 5a? Please describe the structure of the committee and the reasons for establishing it.**





<ESMA\_QUESTION\_DP\_BMR\_8>

Consistent with the IOSCO principles, FTSE Russell has developed a strong governance framework. This framework allocates distinct responsibilities to several specialist bodies. Please see Appendix B: FTSE Russell Organisation structure and Appendix C: FTSE Russell Index Governance. These bodies include:

**The FTSE Russell Governance Board:** The Governance Board is responsible for the approval of all new index methodologies and enhancements to existing methodologies. The Governance Board reports to the LSEG Information Services Management Team. To assist it in its work, the Governance Board is supported by working groups formed of knowledgeable and experienced employees. These groups ensure that all new index methodologies, and changes to existing methodologies, can be implemented without incurring undue operational risk.

**External Advisory Committees:** The external advisory committees are formed of senior, experienced market practitioners, clients and index users. These bodies most closely resemble the single oversight function envisaged by the BMR. However, as an Administrator cannot absolve itself of responsibility for a Benchmark, the role of the committees is purely advisory. They act to challenge methodology proposals put forward by FTSE Russell, and their feedback is integral to the subsequent approval discussion at the FTSE Russell Governance Board. The external advisory committees also help to mitigate any potential conflicts of interest.

**The Audit, Risk and Compliance Committee (ARCC):** The ARCC membership includes an Independent Non-Executive Director from the Board of FTSE International Ltd, and representatives from London Stock Exchange Group Risk and Compliance. The ARCC is the appropriate body to receive and review reports from internal and external auditors, the FTSE Russell Compliance Officer, and the FTSE Russell Risk Officer. The ARCC also reviews the conflicts of interest register.

**The Board of FTSE International Ltd:** The Board retains ultimate responsibility for the strategy of FTSE International and mitigates conflicts of interests that might arise by virtue of the ownership of FTSE Russell by a Group that includes trading venues amongst its interests. The Board includes independent Non-Executive Directors.

This oversight framework ensures that FTSE Russell indexes continue to reflect the requirements of users and other stakeholders.

<ESMA\_QUESTION\_DP\_BMR\_8>

**Q9: Do you agree that an administrator could establish one oversight function for all the benchmarks it provides? Do you think it is appropriate for an administrator to have multiple oversight functions where it provides benchmarks that have different methodologies, users or seek to measure very different markets or economic realities?**

<ESMA\_QUESTION\_DP\_BMR\_9>

As per our answer to Q8, we believe that index oversight may require more than one specialist body to be responsible for different aspects of the oversight function. The different bodies facilitate FTSE Russell's compliance with the distinct requirements of the IOSCO Principles and the forthcoming BMR.

Although the FTSE Russell Governance Board retains ultimate authority on all index methodologies, it relies on advisory committees to provide specialised advice regarding proposals for methodology enhancements. Typically different committees are required for different asset classes, and even within asset classes, regional expertise is also required. Please see the Appendix B: FTSE Russell Organisation structure and Appendix C: FTSE Russell Index Governance.

<ESMA\_QUESTION\_DP\_BMR\_9>

**Q10: If an administrator provides more than one critical benchmark, do you support the approach of one oversight function exercising oversight over all the critical benchmarks? Do you think it is neces-**

**sary for an oversight function to have sub-functions, to account for the different needs of different types of benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_10>

As described in our answers to the preceding questions, we believe that the oversight function is likely best exercised through several bodies.

<ESMA\_QUESTION\_DP\_BMR\_10>

**Q11: Where an administrator provides critical benchmarks and significant or non-significant benchmarks, do you think it should establish different oversight functions depending on the nature, scale and complexity of the critical benchmarks versus the significant or non-significant benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_11>

No. Whilst we agree that the BMR should be implemented in a proportionate manner, we firmly believe 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.

<ESMA\_QUESTION\_DP\_BMR\_11>

**Q12: In which cases would you agree that contributors should be prevented from participating in oversight committees?**

<ESMA\_QUESTION\_DP\_BMR\_12>

Contributors should be prevented from participating in oversight if their presence would constitute a potential conflict of interest, for example if they wished to include certain instrument types that would not be desired by the users of the indices, nor appropriate for the end investors to hold. However, we recognise that the views of contributors are important and their views should be sought separately.

<ESMA\_QUESTION\_DP\_BMR\_12>

**Q13: Do you foresee additional costs to your business or, if you are not an administrator, to the business of others resulting from the establishment of multiple oversight functions in connection with the different businesses performed and/or the different nature, scale and type of benchmarks provided? Please describe the nature, and where possible provide estimates, of these costs.**

<ESMA\_QUESTION\_DP\_BMR\_13>

We see good governance as essential to the administration of our business. In a highly competitive market place, good governance is a key element of the FTSE Russell value proposition.

<ESMA\_QUESTION\_DP\_BMR\_13>

**Q14: Do you agree that, in all cases, an oversight function should not be responsible for overseeing the business decisions of the management body?**

<ESMA\_QUESTION\_DP\_BMR\_14>

As described above, we make extensive use of practitioner committees to advise it on methodology issues. These committees are entirely advisory and do not oversee the business decisions of the company. However, the company cannot absolve itself of its responsibility towards users of the benchmarks it administers, and other aspects of the oversight function including the FTSE Russell Governance Board, the ARCC and the Board of FTSE International Ltd do oversee business decisions. Please see the Appendix B: FTSE Russell Organisation structure and Appendix C: FTSE Russell Index Governance.

<ESMA\_QUESTION\_DP\_BMR\_14>

**Q15: Do you support the proposed positioning of the oversight function of an administrator? If not, please explain your reasons why this positioning may not be appropriate.**



<ESMA\_QUESTION\_DP\_BMR\_15>

We agree that certain aspects of the oversight function should be embedded in the organisational structure. As described above, the FTSE Russell Governance Board has ultimate responsibility for benchmark methodologies and this body is appropriately embedded in the organisation. Similarly, the ARCC is an explicit part of our governance framework, and this too is embedded in the organisational structure. However, the external advisory committees are deliberately separate from the organisation so they can provide independent oversight and advice. Please see Appendix B: FTSE Russell Organisation structure and Appendix C: FTSE Russell Index Governance.

<ESMA\_QUESTION\_DP\_BMR\_15>

**Q16: Do you have any additional comments with regard to the procedures for the oversight function as well as the composition and positioning of the oversight function within an administrator’s organisation?**

<ESMA\_QUESTION\_DP\_BMR\_16>

See our answers to Questions 14 – 15 and the attached description of our governance framework in Appendix B: FTSE Russell Organisation structure and Appendix C: FTSE Russell Index Governance.

<ESMA\_QUESTION\_DP\_BMR\_16>

**Q17: Do you agree with the proposed list of elements of procedures required for all oversight functions? Should different procedures be employed for different types of benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_17>

We look to ensure that all external advisory committees are appropriately constituted with letters of appointment for members and published terms of reference. Members are invited to join by FTSE Russell and any conflicts of interest must be declared before particular agenda items are debated. We do not publish members’ names as to do so could encourage lobbying, for example by potential constituent companies or their advisors. We urge ESMA to withdraw this requirement from the oversight procedures.

<ESMA\_QUESTION\_DP\_BMR\_17>

**Q18: Do you agree with the proposed treatment of conflicts of interest arising from the composition of an oversight function? Have you identified any additional conflicts which ESMA should consider in drafting the RTS?**

<ESMA\_QUESTION\_DP\_BMR\_18>

We agree. As per our answer to the previous question, the terms of appointment of all committee members require members to disclose any conflicts ahead of the discussion of the relevant agenda item.

<ESMA\_QUESTION\_DP\_BMR\_18>

**Q19: Do you agree with the list of records to be kept by the administrator for input data verification? If not, please specify which information is superfluous / which additional information is needed and why.**

<ESMA\_QUESTION\_DP\_BMR\_19>

We are concerned that the requirements listed by ESMA could discourage contributors from contributing the data.

Although the requirements might be considered sensible and proportionate for a critical benchmark such as LIBOR where there relatively few rates to be constructed and relatively few inputs, they are not proportionate for broader fixed income indices where contributors may be contributing quotations for thousands of instruments to enable the construction of benchmarks with hundreds if not thousands of constituents.

ESMA should bear in mind that contributions might not be limited to dealer quotations as seems to be envisaged in the Discussion Paper, but, as per our introductory remarks, could also encompass other, non-price related inputs that are not readily available to the administrator. The significance of these other types of contributions will vary according to the asset class or economic reality that the benchmark is seeking to measure. Further, in many such cases, the administrator would have no ability to require such reports from the provider.

We therefore suggest that a prescriptive, one size fits all, list of requirements should be avoided.  
<ESMA\_QUESTION\_DP\_BMR\_19>

**Q20: Do you agree that, for the information to be transmitted to the administrator in view of ensuring the verifiability of input data, weekly transmission is sufficient? Would you instead consider it appropriate to leave the frequency of transmission to be defined by the administrator (i.e. in the code of conduct)?**

<ESMA\_QUESTION\_DP\_BMR\_20>

The transmission of an extensive set of records on a weekly basis will likely be resisted by contributors to broad benchmarks and could even catalyse their withdrawal from the process. This would have a serious negative impact on the whole determination process, the quality of benchmarks produced, and finally on the end users who will ultimately be denied access to low cost, index-based investment products.

We therefore firmly believe that the administrator should retain the authority to determine the procedures for verifying the reliability of the contributed data. This will allow the procedures to be tailored to the nature of the benchmark.

<ESMA\_QUESTION\_DP\_BMR\_20>

**Q21: Do you agree with the concept of appropriateness as elaborated in this section?**

<ESMA\_QUESTION\_DP\_BMR\_21>

It should be up to administrators to determine the key criteria when determining the appropriateness of input data. We agree with the concept of the appropriateness requirement. However, we reiterate that as currently defined in the BMR, contributed data can take many forms and will not necessarily be limited to quotations or transaction reports for illiquid securities. For this reason, we believe that a prescriptive list of criteria will be counterproductive.

<ESMA\_QUESTION\_DP\_BMR\_21>

**Q22: Do you see any other checks an administrator could use to verify the appropriateness of input data?**

<ESMA\_QUESTION\_DP\_BMR\_22>

No. The appropriateness criteria will vary according to the nature and type of the input data.

<ESMA\_QUESTION\_DP\_BMR\_22>

**Q23: Would you consider it useful that the administrator maintains records of the analyses performed to evaluate the appropriateness of input data?**

<ESMA\_QUESTION\_DP\_BMR\_23>

No. The Administrator should be able to determine whether such record keeping is necessary and fit for purpose.

<ESMA\_QUESTION\_DP\_BMR\_23>

**Q24: Do you see other possible measures to ensure verifiability of input data?**



<ESMA\_QUESTION\_DP\_BMR\_24>

No. We are not proposing other possible measures to ensure verifiability of input data.

<ESMA\_QUESTION\_DP\_BMR\_24>

**Q25: Do you agree with the identification of the concepts and underpinning activities of evaluation, validation and verifiability, as used in this section?**

<ESMA\_QUESTION\_DP\_BMR\_25>

The concepts are sensible in those cases where input data consists of value estimates or quotations for illiquid securities. However, as currently drafted, input data could also be construed as data that is used to calculate the appropriate weight of a constituent in a benchmark and therefore not related to the constituent's value. In such cases, the concepts of evaluation, validation and verifiability will likely not be appropriate.

<ESMA\_QUESTION\_DP\_BMR\_25>

**Q26: Do you agree that all staff involved in input data submission should undergo training, but that such training should be more elaborate / should be repeated more frequently where it concerns front office staff contributing to benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_26>

Our previous statement around the potential for different types of input data also applies to this question. As defined, input data may not be price or value related, and could be sourced from specialist vendors over which the administrator has no control.

We believe that contributors may be better placed to answer the question on training of staff.

<ESMA\_QUESTION\_DP\_BMR\_26>

**Q27: Do you agree to the three lines of defence-principle as an ideal type of internal oversight architecture?**

<ESMA\_QUESTION\_DP\_BMR\_27>

Yes. We believe that such system provides strong and efficient oversight of the effectiveness of internal control in place. As part of the London Stock Exchange Group, FTSE Russell adheres to the three lines of defence principle, which requires us to comply with the policies, minimum standards and risk management principles and allow managing risks within LSEG risk appetite.

<ESMA\_QUESTION\_DP\_BMR\_27>

**Q28: Do you identify other elements that could improve oversight at contributor level?**

<ESMA\_QUESTION\_DP\_BMR\_28>

No. We do not identify any additional elements. As a general principle, we encourage ESMA to keep in mind the principle of proportionality when designing the rules.

<ESMA\_QUESTION\_DP\_BMR\_28>

**Q29: Do you agree with the list of elements contained in a conflict of interest policy? If not, please state which elements should be added / which elements you consider superfluous and why.**

<ESMA\_QUESTION\_DP\_BMR\_29>

We share industry's concerns that highly prescriptive measures could dissuade contributors from continuing to participate in a benchmark. This could undermine the benchmark's ability to measure the underlying market.

<ESMA\_QUESTION\_DP\_BMR\_29>



**Q30: Do you agree that where expert judgement is relied on and/or discretion is used additional appropriate measures to ensure verifiability of input data should be imposed? If not, please specify examples and reasons why you disagree.**

<ESMA\_QUESTION\_DP\_BMR\_30>

Yes. We agree that additional appropriate measures to ensure the verifiability of input data could be required where expert judgement is relied on and/or discretion is used.

<ESMA\_QUESTION\_DP\_BMR\_30>

**Q31: Do you agree to the list of criteria that can justify differentiation? If not, please specify why you disagree.**

<ESMA\_QUESTION\_DP\_BMR\_31>

We generally agree with the list of measures for which differentiation may be applied. We are pleased that ESMA recognizes differentiation in the case of supervised contributors. However, we encourage ESMA to rely on existing supervisory mechanisms to evaluate the effectiveness of a contributor's organisation rather than creating new regulatory requirements.

<ESMA\_QUESTION\_DP\_BMR\_31>

**Q32: Do you agree to the list of elements that are amenable to proportional implementation? If not, please specify why you disagree.**

<ESMA\_QUESTION\_DP\_BMR\_32>

Yes. We agree with the proposed list.

<ESMA\_QUESTION\_DP\_BMR\_32>

**Q33: Do you agree to the list of elements that are not amenable to proportional implementation? If not, please specify why you disagree.**

<ESMA\_QUESTION\_DP\_BMR\_33>

Yes. We agree with the proposed list.

<ESMA\_QUESTION\_DP\_BMR\_33>

**Q34: Do you consider the proposed list of key elements sufficiently granular "to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts"?**

<ESMA\_QUESTION\_DP\_BMR\_34>

We agree that the administrators should provide sufficient information for users to understand how the Benchmark is constructed and maintained, and that the relevant information should be published on the company website.

Based on the ESMA-EBA guidelines, ESMA should maintain that transparency of the methodology doesn't mean disclosing the formulas, but only certain elements of the methodology.

We appreciate that ESMA rightfully recognises the risk of front-running. This risk is particularly apparent for benchmarks of relatively illiquid securities where the methodology is disclosed in sufficient detail to allow third parties to profit – at the end investor's expense – from the anticipated liquidity demand arising from a forthcoming benchmark rebalance.

<ESMA\_QUESTION\_DP\_BMR\_34>

**Q35: Beyond the list of key elements, could you identify other elements of benchmark methodology that should be disclosed? If yes, please explain the reason why these elements should be disclosed.**

<ESMA\_QUESTION\_DP\_BMR\_35>

No. We did not identify other elements of benchmark methodology that should be disclosed.

<ESMA\_QUESTION\_DP\_BMR\_35>

**Q36: Do you agree that the proposed key elements must be disclosed to the public (linked to Article 3, para 1, subpara 1, point (a))? If not, please specify why not.**

<ESMA\_QUESTION\_DP\_BMR\_36>

Yes. We agree that the proposed key elements must be disclosed to the public.

<ESMA\_QUESTION\_DP\_BMR\_36>

**Q37: Do you agree with ESMA's proposal about the information to be made public concerning the internal review of the methodology? Please suggest any other information you consider useful to disclose on the topic.**

<ESMA\_QUESTION\_DP\_BMR\_37>

We agree with making the procedure public. However, we strongly disagree with the proposal that would require the publication of the membership of the FTSE Russell external advisory committees. Requiring the committee members' names to be made public might not be acceptable to them and could encourage lobbying by prospective constituent companies or their advisers.

<ESMA\_QUESTION\_DP\_BMR\_37>

**Q38: Do you agree with the above proposals to specify the information to be provided to benchmark users and, more in general, stakeholders regarding material changes in benchmark methodology?**

<ESMA\_QUESTION\_DP\_BMR\_38>

We agree that any material changes to benchmark methodologies should be announced to the market (to the index users and other stakeholders). In certain cases where very significant and substantive changes are being contemplated, the proposals may also be put to wider stakeholder consultation before ratification is sought.

Depending on the nature and the impact of an agreed change, implementation may be immediate or preceded by notifications. For example, a change in the treatment of a class of corporate actions may take effect from the next instance of such an event. Whereas, changes relating to the eligibility requirements for a Benchmark will require a longer period of notice and potentially, a transition plan to be provided to users.

<ESMA\_QUESTION\_DP\_BMR\_38>

**Q39: Do you agree, in particular, on the opportunity that also the replies received in response to the consultation are made available to the public, where allowed by respondents?**

<ESMA\_QUESTION\_DP\_BMR\_39>

We are of the opinion that making publically available summaries of the feedback from consultations is sufficient.

<ESMA\_QUESTION\_DP\_BMR\_39>

**Q40: Do you agree that the publication requirements for key elements of methodology apply regardless of benchmark type? If not, please state which type of benchmark would be exempt / which elements of methodology would be exempt and why.**





<ESMA\_QUESTION\_DP\_BMR\_40>

Yes. We agree that the publication requirements for key elements of methodology apply regardless of benchmark type.

<ESMA\_QUESTION\_DP\_BMR\_40>

**Q41: Do you agree that the publication requirements for the internal review of methodology apply regardless of benchmark type? If not, please state which information regarding the internal review could be differentiated and according to which characteristic of the benchmark or of its input data or of its methodology.**

<ESMA\_QUESTION\_DP\_BMR\_41>

Yes. We agree that the publication requirements for the internal review of methodology apply regardless of benchmark type.

<ESMA\_QUESTION\_DP\_BMR\_41>

**Q42: Do you agree that, in the requirements regarding the procedure for material change, the proportionality built into the Level 1 text covers all needs for proportional application?**

<ESMA\_QUESTION\_DP\_BMR\_42>

Yes.

<ESMA\_QUESTION\_DP\_BMR\_42>

**Q43: Do you agree that a benchmark administrator could have a standard code for all types of benchmarks? If not, should there be separate codes depending on whether a benchmark is critical, significant or non-significant? Please take into account your answer to this question when responding to all subsequent questions.**

<ESMA\_QUESTION\_DP\_BMR\_43>

Whilst we agree that a benchmark administrator should have the ability to use a standard code of conduct for various types of benchmark; we also support ESMA's view that these codes will likely require tailoring depending on the type of benchmark in question. We anticipate that the content of the code of conduct will be influenced by the type of data, the nature of the contributor and whether the benchmark is critical, significant or non-significant.

<ESMA\_QUESTION\_DP\_BMR\_43>

**Q44: Do you believe that an administrator should be mandated to tailor a code of conduct, depending on the market or economic reality it seeks to measure and/or the methodology applied for the determination of the benchmark? Please explain your answer using examples of different categories or sectors of benchmarks, where applicable.**

<ESMA\_QUESTION\_DP\_BMR\_44>

As the administrator retains responsibility for the quality of the benchmark, it would be natural for the administrator to advocate the use of a code of conduct that is most suitable for its purposes. However, we do not believe that an administrator should be mandated to tailor a code of conduct.

<ESMA\_QUESTION\_DP\_BMR\_44>

**Q45: Do you agree with the above requirements for a contributor's contribution process? Is there anything else that should be included?**

<ESMA\_QUESTION\_DP\_BMR\_45>



We agree with the proposed requirements for a contributor's contribution process where the input data is price data and has been specifically created for the purposes of the determination of a benchmark. 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 framework for the contributor's contribution process to be included in the code of conduct.

<ESMA\_QUESTION\_DP\_BMR\_45>

**Q46: Do you agree that the details of the code of conduct to be specified by ESMA may still allow administrators to tailor the details of their codes of conduct with respect to the specific benchmarks provided?**

<ESMA\_QUESTION\_DP\_BMR\_46>

Yes. We agree that the administrator should be able to tailor the code of conduct to suit the circumstances.

<ESMA\_QUESTION\_DP\_BMR\_46>

**Q47: Do you agree that such information should be required from contributors under the code of conduct? Should any additional information be requested?**

<ESMA\_QUESTION\_DP\_BMR\_47>

We agree that in the case of input data created and provided specifically for the purpose of a benchmark such as LIBOR such information should be required.

On the contrary, in the case of input data provided as ancillary to the contributor's business, such information should not be required.

<ESMA\_QUESTION\_DP\_BMR\_47>

**Q48: Are their ways in which contributors may manage possible conflicts of interest at the level of the submitters? Should those conflicts, where managed, be disclosed to the administrator?**

<ESMA\_QUESTION\_DP\_BMR\_48>

We consider that contributors should have procedures in place to identify and manage conflicts of interest. Conflicts of interest, if appropriately managed, do not need be disclosed to the administrator. If, however, a conflict of interest had an influence on the contribution, then the administrator should be informed.

<ESMA\_QUESTION\_DP\_BMR\_48>

**Q49: Do you foresee any obstacles to the administrator's ability to evaluate the authorisation of any submitters to contribute input data on behalf of a contributor?**

<ESMA\_QUESTION\_DP\_BMR\_49>

We believe that the controls around authorisation of submitters should be applied at the contributor's level rather than the administrator's level. For benchmarks consisting of hundreds of constituents with contributions from numerous contributors, it will simply not be feasible for the administrator to evaluate the authorisation of all submitters.

<ESMA\_QUESTION\_DP\_BMR\_49>

**Q50: Do you agree that a contributor's contribution process should foresee clear rules for the exclusion of data sources? Should any other information be supplied to administrators to allow them to ensure contributors have provided all relevant input data?**

<ESMA\_QUESTION\_DP\_BMR\_50>

We agree.

<ESMA\_QUESTION\_DP\_BMR\_50>

**Q51: Do you think that the listed procedures for submitting input data are comprehensive? If not, what is missing?**

<ESMA\_QUESTION\_DP\_BMR\_51>

We consider the procedures to be comprehensive.

<ESMA\_QUESTION\_DP\_BMR\_51>

**Q52: Do you agree that rules are necessary to provide consistency of contributors' behaviour over the time? Should this be set out in the code of conduct or in the benchmark methodology, or both?**

<ESMA\_QUESTION\_DP\_BMR\_52>

We agree that rules may be helpful to provide consistency of contributors' behaviour over time but urge against guidance that could be excessively prescriptive. We, therefore, consider the code of conduct to be the appropriate place for such rules to be included.

<ESMA\_QUESTION\_DP\_BMR\_52>

**Q53: Should policies, in addition to those set out in the methodology, be in place at the level of the contributors, regarding the use of discretion in providing input data?**

<ESMA\_QUESTION\_DP\_BMR\_53>

Any additional guidance that complements the methodology and assists individual submitters in understanding and complying with the rules regarding the use of discretion would be sensible.

<ESMA\_QUESTION\_DP\_BMR\_53>

**Q54: Do you agree with the list of checks for validation purposes? What other methods could be included?**

<ESMA\_QUESTION\_DP\_BMR\_54>

Yes. We agree with the list of checks for validation purposes

<ESMA\_QUESTION\_DP\_BMR\_54>

**Q55: Do you agree with the minimum information requirement for record keeping? If not would you propose additional/alternative information?**

<ESMA\_QUESTION\_DP\_BMR\_55>

We suggest specifying the minimum time for the retention of records for clarity

<ESMA\_QUESTION\_DP\_BMR\_55>

**Q56: Do you support the recording of the use of expert judgement and of discretion? Should administrators require the same records for all types of benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_56>

There will be categories of benchmark – such as interest rate benchmarks - where the recording of the use of expert judgement and of discretion will be appropriate, particularly to help justify any departure from previous patterns. However, we do not anticipate this being the case for all types of benchmark.

<ESMA\_QUESTION\_DP\_BMR\_56>

**Q57: Do you agree that an administrator could require contributors to have in place a documented escalation process to report suspicious transactions?**

<ESMA\_QUESTION\_DP\_BMR\_57>



We agree that an administrator should be allowed to require contributors to have a documented escalation process in place.

<ESMA\_QUESTION\_DP\_BMR\_57>

**Q58: Do you agree with the list of policies, procedures and controls that would allow the identification and management of conflicts of interest? Should other requirements be included?**

<ESMA\_QUESTION\_DP\_BMR\_58>

Yes, we agree with the list. However, we consider that the contributor should determine the requirements of such policies and procedures and controls rather than administrator being required to set them out in the code of conduct.

<ESMA\_QUESTION\_DP\_BMR\_58>

**Q59: Do you have any additional comments with regard to the contents of a code of conduct in accordance with Article 9(2)?**

<ESMA\_QUESTION\_DP\_BMR\_59>

It is important to strike the correct 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.

<ESMA\_QUESTION\_DP\_BMR\_59>

**Q60: Do you agree with the above list of requirements? Do you think that those requirements are appropriate for all benchmarks? If not what do you think should be the criteria we should use?**

<ESMA\_QUESTION\_DP\_BMR\_60>

Yes. Implementation of these requirements will reduce the need for administrators to include them in the code of conduct for supervised contributors.

<ESMA\_QUESTION\_DP\_BMR\_60>

**Q61: Do you agree that information regarding breaches to the BMR or to Code of Conduct should also be made available to the Benchmark Administrator?**

<ESMA\_QUESTION\_DP\_BMR\_61>

Yes, we agree that Code of Conduct breaches should be made available to the administrator on request.

<ESMA\_QUESTION\_DP\_BMR\_61>

**Q62: Do you think that the external audit covering benchmark activities, where available, should also be made available, on request, to the Benchmark Administrator?**

<ESMA\_QUESTION\_DP\_BMR\_62>

We agree that that any external audit covering benchmark activities should be made available to the administrator on request.

<ESMA\_QUESTION\_DP\_BMR\_62>

**Q63: Do you agree with the proposed criteria for the specific elements of systems and controls as listed in Article 11(2)(a) to (c)? If not, what should be alternative criteria to substantiate these elements?**

<ESMA\_QUESTION\_DP\_BMR\_63>



We agree with the proposed criteria on supervised contributors.  
<ESMA\_QUESTION\_DP\_BMR\_63>

**Q64: Do you agree that the submitters should not be remunerated for the level of their contribution but could be remunerated for the quality of input and their ability to manage the conflicts of interest instead?**

<ESMA\_QUESTION\_DP\_BMR\_64>

Whilst we agree, in principle, that submitters could be remunerated for the quality of their input and their ability to manage conflicts of interests, we believe that “quality” of input will be very difficult to quantify.

<ESMA\_QUESTION\_DP\_BMR\_64>

**Q65: What would be a reasonable delay for signing-off on the contribution? What are the reasons that would justify a delay in the sign off?**

<ESMA\_QUESTION\_DP\_BMR\_65>

We believe that the determination of what constitutes a reasonable delay in signing-off on the contribution is a matter that should be agreed through negotiations with the administrator and in line with the applicable methodology, taking into account the type of input data.

<ESMA\_QUESTION\_DP\_BMR\_65>

**Q66: Is the mentioned delay an element that may be established by the administrator in line with the applicable methodology and in consideration of the underlying, of the type of input data and of supervised contributors?**

<ESMA\_QUESTION\_DP\_BMR\_66>

Yes.

<ESMA\_QUESTION\_DP\_BMR\_66>

**Q67: In case of a contribution made through an automated process what should be the adequate level of seniority for signing-off?**

<ESMA\_QUESTION\_DP\_BMR\_67>

For an automated process, we do not believe that the focus needs to be on the adequate level of seniority for signing-off. Rather, it is more important that the process is periodically reviewed to ensure that the automation algorithm continues to operate as intended in the light of evolving market conditions.

<ESMA\_QUESTION\_DP\_BMR\_67>

**Q68: Do you agree with the above policies? Are there any other policies that should be in place at contributor’s level when expert judgement is used?**

<ESMA\_QUESTION\_DP\_BMR\_68>

Yes, we agree with the policies.

<ESMA\_QUESTION\_DP\_BMR\_68>

**Q69: Do you agree with this approach? If so, what do you think are the main distinctions – amid the identified detailed measures that a supervised contributor will be required to put in place - that it is possible to introduce to cater for the different types, characteristics of benchmarks and of supervised contributors?**

<ESMA\_QUESTION\_DP\_BMR\_69>

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.

We believe that the nature of activities carried out by supervised contributors, we believe this is best addressed through the conflicts of interest policy.

<ESMA\_QUESTION\_DP\_BMR\_69>

**Q70: Do you foresee additional costs to your business or, if you are not a supervised contributor, to the business of others resulting from the implementation of any of the listed requirements? Please describe the nature, and where possible provide estimates, of these costs.**

<ESMA\_QUESTION\_DP\_BMR\_70>

We recognize that it will be more expensive for contributors to comply with the new rules. If these costs, and the associated risks of failing to comply with the BMR, encourage contributors to withdraw from providing benchmark contributions, the quality of benchmarks will suffer. In some cases benchmarks could become non-viable which may limit the consumers' choice and access to low-cost investment products.

<ESMA\_QUESTION\_DP\_BMR\_70>

**Q71: Could the approach proposed, i.e. the use of the field total issued nominal amount in the context of MiFIR / MAR reference data, be used for the assessment of the "nominal amount" under BMR Article 13(1)(i) for bonds, other forms of securitised debt and money-market instruments? If not, please suggest alternative approaches**

<ESMA\_QUESTION\_DP\_BMR\_71>

We agree with proposed approach and support ESMA's use of the existing regulatory framework when designing rules for Critical benchmarks. This will lead to a more streamlined approach and higher degree of international regulatory convergence.

<ESMA\_QUESTION\_DP\_BMR\_71>

**Q72: Are you aware of any shares in companies, other securities equivalent to shares in companies, partnerships or other entities, depositary receipts in respect of shares, emission allowances for which a benchmark is used as a reference?**

<ESMA\_QUESTION\_DP\_BMR\_72>

We believe that "standard" shares are unlikely to reference a benchmark but the possibility cannot be excluded.

<ESMA\_QUESTION\_DP\_BMR\_72>

**Q73: Do you have any suggestion for defining the assessment of the nominal amount of these financial instruments when they refer to a benchmark?**

<ESMA\_QUESTION\_DP\_BMR\_73>

We have no suggestions.

<ESMA\_QUESTION\_DP\_BMR\_73>

**Q74: Do you agree with ESMA proposal in relation to the value of units in collective investment undertakings? If not, please explain why**

<ESMA\_QUESTION\_DP\_BMR\_74>  
We agree.  
<ESMA\_QUESTION\_DP\_BMR\_74>

**Q75: Do you agree with the approach of using the notional amount, as used and defined in the EMIR reporting regime, for the assessment of notional amount of derivatives under BMR Article 13(1)(i)? If not, please suggest alternative approaches.**

<ESMA\_QUESTION\_DP\_BMR\_75>  
We support ESMA using the EMIR reporting regime when assessing notional amounts.  
<ESMA\_QUESTION\_DP\_BMR\_75>

**Q76: Which are your views on the two options proposed to assess the net asset value of investment funds? Should you have a preference for an alternative option, please provide details and explain the reasons for your preference.**

<ESMA\_QUESTION\_DP\_BMR\_76>  
In the absence of an obligation under AIFMD for funds to report on a regular basis, we believe the latest available net asset value should be used. However, this will substantially increase the effort required by those seeking to establish the total value of net assets.  
<ESMA\_QUESTION\_DP\_BMR\_76>

**Q77: Which are your views on the two approaches proposed to assess the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of an investment fund referencing a benchmark within a combination of benchmarks? Please provide details and explain the reasons for your preference. Do you think there are other possible approaches? If yes, please explain.**

<ESMA\_QUESTION\_DP\_BMR\_77>  
We believe that only the portion of the instrument/derivative/fund that references a particular benchmark should be taken into account. To do otherwise risks overstating the importance of the benchmark to economic stability and the impact on end consumers. However, to do this will require significant effort from those seeking to establish the total value of net assets.  
<ESMA\_QUESTION\_DP\_BMR\_77>

**Q78: Do you agree with the ‘relative impact’ approach, i.e. define one or more value and “ratios” for each of the five areas (markets integrity; or financial stability; or consumers; or the real economy; or the financing of households and corporations) that need to be assessed according to Article 13(1)(c), subparagraph (iii)? If not, please elaborate on other options that you consider more suitable.**

<ESMA\_QUESTION\_DP\_BMR\_78>  
When considering the impact on individual member states, the use of relative impact measures is sensible. However, determining appropriate and meaningful values for the various ratios will be difficult and is unlikely to add robustness to the BMR.  
<ESMA\_QUESTION\_DP\_BMR\_78>

**Q79: What kind of other objective grounds could be used to assess the potential impact of the discontinuity or unreliability of the benchmark besides the ones mentioned above (e.g. GDP, consumer credit agreement etc.)?**

<ESMA\_QUESTION\_DP\_BMR\_79>

The potential impact of the discontinuity and unreliability of a benchmark will also depend on the number of financial instruments, derivative contracts, and investment funds that reference that benchmark. Each of these would be impacted if the relevant benchmark were discontinued or found to be unreliable. The higher the number of financial instruments, derivative contracts, and investment funds that reference the benchmark, the higher the level of costs incurred and effort associated with switching these products to an alternative reference benchmark.

<ESMA\_QUESTION\_DP\_BMR\_79>

**Q80: Do you agree with ESMA's approach to further define the above criteria? Particularly, do you think that ESMA should develop more concrete guidance for the possible rejection of the NCA under Article 14c para 2? Do you believe that NCAs should take into consideration additional elements in their assessment?**

<ESMA\_QUESTION\_DP\_BMR\_80>

We believe that as currently drafted, many benchmark administrators will not benefit from the "proportionality" encapsulated in the BMR that was intended to simplify the administration of significant benchmarks. Because an administrator would have to produce a non-compliance explanation for every provision they choose not to apply, and to do this for every benchmark/benchmark family, they may instead decide not to avail themselves of the possibility of exemption from certain of the BMR provisions.

<ESMA\_QUESTION\_DP\_BMR\_80>

**Q81: Do you think that the fields identified for the template are sufficient for the competent authority and the stakeholders to form an opinion on the representativeness, reliability and integrity of a benchmark, notwithstanding the non-application of some material requirements? Could you suggest additional fields?**

<ESMA\_QUESTION\_DP\_BMR\_81>

The fields identified by ESMA are exhaustive. The nature and length of the non-compliance statement is likely to dissuade benchmark administrators from availing themselves of the exemptions provided in the BMR for significant and non-significant benchmarks.

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.

Furthermore, it makes little sense for a benchmark administrator to operate different governance, conflict of interest, oversight functions and controls for significant and non-significant benchmarks. Instead, a benchmark administrator will likely choose to operate the same governance framework for all benchmarks and hence administer all benchmarks to at least significant standard.

<ESMA\_QUESTION\_DP\_BMR\_81>

**Q82: Do you agree with the suggested minimum aspects for defining the market or economic reality measured by the benchmark?**

<ESMA\_QUESTION\_DP\_BMR\_82>



Benchmark administrators do not have the necessary information about who the market participants are, except in a general sense. For many benchmarks, including those based on liquid equity markets, provision of this information in the benchmark statement is an unduly onerous requirement and one that would bring no benefit to the end-investors. We set out some specific comments below:

**Liquidity.** “Size of market” ought to be re-defined in terms of an assessment of the extent to which constituents are screened to ensure that the benchmark is liquid.

**Availability.** A statement on the availability of the benchmark ought to be a requirement. For example, is the benchmark available in real time or at end of day?

**Historical Data.** The statement should clarify the depth of historical data available for the benchmark.

**Suitability.** Benchmark administrators should have the ability to declare an index unsuitable for use as a benchmark (for example for referencing financial contracts). This is to distinguish between indexes requested for journalistic or public policy awareness reasons as opposed to those created in response to investor demand.

<ESMA\_QUESTION\_DP\_BMR\_82>

**Q83: Do you think the circumstances under which a benchmark determination may become unreliable can be sufficiently described by the suggested aspects?**

<ESMA\_QUESTION\_DP\_BMR\_83>

We agree with the circumstances listed, although administrators may wish to include additional criteria for certain benchmarks. For example, benchmarks based on contributions may become unviable if contributors withdraw from the submissions process. In contrast, for benchmarks based on liquid equity markets such criteria are likely to be superfluous. Users of these benchmarks are vociferous in requiring such benchmarks to be investable and in response to the requirements voiced by users; administrators will strive to ensure that constituents meet appropriate eligibility screens, including those that are based on the underlying constituents’ liquidity

<ESMA\_QUESTION\_DP\_BMR\_83>

**Q84: Do you agree with the minimum information on the exercise of discretion to be included in the benchmark statement?**

<ESMA\_QUESTION\_DP\_BMR\_84>

Broadly speaking, we agree – and suggest incorporating policies by reference. Discretion can apply not only to the use of expert judgement when determining the value of an illiquid security (as seems to be envisaged in the Discussion Paper). Judgement can also be used when seeking the most appropriate method for a benchmark to incorporate a complex corporate event, and also in the management of a benchmark when the trading of one or more of its constituents, and potentially an entire market, has been suspended. A benchmark administrator will usually have policies outlining its preferred approach in such circumstances. As the policies are likely to be numerous and lengthy, the benchmark statement should be able to incorporate such general policies by reference rather than through explicit inclusion.

<ESMA\_QUESTION\_DP\_BMR\_84>

**Q85: Are there any further precise minimum contents for a benchmark statement that should apply to each benchmark beyond those stated in Art. 15(2) points (a) to (g) BMR?**

<ESMA\_QUESTION\_DP\_BMR\_85>

No.

<ESMA\_QUESTION\_DP\_BMR\_85>

**Q86: Do you agree that a concise description of the additional requirements including references, if any, would be sufficient for the information purposes of the benchmark statement for interest rate benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_86>





Yes.

<ESMA\_QUESTION\_DP\_BMR\_86>

**Q87: Do you agree that the statement for commodity benchmarks should be delimited as described? Otherwise, what other information would be essential in your opinion?**

<ESMA\_QUESTION\_DP\_BMR\_87>

Yes.

<ESMA\_QUESTION\_DP\_BMR\_87>

**Q88: Do you agree with ESMA's approach not to include further material requirements for the content of benchmark statements regarding regulated-data benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_88>

Yes. Certain benchmarks incorporate data from many trading venues. For example, the FTSE Russell global equity benchmarks can include traded prices from some 80 markets. Including regulatory responsibility for each market would be unduly burdensome.

<ESMA\_QUESTION\_DP\_BMR\_88>

**Q89: Do you agree with the suggested additional content required for statements regarding critical benchmarks? If not, please precise why and indicate what alternative or additional information you consider appropriate in case a benchmark qualifies as critical.**

<ESMA\_QUESTION\_DP\_BMR\_89>

Yes, although we suggest that because ESMA will have made the determination that a particular benchmark has been deemed as critical, ESMA would be best placed to supply the appropriate supporting evidence to the benchmark administrator for inclusion in the benchmark statement.

For critical benchmarks, the benchmark statement ought to evidence how the benchmark complies with the requirement that the benchmarks are licensed on a fair, reasonable and non-discriminatory basis (in line with MiFIR).

<ESMA\_QUESTION\_DP\_BMR\_89>

**Q90: Do you agree with the suggested additional requirements for significant benchmarks? Which of the three options proposed you prefer, and why?**

<ESMA\_QUESTION\_DP\_BMR\_90>

As indicated previously, it is possible that the burden of producing detailed non-compliance statements will cause benchmark administrators not to avail themselves of the possibility of obtaining an exemption from the optional provisions for significant benchmarks. To the extent that administrators do choose to opt out of the relevant provisions, we have a strong preference for Option 1.

<ESMA\_QUESTION\_DP\_BMR\_90>

**Q91: Do you agree with the suggested additional requirements for non-significant benchmarks? If not, please explain why and indicate what alternative or additional information you consider appropriate in case a benchmark is non-significant.**

<ESMA\_QUESTION\_DP\_BMR\_91>

We believe that the burden of producing non-compliance statements for non-significant benchmarks, coupled with the potentially difficult task of proving that a benchmark family does not cross the thresholds for significance, will encourage large benchmark administrators not to take advantage of the ability to opt out of certain of the provisions for significant benchmarks. We further believe that the same standards of governance, and the same internal control framework, should be applied to all benchmarks regardless of

their classification. Maintaining a separate, less stringent regime for non-significant benchmarks will be operationally inefficient and detrimental to users.

However, we understand that the opt-out provisions may be of more utility to small benchmark administrators who only administer non-significant benchmarks. To the extent that administrators do choose to opt out of the relevant provisions, we have a strong preference for option 1.

<ESMA\_QUESTION\_DP\_BMR\_91>

**Q92: Are there any further contents for a benchmark statement that should apply to the various classes of benchmarks identified in this chapter?**

<ESMA\_QUESTION\_DP\_BMR\_92>

No.

<ESMA\_QUESTION\_DP\_BMR\_92>

**Q93: Do you agree with the approach outlined above regarding information of a general nature and financial information? Do you see any particular cases, such as certain types of providers, for which these requirements need to be adapted?**

<ESMA\_QUESTION\_DP\_BMR\_93>

In general we agree with the requirements. However, some large 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 should reference this.

<ESMA\_QUESTION\_DP\_BMR\_93>

**Q94: Do you agree with ESMA's approach to the above points? Do you believe that any specific cases exist, related either to the type of provider or the type of conflict of interest, that require specific information to be provided in addition to what initially identified by ESMA?**

<ESMA\_QUESTION\_DP\_BMR\_94>

Yes, we agree with ESMA's approach

<ESMA\_QUESTION\_DP\_BMR\_94>

**Q95: Do you agree with the proposals outlined for the above points? Do you see any areas requiring particular attention or adaptation?**

<ESMA\_QUESTION\_DP\_BMR\_95>

Broadly, yes. However in the interests of proportionality for both administrators and competent authorities we recommend that the RTS recognise that for large administrators potentially running hundreds or thousands of benchmarks across perhaps one hundred benchmark families, the proposals could generate a significant volume of material for NCAs to review.

Because of this, we are in favour of applying for authorisation at the administrator level, as opposed to at the individual benchmark or benchmarks family level. This is to ensure that the application process is efficient and does not introduce regulatory uncertainty in the market, stemming from regulators having difficulties dealing with the number of benchmark statements they will have to review and the potential inability of NCAs to process them in in a reasonable timeframe..

With respect to paragraph 296, we reiterate our point that for large administrators, the burden entailed in demonstrating whether particular benchmarks are non-significant or significant will likely lead those administrators to choose to administer those benchmarks to at least significant standard. This decision could be reinforced by the requirement to produce and publish non-compliance statements for significant and non-significant benchmarks which could further lead administrators to choose not to avail themselves of the opt out provisions.



<ESMA\_QUESTION\_DP\_BMR\_95>

**Q96: Can you suggest other specific situations for which it is important to identify the information elements to be provided in the authorisation application?**

<ESMA\_QUESTION\_DP\_BMR\_96>

The requirement to detail the use of third parties and to produce the contractual arrangement or relevant service level agreements is excessive. Benchmarks may entail the use of many different types of data, not just that related to pricing. The BMR makes it clear that it is the administrator's responsibility to ensure that the data used is fit for purpose.

<ESMA\_QUESTION\_DP\_BMR\_96>

**Q97: Do you agree with the proposed approach towards registration? How should the information requirements for registration deviate from the requirements for authorisation?**

<ESMA\_QUESTION\_DP\_BMR\_97>

We agree that supervised entities should not be required to submit organisational information already provided to the relevant NCA. However, the information required for the registration process in relation to the administration of non-significant benchmarks should be identical to that required from those seeking authorisation.

<ESMA\_QUESTION\_DP\_BMR\_97>

**Q98: Do you believe there are any specific types of supervised entities which would require special treatment within the registration regime? If yes, which ones and why?**

<ESMA\_QUESTION\_DP\_BMR\_98>

Certain supervised entities might be subject to potential conflicts of interest. These conflicts should be explicitly addressed in the registration process.

<ESMA\_QUESTION\_DP\_BMR\_98>

**Q99: Do you have any suggestions on which information should be included in the application for the recognition of a third country administrator?**

<ESMA\_QUESTION\_DP\_BMR\_99>

In order to ensure a level playing field between third country administrators and those based in the EU, we believe that the application for recognition should be substantially the same as that for authorisation. It should not be sufficient for third country administrators to demonstrate compliance with the IOSCO principles. Rather, those applying for recognition should be required to supply the same level of detail as those applying for authorisation.

<ESMA\_QUESTION\_DP\_BMR\_99>

**Q100: Do you agree with the general approach proposed by ESMA for the presentation of the information required in Article 21a(6) of the BMR?**

<ESMA\_QUESTION\_DP\_BMR\_100>

Yes, we agree with ESMA's approach.

<ESMA\_QUESTION\_DP\_BMR\_100>

**Q101: For each of the three above mentioned elements, please provide your views on what should be the measures to determine the conditions whether there is an 'objective reason' for the endorsement of a third country benchmark.**



<ESMA\_QUESTION\_DP\_BMR\_101>

The requirement to provide an objective reason should not be set unnecessarily high. We believe that any of the three issues listed would be sufficient to allow endorsement of a third country benchmark.

<ESMA\_QUESTION\_DP\_BMR\_101>

**Q102: Do you consider that there are any other elements that could be taken into consideration to substantiate the ‘objective reason’ for the provision and endorsement for use in the Union of a third country benchmark or family of benchmarks?**

<ESMA\_QUESTION\_DP\_BMR\_102>

We recommend that the possible options could also include current investor demand.

<ESMA\_QUESTION\_DP\_BMR\_102>

**Q103: Do you agree that in the situations identified above by ESMA the cessation or the changing of an existing benchmark to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument which references a benchmark? If not, please explain the reasons why.**

<ESMA\_QUESTION\_DP\_BMR\_103>

We agree.

<ESMA\_QUESTION\_DP\_BMR\_103>

**Q104: Which other circumstances could cause the consequences mentioned in Article 39(3) in case existing benchmarks are due to be adapted to the Regulation or to be ceased?**

<ESMA\_QUESTION\_DP\_BMR\_104>

We are not aware of any additional circumstances.

<ESMA\_QUESTION\_DP\_BMR\_104>

**Q105: Do you agree with the proposed definition of “force majeure event”? If not, please explain the reasons and propose an alternative.**

<ESMA\_QUESTION\_DP\_BMR\_105>

Yes, we agree with the definition proposed by ESMA.

<ESMA\_QUESTION\_DP\_BMR\_105>

**Q106: Are the two envisaged options (with respect to the term until which a non-compliant benchmark may be used) adequate: i.e. either (i) fix a time limit until when a non-compliant benchmark may be used or (ii) fix a minimum threshold which will trigger the prohibition to further use a non-compliant benchmark in existing financial instruments/financial contracts?**

<ESMA\_QUESTION\_DP\_BMR\_106>

We believe that the two options envisaged are adequate. Whether one or the other, or a combination of the two, should be used will depend on the precise circumstances. We believe there needs to be a time limit for how long non-compliant benchmarks are being used.

<ESMA\_QUESTION\_DP\_BMR\_106>

**Q107: Which thresholds would be appropriate to foresee and how might a time limit be fixed? Please detail the reasons behind any suggestion.**

<ESMA\_QUESTION\_DP\_BMR\_107>



We believe this question is best answered according to the particular circumstances at the time.  
<ESMA\_QUESTION\_DP\_BMR\_107>

**Q108: Is the envisaged identification process of non-compliant benchmarks adequate? Do you have other suggestions?**

<ESMA\_QUESTION\_DP\_BMR\_108>

The identification process is likely to be adequate during the transitional period. Thereafter administrators could provide a compliance statement on a regular basis that demonstrates the adherence of each benchmark family to the regulation.

<ESMA\_QUESTION\_DP\_BMR\_108>

**Q109: Is the envisaged procedure enabling the competent authority to perform the assessment required by Article 39(3) correct in your view? Please advise what shall be considered in addition.**

<ESMA\_QUESTION\_DP\_BMR\_109>

We have nothing further to add on this point.

<ESMA\_QUESTION\_DP\_BMR\_109>

**Q110: Which information it would be opportune to receive by benchmark providers on the one side and benchmark users that are supervised entities on the other side?**

<ESMA\_QUESTION\_DP\_BMR\_110>

Benchmark providers would welcome evidence of the extent of use the benchmarks they administer.

<ESMA\_QUESTION\_DP\_BMR\_110>

**Q111: Do you agree that the different users of a benchmark that are supervised entities should liaise directly with the competent authority of the administrator and not with the respective competent authorities (if different)?**

<ESMA\_QUESTION\_DP\_BMR\_111>

Yes, we agree that supervised entities should liaise with the competent authority of the benchmarks administrator.

<ESMA\_QUESTION\_DP\_BMR\_111>

**Q112: Would it be possible for relevant benchmark providers/users that are supervised entities to provide to the competent authority an estimate of the number and value of financial instruments/contracts referencing to a non-compliant benchmark being affected by the cessation/adaptation of such benchmark?**

<ESMA\_QUESTION\_DP\_BMR\_112>

Administrators are not notified when their benchmarks are referenced in financial contracts or instruments and therefore administrators are not in a position to provide such estimates. Such information would be better sourced from users.

<ESMA\_QUESTION\_DP\_BMR\_112>

**Q113: Would it be possible to evaluate how many out of these financial contracts or financial instruments are affected in a manner that the cessation/adaptation of the non-compliant benchmark would result in a force majeure event or frustration of contracts?**

<ESMA\_QUESTION\_DP\_BMR\_113>



This question is best addressed to users of benchmarks. Administrators are not necessarily notified when their benchmarks are referenced in financial contract and therefore would not be able to provide such an estimate or evaluation.

<ESMA\_QUESTION\_DP\_BMR\_113>