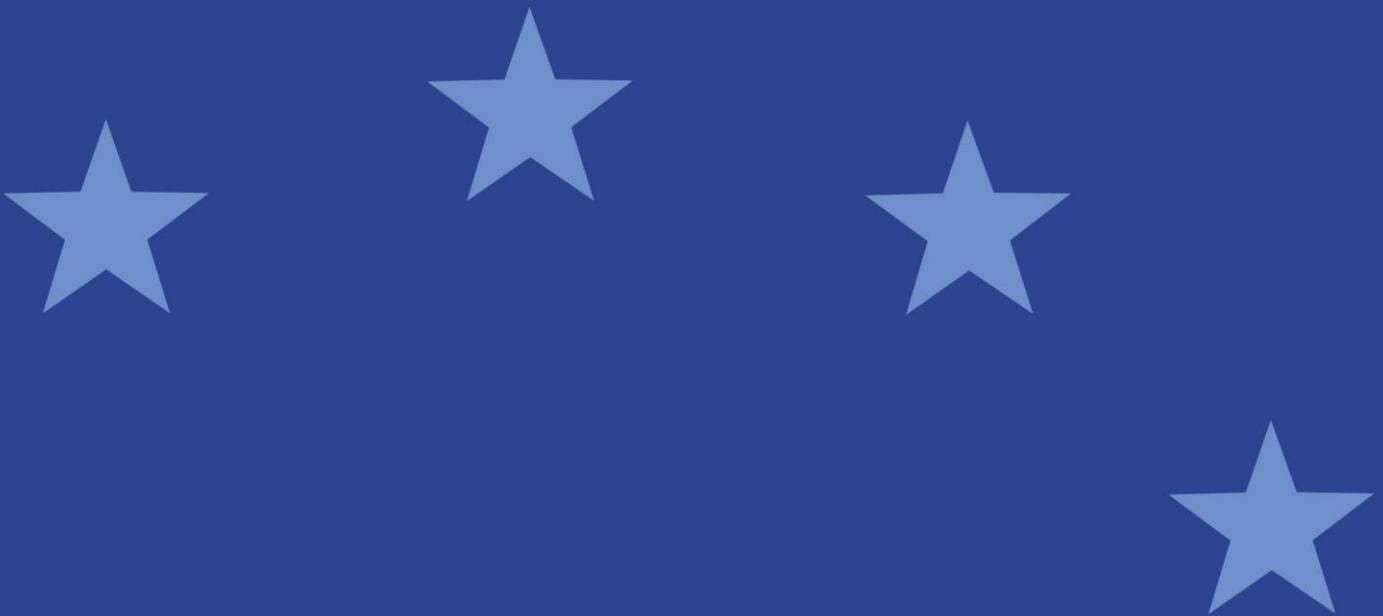




European Securities and
Markets Authority

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 29 March 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_DP_BMR_1>

We appreciate the work that ESMA has done around this Discussion Paper and we thank ESMA for the opportunity to respond. We are fully aware of the difficult task that ESMA has in applying and implementing a number of the provisions in the Level 1 text as part of the delegated acts. We hope that our responses are helpful and illustrative.

We note that there is still ambiguity in a number of areas in the Level 1 text, which we hope can be clarified in the Level 3 process. They include:

Article 1.24 – We believe that the definition of regulated data benchmarks includes data that comes from stock exchanges but is delivered through data aggregators. It would be helpful if it could be clarified that entirely and directly includes data feeds from data aggregators, and not an outsourced activity under Article 11. The latter would result benchmark administrators being responsible for data aggregators' automated processes that are responsible for sending data feeds globally to thousands of clients, including financial institutions, etc.

Article 16 – We believe that the code of conduct requirements are excluded completely with respect to regulated data benchmarks and that has always been the intent. To avoid ambiguity in the implementation by regulators we would like a clarification that the exclusion applies to the entire benchmark and not just with respect to the regulated data itself (e.g., only stock exchange prices for equity indexes). The latter interpretation, would fundamentally disruptive to the market, leading to anomalous and unintended results. While the stock prices are a key driver of the return of an equity index, no equity index only uses stock exchange prices. Data such as company fundamental data, number of shares, company shareholdings, dividends, and corporate events is used, which can be sourced from market data vendors or from public company filings. GDP data could be used for GDP weighted indexes. ESG data could be used for ESG indexes.>>>

Article 17 – Benchmark administrators appear to be supervised contributors. If a benchmark administrator's benchmark regulated under the regulation is being used as an input in another benchmark created by another party, we do not believe that benchmark should also be subject to Article 17. That would lead to the anomalous result of the benchmark being regulated under two different standards (i) by the regulation generally as a benchmark and (ii) by Article 17 as "contribution" by a supervised contributor.

Article 33(4)(c) refers to financial instruments "still traded". We would like clarity whether "still traded" refers to the date of publication of the regulation, date of application or some other date. We would also like clarity that if products stop trading that the administrator is not required to apply again, potentially in another jurisdiction.

Article 39(1) - We assume that Article 39(1) applies to existing *benchmark providers* and that all indexes produced by existing benchmark providers can be used during the 24 month period, not just the *indexes* existing as of the date of application. The latter interpretation would mean that *no new benchmarks* could be used in the EU for 2 years. We do not think that is the intent, and clarity around that issue would be helpful.

<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>

If a supervised entity is making “use of the benchmark” by issuing financial instruments, financial contracts, investment funds that are based on the benchmark, then for investor protection, the index off of which that product is based should be deemed to be “made available to the public”, irrespective of where index levels may be posted. Any other interpretation could inappropriately drive behaviour that could lead to less transparency for investors.

For example, if an equity benchmark is used as the basis of an ETF or a derivative, regardless of whether it is a widely used benchmark calculated by an independent index provider or a single benchmark calculated by the financial product provider financial product for a single, it should be captured by the BMR. It should not matter whether the index is posted on Bloomberg terminals, on a website, only made available to institutional investors or only end retail investors.

Further, mere posting of an index on website without any “use of a benchmark” should not make that index subject to the BMR.

<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>

The actual mechanism for publication should not matter. If a supervised entity is making “use of the benchmark” by issuing financial instruments, financial contracts, investment funds that are based on the benchmark, then for investor protection, the index off of which that product is based should be deemed to be “made available to the public”, irrespective of where index levels may be posted. Any other interpretation could inappropriately drive behaviour that could lead to less transparency for investors.

For example, if an equity benchmark is used as the basis of an ETF or a derivative, regardless of whether it is a widely used benchmark calculated by an independent index provider or a single benchmark calculated by the financial product provider financial product for a single, it should be captured by the BMR. It should not matter whether the index is posted on Bloomberg terminals, on a website, only made available to institutional investors or only end retail investors.

Further, mere posting of an index on website without any “use of a benchmark” should not make that index subject to the BMR.

<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 that the BMR should be aligned with IOSCO. We have interpreted it as the design, calculation and maintenance of an index. However, we do not believe “distribution” is part of the administration of a benchmark. That is a delivery function that is clearly outside the design, calculation and maintenance of the benchmark. While benchmark administrators have control over the clients and distributors they license, benchmarks administrators do not have responsibilities over the platforms that clients can use to access the benchmarks, such as Bloomberg terminals or other data feed channels.

<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>

Generally we agree though we think there are two additional aspects that should be included in the definition for the sake of clarity. Indexes are used as the basis for financial instruments that are both traded in listed markets (e.g. stock exchanges and derivatives exchanges) as well as OTC markets (e.g. bilateral private markets). Therefore the definition should explicitly state that this refers to financial instruments both in the listed and OTC markets. Also, financial instruments reference indexes not only in order to provide passive exposure but as a means of comparing the performance of an active investment versus its “benchmark”. The definition should therefore be expanded to include financial instruments that are issued where the performance of the actively managed instrument is compared to its passive benchmark.

However, while we agree that the issuance should be broad enough to include all types of investment products, we caution that the data for reporting the assets as required for significant and non-significant benchmarks may not be available to benchmark providers or regulators and cannot be required.

<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 listed derivatives markets, yes, we agree as ultimately the CCP is the Issuer of the financial instrument. However, we believe that where a product is issued based on a benchmark, then that benchmark should be subject to the BMR. The creation of financial instruments by any entity should be deemed to fall under the concept of “issuance of a financial instrument”. Who issues the product should not be relevant to determine whether the benchmark is subject to the BMR.

<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 agree that the governance structure should be appropriate to the benchmark, ownership and control structure and nature scale and complexity of the benchmark. We also agree that the governance structure can be accomplished through a series of committees. We believe the governance structure and terms of reference should be made public as IOSCO recommended. However, we believe that care needs to be taken when considering the introduction external parties into benchmark governance structures, such as stakeholders and INEDs. We believe it could introduce very serious conflicts of interest into benchmark administration, jeopardize the independence of the index and could conflict with securities disclosures laws. This is particularly true for widely used benchmarks. Stakeholders include those parties who have issued financial products off of the index and are exactly the parties that could benefit from particular index changes. Additionally, if those parties could get access to price sensitive information (such as index changes, index performance) before the rest of the market, which could violate securities disclosure laws. Further, the BMR did not require external parties to be included in the oversight and as such requiring it in the technical standards would be going beyond the Level 1 text.

It is important to note that governance structures may very well include the individuals that have responsibility for the benchmark as they will be the experts on that benchmark. What is important is that the governance structure provide for proper escalation of issues and that conflicts of interest are not presented as a result of the governance structure.



We do not agree that the function of benchmark oversight is to challenge the board or management of the benchmark administrator. Benchmark governance is about benchmark governance and management of a business is about management of a business. They are different functions and the BMR is not about regulating the management of benchmark administrator businesses.
<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>

We agree that the governance structure should be appropriate to the benchmark, ownership and control structure and nature scale and complexity of the benchmark. We also agree that the governance structure can be accomplished through a series of committees. We believe the governance structure and terms of reference should be made public as IOSCO recommended. However, we believe that care needs to be taken when considering the introduction external parties into benchmark governance structures, such as stakeholders and INEDs. We believe it could introduce very serious conflicts of interest into benchmark administration, jeopardize the independence of the index and could conflict with securities disclosures laws. This is particularly true for widely used benchmarks. Stakeholders include those parties who have issued financial products off of the index and are exactly the parties that could benefit from particular index changes. Additionally, if those parties could get access to price sensitive information (such as index changes, index performance) before the rest of the market, which could violate securities disclosure laws. Further, the BMR did not require external parties to be included in the oversight and as such requiring it in the technical standards would be going beyond the Level 1 text.

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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>

We have had an oversight structure in place for many years for the purpose of escalation, consistency in applying our methodology, and good governance.

Per the recommendation of IOSCO, we have published our governance structure and our terms of reference on our website at <https://www.msci.com/index-regulation>. We have one governance structure for our equity indexes and one for our real estate indexes. They are based on the same structure, with multiple committees that serve different purposes.

<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 func-

tions where it provides benchmarks that have different methodologies, users or seek to measure very different markets or economic realities?

<ESMA_QUESTION_DP_BMR_9>

We believe that an oversight function can include different sub-functions. Different methodologies may not trigger the need for different oversight. However, different asset classes may because of the differences in types of input data, input data validation processes, benchmark calculation processes, benchmark publication timetables, etc. Oversight should be adapted to the different needs of the benchmark. If there are common processes, then common oversight function may be appropriate. If there are different processes, then different oversight functions may be appropriate. It should also scale to the type of organization administering the benchmark. An administrator calculating hundreds of thousands of indexes cannot be required to have hundreds of committees. Administrators calculating 5 indexes may be able have a committee per index.

It is also important to note that governance structures may very well include the individuals that have responsibility for the benchmark as they will be the experts on that benchmark. What is important is that the governance structure provide for proper escalation of issues and that conflicts of interest are not presented as a result of the governance structure.

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

<ESMA_QUESTION_DP_BMR_10>

Oversight should be adapted to the different needs of the benchmark. Different asset classes may require different oversight because of the differences in types of input data. For example, if there are common processes, then common oversight function may be appropriate. If there are different processes, then different oversight functions may be appropriate.

<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>

The differences in oversight come from the differences in the benchmarks (including the asset class being measured), not the amount tracking the benchmarks. How a commercial real estate index is calculated using data about commercial buildings is much different than how equity indexes are calculated using stock exchange and other data. Those differences are primarily around types of input data, input data validation processes, benchmark calculation processes, benchmark publication timetable. That is what requires different oversight, with expertise required in the various areas, not whether EUR250M or EUR51BN are tracking the benchmark.

<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>

We believe that contributors should generally not be required to be included on oversight committees. However, there may be situations where it is appropriate. As such, it should be relevant to the benchmark and neither prevented nor required.

If contributors are included in the governance structure, then the terms of reference for the governance committee should be published on the benchmark administrator's website indicating the number of contributors included in the committees that form part of the governance structure.

<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 are an administrator and we already have a governance structure in place. However, if we were required to materially change our governance structure, then there could be costs associated, depending on what was required to change. For example, if a full oversight function had to all be in a single specific location there would be a cost of relocating people or hiring those senior people with the expertise in that location.

<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>

Yes, we agree, that the oversight function should not be responsible for overseeing business decisions of the business. The role of the oversight function is to oversee the administration of the benchmark (i.e., design, calculation, and maintenance), and not to oversee the business as a whole. The latter is the responsibility of management and that is governed by other rules about company board membership, management, etc.

Further, we do not believe that the role of the oversight function is to "challenge" benchmark administration. Its purpose is to advise, provide an escalation point and consistent application of the methodologies as well as identify and address risk and changes.

<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 do not believe that the analogy of board committees (such as remuneration) is accurate for benchmark governance functions. The BMR focuses on the quality of benchmarks and benchmark calculation and the role of the governance function is to advise on the proper administration of the benchmark, provide an escalation point and consistent application of the methodology as well as identify and address risk and changes in relation to the benchmark.

As such, we do not believe that the role of the oversight function is to "challenge" benchmark administration or management of the business.

<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 organization?

<ESMA_QUESTION_DP_BMR_16>



The oversight function should be relevant to the benchmark and should not introduce unnatural elements into benchmark administration. Introducing, external members outside the organization to an oversight function should be treated with caution. Third parties, such as contributors, users and stakeholders, can introduce conflicts of interest into the governance process.

<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>

Yes to both questions.

<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>

Yes to the first questions. Stakeholders on committees can also introduce conflicts of interest

<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>

[There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data) and we hope that distinction can be clarified in Level 2.

While there may be issues with manipulation and conflicts of interest in input data that is created for the purpose of calculating the benchmark which need to be addressed through “evaluation” and “verification” procedures, same risks do not apply with respect to readily available specifically because readily available data already exists and has an independent use/purpose in the world, completely independent of the benchmark.

For example, factual data about commercial properties or commercial property valuations used in our real estate indexes is not data created for the benchmark and fundamentally has an independent and separate use and purpose. We collect that data in order to measure the market as explained in our methodologies. Likewise, data for our equity indexes, including stock prices, fundamentally has an independent and separate use and purpose, and we use that data to measure the market as explained in our methodologies. Readily available data may be publicly available, available on a subscription basis or available on a confidential basis, however, so long as it has an independent use/purpose in the world, completely independent of the benchmark, it should be considered “readily available”.

What is important for readily available data is what data was submitted and used in the benchmark, and what was not and why. The issues during the data cleaning process are with data quality, and as such appropriate validation should be employed to identify mistakes and outliers through comparisons with prior submissions/outlier checks.

The rest of the information in the first, second, third, fourth and sixth bullets of the discussion paper is superfluous and unnecessary for readily available data. They go beyond the record keeping requirements of Article 9 and have the potential to create very onerous record keeping requirements, especially for

those indexes where there are thousands of contributors. Further, the roles of the submitters is irrelevant because they are just passing on data that exists in its own right and they are not involved in the input data creation. Likewise, requiring all communications to be kept for readily available data is also superfluous because this is not about data creation. It's about data collection and comparing what was sent last time to this time and that can be accomplished by keeping what data was submitted and used and what was not and why.

<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 timing should tie into the natural frequency of data submissions and benchmark publications. Artificially requiring information to be submitted outside those parameters is anomalous and will introduce extra steps, administration and costs into the process.

<ESMA_QUESTION_DP_BMR_20>

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

<ESMA_QUESTION_DP_BMR_21>

The first bullet makes sense. The remainder of the bullets are index methodology design issues that would be addressed in the methodology and established at the time of the index set up. They are not calculation issues that are "checked" at every release. Decisions about input data is used is chosen up front, again, as part of index design.

Please note that any lists prescribing actions should not be exhaustive or prescriptive because benchmarks are different. For example, some benchmarks may not have a hierarchy as substitute data points may not be applicable, "daily" checks will not work for benchmarks that are not calculated on a daily basis.

Further, the record keeping requirements should not go beyond Article 9 of the Level 1 text.

<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>

<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>

The use of input data is driven by the asset class of the benchmark. The methodology can explain the use of the data. Further analysis seems non-sensical. So long as the methodology explains how the benchmark is calculated, it doesn't seem to make sense to ask why a type of data was chosen.

<ESMA_QUESTION_DP_BMR_23>

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

<ESMA_QUESTION_DP_BMR_24>

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data) and we hope that distinction can be clarified in Level 2.

While there may be issues with manipulation and conflicts of interest in input data that is created for the purpose of calculating the benchmark which need to be addressed through “evaluation” and “verification” procedures, those same risks do not apply with respect to readily available specifically because readily available data already exists and has an independent use/purpose in the world, completely independent of the benchmark.

For example, factual data about commercial properties or commercial property valuations used in our real estate indexes is not data created for the benchmark and fundamentally has an independent and separate use and purpose. We collect that data in order to measure the market as explained in our methodologies. Likewise, data for our equity indexes, including stock prices, fundamentally has an independent and separate use and purpose, and we use that data to measure the market as explained in our methodologies. Readily available data may be publicly available, available on a subscription basis or available on a confidential basis, however, so long as it has an independent use/purpose in the world, completely independent of the benchmark, it should be considered “readily available”.

What is important for readily available data is what data was submitted and used in the benchmark, and what was not and why. The issues during the data cleaning process are with data quality, and as such appropriate “validation” should be employed to identify mistakes and outliers through comparisons with prior submissions/outlier checks. Requiring anything beyond that is adding unnatural elements into the benchmark administration process that have no applicability and create impossible obligations for the administrators.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_27>

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

<ESMA_QUESTION_DP_BMR_28>

TYPE YOUR TEXT HERE

<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>
TYPE YOUR TEXT HERE
<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data) and we hope that distinction can be clarified in Level 2.

Issues with manipulation and conflicts of interest and use of expert judgment in input data that is created for the purpose of calculating the benchmark may be able to be addressed through “evaluation” and “verification” procedures.

However, same risks do not apply with respect to readily available specifically because readily available data already exists and has an independent use/purpose in the world, completely independent of the benchmark.

For example, factual data about commercial properties or commercial property valuations used in our real estate indexes is not data created for the benchmark and fundamentally has an independent and separate use and purpose. We collect that data in order to measure the market as explained in our methodologies. Likewise, data for our equity indexes, including stock prices, fundamentally has an independent and separate use and purpose, and we use that data to measure the market as explained in our methodologies. Readily available data may be publicly available, available on a subscription basis or available on a confidential basis, however, so long as it has an independent use/purpose in the world, completely independent of the benchmark, it should be considered “readily available”.

What is important for readily available data is what data was submitted and used in the benchmark, and what was not and why. The issues during the data cleaning process are with data quality, and as such appropriate validation should be employed to identify mistakes and outliers through comparisons with prior submissions/outlier checks. Requiring anything beyond that is adding unnatural elements into the benchmark administration process that have no applicability and create impossible obligations for the administrators.

<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE



<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>

TYPE YOUR TEXT HERE

<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>

The methodology should explain the market it measures, how the index is calculated, the relevant input data used, the rebalancing frequencies, the contingency measures in conditions of market stress, consultation processes, and a glossary of terms. It should be as broad as possible without compromising the intellectual property of the benchmark owner. Methodologies can consist of single documents or multiple documents.

What should be included in the methodology needs to be relevant to the benchmark, otherwise it will introduce confusion if it is not relevant.

For example, list provided focuses too much on input data and attempts to address the issues raised by that data which is created solely for the purpose of calculating the benchmark. There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

The benchmark rebalancing schedule and the contingency measures are appropriate to include in methodology documents (first and last bullets). However, the rest should be included only to the extent they are relevant to the benchmark. For example, input data hierarchy (second bullet), e.g., input data alternatives, doesn't apply to all types of benchmarks. In the third bullet, the quality of data is not a methodological issue and hard to see how the “quality” of input data would be explained for readily available data where validation is against prior data and outliers. Those procedures can be in depth and data point specific are not appropriate for calculation methodologies. In the fourth bullet, verification procedures should only apply to input data that is created for the purpose of calculating the benchmark (contributions) and not input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data). For the fifth bullet, not all benchmarks use panels so it should only be included if it is relevant to the benchmark. The meaning of the sixth bullet is unclear. The seventh bullet doesn't seem to make sense. If data is provided by third parties (e.g., stock exchange data by stock exchanges through data feeds licensed by data aggregators to administrators), the roles are independent because the companies are separate and independent and based on license agreements. Error management procedures can go into a policy document and do not necessarily need to be in the methodologies.

Note, benchmark distribution is not a methodological issue. It is independent of benchmark calculation and is a contractual matter between the administrator and the distributors and the administrator and its clients. For example, whether benchmarks are available via Bloomberg or Factset or direct to the client is irrelevant to the benchmark calculation methodology. Further, the list of distributors can change over time as distributors/distributor contractual relationships change. Hard coding distributors into methodologies is inappropriate and will cause unnecessary revisions to the methodologies each and every time a distributor changes.

<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>

What should be included in the methodology needs to be relevant to the benchmark, otherwise it will introduce confusion if it is not relevant.

<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>

We believe that methodologies should be posted on administrator websites, subject to the intellectual property rights of the administrator.

<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>

What should be made public is the methodology explaining how it is calculated (subject to the administrator's IP), the rebalancing frequency, and changes to the methodology (which should be announced sufficiently in advance). The decision making process behind that should not be made public. The changes to the benchmark are what are relevant to investors.

We do not agree that names of individuals in the oversight function should be made public. That could lead to in appropriate lobbying by stakeholders, users and contributors. However, titles and functions can be reflected in the oversight committee's terms of reference.

<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>

Yes, we generally agree. However, the role of the governance function is to advise, ensure consistent application of the methodology, or help assess as part of an escalation process whether a change is material. The role is not to necessarily "challenge" the notion.

Also, we do not agree with section 133. Decisions should be made independently by the benchmark administrator. We believe that publishing consultation comments and responses could promote inappropriate lobbying and jeopardize the independence of the equity index decision process. Further responding to each response, can add unnecessary delay, especially if the methodology changes are prompted by sudden market changes.

For 134, while we believe that any changes to methodologies should be announced and published on the administrator's website, we do not believe hard copies should be mandated. That adds unnecessary expense of printing and sending for no legitimate reason.

<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>

No, we do not agree with 133. Decisions should be made independently by the benchmark administrator. We believe that publishing consultation comments and responses could promote inappropriate lobbying and jeopardize the independence of the index decision process. Further, responding to each response, can add unnecessary delay, especially if the methodology changes are prompted by sudden market changes.

<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>

Key elements should be published for all benchmarks covered by the BMR. However what those key elements are will vary depending on the type of benchmark.

<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>

We believe that the oversight function and its committees' terms of reference should cover the topic of methodological review and that the oversight function's committees' terms of reference should be published on the administrator's website. Further, the information published in methodology documents regarding rebalancing schedules can include methodological reviews. Anything more prescriptive than that cannot be applied across all benchmark types.

<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. However, we disagree with Article 7b(2)(b). We believe that publishing consultation comments and responses could promote inappropriate lobbying and jeopardize the independence of the index decision process. Further, responding to each response, can add unnecessary delay, especially if the methodology changes are prompted by sudden market changes

<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>

We have found that the main driver behind the code of conduct is the type of input data used (e.g., the asset class), not the level of assets tracking the index. The input data for the different asset classes have different data cleaning processes, different benchmark publication schedules, different numbers of data points, different types of contributors, etc., all of which impact the code of conduct. Common processes and procedures will apply to address those issues and will apply across those benchmarks. The process-



es and procedures don't change because of changes in asset levels and it would be anomalous to do so, especially when assets levels can change over time or because of market volatility.

What is key is that codes of conduct focus on data quality. Codes of conduct should not require the administrator to dictate or change the contributor's corporate policies. Mandating the latter puts the administrator in an impossible position. The administrator has no legal or regulatory power to mandate that contributors change their corporate policies. Contributors may not be supervised entities, are voluntary contributors, and/or are outside the EU. Prescriptive codes of conduct going beyond data quality can result in completely anomalous situations whereby there are no data quality issues, but the contributors fail to have a specific policies in place so the administrator could technically be forced to remove those contributions and resulting in a benchmark that no longer represents the market.

On a separate note, to avoid confusion during implementation of the BMR, we believe that the technical standards should clarify that codes of conduct are not required at all for those benchmarks based on regulated data, regardless of what other data points are used in that benchmark calculation process. The intent, for example, has always been to exclude equity indexes completely from Article 9, which is consistent with IOSCO's approach. Again, to avoid confusion, it would be helpful if that could be explained.
<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>

No. Benchmarks measuring market performance for a particular asset class, can use the same types of data across different regions, sectors, etc. For example, you can have country real estate benchmarks or regional real estate benchmarks or sector real estate benchmarks, all using the same data points and the undergoing the same quality control checks. All of that can stem from a single code of conduct. What drives the code of conduct is the asset class of the input data. What would be anomalous is asking contributors to be subject to "N" different versions of codes of conduct because there are benchmarks using the same data but measure different slices of the markets, as in the examples above.
<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>

Codes of conduct should focus on data quality and should not require the administrator to dictate or change the contributor's corporate policies. Mandating the latter puts the administrator in an impossible position. The administrator has no legal or regulatory power to mandate that contributors change their corporate policies. Contributors may not be supervised entities, are voluntary contributors, and/or are outside the EU. Prescriptive codes of conduct going beyond data quality can result in completely anomalous situations whereby there are no data quality issues, but the contributors fail to have a specific policies in place so the administrator could technically be forced to remove those contributions and resulting in a benchmark that no longer represents the market.
<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, but only to the extent relevant to the benchmark. The requirement must be relevant to the benchmark. If it is not then it introduces unnatural elements into benchmark calculation and administration. As such, it should not be mandated or prohibited.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data). Because readily available data has an independent existence outside benchmark calculation, the concerns raised about the submitters are not relevant specifically because the submitters are not creating the data. As such we believe that such information should not be required in relation to readily available data.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data). Because readily available data has an independent existence outside benchmark calculation, the concerns raised about the submitters are not relevant specifically because the submitters are not creating the data. As such we believe that such information should not be required in relation to readily available data.

<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>

Fundamentally, where contributors and administrators are separate, independent companies, the administrator has no legal authority or commercial ability require the contributors to change their corporate policies, compensation structures, IT policies, etc. This is especially true where contributions are voluntary and where the contributors are not supervised entities in the EU.

Further, there is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data). Because readily available data has an independent existence outside benchmark calculation, the concerns raised about the submitters are not relevant specifically because the submitters are not creating the data. As such we believe that such information should not be required in relation to readily available data.

<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>

What needs to be considered is what is applicable to the benchmark. Prescribing policies for all benchmarks can introduce unnatural elements into the process.

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

For readily available data, data templates with identified data fields for all of the required assets can be used for some benchmark types to show “complete” submissions. Then those data points can be validated against prior submissions. Administrators may not need more than that and to ask for more data (i.e., “all relevant data”) can introduce confusion and delay into the process.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

The listed procedures deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. As such, the listed procedures are excessive for readily available data. For readily available data, validation against prior submissions and outlier checks constitutes the data cleaning process.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

The listed procedures deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. As such, the listed procedures are excessive for readily available data. For readily available data, the key is quality through validation against prior submissions and outlier checks.

Note, to avoid an increase in compliance costs, it would be helpful if the requirements did not mandate different documents with duplicative information. Firstly, it has the potential to create confusion of two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, more documents mean that more people have to draft/manage them. That extra work means extra cost to the business.

What should also be considered is how much information needs to be provided on a per benchmark basis. Given that we calculate over 170,000 benchmarks, provided detail on individual indexes may be impossible. However, providing information on families may be more appropriate and should be offered as an alternative to the extent relevant.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

The listed procedures deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. For readily available data, the key is quality through validation against prior submissions and outlier checks. For this reason, while they may be appropriate for contributions, the policies at the contributor level are excessive, onerous and inappropriate for readily available data.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

The listed procedures deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. For readily available data, the key is quality through validation against prior submissions and outlier checks.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

The listed procedures deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. For this reason, while they may be appropriate for contributions, the contributor record keeping requirements are excessive, onerous and inappropriate for readily available data.

<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 is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data).

The listed procedures deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. For this reason, while they may be appropriate for contributions, the records requirements are excessive, onerous and inappropriate for readily available data.

<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>

No. Where contributors and administrators are separate, independent companies, the administrator has no regulatory or legal authority to mandate or require the contributors to change their corporate policies, compensation structures, IT policies, etc. This is especially true where contributions are voluntary and where the contributors are not supervised entities in the EU.

Further, there is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data). The listed procedures deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. For this reason, while they may be appropriate for contributions, mandating an escalation process is excessive, onerous and inappropriate for readily available data

<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>

This will not apply to all benchmarks.

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data). The listed policies, procedures and controls deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. For this reason, while they may be appropriate for contributions, the listed policies, procedures and controls are excessive, onerous and inappropriate for readily available data.

<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>

There is a very important difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data). The listed policies, procedures and controls deal with issues around creating contributions. However, readily available data is not being created for the benchmark; it is being collected. Readily available data has an independent use and purpose and cannot simply be changed by the benchmark administrator. It is what it is. For this reason, while they may be appropriate for contributions, the listed policies, procedures and controls are excessive, onerous and inappropriate for readily available data.

Further, codes of conduct should focus on data quality and should not require the administrator to dictate or change the contributor's corporate policies. Mandating the latter puts the administrator in an impossible position. The administrator has no legal or regulatory power to mandate that contributors change their corporate policies. Contributors may not be supervised entities, are voluntary contributors, and/or are outside the EU. Prescriptive codes of conduct going beyond data quality can result in completely anomalous situations whereby there are no data quality issues, but the contributors fail to have a specific policies in place so the administrator could technically be forced to remove those contributions and resulting in a benchmark that no longer represents the market.

<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>

We would like a clarification that benchmark administrators should not be considered supervised contributors with respect to those regulated benchmarks (i.e., regulated by the BMR) used in another benchmark.

Further, because of the difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data), we believe that it should be clarified that the list of requirements applies to contributions only and not readily available data.

<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>

Because of the difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data), we believe that it should be clarified that the list of requirements applies to contributions only and not readily available data.<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>

TYPE YOUR TEXT HERE

<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 would like a clarification that benchmark administrators should not be considered supervised contributors with respect to those regulated benchmarks (i.e., regulated by the BMR) used in another benchmark.

Further, because of the difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data), we believe that it should be clarified that the proposed criteria applies to contributions only and not readily available data.

<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>

TYPE YOUR TEXT HERE

<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>
TYPE YOUR TEXT HERE
<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>
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<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>
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<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>
We would like a clarification that benchmark administrators should not be considered supervised contributors with respect to those regulated benchmarks (i.e., regulated by the BMR) used in another benchmark.

Further, because of the difference between input data that is created for the purpose of calculating the benchmark (contributions) and input data that is not created for the purpose of calculating benchmark and instead exists outside of, and independent of, benchmark calculation (readily available data), we believe that it should be clarified that the list of requirements applies to contributions only and not readily available data.

<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>
TYPE YOUR TEXT HERE
<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>



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<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>

Note that this response applies to both critical benchmarks and the determination of thresholds for significant benchmarks.

In answer to the question, without a detailed understating of the “reference data” table in question, our experience as a benchmark administrator shows that in some cases, most notably in the equity index linked structured products market, the total issued amount in many cases inaccurately overstates/inflates the assets tracking a given index on a particular product simply because this amount may not be the same as the actual amount sold to investors, which is in many cases significantly lower than what may appear as the amount issued. Specifically with regards to the structured products market it should be noted that there is a distinction between amount issued and amount sold and efforts should be made to collect amount sold data as the true representation of what is available in the market.

More broadly with respect to the administrator’s obligations to report asset, it is inherently inequitable to require benchmark administrators to categorize their benchmarks using data to which they have limited, inconsistent and, at times, or non-existent access. A system should be devised to capture as many assets as practical. However it is important to that there is symmetry of information available consistently for both the regulators and the administrators. We believe that any data used in the calculation has to be either (i) be publicly available, (ii) provided by independent third parties and available by subscription or (iii) provided by the regulator, so that benchmark administrators and regulators can access are able to reference the same data/data sources. Any data that does not fall within that category should not be required to be used because that information may not be available to regulators and administrators at all or on consistent basis. Such a system is proposed below.

1. Category 1 – Funds in the EU - For UCITS funds and ETFs, we recommend requiring administrators and regulators use a source from a list of ESMA-approved providers (e.g. Morningstar) to obtain balances as of a certain date.
2. Category 2 – Structured Products listed/traded in the EU - In order to get a consistent count, our recommendation is that, given that these firms are all supervised entities in the EU, that a request from the NCA or ESMA on an annual basis be made to all benchmark administrators for a list of those firms for which a structured products license has been granted. The relevant authority then sends a mandatory survey to obtain relevant assets which will be reported back to the benchmark administrators for inclusion. Funded, not leveraged or notional amounts would be included.
3. Category 3 – Exchange Traded Futures, and Options in the EU – netted value exposure should be used on relevant indices is calculated annually through an ESMA or NCA’s per above.
4. Category 4 – Organized Trading Facility Derivatives in the EU –only net exposure of in-force trades as of a particular date would count to avoid over counting the exposures. These data should be sourced from ESMA or NCA’s depending on who has the data which is currently being reported.
5. Category 5 – OTC Swaps, options, forwards, & other non-structured product derivatives in the EU. These instruments are excluded with the exception of securities from systematic internalizers. Since the definition for systematic internalizer under Directive 2014/65/EU is vague, the counting of OTC derivatives should be suspended until such time as firmly tangible standards can be established for systematic internalizers.
6. Category 6 – Performance Benchmarking. We feel that assets benchmarked do not contribute to the risk of a benchmark in the same way as investment products actually tracking the benchmark do and therefore advocate excluding this category from calculation

7. Category 7 – Asset Allocation/Fee Determination - We feel that these assets do not contribute to the risk of a benchmark in the same way as investment funds actually tracking the benchmark do and therefore advocate excluding this category from calculation. Additionally, there is no way for the administrators to know precisely which firms are utilizing their indices in this manner, let alone how many assets are involved. For instance, for a combined benchmark, the asset allocation of a portfolio may involve dozens of indices – how does one allocate assets to each one? What if it is a model portfolio – how does one count the assets in that scenario?

<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>

No.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, we agree.

We also believe that any data used in the calculation has to be either (i) be publicly available, (ii) provided by independent third parties and available by subscription or (iii) provided by the regulator, so that benchmark administrators and regulators can access are able to reference the same data/data sources. Any data that does not fall within that category should not be required to be used because that information may not be available to regulators and administrators at all or on consistent basis.

<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>

The issue here is whether the required data is actually available to benchmark administrators in the case of derivatives that are not publicly listed and traded. It is our understanding that benchmark administrators do not and will not have access to the data reported to Trade Repositories. To the extent that benchmark administrators do not otherwise have access to the data, it creates an impossible reporting obligation on the benchmark administrators. We have heard the argument that the administrators can just renegotiate all of their contracts to accommodate additional reporting rights. That is not only commercially disruptive, but also extremely impractical given the volume of contracts and the limitations of many clients in properly being able to report this data. Further, administrators have no legal right to force clients to sign up to such reporting obligations. Even if clients did sign, the administrators' compliance with the reporting would be subject to clients actually reporting, which is difficult in practice to enforce. Without regulation requiring reporting to benchmark administrators and regulators, this creates liability and exposure for the benchmark administrators where banks or broker dealer do not provide the information.

We believe that any data used in the calculation has to be either (i) be publicly available, (ii) provided by independent third parties and available by subscription or (iii) provided by the regulator, so that benchmark administrators and regulators can access are able to reference the same data/data sources. Any data that does not fall within that category should not be required to be used because that information may not be available to regulators and administrators at all or on consistent basis.

<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>

TYPE YOUR TEXT HERE

<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>

Any data that is used in the calculation needs to be publicly available. Benchmark administrators are not investors so unless it's public, will not have access to the data. ETF data is public and that is fine. However for the assets under management of other funds to count, that data must be (i) publicly available, (ii) provided by independent third parties and available by subscription or (iii) provided by the regulator, so that benchmark administrators and regulators can access are able to reference the same data/data sources. Any data that does not fall within that category should not be required to be used because that information may not be available to regulators and administrators at all or on consistent basis.

<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>

The weighted amounts should be used, otherwise using the full amount incorrectly overstates/inflates the assets tracking an index.

<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>

<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>

What seems to be missing is whether there are any reasonable substitutes. If there is even one substitute, there will be less impact on the market and if there is more than one substitute, there is even less impact, because product issuers can switch the benchmark.

<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>

While the list is mostly fine, there are two major issues that we see.

Firstly, listing the individual benchmarks should not be required because (i) the list will change all of the time (e.g., potentially on a weekly if not daily basis), (ii) it will be impossible for administrators that produce many benchmarks to manage the process, and (iii) the ESMA register will also have this information so there is a likelihood that the two sources will get out of synch. Given that we calculate over 170,000 benchmarks, we will need to either produce over 170,000 individual compliance statements or one compliance statement with hundreds of pages of index names that needs to be update weekly, if not daily. If a family is listed then it seems inconsistent with the ESMA register which appears to require that each individual index needs to be listed. An alternative is to produce different compliance statements only to the extent that the processes are different. It seems that a single compliance statement can be produced for a single asset class. For example, our equity indexes have one IOSCO compliance statement and the same can apply for the EU benchmark regulation. So long as the processes are the same there is no reason to produce different compliance statements.

Secondly, the designation of significant/noni-significant benchmarks can change on a 6 monthly basis and it is unclear how that process will be managed.

Another technical point is how the excluded provisions will be dealt with in the compliance statement. They should not appear as non-compliance because they wouldn't apply in the first place.

Note, it is important that the requirements do not mandate documents with duplicative information. Firstly, it has the potential to create confusion of two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, a change to the benchmark or a process can trigger changes in multiple documents which can create extra work depending on the number of documents. That extra work means extra cost to the business. A rule of thumb is the more paper required, the more people required.

<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>

What is required should be relevant to the benchmark, otherwise it introduces unnatural elements into the benchmark calculation or administrator process. To the extent something is relevant to the benchmark then it should be included. For example, while the first two bullets under 264 may be ok, the third bullet certainly does not apply to all benchmarks. The aim of our equity indexes is to effectively represent the performance of a particular equity market or strategy. Our aim in designing real estate indexes is to represent a real estate market, segment, peer group or strategy. We understand the last bullet to refer to the

relationship between the market for index-linked financial products and the underlying market, which is not and cannot be part of our design process or objectives.

Note this information is typically set forth in the methodology. As such it would be helpful if the benchmark statement could refer to the methodology so that duplicative documents do not need to be created/maintained. Not only is it administratively burdensome to maintain duplicative documents, but it can also create confusion to users and investors.

Generally, to avoid an increase in compliance costs, it would be helpful if the requirements did not mandate different documents with duplicative information. Firstly, it has the potential to create confusion if two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, more documents mean that more people have to draft/manage them. That extra work means extra cost to the business.

What should also be considered is how much information needs to be provided on a per benchmark basis. Given that we calculate over 170,000 benchmarks, provided detail on individual indexes may be impossible. However, providing information on families may be more appropriate and should be offered as an alternative to the extent relevant.<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>

These factors don't apply to all benchmark types. Scenarios should not be mandated, specifically because each benchmark is different. The administrator can explain the scenarios based on what the benchmark is intended to measure as explained in the methodology.

<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>

The circumstances need to be relevant to the benchmark. The potential issue with minimum requirements is that they don't apply to all benchmarks, thus introducing unnatural elements into the benchmark administration/calculation process. To the extent it is relevant, it should be included, however it should not be required if it is not relevant.

Additionally much of this information will be in the methodologies. To the extent it is, the benchmark statement should be able to refer to the methodologies, otherwise there is duplication of information. In fact, some information is being requested in the methodologies, benchmark statements, compliance statements, and the application for registration/authorization. To avoid an increase in compliance costs, it would be helpful if the requirements did not mandate different documents with duplicative information. Firstly, it has the potential to create confusion if two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, more documents mean that more people have to draft/manage them. That extra work means extra cost to the business.

What should also be considered is how much information needs to be provided on a per benchmark basis. Given that we calculate over 170,000 benchmarks, provided detail on individual indexes may be impossible. However, providing information on families may be more appropriate and should be offered as an alternative to the extent relevant.

<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>

Information that is included should be relevant to the benchmark. The potential issue with minimum requirements is that they don't apply to all benchmarks, thus introducing unnatural elements into the benchmark administration/calculation process. To the extent it is relevant, it should be included, however it should not be required if it is not relevant.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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

<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>

TYPE YOUR TEXT HERE

<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>

Assuming the Level 1 text mandates that the compliance statements must be public, Option 1 seems the best, otherwise there is a duplication of information in the documentation. It is important that the requirements do not mandate documents with duplicative information. Firstly, it has the potential to create confusion of two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, a change to the benchmark or a process can trigger changes in multiple documents which can create extra work depending on the number of documents. That extra work means extra cost to the business. A rule of thumb is the more paper required, the more people required.

One point that is unclear is how changes in asset levels are managed with respect to the benchmark statements and compliance statements, for example, if a benchmark bounces above/below the 50BN threshold.

Further within a family, there may be non-significant benchmarks and significant benchmarks. Benchmark statements should allow for that, otherwise for index providers like MSCI that calculate hundreds of thousands of benchmarks, a benchmark statement per benchmark would be impossible and prohibitively expensive to manage. <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>

Assuming the Level 1 text mandates that the compliance statements must be public, Option 1 seems the best, otherwise there is a duplication of information in the documentation. It is important that the requirements do not mandate documents with duplicative information. Firstly, it has the potential to create confusion of two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, a change to the benchmark or a process can trigger changes in multiple documents which can create extra work depending on the number of documents. That extra work means extra cost to the business. A rule of thumb is the more paper required, the more people required.

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Further within a family, there may be non-significant benchmarks and significant benchmarks. Benchmark statements should allow for that, otherwise for index providers like MSCI that calculate hundreds of thousands of benchmarks, a benchmark statement per benchmark would be impossible and prohibitively expensive to manage.

<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>

TYPE YOUR TEXT HERE

<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>

<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>

Regarding Section 292, CVs of the management body and those "directing the business" are not relevant and are excessive for the BMR as the BMR is focused on benchmark quality not management of the benchmark business. This is not the same as an application for a bank or asset manager. Benchmark providers are content providers not financial product issuers.

There seems to be duplicative of information required here that is being required elsewhere. For example, Sections 293, 294, 295, will be captured in the compliance statement.

Note, to avoid an increase in compliance costs, it would be helpful if the requirements did not mandate different documents with duplicative information. Firstly, it has the potential to create confusion of two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, more documents mean that more people have to draft/manage them. That extra work means extra cost to the business.

What should also be considered is how much information needs to be provided on a per benchmark basis. Given that we calculate over 170,000 benchmarks, provided detail on individual indexes may be impossible. However, providing information on families may be more appropriate and should be offered as an alternative to the extent relevant.

<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>

The information here seems to be duplicative of information that is being required elsewhere. For example, Section 300 will be captured in the compliance statement. Section 302 will be in the methodology, the compliance statement, the benchmark statement.

Note, to avoid an increase in compliance costs, it would be helpful if the requirements did not mandate different documents with duplicative information. Firstly, it has the potential to create confusion of two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, more documents mean that more people have to draft/manage them. That extra work means extra cost to the business.

What should also be considered is how much information needs to be provided on a per benchmark basis. Given that we calculate over 170,000 benchmarks, provided detail on individual indexes may be impossible. However, providing information on families may be more appropriate and should be offered as an alternative to the extent relevant.

<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>

This is already required in the compliance statement and this shouldn't duplicate what is already required to be provided. To avoid an increase in compliance costs, it would be helpful if the requirements did not mandate different documents with duplicative information. Firstly, it has the potential to create confusion of two documents have to include the same information which may be expressed in a slightly different way. Secondly, multiple documents can get out of synch. Thirdly, more documents mean that more people have to draft/manage them. That extra work means extra cost to the business.

What could be helpful is any explanation that the administrator may want to provide outside of what's already been provided. It doesn't need to be a prescriptive requirement. It can be an opportunity for the benchmark administrator to provide any additional explanations or information.

<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>

Benchmark administration is different from other supervised activities. It seems that (d)-(h) should apply to all administrators, not just independent index providers that are not financial product issuers. In fact, how conflicts of interest are managed are particularly relevant and should be different control mechanisms for the benchmark administration and the financial product side, otherwise a combined governance structure could result in conflicts of interest.

<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>

TYPE YOUR TEXT HERE

<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>

It should be consistent with the requirements for authorization/recognition. An IOSCO compliance statement can replace the BMR compliance statement and a mapping between the two documents can be provided.

Section 317 only applies if the administrator is subject to supervision already. A cooperation agreement is not required if the administrator is not subject to supervision, otherwise that would be “equivalence” and the purpose of recognition is to provide an alternative to equivalence.

It would be helpful to understand what “still traded” means in Article 33(4)(c). Is that as of the publication date of the BMR, the application date or some other date and does it change if the financial products expire or are delisted?

<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>

It should be consistent with the requirements for authorization/recognition. An IOSCO compliance statement can replace the BMR compliance statement and a mapping between the two documents can be provided.

<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>

TYPE YOUR TEXT HERE

<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>
TYPE YOUR TEXT HERE
<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>

It seems that the bigger issue with the transition period is that product providers will not know even at the end of the 24 month period whether the benchmark is registered. To be safe (so that they are not “caught out” post the 24 month period), they may have to stop using the benchmark well prior to expiration of the 24 month period even though the registration process has not be completed and despite the fact that the registration could ultimately be accepted. Given that it takes time to switch out a benchmark for a financial product, the financial product providers may have to do so earlier than the 24 month period. In that situation, there is market disruption even though the benchmark provider is well within its obligations under the regulation and may ultimately be approved. This could have a disproportionate impact on those benchmark providers having to go through authorization, which is a longer process.

It seems that there should be a sufficient time period after the administrator application process has ended for the provider to be able to switch out the non-compliant benchmark to a compliant benchmark. That way benchmark administrators that are ultimately judged to be compliant (with their registration accepted) are not prematurely penalized and financial product providers are not caught out at the end of the process.

Note, we assume that Article 39(1) applies to existing *benchmark providers* and that all indexes produced by existing benchmark providers can be used during the 24 month period, not just the *indexes* existing as of the date of application. The latter interpretation would mean that *no new benchmarks* could be used in the EU for 2 years. We do not think that is the intent, and clarity around that issue would be helpful.

<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>

It seems that the bigger issue with the transition period is that product providers will not know even at the end of the 24 month period whether the benchmark is registered. To be safe (so that they are not “caught out” post the 24 month period), they may have to stop using the benchmark well prior to expiration of the 24 month period even though the registration process has not be completed and despite the fact that the registration could ultimately be accepted. Given that it takes time to switch out a benchmark for a financial product, the financial product providers may have to do so earlier than the 24 month period. In that situation, there is market disruption even though the benchmark provider is well within its obligations under the regulation and may ultimately be approved. This could have a disproportionate impact on those benchmark providers having to go through authorization, which is a longer process.

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<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>
TYPE YOUR TEXT HERE
<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>
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<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE



<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DP_BMR_113>