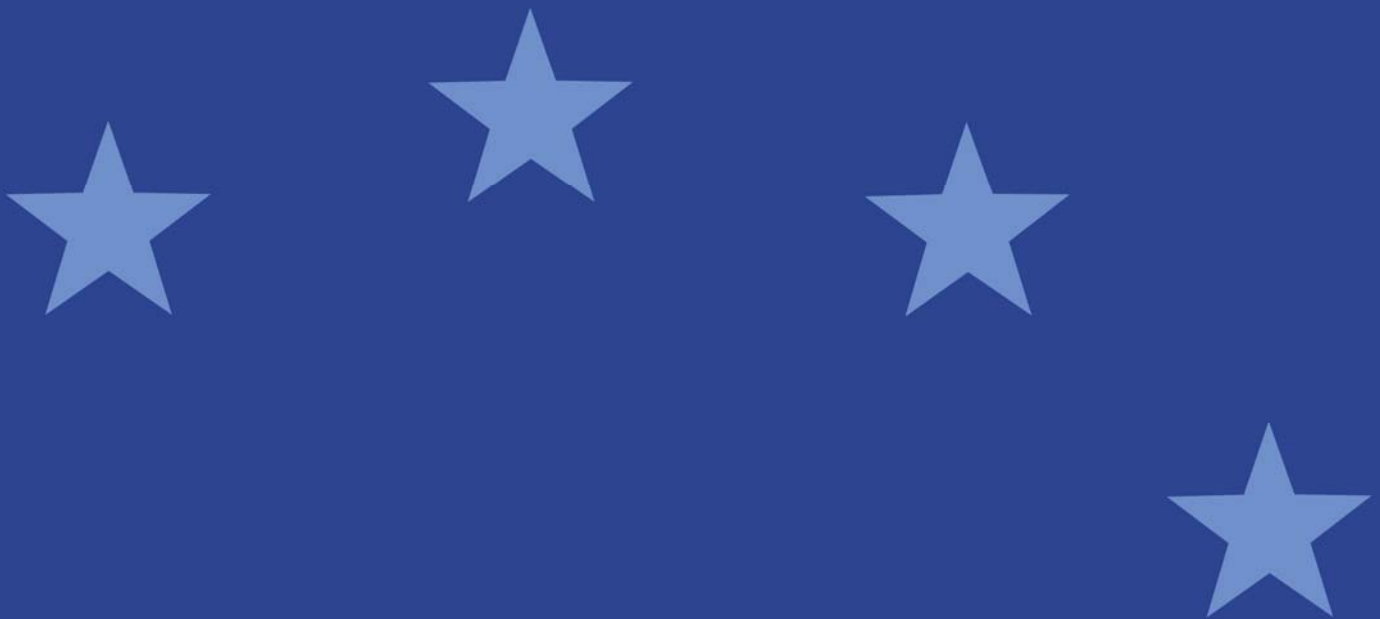




European Securities and  
Markets Authority

Anlage

## 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](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.



### ***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### ***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## Introduction

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

<ESMA\_COMMENT\_DP\_BMR\_1>

The German Banking Industry Committee (GBIC) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks. GBIC welcomes the opportunity to take part in the ESMA consultation process on Benchmark Regulation level 2 measures.

<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>

No. The characteristic of being "made available to the public" should, on the contrary, be defined as precisely as possible. Its definition is of fundamental importance for application of the Benchmarks Regulation (BMR). Not least with legal certainty in mind, we therefore call for a narrow interpretation of this characteristic, i.e. an index is only deemed to be “made available to the public” if it is accessible to an indefinite or unlimited number of persons. An unlimited number of persons would therefore have to have access to the index. Consequently, variable or fixed interest rates for financial instruments and financial contracts set by internal decisions of a credit institution and spread within the same group without being offered to the respective clients or being published, would need to be excluded from the scope of 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>

TYPE YOUR TEXT HERE

<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, too, believe that the development of the methodology and the establishment of governance structures are the key aspects in administering the arrangements for determining a benchmark. We do not see any other aspects that should be covered by Article 3(1), point 3(a).

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_DP\_BMR\_7>

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

<ESMA\_QUESTION\_DP\_BMR\_8>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_DP\_BMR\_8>

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

<ESMA\_QUESTION\_DP\_BMR\_9>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
The establishment of an oversight function will entail costs.  
<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.  
<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>  
Yes. We welcome it that ESMA says (cf. paragraph 47) that an independent oversight function could also be embedded within an administrator's organisational structure. This is something we expressly endorse.  
<ESMA\_QUESTION\_DP\_BMR\_15>

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

<ESMA\_QUESTION\_DP\_BMR\_16>  
No.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
We share the view expressed by ESMA in paragraph 67 that administrators should be supported by contributors in the task of ensuring the verifiability of input data. Close cooperation between contributors and administrators is required. However, particularly with the appropriateness of input data in mind, it should be ensured that contributors are not subject to any excessive administrative requirements. Otherwise it is to be feared that contributors will cease to provide data, depriving administrators of the database for their benchmarks – this is something that must be avoided. ESMA sees this danger in connection with the establishment of the code of conduct (cf. paragraph 147). For the aforementioned reasons, we believe that an approach allowing the exchange of information between contributors and administrators to be regulated individually is preferable.  
<ESMA\_QUESTION\_DP\_BMR\_20>

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

<ESMA\_QUESTION\_DP\_BMR\_21>  
We agree with ESMA's understanding of appropriateness in paragraph 65 and share the view that appropriateness is closely linked to the benchmark methodology (paragraph 75). Compliance by contributors with the administrator's methodology is a task that has to be performed jointly by contributors and administrators. The checks set out by ESMA appear helpful in this context.  
<ESMA\_QUESTION\_DP\_BMR\_21>

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

<ESMA\_QUESTION\_DP\_BMR\_22>  
No.  
<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>  
Yes.  
<ESMA\_QUESTION\_DP\_BMR\_23>





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

<ESMA\_QUESTION\_DP\_BMR\_24>

No.

<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>

Yes.

<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>

Yes. Training is essential.

<ESMA\_QUESTION\_DP\_BMR\_26>

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

<ESMA\_QUESTION\_DP\_BMR\_27>

Yes, the 'three lines of defence' model is an already established system.

<ESMA\_QUESTION\_DP\_BMR\_27>

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

<ESMA\_QUESTION\_DP\_BMR\_28>

No.

<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>

TYPE YOUR TEXT HERE

<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>  
Yes.  
<ESMA\_QUESTION\_DP\_BMR\_31>

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

<ESMA\_QUESTION\_DP\_BMR\_32>  
Yes.  
<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>  
Yes.  
<ESMA\_QUESTION\_DP\_BMR\_34>

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

<ESMA\_QUESTION\_DP\_BMR\_35>  
No.  
<ESMA\_QUESTION\_DP\_BMR\_35>

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

<ESMA\_QUESTION\_DP\_BMR\_36>  
Yes. Disclosure of these elements is necessary to ensure a transparent and understandable benchmark for users.  
<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>  
Yes.



<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_DP\_BMR\_41>

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

<ESMA\_QUESTION\_DP\_BMR\_42>  
Yes.  
<ESMA\_QUESTION\_DP\_BMR\_42>

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

<ESMA\_QUESTION\_DP\_BMR\_43>  
We expressly welcome mention in paragraph 149 of the possibility for administrators to employ a standard code for all types of benchmarks. This makes things easier for administrators of several benchmarks and, at the same time, takes into account the principle of proportionality already established at Level 1.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
Yes. We do not recommend including anything else.  
<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. Given the many different indices there are, this discretion is essential.  
<ESMA\_QUESTION\_DP\_BMR\_46>

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

<ESMA\_QUESTION\_DP\_BMR\_47>  
We believe that the submitter's name is sufficient to identify it. As ESMA correctly says in paragraph 157, the administrator should expect that the submitters used by contributors have the necessary skills, knowledge and experience to perform their duties. That they do is, in our view, the contributor's responsibility and should be ensured by its internal oversight system (cf. paragraph 88ff). We do not see any need for a submitter to be approved by the administrator, as suggested in paragraph 159. This constitutes undue interference in the contributor's affairs and should therefore not be included.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
Yes.  
<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>  
What ESMA says in paragraph 164 about the need for consistency of contributors' behaviour concerns solely the use of discretion in selecting input data. This point should be comprehensively addressed in the benchmark methodology. The benchmark methodology and the code of conduct should, in our view, complement each other and not lead to duplication of descriptions and requirements. To ensure clarity of presentation, any duplication of information in both is therefore inadvisable and should be avoided. We believe that the issues referred to in paragraph 164 should be dealt with in the benchmark methodology.  
<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>  
No. All relevant policies should be set out in the methodology.  
<ESMA\_QUESTION\_DP\_BMR\_53>

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

<ESMA\_QUESTION\_DP\_BMR\_54>  
Yes. There are no other methods we recommend should be included.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
The benchmark methodology and the code of conduct should, in our view, complement each other and not lead to duplication of descriptions and requirements. To ensure clarity of presentation, any duplication of information in both is therefore inadvisable and should be avoided. Both should contain clearly specified requirements and be mutually distinguishable.  
<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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_DP\_BMR\_60>

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

<ESMA\_QUESTION\_DP\_BMR\_61>  
Yes. To protect the benchmark, it is essential that the administrator is informed about any misconduct by its contributors. We therefore believe that this requirement is justified.  
<ESMA\_QUESTION\_DP\_BMR\_61>

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

<ESMA\_QUESTION\_DP\_BMR\_62>  
We do not believe that this is necessary. Under Article 17 BMR, the contributor is responsible itself for its governance and control system. The external audit therefore essentially benefits the contributor alone and is designed to support it in complying with Article 17 BMR.  
<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>  
Yes.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
We believe, quite generally, that the requirements in regard to seniority for signing-off should not be set too high. The 'four eye(s)' principle that ESMA already refers to elsewhere (see, for example, paragraph 165) is adequate, in our view. The second pair of eyes could then have higher seniority, but could also be on the same hierarchy level.  
<ESMA\_QUESTION\_DP\_BMR\_67>

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

<ESMA\_QUESTION\_DP\_BMR\_68>  
Yes. We have no other suggestions.  
<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>  
Yes, we anticipate additional costs resulting from compliance with the organisational requirements and implementation of IT measures.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
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<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>  
Yes, we agree with the criteria. No additional elements need to be taken into consideration, in our view.  
<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>

Yes, we believe that these fields are sufficient. They do not impose a disproportionate burden on the benchmark administrator and, at the same time, they allow the NCA to form an opinion about the benchmark. No additional fields should be included.

<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>

Yes. These minimum requirements already follow from Article 28 (1) (a) BMR.

<ESMA\_QUESTION\_DP\_BMR\_82>

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

<ESMA\_QUESTION\_DP\_BMR\_83>

We see no other aspects that could be taken into account in this regard.

<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>

In principle, yes. In our view, it is, however, essential to avoid any undue complexity. As the methodology has to be made public in accordance with Article 14 (1) BMR, the benchmark statement should always be read together with the methodology, and reference can be made in the benchmark statement to relevant passages in the methodology. Any duplication of information would be inappropriate, in our view.

<ESMA\_QUESTION\_DP\_BMR\_84>

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

<ESMA\_QUESTION\_DP\_BMR\_85>

No.

<ESMA\_QUESTION\_DP\_BMR\_85>

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

<ESMA\_QUESTION\_DP\_BMR\_86>

We are firmly against such an additional description. Administrators of interest rate benchmarks are, as ESMA correctly points out in paragraph 269, already additionally burdened by the additional requirements of Annex 1. These requirements are directly applicable and must be taken into account by administrators of interest rate benchmarks. We therefore see no benefit in additionally describing, as proposed by ESMA,



how the Annex 1 requirements have been implemented. This imposes an additional burden on administrators of interest rate benchmarks that is not justified by any additional benefit for benchmark users. ESMA should therefore drop this proposal.

<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>

Yes.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DP\_BMR\_91>

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

<ESMA\_QUESTION\_DP\_BMR\_92>

No.

<ESMA\_QUESTION\_DP\_BMR\_92>

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

<ESMA\_QUESTION\_DP\_BMR\_93>  
Yes.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
We are firmly in favour of including a copy of the methodology and the benchmark statement, as proposed by ESMA in paragraph 301. These would contain the information requested in paragraphs 296 and 298. Providing the same information twice should be avoided and the methodology and benchmark statement included instead.  
The same should apply to the compliance statement, which already contains the information requested in paragraph 297 and thus makes providing it again unnecessary.  
<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>  
No.  
<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>  
Yes, we agree with the proposed approach. We would greatly welcome a significant reduction in the requirements for registration compared to authorisation.  
<ESMA\_QUESTION\_DP\_BMR\_97>

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

<ESMA\_QUESTION\_DP\_BMR\_98>  
No.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
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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>

We would welcome it if existing indices referenced by financial instruments may be computed by the same units, and in the same way, as before even after the BMR comes into force. Article 39 BMR allows this in cases of force majeure or where the terms of any existing financial contract or financial instrument that references the benchmark are frustrated or otherwise breached. Such cases should be interpreted broadly. This should apply to both products with a fixed term and products without any fixed term.

In the definition of a 'force majeure event', the closing phrase "...despite all reasonable efforts to the contrary" contradicts the wording of the definition, which says that such an event means circumstances beyond the control of the contracting parties, and creates the impression that proof of reasonable efforts has to be provided before the force majeure clause can be invoked. This final phrase should therefore be deleted.

<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>

Yes.

<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>

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<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>

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<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>

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<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>

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<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>

No. We are against a requirement for banks, as benchmark users, to liaise across borders with a foreign NCA. This is not a practicable proposal for the large number of banks we represent.

<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>

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<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>

We are unfortunately unable to provide any figures in this regard. May we, however, take this question as an opportunity to generally point out that, because of the regulatory requirements and the associated high costs for administrators, contributors and users of benchmarks, many benchmarks will, in our view, no longer be made publicly available. The downside of the regulation is that product and market diversity is restricted to a certain extent. This should be taken into account in supervisory interpretation of the relevant rules.

<ESMA\_QUESTION\_DP\_BMR\_113>