



European Securities and  
Markets Authority

## Reply form for the Consultation Paper on Benchmarks Regulation



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on the 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\_CP\_BMR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

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

### **Naming protocol**

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

ESMA\_CP\_BMR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_BMR\_XXXX\_REPLYFORM or

ESMA\_CP\_BMR\_XXXX\_ANNEX1

### **Deadline**

Responses must reach us by **30 June 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\_CP\_BMR\_1>

Swedish Securities Dealers' Association (SSDA) represents 27 member banks and investment firms that conduct investment services and activities in Sweden.

The mission of the SSDA is to promote a sound, strong and efficient securities market.

<ESMA\_COMMENT\_CP\_BMR\_1>



**Q1: Do you agree with the conditions on the basis of which an index may be considered as made available to the public?**

<ESMA\_QUESTION\_CP\_BMR\_1>

SSDA urges for a clearer confirmation/statement on whether the BMR is to be considered to apply for a method (performance strategy/structure) used to determine the amount payable under a financial instrument when the method is only described in a prospectus and the “figure” per se is not published. In these cases, prices for the financial instrument are available and also closing value. The method is typically used in a structured product and could include a customised index or use prices from other financial instruments as components in a specific performance strategy/structure. We are of the view that such a non-published “figure” should not be considered made available to the public, since it cannot be used for any other purpose than calculating the amount payable under the actual financial instrument. Also, the method of calculation is described in the prospectus and therefore fully transparent to the investor.

We welcome the clarification in paragraph 23 that index produced to meet tailor made needs such as in non-standardised derivatives/OTC-derivatives are not covered by the BMR.

SSDA is of the view that both 1 (i) and 1 (ii) in the proposed advice should reflect that the group of recipients should be OPEN as concluded being one parameter in paragraph 14 .

<ESMA\_QUESTION\_CP\_BMR\_1>

**Q2: Do you agree with the proposed specification of what constitutes *administering the arrangements for determining a benchmark*?**

<ESMA\_QUESTION\_CP\_BMR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BMR\_2>

**Q3: Do you agree that the ‘use of a benchmark’ in derivatives that are traded on trading venues and/or systematic internalisers is linked to the determination of the amount payable under the said derivatives for any relevant purpose (trading, clearing, margining, ...)?**

<ESMA\_QUESTION\_CP\_BMR\_3>

SSDA believes it is strange to refer to systematic internalisers in this respect since you hardly can be an SI unless the instrument is traded on a trading venue or the instrument is a look-a-like to an instrument traded on a trading venue.

Furthermore, SSDA does not fully understand the term “negotiation” as used in the last sentence of the draft technical advice. It would be good if the meaning thereof is explained in the final report

SSDA believes it to be important that it is clarified if it may be agreed who is the user and who is the investor (holder) in a situation where two supervised entities are parties to a bilateral agreement which is considered a financial instrument in scope of the BMR.

<ESMA\_QUESTION\_CP\_BMR\_3>



**Q4: Do you have any comments on the proposed specification of issuance of a financial instrument?**

<ESMA\_QUESTION\_CP\_BMR\_4>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_BMR\_4>

**Q5: What are your views on the transitional regime proposed to assess the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds in the case where the regulatory data is not available or sufficient?**

<ESMA\_QUESTION\_CP\_BMR\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_BMR\_5>

**Q6: Do you agree with the measurement performed at a specific point in time for assessing whether a benchmark hits the thresholds specified in Article 20(1) to be considered as critical?**

<ESMA\_QUESTION\_CP\_BMR\_6>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_BMR\_6>

**Q7: What are your views on the use of licensing agreements to identify financial instruments referencing benchmarks? Would this approach be useful in particular in the case of investment funds?**

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

**Q8: Do you agree with the criteria proposed? Do you consider that additional criteria should be included in the technical advice?**

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

**Q9: Do you think that the concept of “significant share of” should be further developed in terms of percentages or ranges of values expressed in percentages, to be used for (some of) the criteria based on quantitative data? If yes, could you propose percentages of reference, or ranges of values expressed in percentages, to be used for one or more of the proposed criteria?**

<ESMA\_QUESTION\_CP\_BMR\_9>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_BMR\_9>

**Q10: Do you agree with the suggested indicators for objective reasons for endorsement of third-country benchmarks?**

<ESMA\_QUESTION\_CP\_BMR\_10>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_BMR\_10>



**Q11: Do you agree with the criteria, included in the draft technical advice, that NCAs should use when assessing whether the transitional provisions could apply to a non-compliant benchmark? Could you suggest additional criteria?**

<ESMA\_QUESTION\_CP\_BMR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_BMR\_11>