



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 under the heading ‘Your input/Consultations’.



Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.



Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_BMR_1>

The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred to in this document as 'WMBA') are the European industry associations for the wholesale intermediation of Organised Venue and Over-the-Counter (OTC) markets in financial, energy, commodity and emissions markets and their traded derivatives. Our members act solely as intermediaries in wholesale financial markets and do not undertake any proprietary trading

The wholly owned company of the Wholesale Markets Brokers' Association ("WMBA Limited") was the founder, administrator and is the Calculation Agent of the Sterling Overnight Index Average ("SONIA"), and the Benchmark Administrator for the Repurchase Overnight Index Average ("RONIA") both of which have been identified by the UK FCA as critical benchmarks as such are regulated benchmarks. Additionally, the wholly owned company of the London Energy Brokers' Association ("LEBA Limited"), is the Benchmark Administrator for the range of Power, Gas, Coal and Carbon indices which it publishes daily as Volume Weighted Traded Averages [VWAPs].

WMBA welcomes the opportunity to respond to this consultation paper because of the continuous involvement that the association has had in IOSCO, FEMR and BIS initiatives around the development of benchmarks and indices, particularly the market conduct codification and the role of multilateral venues in pricing transparency.

TYPE YOUR TEXT HERE

<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>
Yes, the WMBA does agree.

We agree with the conditions but believe further clarity should be considered for what constitutes 'public available so that access to indices are only by professional clients/investors and market participants who have the necessary expertise of the associated financial instrument as well as appropriate use by the general public.

TYPE YOUR TEXT HERE
<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>
Yes, the WMBA does agree.

However, the activities described within the definition of Administrator can be undertaken by more than one firm for example the activities of a Calculation Agent can be an outsourced activity but the firm who undertakes this activity still be deemed as an Administrator and to be subject to governance arrangement under BMR Article 5 'Governance Arrangement'

b – the administrator shall establish an oversight function to provide oversight of all aspects of the provision of its benchmarks ('Oversight');

We believe that although Calculation Agent activity is defined as an Administrator, it should not be subject to BMR Article 5 – Oversight Function as there are already specific principles laid down in 2013/658 joint paper by ESMA and EBA Final Report Principles for Benchmark –setting Process in the EU:

Principles for Benchmark Calculation Agent – Record Keeping, Governance Structures

a) A Benchmark Calculation Agent should have clearly accountable, named individuals, at the appropriate level of seniority within the entity, responsible for Benchmark computation.

b) A Benchmark Calculation Agent should implement and maintain systems for pre- and post-calculation control that are adequate to ensure consistent and timely Benchmark computation., Oversight and Control.

a) A Benchmark Calculation Agent should establish an effective whistleblowing mechanism in order to facilitate early awareness of any misconduct or other irregularities that may arise.

b) A Benchmark Calculation Agent should have clear policies in place on how to publicise any errors in calculation due to any reason and communicate clearly any new Benchmark fixing or determination. and Transparency.



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>

Yes, the WMBA does agree.

We agree with this approach of the use of the benchmark using traded derivatives on venue platforms to determine payment costs. Therefore, we can assume that posting of bids and offers on screen on a venue although tradeable prices cannot be deemed as, ‘benchmarks’ but only at the point of traded can these be used for benchmark calculation

We also note that not all regulated benchmarks are calculated on the basis of using traded data.

TYPE YOUR TEXT HERE

<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>

No views expressed.

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>

Yes, the WMBA does agree.

We support the measurement approach used for derivatives to take into consideration the information from Trade Repositories based on EMIR reporting and also where the data is not available to extend this to publicly available trade repositories data.

However how will ESMA determine the measurement of products outside the perimeter guidance of financial instrument under C6 as these are not traded in nominal amount but can be seen in some cases as benchmark indices under the IOSCO principles of financial benchmark?

We note that as part of the data collection exercise, one of the key challenges facing the industry is in establishing a common identifier for derivatives traded on a venue, under MiFIR this is ISO10022 [‘ISIN’]. Until this has been established care must be taken to ensure the assessment of the notional amount of the financial instrument has been accurately applied to the same instrument



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>

Yes, the WMBA does agree.

We agree with setting specific point in time for assessing whether a benchmark hits the threshold for critical for the financial instruments identified in this question.

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>

We recommend that the any introduction of licensing agreement for the purpose of regulated activities in particular to benchmarks should comply with fair, reasonable and non-discriminatory ('FRAND' under FSMA MAR8 in the UK) as defined in MiFIR Article 37 1(b) 'non-discriminatory access and obligation to license benchmarks' –

1. Where the value of any financial instrument is calculated by reference to a benchmark, a person with proprietary rights to the benchmark shall ensure that CCPs and trading venues are permitted, for the purposes of trading and clearing, non-discriminatory access to:

(a) relevant price and data feeds and information on the composition, methodology and pricing of that benchmark for the purposes of clearing and trading; and

(b) licences.

A licence including access to information shall be granted on a fair, reasonable and non-discriminatory basis within three months following the request by a CCP or a trading venue.

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>

Yes, the WMBA does agree.

We support the approach on setting criteria's in principle however we not believe volume metric should be one of the criteria as this does not necessary identify the critical benchmark.

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<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>

No views expressed.

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>

WMBA does not agree that the indicators suggested should provide for an exhaustive list or a meaningful guideline. Rather WMBA would advocate a principals lead approach since the most important rationale for the endorsement would be each of, competition and innovation. This may simply be done by the adoption of IOSCO principals in a declaration by any third country benchmark chosen to be adopted by an EU market participant or consumer.

Because the WMBA understands that the attempt to provide for any regimen for third countries which do not have any benchmark regulation can only be deeply flawed and problematic, we would strongly advise ESMA to only adopt a very high level approach to the entire segment of cross border deference, recognition and even ‘equivalence’.

Rather an open door and a broad church approach can only be the way to stimulate activity and innovation in this space, which in turn will lead towards transparency and efficacy of consumer service and integrity.

<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>

Yes, the WMBA does agree.

We support this approach and believe it is a sensible time limit for the cessation period to ensure limited impact to the relevant market and users of the benchmarks.

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<ESMA_QUESTION_CP_BMR_11>