Response Form to the Consultation Paper

Draft Regulatory Technical Standards under the Benchmarks Regulation

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;

- indicate the specific question to which the comment relates;

- contain a clear rationale; and

- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 May 2020.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1.   Insert your responses to the questions in the Consultation Paper in the present response form.

2.   Please do not remove tags of the type <ESMA_QUESTION_CP_BRTS_1>. Your response to each question has to be framed by the two tags corresponding to the question.

3.   If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.

4.   When you have drafted your response, name your response form according to the following convention: ESMA_BRTS_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_BRTS_ABCD_RESPONSEFORM.

5.   Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" → "Consultation on MiFIR report on Systematic Internalisers in non-equity instruments").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading Legal Notice.

Who should read this paper

This paper may be specifically of interest to administrators of benchmarks, contributors to benchmarks and to any investor dealing with financial instruments and financial contracts whose value is determined by a benchmark or with investment funds whose performances are measured by means of a benchmark.

General information about respondent

Name of the company / organisation	MSCI Limited
Activity	Other Financial service providers
Are you representing an association?	☐
Country/Region	UK

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_BRTS_1>

MSCI appreciates the opportunity to comment on this consultation.

MSCI is a leading provider of investment decision support tools to institutional investors globally, including asset managers, banks, hedge funds and pension funds. MSCI products and services include indexes, ESG research and tools, and portfolio risk and performance analytics. MSCI is headquartered in New York, with research and commercial offices around the world.

MSCI's flagship equity indexes include the MSCI Global Equity Indexes and MSCI as been calculating indexes for more than 45 years. MSCI Global Equity Index categories include country and regional indexes, size indexes (large cap, small cap, and micro-cap), sector indexes, style (value/growth) indexes, strategy indexes, thematic indexes and ESG indexes. MSCI also calculates custom indexes at the request of clients, by applying client screens and constraints to MSCI Global Equity Indexes.

MSCI Global Equity Indexes are used worldwide by:
- assets owners to help them with their mandate decisions and with reviewing their managers' performance;
- active asset managers so that they can actively manage their funds against an index and report performance;
- passive fund managers to issue passive funds and ETFs based on the indexes;
- broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally;
- stock exchanges to create equity index linked futures and options contracts; and

- CCPs to calculate the risks of its positions for index linked futures and options contracts.

During 2013 and 2014, MSCI implemented the IOSCO Principles for Financial Benchmarks, was externally audited during each of 2014, 2015 and 2016 for the MSCI equity indexes and select MSCI private real estate indexes, and posted the adherence statements and audit reports on the Index Regulation page of www.msci.com. During 2017, 2018 and 2019, MSCI devoted those resources to implementing the BMR across its benchmark families, and continued to post IOSCO adherence statements on the Index Regulation page of www.msci.com.

On 5 March 2018, MSCI Limited, which is a UK subsidiary of MSCI Inc., was granted authorization by the UK FCA as a UK administrator under the BMR for the MSCI equity and blended indexes. MSCI was the first major global equity index provider to become authorized under the BMR. On 13 June 2019, MSCI notified the FCA in relation to specific UK MSCI Private Real Estate Indexes used as regulated benchmarks under the BMR. On 16 December 2019, MSCI notified the FCA in relation to the MSCI fixed income indexes.

<ESMA_COMMENT_CP_BRTS_1>

Questions

Q1 : Do you agree with the governance arrangements set above? Do you have any additional suggestions? Please specify.

<ESMA_QUESTION_CP_BRTS_1>
Any outsourcing arrangments in the RTS should only cover shared services regarding benchmark administration and not other non-BMR related functions as that is outside the scope of the BMR.
<ESMA_QUESTION_CP_BRTS_1>

Q2 : Do you agree that administrators should have in place a remuneration framework?

<ESMA_QUESTION_CP_BRTS_2>
The BMR already has extensive requirements around disclosing and mitigating conflicts of interest, so clauses around remuneration are unnecessary. Further, the proposed RTS' overly broad scope in terms of "appropriately setting" the levels of individual remunerate is certainly beyond the scope of the BMR. The IOSCO Principles for Financial Benchmarks focused on remuneration policies of staff involved in benchmark determination not being "rewarded or incentivized by the levels of the Benchmark". Thus, any requirements around remuneration should only apply to benchmarks where the risk of manipulation is significant, and in those situations, the global standard in the IOSCO Principles should be more closely followed.
<ESMA_QUESTION_CP_BRTS_2>

Q3 : Do you agree that the same requirements should apply to an administrator that is a natural person? Please elaborate.

<ESMA_QUESTION_CP_BRTS_3>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_3>

Q4 : Do you think that other conditions should be taken into account to ensure that the methodology complies with the requirements of the BMR? Please specify.

<ESMA_QUESTION_CP_BRTS_4>
The requirements in the Level 1 text do not require further clarification.
<ESMA_QUESTION_CP_BRTS_4>

Q5 : Do you consider that additional requirements are needed to ensure that the methodology is traceable and verifiable? Please specify.

<ESMA_QUESTION_CP_BRTS_5>
The requirements in the Level 1 text do not require further clarification.
<ESMA_QUESTION_CP_BRTS_5>

Q6 : Do you think that the back-testing requirements are appropriate? Please specify.

<ESMA_QUESTION_CP_BRTS_6>

No. As proposed, the additional back-testing requirements are unclear and disproportionate:

- Firstly, the concept of "where appropriate" in the level 1 text should be maintained, as periodic back-testing may not be useful or relevant for all types of benchmarks. For example, where transaction input data is used to calculate the benchmark (for example in equity benchmarks), creating and running periodic back-testing exercises comparing these to transaction data is irrelevant, as that just appears to only be recalculating the history. It is also operationally burdensome and costly. As such, periodic back-tests should only be applied to benchmarks that do not use transaction data or readily available data as input data.

- Secondly, where back-tests are appropriate, it does not follow that all the requirements in the proposed RTS should apply. Tests should only be used if and as appropriate. Setting out a single set of prescriptive requirements directly contravenes the proportionality already provided in the Level 1 text, and even more worrying, applies requirements that do not work in all cases, and as a result may be anomalous or, in fact, inappropriate. For example,
  - Statistical tests to assess the back-testing results (if meant to check statistical significance of the results obtained over a historical back-test e.g. index returns, risk etc.) are not appropriate, because it is not and should not be role of the administrator to establish the statistical significance of the performance of a benchmark. (Article 3(2)(c))
  - For the time horizon, while it may be prudent to back-test a new index methodology from as far back as possible, the actual time horizon depends upon the availability of data which is influenced by many other factors (regions v/s countries, large caps v/s small caps, index objective etc.). The index methodology could be generic in nature but the actual index history could vary depending upon these factors. (Article 3(2)(b))
  - Additionally, index methodology development is an iterative research process that undergoes multi-dimensional analysis. Documenting and minuting each and every test/sample/simulation/step is unnecessary and disproportionate, adding layers of operational burden and cost into the research process. (Article 3(2)(d))
  - For testing frequency, it may or may not be appropriate to match the frequency of the calculation of the benchmark, and may depend on factors such as, the objective of the index, the type of data, type of asset class and frequency of index calculation and rebalancing. Again, putting single standards of prescriptive rules on testing frequency is problematic, and because of that should be applied proportionally as was already provided for in the Level 1 text. (Article 3(2)(e))

- Further, while realized market stress may be included as part of the initial and/or periodic (e.g., annual) methodology reviews, requiring benchmark administrators to also use hypothetical data for unrealized market conditions is not necessarily useful or relevant, and may not even be practical. While applying appropriate reviews makes sense, requiring reviews that are burdensome and not relevant, practical or useful, for the sake of ticking a box, does not make sense and is costly. To address this, MSCI proposes the following modification to the Article 4.1 on methodology to read "realised stressed market conditions and/or relevant unrealised stressed market conditions, as/where appropriate." Additionally, Article 4.2 on methodology, should also apply on a proportional basis by adding "as/where appropriate."

<ESMA_QUESTION_CP_BRTS_6>

Q7 : Do you agree with the requirements set out above? Do you have any additional suggestions? Please specify.

<ESMA_QUESTION_CP_BRTS_7>
No. This section should apply only to benchmarks based on "contributions of input data". The provisions are unworkable and disproportionate with respect to benchmarks based on stock prices from non-EU stock exchanges and other readily available data. This adds not only unnecessary administrative burden, but also unnecessary cost by requiring layers of additional processes and procedures for data that is otherwise regulated and/or otherwise already widely used throughout the EU financial services system.

Specifically, in relation to the definition of "regulated-data benchmarks", we know that it applies only to that small number of equity benchmarks using EU stock prices only, and not to equity benchmarks more widely. As such, these proposed RTS would require most equity benchmarks to follow these extra rules, even though the aim of the regulated-data benchmarks definition was supposed to remove them for equity benchmarks. These proposed RTS are another example of the perpetuation of the problem with that definition, and treating EU stock prices differently from non-EU stock price data *in relation to benchmarks* is anomalous given that stock price data is used widely throughout the EU financial services system today.
<ESMA_QUESTION_CP_BRTS_7>

Q8 : Do you agree with the systems suggested for the surveillance of market manipulation? In particular, do you think that an automated system should be required only when it appears to be adequate according to the nature, scale and complexity of the benchmark? Please specify.

<ESMA_QUESTION_CP_BRTS_8>
No. This section should apply only to benchmarks based on "contributions of input data". The provisions are unworkable and disproportionate with respect to benchmarks based on stock prices from non-EU stock exchanges and other readily available data. This adds not only unnecessary administrative burden, but also unnecessary cost by requiring layers of additional processes and procedures for data that is otherwise regulated and/or otherwise already widely used throughout the EU financial services system.

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<ESMA_QUESTION_CP_BRTS_8>

Q9 : Do you think that other criteria should be considered in relation to the transition of the provision of the critical benchmark to a new administrator? Please specify.

<ESMA_QUESTION_CP_BRTS_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_9>

Q10 : Do you think that other criteria should be considered in relation to the cessation of the provision of a critical benchmark? Please specify.

<ESMA_QUESTION_CP_BRTS_10>
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<ESMA_QUESTION_CP_BRTS_10>

Q11 : Do you agree with the criteria under which competent authorities may require changes to the compliance statement? Please specify

<ESMA_QUESTION_CP_BRTS_11>
The criteria in Article 2 of the proposed RTS should be expanded to include the potential negative impact on the amount and quality of contributions to benchmarks. The extent to which the BMR dissuades contributions of input data (in particular for private asset classes) should be considered a legitimate reason for an administrator to take a permitted exemption (i.e., preserving the ability of the benchmark administrator to calculate the index at all in otherwise opaque private markets). As transparency is the goal of indexes and a goal of the BMR, it should follow that overall loss of transparency can be a reason for applying reasonable proportionality.
<ESMA_QUESTION_CP_BRTS_11>

Q12 : Do you agree with the criteria under which competent authorities may require changes to the control framework requirements? Please specify

<ESMA_QUESTION_CP_BRTS_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_BRTS_12>