



EFAMA

European Fund and Asset Management Association

EFAMA'S REPLY TO ESMA'S CONSULTATION PAPER ON DRAFT REGULATORY TECHNICAL STANDARDS UNDER THE BENCHMARKS REGULATION

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Introduction

EFAMA is pleased to submit its response to the ESMA consultation on draft RTS under the Benchmarks Regulation (BMR). As background, EFAMA is the voice of the European investment management industry, representing 28 member associations, 59 corporate members and 22 associate members. At the end of 2018 total net assets of European investment funds reached EUR 15.2 trillion. These assets were managed by almost 62,000 investment funds, of which more than 33,000 were Undertakings for Collective Investments in Transferable Securities (UCITS) funds, with the remaining funds composed of Alternative Investment Funds (AIFs). We support the goal of BMR to establish a regulatory framework for indices and benchmarks. The BMR strengthens the confidence in the financial markets and helps to prevent manipulation of financial indices. Therefore, we welcome the initiative started by the ESAs to further modernise the benchmark framework.

As an important group of benchmarks users, we would like to make the following comments:

- As further expanded under Q. 9, it is important to **keep the right balance between the regulatory obligations for benchmark administrators to tackle potential conflicts of interest and risks for misconduct and avoiding excessive burden and costs** that will be ultimately passed over to users of benchmarks and end clients. We have indeed experienced a significant increase of costs related to use of indices and the access to their underlying data & methodology (about three times more compared to 10 years ago). We would encourage ESMA to reflect on price lists, cost disclosure and the prohibition of certain licence practices – in particular the (early) termination of data licences by benchmarks administrators in case of pricing policy or data policy changes.
- We would also encourage further reflections on the **ESMA Register**, in particular around its transparency and usability. The ESMA Benchmark register should be a centralized benchmark log. Benchmarks should be listed in addition to the administrator, so that users could search for either the administrator or the benchmark. They should also be able to see all the benchmarks being provided by a specific administrator. However, should this prove too difficult to implement, a second best option could be that the respective administrators be required to maintain a list of all the benchmarks provided by the approved legal entity on their website with a direct link available via the ESMA Register. Also, the ESMA register should include a research functionality which enables supervised entities to identify in a user friendly way individual indices provided by EU/Non-EU authorized/registered/endorsed administrators. An identification code of each benchmark (e.g. ISIN, Ticker) should be provided in the register. Supervised entities should also be able to search for indices based on historical data.

Questions

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

We would agree that administrator should have in place a remuneration framework designed to prevent the incentives for personnel involved in the provision of a benchmark to manipulate the benchmark, in particular in the context of the administrators forming part of larger groups involving also companies entering into financial transactions based on the relevant benchmark. Even where an administrator is already subject to other, sector specific remuneration framework by virtue of being a part of a larger group, **they should still be subject to additional rules preventing specific risk of manipulation linked to the benchmarks administered by the administrator.**

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.

We support the proposals set out in the consultation paper. Users of the benchmarks have to rely on the transparent methodology provided by regulated benchmark administrators. Any discretion in the application of the methodology – as established by the Regulation - should be made transparent to the users of benchmarks as they use benchmarks in their investment process

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.

Whilst it is welcome that accessibility of a benchmark post transition, including whether such benchmark is to be available free of charge or against a payment of a fee, is already one of the criteria proposed by ESMA, it would be important that in this context the relevant competent authorities examine not only the fee, if any, levied to obtain the current value of the benchmark but also the overall fee structure applicable to the benchmark and proposed by a prospective administrator, including any fee charged for using the benchmark within the meaning of the Benchmarks Regulation or referencing the benchmark within the meaning of the KIIDs Regulation (as interpreted by the ESMA Q&A on UCITS) and thus disclosing the benchmark in offering materials, KIIDs or prospectuses of investment funds.

Most benchmark administrators have included in their offers new fees related to ad hoc services, such as re-distribution. Data collected by one of our members from a representative sample of asset managers indicate that benchmark costs have tripled over the last ten years (in contrast with asset managers revenues which have stabilised since 2015). During the last five years, and also after the BMR came into force, costs increased according to the same source by 64% (13% on an annual average), a value much higher than the increase of assets under management over the same period. The price increases observed are transversal among all administrators (between 20% and 274% during the 5 years period)

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

We agree with the criterias that Competent Authorities and benchmark administrators should take into consideration in order to assess if a critical benchmarks needs be ceased or transferred to a new administrator. The critical benchmark should be ceased or transferred to a new administrator only on a basis of a valid assessment.
