

# The Benchmarks Regulation White Paper

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## Introduction

The final compromise text of the European Benchmarks Regulation (“BMR”) was approved by the European Council on 9 December 2015. The regulation on indices used as benchmarks in financial instruments and financial contracts has been a political controversy with much lobbying at European level due to the breadth of its scope and the impact it will have on the financial industry in general and asset managers specifically.

The Regulation addresses concerns raised by the manipulation of interest rate benchmarks such as the London Interbank Offered Rate (LIBOR), the Euro Interbank Offered Rate (EURIBOR) and the Tokyo Interbank Offered Rate (TIBOR). The regulatory investigations, enforcement actions and settlements reached by several regulatory authorities concerning LIBOR and EURIBOR in 2012 have served to highlight the importance of benchmarks and their vulnerabilities.

### It is intended to:

- Improve governance and controls over the benchmark process, particularly in relation to conflicts of interest;
- Improve the quality of input data and methodologies and ensure that data contributors are subject to adequate controls to avoid conflict of interest or data manipulation;
- Protect consumers and investors through greater transparency, rights of redress and a suitability assessment in certain cases. The scope of the Benchmarks Regulation and the definition of “benchmark” itself are intentionally wide in order to capture a wide array of activities.

### The Regulation aims to address potential issues at each stage of the benchmark process and will apply in respect of:

- The provision of benchmarks;
- The contribution of input data to a benchmark;
- The use of a benchmark within the EU.

This Benchmarks Regulation White Paper 2017 does not provide legal advice on the Benchmarks Regulation or the specific arrangements or obligations of any party and parties should always seek individual legal advice as to such matters. As such, RIMES Technologies Corporation does not assume responsibility to any party in relation to the contents of this paper.



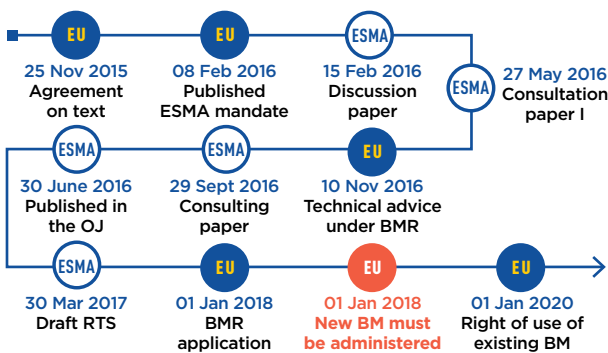
For more info  
on the BMR  
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## Ultimate goal

BMR prohibits the use in the European Union (EU) by supervised entities of benchmarks other than benchmarks which are provided by an administrator that has been authorised or registered under the BMR. This extends to benchmarks prepared by unregistered non-EU administrators from non-equivalent jurisdictions and is designed to enhance the single market by creating a common framework across Member States. By limiting the ability of national administrators to set benchmarks rates using their own discretion, it is hoped that conflicts of interest will be reduced and confidence will be restored in the accuracy and integrity of benchmarks.

## Timeline



The original legal text was published by the EU in November 2015 with the mandates for the European Securities and Markets Authority (ESMA) following in February 2016. The publication in the Official Journal was on the 29 June 2016 and therefore the regulation entered into force on 30 June 2016 (although most of the provisions are applicable from 1 January 2018). Following its consultation paper published on 29 September 2016 and in accordance with its mandate under the EU regulation on BMR, ESMA published its final report on the draft 'level 2' regulatory technical standards (RTS)

→ The new Benchmarks Regulation entered in force on June 30th 2016 and applies from 1st of January 2018.

- Manage conflicts of interest inherent to certain investment processes
- Supervised entities (Including fund managers) must not use unregistered benchmarks in the EU
- Improve governance and controls over the benchmark process
- Protect consumers and investors through greater transparency and adequate rights of redress

## Some important definitions

1 A **“benchmark”** is “any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument is determined or an index that is used to measure the performance of an investment fund with the purposes to track the return of such index or to define the asset allocation of a portfolio or to compute the performance fees”.

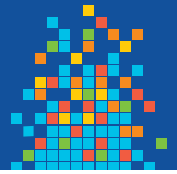
2 An **“index”** is “any figure: (i) that is published or made available to the public; (ii) that is regularly determined, entirely or partially, by the application of a formula or any other method of calculation, or by an assessment; and (iii) where this determination is made on the basis of the value of one or more underlying assets, or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes or other values or surveys”.

3 A key element of each index is **discretion**: an index is calculated using a formula or some other methodology on the basis of underlying values. Discretion exists in constructing this formula, performing the calculation or determining the input data. This discretion creates a risk of manipulation and therefore all benchmarks sharing this characteristic should be covered by this Regulation. (BMR: Recital 15)

4 A **single price or reference value** is not a benchmark since there is no calculation, input data or discretion (BMR: Recital 18)

From above: some additional definitions:

5 **“Financial instrument”** means any of the instruments (being transferable securities and OTC derivatives contracts) listed in Section C of Annex I to 2014/65/EU (i.e. MiFID II) for which a request for admission to trading on a trading venue has been made or which are traded on a trading venue or **“systematic internaliser”**. **“Trading venue”** is not directly defined but instead cross refers to MiFID II and therefore includes any EU regulated market, EU multilateral trading facility (MTF) or EU organised trading facility (OTF)



that will supplement the 'level 1' text of the Benchmarks Regulation on 30 March 2017.

## What happens next?

The European Parliament and the Council have a scrutiny period of three months within which to object to the RTS. Assuming the RTS are approved, they will apply from 30 March 2017. FCA (the UK Regulator) also published a consultation paper on 22 June 2017 mapping out how it intends to implement the Benchmarks Regulation. Further, ESMA 'Q&As' are also likely.

## What is a supervised entity?

### Supervised entities

Under BMR (Art. 3 Paragraph 17) a supervised entity (and therefore a physical or legal person subject to the law) comprises, amongst other things:

- 1 Banks;
- 2 Investment firms;
- 3 Insurance and reinsurance companies;
- 4 UCITS and AIFM;
- 5 Pension funds;
- 6 Fund managers;
- 7 Consumer lenders;
- 8 CCP;
- 9 Administrators.

## What is a Benchmark under BMR?

Asset managers (and other supervised entities) must ask themselves the following questions when it comes to the index\* they are using:

- Is the index used to determine the value of a fund?
- Is the index used to define the asset allocation of a portfolio?
- Is the index used to calculate performance fees?

- Does the index help determine the amount payable under a financial instrument?
- Does the index help determine the amount payable under a financial contract?
- Is the index used to determine the value of a financial instrument?

If the index is used for any of these purposes, it is a benchmark under the EU BMR and therefore the firm becomes a **User** under EU BMR

NOTE - Under the EU BMR Blended and Custom indices used for one of the above purposes are considered to be a benchmark.

## What are the types of Benchmark under BMR?

To counterbalance the broad scope and in order to achieve proportionality and ensure that the requirements are appropriately impacting the benchmark, BMR uses features relating to three aspects:

- 1 The nature of the asset(s):** the regulation envisages alternative requirements in relation to benchmarks where the underlying asset is an "interest rate" or a "commodity", which differ from the standard requirements that apply for other underlying assets;
- 2 The significance:** the complexity of the law's requirements varies according to how significant the benchmark is. Additional requirements apply for benchmarks classed as "critical", while those classed only as "significant" or "nonsignificant" are exempt from certain requirements. The three categories of significance are:
  - A Critical:** Is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or

\* EU BMR Art 3(1)'index' means any figure: (a) that is published or made available to the public; (b) that is regularly determined: (i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and (ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys;



financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion;

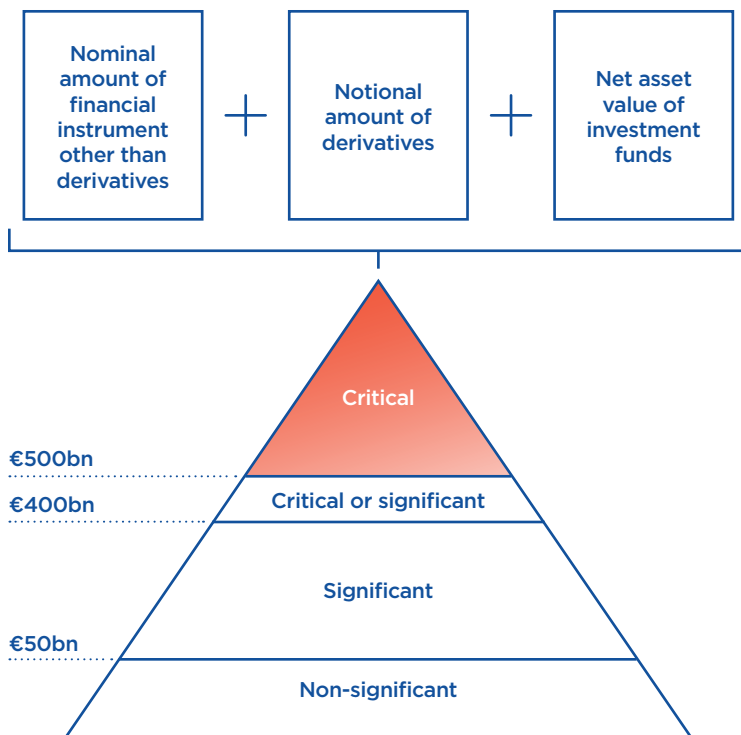
**B Significant:** is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value of at least EUR 50 billion;

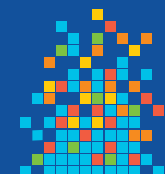
**C Non-significant:** is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value of less than EUR 50 billion.

**3 Quality of data:** “regulated-data” benchmarks, being benchmarks determined by the application of a formula from:

- A** input data received from amongst other things:
  - i.** EU trading venue;
  - ii.** certain EU energy exchanges;
  - iii.** EU emission allowance auction platforms or on outsourced service provider;
  - iv.** receiving input data in such a way; or
- B** the net asset values of investment funds like AIFs or UCIT).

**Exemption:** Article 17 of BMR states that many of the requirements of the BMR shall not apply to the provision of, and contribution to, regulated data benchmarks. Amongst other things administrators of a regulated data benchmark don't have to provide such a stringent set of controls on the data used (Article 11), don't have to put in place a data infringement mechanism to National Competent Authorities (Article 14) and the code of conduct, control and governance and control requirements for supervised contributors are not applicable (Articles 15&16).





## How are supervised entities impacted by BMR?

You could be:

A **Benchmark Administrator** if you provide indices to benchmark users that are used in pricing or allocating assets to determine the amount payable under:

- financial instruments traded on trading venues or via systematic internalisers;
- EU mortgage or consumer credit contracts;
- investment funds.

BMR Article 3(6): An Administrator is the natural or legal person that has control over the provision of a benchmark.

- Provision of a benchmark means:
  - administering the arrangements for determining a benchmark;
  - collecting, analysing or processing input data for the purpose of determining a benchmark; and
  - determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.
- Every person located in the EU that has control over the provision of a benchmark will be required to be authorised or registered by a national regulator

A **Supervised Contributor** under the Regulation if you are a supervised entity and:

- contribute input data that is not readily available to the Administrator located in the EU;
- provide the input data for the purpose of determining a benchmark to be used in the EU

A **Benchmark User** and be subject to additional requirements if you are a supervised entity and use indices as benchmarks (as described on Page 5):

- issues a financial instrument that references an index or combination of indices;
- determines the amount payable under a financial instrument or a mortgage or consumer credit contract by referencing an index or combination of indices;
- is a party to a mortgage or consumer credit contract that references an index or combination of indices;
- provides a borrowing rate calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a consumer credit contract to which the creditor is a party;
- measures the performance of an investment fund through an index or combination of indices either to track the return of the indices or combination of indices, or to define its asset allocation or of computing performance fees.



For more info  
on the BMR  
[info@rimes.com](mailto:info@rimes.com)

## Are you an Administrator, a Contributor or a User?



### If you are a User

Asset managers (or other supervised entities) using benchmarks under BMR are OBLIGED to:

- 1 Ensure that their benchmarks used in the EU are provided by Administrators that are legally authorised or registered in the EU as Benchmark Administrators (Art. 29) or ensure that the use of the third country benchmarks complies with the equivalence



and other requirements (Article 30-33 BMR):

- 2 Have robust contingency plans in place to be able to substitute the benchmarks the firm uses in case of material change or cessation of the publication of the benchmark (Art 28);

### If you are a Contributor

Each benchmark contributor must comply with the requirements and obligations specified in the applicable code of conduct as defined in Art. 15 and governance and control requirements (Art. 16). Each benchmark contributor which is a supervised entity must also, amongst other things:

- Put in place a structure such that the provision of input data is not affected by any existing or potential conflict of interest and that, where discretion is required, it is independently and honestly exercised;
- Cooperate in the auditing and supervision of benchmarks and maintain for an appropriate period of time (Art. 16) and make records available (other than in relation to certain non-significant benchmarks);
- Contribute data for critical benchmarks if required to do so by a competent authority.

### If you are an Administrator

#### Authorisation or registration

A benchmark administrator within the EU must obtain a proper authorisation by a EU National Competent Authority.

#### Governance and control

A benchmark administrator must, amongst other things:

- ensure that a benchmark is not affected by any existing or potential conflict of interest and that, where discretion is required, it is independently and honestly exercised;
- have a clear organisational structure with transparent and consistent roles for those involved in the provision of a benchmark and ensure that those involved have the necessary skills, knowledge and experience and are subject to effective supervision;
- establish a permanent oversight function (consisting of a separate committee) to annually review the benchmark's definition and oversee the control framework and any third party involvement;
- use sufficient input data to represent reliably and accurately the market or economic reality that the benchmark is intended to measure and verifiable input data, robust and reliable methodologies and provide appropriate transparency;
- publish a "benchmark statement" for each benchmark or where applicable, each family of benchmarks containing certain prescribed information, including details relating to the exercise of any discretion;
- develop a code of conduct for each benchmark specifying the contributors obligations;
- publish a procedure covering actions to be taken in the event of changes to a benchmark or its cessation;
- report any manipulation or attempted manipulation of the benchmark under the EU Market Abuse Regulation. This report must be provided to the National Competent Authority (FCA in the UK);

### Additional definitions:

- 1 **'Contribution of input data'** means providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose;
- 2 **'Contributor'** means a natural or legal person contributing input data;
- 3 **'Supervised contributor'** means a supervised entity that contributes input data to an administrator located in the Union.



- develop, operate and administer the benchmark data and methodology transparently;
- publish or otherwise provide the key elements of the methodology and details of the internal review and approval thereof;
- put in place full record keeping for 5 years for all documents including, amongst other things, all input data, the use of such data, the methodology used for the determination of a benchmark and 3 years for all phone or electronic communication with the contributors. Administrators must keep the records in such a form that it is possible to replicate and fully understand the determination of a benchmark and enable an audit or evaluation of input data, calculations, judgements and discretion.

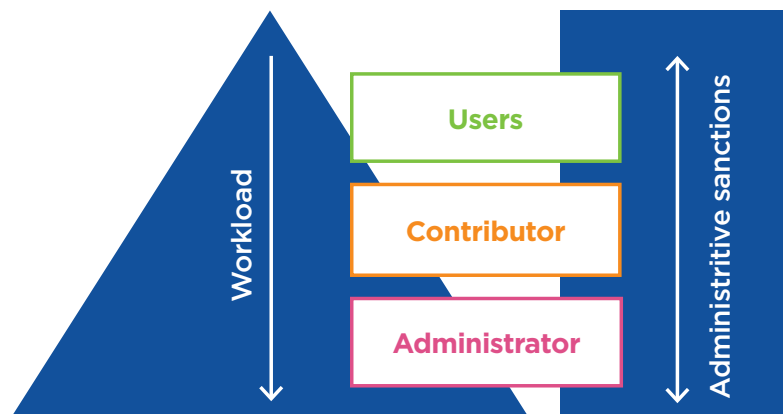
## Administrative Sanctions

Administrative Measures and Sanctions Under Article 42 of the Benchmarks Regulation - national authorities must be accorded supervisory and investigatory powers together with the ability to impose sanctions for any breach of its provisions, including monetary fines up to specified limits (being at least the higher of €1,000,000 or 10% of total annual turnover for firms and €500,000 for individuals for most breaches).

It is important to note that these sanctions apply not only to administrators and contributors but also to users under Art 28 and 29.

**EU BMR Art. 28:** Supervised entities shall produce and maintain robust written plans setting out the actions that they would take if a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives. The supervised entities shall, upon request, provide the relevant competent authority with those plans and any updates and shall reflect them in the contractual relationship with clients.

**EU BMR Art. 29:** Supervised entities may use a benchmark or a combination of benchmarks in the Union if the benchmark is provided by an Administrator located in the Union and included in the register referred to in Article 36 or is a benchmark which is included in the register referred to in Article 36.





## Third-country Benchmark supervision regime

A crucial aspect of the new regime is whether the use of third-country benchmarks will be allowed. 3 access methods are allowed under the BMR:

- 1 If an equivalence decision can be reached by the Commission that the third country ensures requirements equivalent to those of the new regulation (so in fact post Brexit, UK will be forced to apply for this provision). A third-country administrator can apply for temporary recognition that their regime complies with standards outlined in the regulation until the equivalence decision is made;
- 2 **Art. 33:** For benchmarks produced outside the EU, an EU Registered Administrator can endorse a benchmark or a Family of benchmarks from a third country Administrator under a number of very specific rules and regulations. It will require the approval of a National Competent Authority (NCA) and a registration of all benchmarks to be administered;
- 3 **Art. 32:** Supervised entities can use benchmarks from a Benchmark Administrator located outside the EU under the condition that it has been approved by an NCA and appoints a legal representative able to fulfill the Administrator functions on behalf of the Administrator.

NOTE: The legal representative shall perform the oversight function relating to the provision of benchmarks performed by the Administrator under this Regulation together with the Administrator and, in that respect, shall be accountable to the competent authority of the Member State of reference.

### ESMA:

Under the BMR, Supervised entities can use benchmarks provided by administrators included in the ESMA's register, or benchmarks directly listed in the register. Information provided in the register:

- EU administrators authorised or registered and the NCAs responsible for the supervision thereof
- 3rd country administrators and their benchmarks established in 3rd country for which an equivalence decision applies (plus the 3rd country NCA)
- 3rd country administrators recognised, the benchmarks they provide (plus the 3rd country NCA)
- 3rd country benchmarks endorsed, their 3rd country administrator and endorsing administrator / supervised entity

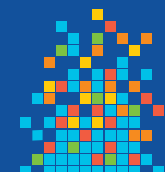
### Comments on ESMA RTS (See summary in Annex)

The final draft of the RTS was published on 30 March 2017. Once in force, these 'level 2' standards will supplement the 'level 1' text of the Benchmarks Regulation.

On top of covering the mandated provisions of the Benchmarks Regulation, ESMA has asked the European Commission to provide urgent interpretive guidance on the transitional provisions, which are currently unclear and have led to much confusion in the market. Following the mandate to ESMA, original law has largely been amended to:

- 1 Clarify certain provisions (including seeking guidance on the transitional provisions);
- 2 Reduce the administrative burden on administrators where possible;
- 3 Eradicate duplication within the technical standards themselves and between the technical standards and other legislation.





The areas covered and clarified in the draft RTS are:

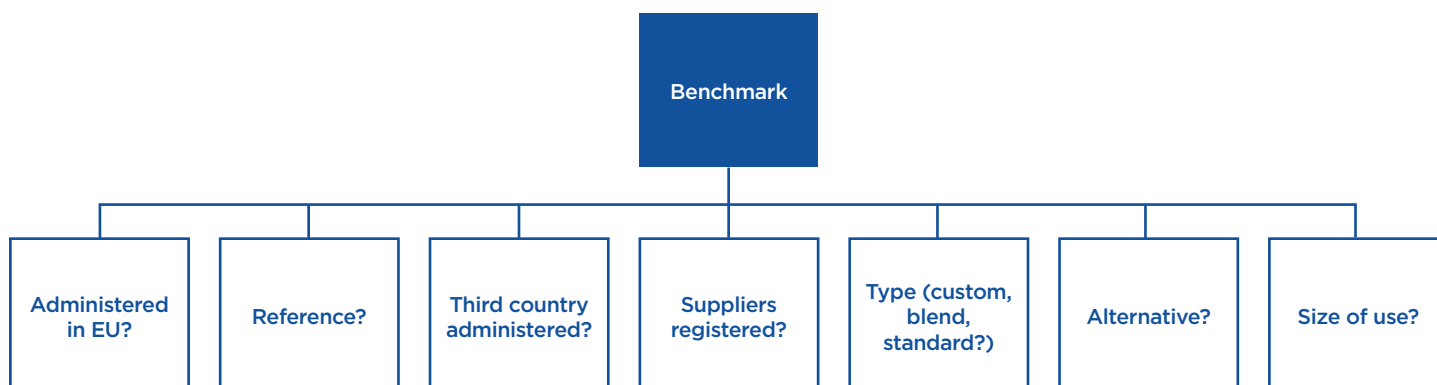
- 1 Procedures and characteristics of the oversight function;
- 2 Input data;
- 3 Transparency of methodology;
- 4 Code of conduct for contributors;
- 5 Governance and control requirements for supervised contributor
- 6 Compliance statement for administrators of significant and non-significant benchmarks;
- 7 Criteria for significant benchmarks;
- 8 Benchmark statements;
- 9 Authorisation and registration of an administrator;
- 10 Recognition of an administrator located in a third country; and
- 11 Procedures and forms for exchange of information.


Full text available at <https://goo.gl/4ZUTgZ>

## Conclusions

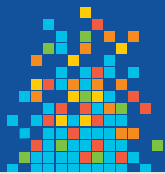
### Addressing the risk exposure

To address the risk exposure of any firm to BMR, the very first step is to know what indices are used by the firm: therefore it is essential to create as soon as possible an “inventory” of benchmarks. This essential “list” of indices must allow the firm to classify all indices as benchmark (by answering the 7 questions below). It also helps the firm to add attributes to each index to establish the exact regulatory risk exposure.



 **For more info  
on the BMR**  
[info@rimes.com](mailto:info@rimes.com)

 **Overleaf  
Summary of  
ESMA Draft RTS**



## Annex Summary of ESMA Draft RTS

### 1 Procedures and characteristics of the oversight function

ESMA has maintained most of its position from the consulting Papers.

Under BMR, benchmark administrators must establish a permanent and effective oversight function for the provision of their benchmarks. ESMA is mandated to specify detailed procedures and characteristics of the oversight function, including composition and governance arrangements.

On the issue of conflicts of interest, instead of requiring administrators to establish procedures that address the management of conflicts of interest in the oversight function (as proposed in the Consultation Paper), the RTS now sets out requirements that will effectively avoid conflicts of interest in the first place.

The non-exhaustive list of governance arrangements has been maintained. The requirement for two independent members other than director of the administrator for the oversight function has been retained for critical benchmarks only.

For non-critical benchmarks there is no change regarding the oversight function: external stakeholders are not mandatory for the oversight function, although ESMA does highlight the benefit of having such.

A change from the original draft is that staff of the administrator can sit on the oversight function but cannot have any voting rights if they are directly involved in the provision of the respective benchmark. This should reduce the risk of conflict of interest.

Therefore, compliance officers or legal employees could sit on an oversight function with voting rights. External members will not have any voting rights when the decision would have a direct business impact on the organisation they represent. Observers are allowed on the oversight function.

The oversight function can be carried out by a 'natural person' (i.e. an individual) for non-critical benchmarks as long as the individual is not involved in the provision of any relevant potential benchmark and has no potential conflict of interest. In this case however, the RTS now require an alternate appropriate body or natural person to be named to ensure continuity should anything happen to that individual.

An important change from the consulting paper is the requirement for administrators to publish the names of members and minutes of meetings of the oversight function. But ESMA still believes that these should not be permanent members of the oversight function and should only be invited to meetings from time to time and in a non-voting capacity.

### 2 Input data

BMR is very clear: input data must be appropriate and verifiable.

What stays is the authorisation for the administrator to determine the frequency of appropriateness checks depending on:

- 1 The type of input data;
- 2 Characteristics of the benchmark;
- 3 Market reality the benchmark is measuring.

Meanwhile ESMA doesn't recommend a 'One off' basis appropriateness checks. The RTS also clarified what is a 'reliable source' of data. A 'reliable source' relates to criteria



to be fulfilled by the source of data such as regular dissemination. This is important for the administrator's obligation to perform checks to ensure the verifiability of input data.

As regulated-data benchmarks are subject to existing regulation and supervision and should therefore benefit from less obligation, they are not subject to the full input data framework; they are instead subject to a specific monitoring check to ensure that the input data used in the benchmark stems from a particular source, as set out in the RTS.

RTS described 3 levels of controls:

- 1 Control should be aligned with processes under the code of conduct.
- 2 Survey communication with front office staff rather than constant monitoring.
- 3 Conflict of interest requirements now only apply for potential or actual material conflicts of interest and are subject to proportionality provisions. Proportionality also now applies to the requirement for a physical presence of a second level of control function staff in the front office function.

### 3 Transparency of methodology

From the ESMA mandate, the transparency obligation still does not require publication of the benchmark formula, merely disclosure of sufficient elements to allow stakeholders to understand how the benchmark is derived. An important part of the obligation for the administrator relates to the procedure in case of material changes in the methodology and its rationale was subject to consultation. Meanwhile the level 2 will still require a consultation process but the process can be shortened in exceptional circumstances for example market disruptions.

### 4 Code of conduct for contributors

The original proposition presumed that all contributors were EU financial services firms. The RTS changes the text to consider an entity which may act as a contributor but doesn't have a compliance function or 'trading desks'. The code of conduct requires contributors to be satisfied that their submitters\* have the necessary skills, knowledge, training and experience for

**\* EU doesn't provide a clear definition of Non-Regulated data therefore we can assume that all data NOT coming from the source hereunder are Non-Regulated:**

1. Trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council (22), or a regulated market considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to

transaction data concerning financial instruments;

2. Approved publication arrangement as defined in point (52) of Article 4(1) of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of Article 4(1) of Directive 2014/65/EU, in accordance with mandatory post-trade transparency requirements, but only regarding transaction data concerning financial instruments that are traded on a trading venue;

3. Approved reporting mechanism as defined in point (54) of Article 4(1) of Directive 2014/65/EU, but only regarding transaction data concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade

transparency requirements;

4. Electricity exchange as referred to in point (j) of Article 37(1) of Directive 2009/72/EC of the European Parliament and of the Council (23);

5. Natural gas exchange as referred to in point (j) of Article 41(1) of Directive 2009/73/EC of the European Parliament and of the Council (24);

6. Auction platform referred to in Article 26 or 30 of Commission Regulation (EU) No 1031/2010 (25);

7. Service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, if the service provider receives the data entirely and directly from an entity referred to in points (i) to (vi);

8. Net asset values of investment funds;



the role, and ESMA has tried to make this provision in the RTS clearer by including, among other things, a requirement for the contributor to perform checks on the submitter. ESMA has also included provisions for automated systems for the contribution of data. The contributor must monitor and check the system to ensure appropriateness.

There is a new provision in the RTS which focuses on 'policies on the use of discretion when contributing input data'. ESMA believes that the use of discretion leaves data particularly exposed to the risk of manipulation. Elements to be included in the code of conduct where discretion is used include:

- 1 The circumstances in which the contributor may exercise discretion;
- 2 The persons within the contributor (the Submitter\*) that are permitted to exercise discretion;
- 3 Internal controls that govern the exercise of the contributor's discretion;
- 4 Any persons within the contributor that may evaluate ex-post the exercise of discretion.
- 5 Maintain a register of conflicts of interest which should now feature in the code of conduct;
- 6 Record keeping for a minimum of five years, or for three years where the records are of telephone conversations or electronic communication.

\* Submitter: means a natural person employed by the contributor for the purpose of contributing input data

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## 5 Governance and control requirements for supervised contributors

ESMA RTS imposes systems and controls for supervised contributors. The main change is in relation to the physical and operational separation of submitters and other staff within a supervised entity. Here ESMA has clarified that separation should only be where there could be a conflict of interest between

the contribution to the benchmark and other activities performed by the contributor and not as standard. The provision in the RTS relating to remuneration of submitters has been clarified so that remuneration should not be linked to the benchmark or the specific values of the submissions made nor the performance of an activity of the supervised entity that may give rise to a conflict of interest with the contribution to the benchmark.

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## 6 Compliance statement for administrators of significant and non-significant benchmarks

RTS introduces a proportionate approach for compliance statements for administrators of significant and non-significant benchmarks which allows them to reduce certain provisions (such as on governance and conflicts of interest). In this event, the administrator must publish and maintain a compliance statement explaining its reasons for non-compliance. The key difference between the requirements for significant and non-significant benchmark administrators is that for significant benchmark administrators, the national competent authority can assess the appropriateness of the compliance statement (who should receive a copy) and request additional information as well as changes to be made.

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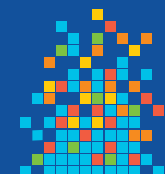
## 7 Criteria for significant benchmarks

ESMA has kept the RTS the same as proposed in the Consultation Paper.

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## 8 Benchmark statements

No major change from the consulting paper: administrators must publish a benchmark statement explaining the methodology and process used to determine the benchmark.



The only new requirement is the obligation to add the date of publication and a date of update, the ISIN (When available) of the benchmark or benchmark family and whether the benchmark or family of benchmarks relies on contributions of input data.

## 9 Authorisation and registration of an administrator and transitional provisions

As part of their Mandate ESMA was asked to list the information to be provided to competent authorities by administrators as part of the authorisation and registration processes. It is now part of the annexes of the RTS. ESMA has also specified which annexes, or sections of annexes, should be used for particular benchmarks. Applicants will now be required to include information on the number of benchmarks administered but will no longer have to provide some of the detailed financial information that was previously required.

The provisions on authorisation and registration will only apply from 1 January 2018. Article 51(1) of the Benchmarks Regulation allows administrators who provided a benchmark on the date of entry into force of the Benchmarks Regulation (i.e. 30 June 2016) a grace period to apply for authorisation, until 1 January 2020. But this DOESN'T apply to a third country index provider (which will need to be recognised or located in an 'equivalent' jurisdiction).

Article 51(3) of the Benchmarks Regulation allows administrators to continue to provide, and supervised entities to continue to use, an 'existing benchmark'. Article 51(5) says that benchmarks provided by a third country provider may continue to be used by supervised entities in the EU "where the benchmark is already used in financial

instruments, contracts or for measuring performance in a fund" but there is no clear definition of the word "existing". ESMA did ask the EU for clarification.

## 10 Recognition of an administrator located in a third country

The Benchmarks Regulation provides for a system of 'recognition' of third country index providers, subject to a number of conditions being fulfilled. In its Consultation Paper, ESMA provides the contents of the application for recognition, which are very similar to the ones for registration as an EU administrator. No major changes there.

## 11 Annex of the RTS

### List of key elements to be disclosed for ALL benchmarks (RTS 13.1.8. Art. 1).

General disclosure requirements:

- The benchmark statement shall:
  - State the date of its publication and the date of its last update;
  - Include, where available, the ISIN of the benchmark or, when the benchmark statement refers to a family of benchmarks, a reference to a location where the ISINs of the benchmarks within the family of benchmarks are publicly accessible free of charge;
  - State whether the benchmark or at least one benchmark in the family of benchmarks is determined using contributions of input data.
- For the purpose of defining the key terms relating to the benchmark or family of benchmarks, and, in particular, the market or economic reality measured by the benchmark or family of benchmarks, the benchmark statement shall contain at least the following information:
  - General description of the market or economic reality;

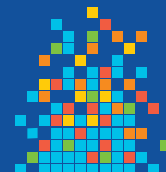


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- Geographical boundaries of the market or economic reality, where applicable;
- Any other relevant information the administrator considers beneficial for a benchmark user to understand the relevant features of the market or economic reality. Subject to the availability of reliable data, the administrator shall consider including, inter alia:
  - ◆ Information on actual or potential participants in the market;
  - ◆ Barriers to market access;
  - ◆ Indication of the size of the market or economic reality.
- For the purpose of defining the potential limitations of the benchmark or family of benchmarks and, in particular, the circumstances in which the measurement of the relevant market or economic reality may become unreliable, the benchmark statement shall contain at least the following elements, giving consideration to the methodology used for the specific benchmark or family of benchmarks:
  - The circumstances in which the administrator would lack sufficient input data to determine the benchmark according to the methodology;
  - Where relevant, circumstances in which the degree of liquidity of the underlying market becomes insufficient to ensure the integrity and reliability of the benchmark determination according to the methodology;
  - Any other relevant information the administrator considers beneficial for a benchmark user to understand the circumstances in which the measurement of the relevant market or economic reality may become unreliable, including exceptional market events.
- For the purpose of providing information on the controls and rules that govern any exercise of judgment or discretion in the calculation of the benchmark or of the family of benchmarks, the benchmark statement shall at least:
  - Indicate the position of each function or body that may exercise discretion;
  - Outline each step of any ex-post evaluation process on the use of discretion, including a clear reference to the position of any person(s) who evaluates an exercise of discretion.
- For the purpose of providing information on the review of the methodology and of advising users in relation to changes to, or the cessation of, the benchmark or family of benchmark, a benchmark statement shall at least:
  - Refer to its procedures for public consultation on any material changes to its methodology;
  - To the extent known, indicate possible impacts of changes to, or the cessation of the benchmarks upon the financial contracts, financial instruments that reference the benchmark or the measurement of the performance of investment funds.
- Point (c) in paragraph 3 and point (a) in paragraph 5 shall not apply to the benchmark statement of a significant benchmark.
- Point (c) of paragraph 2, points (b) and (c) of paragraph 3, paragraph 4 and paragraph 5 shall not apply to the benchmark statement of a non-significant benchmark. In respect of the benchmark statement of a non-significant benchmark, the administrator may satisfy the requirements in points (a) and (b) of paragraph 2 by providing a clear reference to a published document, accessible free of charge, that includes the same information.
- A benchmark administrator may include additional information at the end of the benchmark statement by way of referencing to a published document, accessible free of charge.



- A** a definition and description of the benchmark and of the market or economic reality it is intended to measure;
- B** the currency or other unit of measurement of the benchmark;
- C** the criteria used by the administrator for selecting the sources of input data;
- D** types of input data used and the priority given to each type;
- E** the composition of any panel of contributors and the criteria determining eligibility for panel membership;
- F** a description of the constituent elements of a benchmark and the criteria used for their selection and for assigning weights to them;
- G** any minimum liquidity requirements for the constituent elements of the benchmark;
- H** any minimum requirements for the quantity of input data and minimum standards for the quality of input data;
- I** rules identifying how and when discretion may be exercised in the determination of the benchmark;
- J** whether the benchmark takes into account any reinvestment of dividends and coupons paid by its constituent elements;
- K** where the methodology is changed periodically to remain representative, any criteria used to:
  - i** determine when such a change is necessary;
  - ii** determine the frequency of such a change; and
  - iii** rebalance the constituent elements of the benchmark in the process of such a change.
- L** limitations of the methodology and details of the applicable methodology in exceptional circumstances including in illiquid markets or in periods of stress or where transaction data sources may be insufficient, inaccurate or unreliable;
- M** details of the roles of any third parties involved in data collection for, or the

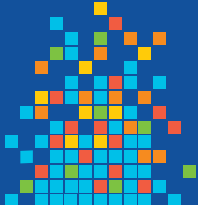
computation or dissemination of, the benchmark (for critical benchmarks only, administrators of significant benchmarks can opt out);

- N** the method used for the extrapolation and any interpolation of data (for critical benchmarks only, administrators of significant benchmarks can opt out).

### **RTS 13.1.8 Art. 6**

Specific disclosure requirements for significant and non-significant benchmarks:

- In addition to Article 1, for a significant benchmark or a family of benchmarks that includes only significant benchmarks, the benchmark statement shall at least indicate the qualification of the benchmark(s) as a significant benchmark pursuant to point 26 of Article 3(1) of Regulation (EU) 2016/1011.
- In addition to Article 1, for a non-significant benchmark or a family of benchmarks including only non-significant benchmarks, the benchmark statement shall at least indicate the qualification of the benchmark(s) as a non-significant benchmark pursuant to point 27 of Article 3(1) of Regulation (EU) 2016/1011.
- In addition to Article 1, for a family of benchmarks that includes both a significant and a non-significant benchmark, the benchmark statement shall at least indicate that the family of benchmarks includes both a benchmark qualified as a significant benchmark, pursuant to point 26 of Article 3(1) of Regulation (EU) 2016/1011, and a benchmark qualified as a non-significant benchmark, pursuant to point 27 of Article 3(1) of Regulation (EU) 2016/1011.



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RIMES is a buy-side specialist that truly understands the data management challenges faced by its clients. It serves over 300 investment managers, pension funds, hedge funds, wealth managers, private banks, custodian banks and insurance companies in 40 countries, including 60 of the 100 largest global asset managers and 9 of the 10 largest custodians by TAUM.

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