



Commodity Markets Council - Europe

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General Comments

- CMCE members support the proportional treatment for commodity benchmarks, the majority of whose contributors are not supervised entities, envisaged in the BMR.
- CMCE members are concerned that the drafting of the RTS does not make clear that exemptions in level one for 'Annex II' benchmarks are also maintained throughout the RTS
- CMCE members call for this to be made explicit in the final draft RTS

Section 2: Oversight function (Article 5 BMR)

Q1: Do you consider the non-exhaustive list of governance arrangements to be sufficiently flexible? Are there any other structures which you would like to see included?

- CMCE members welcome amendments to the draft RTS allowing one oversight function to be established to cover all benchmarks produced by an administrator

Q2: Do you support the option for the oversight function to be a natural person who is not otherwise employed by the administrator?

- Yes. CMCE members support this flexibility

Q3: Do you support the concept of observers and their inclusion in the oversight function?

- [members input required]

Q4: Do you think that the draft RTS allows for sufficient proportionality in the application of the requirements? If no, please explain why and provide proposals for introducing greater proportionality.

- See answer to Q1

Q5: Do you have any other comments on the oversight function (composition, positioning and procedures) as set out in the draft RTS?

Section 3: Input data (Article 11 BMR)

Q6: Do you agree with the appropriateness and verifiability of input data that the administrator must ensure are in place? Please elaborate.

- CMCE members question how these requirements would apply to regulated data

Q7: Do you agree with the internal oversight and verification procedures that the administrator must ensure are in place where contributions are made from a front-office function in a contributor organisation? Please elaborate.

- CMCE members question how these requirements would apply to regulated data

Section 4: Transparency of Methodology (Article 13 BMR)

Q8: Do you agree with the list of key elements proposed? Do you consider that there are any other means that could be taken into consideration to ensure that the benchmark's methodology is traceable and verifiable?

- [members input required]

Q9: Do you agree with the elements of the internal review of methodology to be disclosed? Do you consider that there are other elements of information regarding the procedure for internal review of methodology that should be included?

- [members input required]

Q10: Do you agree with the procedure for consultation on material changes to the methodology?

- [members input required]

Section 5: Code of Conduct (Article 15 BMR)

Q11: Do you agree with this approach? Please explain your response.

- [members input required]

Q12: Do you agree with this approach? What are the different characteristics of contributors that should be taken into consideration in this RTS? How should those 152 characteristics be taken into account in the provisions suggested in this draft RTS? Please give examples.

- CMCE members are concerned that the drafting of this provision does not make clear that 'Annex II' benchmarks are not in scope of these requirements

Q13: Should the substantial exposures of individual traders or trading desk to benchmark related instruments apply to all types of benchmarks for all contributors?

- [members input required]

Q14: Do you agree with the proposals for the reporting of suspicious transaction in this draft RTS? Please explain your answer.

- [members input required]

Q15: Are there any provisions that should be added to or amended in the draft RTS to take into consideration the different characteristics of benchmarks? Please give examples.

- See answer to Q12

Q16: Do you have any further comments or suggestions relating to the draft RTS on the code of conduct?

- [No]

Section 6: Governance and Control for Supervised Contributors (Article 16 BMR)

Q17: Do you agree with the draft technical standards in relation to the governance and control arrangements for supervised contributors to benchmarks? Please provide reasons.

- [No response]

Q18: In particular, can you identify specific aspects of the draft Regulation that should be applied differentially to different supervised contributors in particular in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors?

- [No response]

Section 7: Criteria for Significant Benchmarks (Article 25 BMR)

Q19: Do you agree with ESMA's specifications of the criteria?

- [members input required]

Section 8: Compliance Statement (Article 26 and 26 BMR)

Q20: Do you agree with the content and structure of the two compliance statement templates? If not, please explain.

- [members input required]

Section 9: Benchmark Statement (Article 27)

Q21: Do you agree with the proposed specifications of the contents of a benchmark statement?

- CMCE are opposed to duplication of requirements in benchmark statement under Article 15 and the Annex II
- CMCE would like to point out inconsistencies between the language in Level 1 and the draft RTS. The RTS should reference 'majority supervised entities' rather than 'predominantly'

Q22: Do you agree with the proposed specifications of the cases in which an update of such statement is required? Do you have any further proposals? Please explain.

- CMCE support the proposed specifications

Section 10: Authorisation and Registration (Article 34 BMR)

Q23: Do you agree with the general approach to distinguish the contents of the application with reference to the cases of authorisation or registration?

- CMCE agree that the narrower requirements for registration are appropriate

Q24: Are the general and financial information requirements described appropriate for authorisation applications? Are the narrower requirements appropriate for registration applications?

- CMCE member oppose the introduction of any financial information not already required to be reported under national company law. The BMR does not provide a mandate for additional reporting requirements.
- CMCE members question the relevance of all administrators providing financial forecasts. We propose that an option for NCAs to request this information where they have specific concerns regarding the financial viability of an administrator is included instead.
- CMCE members call for the RTS to allow for IOSCO audit reports to be used to demonstrate compliance with BMR (as far as information required for authorisation is covered by these reports). As currently drafted this is permitted for third country administrators seeking recognition but not EU administrators seeking authorisation.

- CMCE members for the RTS to be amended to clarify that information is to be provided only at the time of authorisation/registration and is not required to be updated periodically.

Q25: Are the requirements covering the information on the applicant's internal structure and functions appropriate?

- [members input required]

Q26: Are the requirements described dealing with the benchmarks provided appropriate? In particular, is the way in which the commodity benchmarks requirements are handled acceptable?

- CMCE members agree with ESMA that no additional specific requirements for Annex II benchmarks should be included

Q27: Is the specific treatment for a natural person as applicant appropriate?

- [members input required]

Q28: Do you agree with the proposals outlined for requirements for other information?

- [members input required]

Section 11: Recognition of Third Country Administrators (Article 32 BMR)

Q29: Do you agree with the approach followed in the draft RTS as regards the general information that a third-country applicant should provide to the competent authority of the Member State of reference?

- See answer to Q24
- CMCE members call for amendments to Annex 1 to clarify that only information directly related to the administration of a benchmark should be required. Language in 6(a) Annex 1 on 'activities of the provision of a benchmark' should be replicated in sections 3,4,5 and 9
- CMCE members for the RTS to be amended to clarify that information is to be provided only at the time of authorisation/registration and is not required to be updated periodically.

Q30: Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should provide in order to explain how it has chosen a specific Member State of reference and which are the identity and role of the appointed legal representative in such State?

- [members input required]

Q31: Do you agree with the approach followed in the draft RTS as regards the information that a third-country applicant should give around the benchmarks it provides and that are already used or intended for use in the Union? In particular, do you agree with the proposals regarding the information to be provided on the types and the categories to which the benchmarks belong to?

- [members input required]