

FESE Response to ESMA Consultation Paper on Non-Significant Benchmarks

Introductory remarks

The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives and commodities through 20 Full Members from 29 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE represents public Regulated Markets, which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2016, FESE members had 8,982 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,291 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers.

FESE is registered in the European Union Transparency Register with number 71488206456-23.

Summary FESE response

Overall, FESE agrees with the draft guidelines on non-significant benchmarks published by ESMA, however, in terms of the scope of input data further clarification is necessary.

Data from regulated trading venues (within and outside the EU) should be considered regulated data and trading venues should not be considered contributors.

Moreover, FESE considers it important that a proportionate approach is selected since the guidelines will apply to non-significant benchmarks.

Response to questions

Question 1: Do you have any views on the content of the draft guidelines on the oversight function for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

In principle, there is merit to the content of the oversight function to take the form of a separate committee within the organisational structure of the administrator. For regulated data benchmarks, we support the option to include external representatives as members of the oversight function. We support this being optional and not mandatory, as inclusion of external representatives could introduce conflicts of interest to benchmark administration. In particular, we would have had concerns about mandatory inclusion of representatives from other, competing trading venues on the oversight committee. For instance, parties could have gained access to price sensitive information (such as planned index changes) before other market participants. The BMR Level 1 text does not require external parties to be included in the oversight and therefore requiring this in Level 3 would have been against the Level 1 text.

Question 2: Do you have any views on the content of the draft guidelines on input data for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

In terms of the scope of input data we feel further clarification is necessary to determine that data from regulated trading venues within and outside the EU will be considered regulated data and that trading

venues should not be considered contributors.

Benchmarks based on regulated data are subject to a proportionate framework that acknowledges that the input data is transaction based, already subject to stringent regulatory requirements and that these benchmarks are therefore less prone to manipulation. Today, benchmark administrators often obtain data from trading venues via market data providers that provide the technical link between the venue and administrator without making any alterations to the raw and unprocessed data. Such practices should be deemed to fall within the scope of a regulated data benchmark, specifically meeting the requirement for the data to be taken 'entirely and directly from the trading venue' so long as the data is provided in a raw and unprocessed state.

A regulated data benchmark is based on (post-trade) transparent transaction data published by trading venues and made available to the public. Therefore, regulated data can be considered to be 'readily available'. Using regulated data as input data for a benchmark can, for that reason, not be considered as data that is being contributed as defined in Article 3(1)(8). Trading venues whose data is being used for purposes of a benchmark cannot be considered a (supervised) contributor for that purpose.

Question 3: Do you think the proposal to include in the guidelines a requirement for the three levels of control functions appropriate for administrator of non-significant benchmarks?

Question 4: Do you agree with the content of the draft guidelines on the transparency of the methodology for administrators of non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

FESE overall agrees with the draft guidelines on the transparency of the methodology for administrators of non-significant benchmarks. However, regarding point 1 I, FESE would like to point out that liquidity should always be assessed in a proportionate manner, taking into consideration the specificities of the relevant market. In emerging markets, liquidity and trading activity can be rather volatile and this should not necessarily impact the provision of indices based on these markets, especially when the related benchmarks are classified as non-significant

Question 5: Do you think the proposal to include in the guidelines a requirement for publishing or making available to the public "a description of specific events that may give rise to an internal review including any mechanism used by the administrator to determine whether the methodology is traceable and verifiable" is appropriate for administrator of non-significant benchmarks?

Question 6: Do you agree with the content of the draft guidelines on governance and control requirements for supervised contributors to non-significant benchmarks? Would you suggest to include any additional elements or to delete one or more of the elements proposed? Please explain.

Question 7: Do you think that the proposal to include in the guidelines a requirement of establishing, where appropriate, a physical separation of submitters from other employees of the supervised contributor is suitable also for supervised contributors to non-significant benchmarks?