ASSOGESTIONI RESPONSE TO THE PUBLIC CONSULTATION ON THE

REVIEW OF THE EU BENCHMARK REGULATION

General Remarks

Assogestioni[1] welcomes the opportunity to respond to the consultation of the European Commission on the review of the EU Benchmark Regulation (BMR).

BMR, together with the revision of the market abuse Regulation (MAR/MAD), is the milestone of the European legislation used to respond to the scandal of the manipulation of some interest rate benchmark and to tackle and improve the framework under which benchmark are provide, contributed to and used.

Although Assogestioni supports the objective of fostering efficiency, transparency and integrity in the financial markets, we believe that **BMR should be substantially revised.** The deliberate choice **to include in the scope of BMR any benchmark that may pose risk in the future has not proved appropriate**.

The EU intended to be a pioneer with the BMR but, as a matter of fact, the other jurisdictions have not followed its approach: several jurisdictions have begun codifying the IOSCO principles, and regulation or supervision is usually limited to the most critical or systemic financial benchmarks. Therefore, the requirements for EU entities are more challenging than in other jurisdictions.

It is important to note that not all benchmarks are the same; **the BMR review should be based on a risk-based approach** that limits the scope to those benchmarks having significant impact on the economy or on financial stability and/or where use of discretion or risk of manipulation may exist. Therefore, critical benchmark, such as IBOR, should be included in the scope as they pose fundamental issues and should be tackled appropriately, while non-critical benchmark, such as regulated data benchmark, should be out of scope.

Using too broad a scope of application has several side effects.

Asset managers, as users of benchmark and managers of financial instruments that fall within the scope of BMR, should maintain access to a wide range of indexes. The concern is **for administrators or third country administrators who are disincentivized to become BMR compliant,** hence asset managers do not have access to their indexes unless another BMR compliant administrator provide them. In the latter case, **issues of fair competition might arise.**

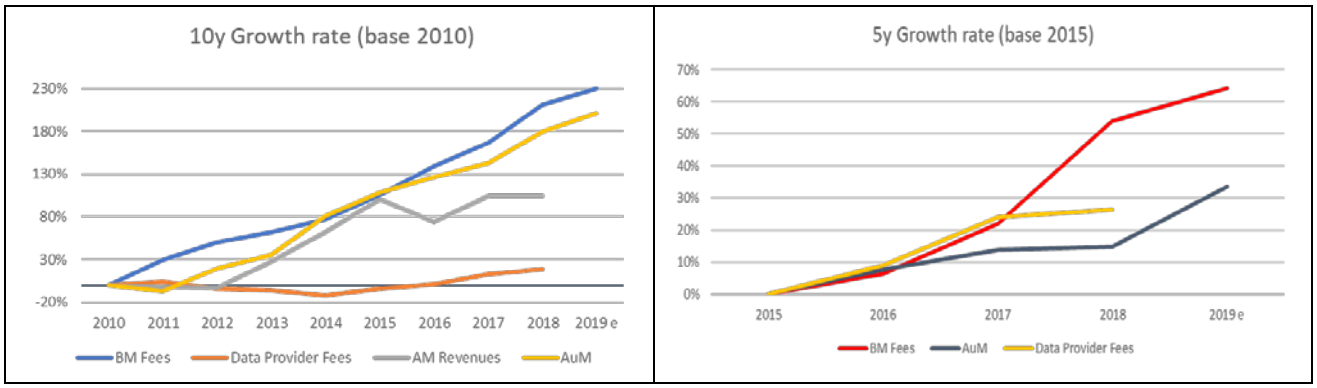
In the last five years, **some long established "benchmark administrators**" (among them BofA Merrill Lynch, Citigroup, Barclays) **sold their index businesses** to well-positioned operators committed to investing and growing their businesses. At Italian level, at the begin of December 2019, Intesa Sanpaolo announced that it will not register as a benchmark administrator with BMR and therefore, from the 1th January 2020, the

[1] Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 2,283 billion (as of September 2019).

publication of the Comit indices that mirror the performance of the Italian stock market (among them "Comit globale" dating back to 31 December 1972) will cease.

A key point we would like to highlight is **the significant increase of costs related to the use of indices and the access to their underlying data/methodology** that might also derive as a side effect of the BMR as well as from the increasing regulatory requirements for supervised entities using benchmarks together with the role that benchmarks have across the investment process lifecycle. A situation that is well known and could lead to further fees' increases.

The graphs below show the growth rate of benchmark costs as reported by representative samples of our members.



Over the past ten years the benchmark costs have tripled, unlike the trend in the overall data providing costs that remain stable. Benchmarks costs experienced a constant growth while asset manager revenues have stabilized since 2015.

In the last five years, where (also) the BMR came into force, costs increased by 64% (13% on an annual average), a value much higher than the increase of assets under management (34% over the period, 8% on annual average). The price increase is transversal among all administrators (between 20% and 274% in the 5y period), not only on the top of the two administrators who, in any case, represent around the 70% of the market at the end of 2019.

Costs increases does not appear to be linked to changes in the AUM but to the following trends:

- **change in pricing policies**, due to the introduction of fees by benchmarks providers previously offering the benchmark for free and to some strong price review,
- a **general increase in prices** - with most of benchmark administrators having included in their offers new fees related to ad hoc services, such as re-distribution,
- **audit procedures** conducted to review the current practices, adoption and correct application of licenses,
- new benchmarks and/or new services offered under new licensing contracts, such as blended-index (combination of indexes of the same administrator), hedge-indexes.

Several factors could explain the cost increase, however it is important to highlight:

- 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;
- **to promote competitiveness and avoid possible undesirable effects on price control**.

Therefore, we call for the following changes to address the cost issue:

1. **Price lists** – Similar to MiFID, benchmark administrators should be required to publish annual price lists of all products/services allowing also for multiyear comparisons and easy identification of product /service changes.
2. **Cost disclosure** – Similar to MiFID, BMR should provide for basic pricing rules for products and services stating that prices/revenues under BMR need to have a reasonable relationship with the cost of production. Therefore, benchmark administrators need to publish in-depth cost disclosures allowing to compare the cost of (all) data products with their revenues / price development.
3. **Extension of FRANDT to non-critical benchmarks** - Currently, the BMR (Article 22, Recital 38) requires only the administrators of critical benchmarks, such as the major IBORs, to take adequate steps to ensure that licenses of, and information on, benchmarks are provided on a fair, reasonable, transparent and non-discriminatory basis to all users. We propose to extend this rule to all administrators of benchmarks/indices.
4. **Data continuity** - Situation that might impact users because of cut-off should be avoided. The (early) termination of data licenses by benchmark administrators in case of pricing policy or data policy changes should be prohibited until an arbitration tribunal or a regular court has adjudicated on the legality of the changes.

In addition to the scope of BMR, we have some comments also on the following issues. Obviously, several of them would no longer be relevant if a substantially revision on the BMR scope took place:

- As regard the **supervision of climate-related benchmark**, we believe that NCA **should not have power to prevent supervised entities from referencing climate-related benchmarks.** Asset managers should ensure that they are using administrators/ benchmarks which are on the ESMA Register and are suitable for their investment strategy. It should be left to investors to assess if they are happy with a particular investment strategy and the way a Climate Benchmark is used as part of such a strategy. **BMR, in any case, should not overlap/conflict with the UCITS and AIFMD related regulatory framework and the compliance onerous for the respect of the rules applicable to climate-relate benchmark should not be on supervised entity.**

- As regard **non-EEA Benchmark, it might be a serious disruption if FX rate** (not only for Non Deliverable Forward) **were not out of scope of BMR.** Asset managers are indirectly affected by BMR as they manage financial instruments (that refer to an index or whose amount's payable refers to an index) to implement their investment objective and strategies. Exchange traded derivatives and derivatives traded via systematic internalisers (which includes most of the major banks) for which the FX rate is not provided by a central bank may be no longer tradable if such data provider did not have the right authorisation under BMR. If most European banks would not be able to provide financial instruments

exposed to a particular non-EEA "currency", this would be a problem for the market because asset managers would have less counterparties to trade OTC with, for example for, but not only, hedging purpose.

- **Legal certainly is absolutely important from a user perspective who should know which administrators are compliant with BMR (art. 29).** If the power to withdraw or suspend the authorisation or registration of an administrator applies in respect of one or more benchmark and not for all its benchmarks issues arise. In order to grant legal certainty and improve the identification of benchmarks by a user, the ESMA Register should be updated with benchmarks produced also by EU benchmarks administrators authorised or registered. So far, more than 80.000 non-EU indices are listed, and the list could be much longer in the future, therefore a unique identifier would also be welcomed (for example, ISIN). A centralised hub where a user might find all reliable information in an easy and digital way would better fit the scope.

- **Under BMR and UCITS framework, asset managers have a double burden of information to obtain in order to comply and this should be avoided**. The current regulation does not consider in the benchmark disclosure all the additional set of requirements for the use of benchmark requested by UCITS framework, among them the availability of a full transparency on constituents and their respective weightings.

- Finally, **the regime applicable to AIFs should be clarified**. Art. 29 states "only supervised entity may use a benchmark […] " but AIFs are not included in the definition of "supervised entity", even if they are included in the definition of funds relevant to the delimitation of the concept of "use of benchmark". It is our understanding that the BMR applies (only) to retail AIFs and not to institutional ones, considering that art. 29 (2) refers (only) to the directive 2003/71/CE (Prospectus Directive).

Critical Benchmarks

QUESTION 1: TO WHAT EXTENT DO YOU THINK IT COULD BE USEFUL FOR A COMPETENT AUTHORITY TO HAVE BROADER POWERS TO REQUIRE THE ADMINISTRATOR TO CHANGE THE METHODOLOGY OF A CRITICAL BENCHMARK? VERY USEFUL – NOT USEFUL AT ALL (5 CATEGORIES).

QUESTION 2: DO YOU CONSIDER THAT SUCH CORRECTIVE POWERS SHOULD APPLY TO CRITICAL BENCHMARKS AT ALL STAGES IN THEIR EXISTENCE OR SHOULD THESE POWERS BE CONFINED TO (1) SITUATIONS WHEN A CONTRIBUTOR NOTIFIES ITS INTENTION TO CEASE CONTRIBUTIONS OR (2) SITUATIONS IN WHICH MANDATORY ADMINISTRATION AND/OR CONTRIBUTIONS OF A CRITICAL BENCHMARK ARE TRIGGERED? YES / NO? PLEASE EXPLAIN.

QUESTION 3: ARE THERE ANY OTHER CHANGES TO ARTICLE 23(6)(D) BMR RELATIVE TO THE CHANGE OF METHODOLOGY FOR CRITICAL BENCHMARKS THAT MIGHT BE DESIRABLE TO IMPROVE THE ROBUSTNESS, RELIABILITY OR REPRESENTATIVENESS OF THE BENCHMARK? YES / NO? PLEASE EXPLAIN

QUESTION 4: TO WHAT EXTENT DO YOU THINK THAT BENCHMARK CESSATION PLANS SHOULD BE APPROVED BY NATIONAL COMPETENT REGULATORS? AGREE COMPLETELY – NOT AGREE AT ALL (5 CATEGORIES) + EXPLAIN

Critical benchmarks may impact market stability and an orderly cessation is of the utmost importance. Therefore, **we see merits in making the critical benchmark cessation plans of administrators subject to approval by the NCA (art. 28(1))** as this could be beneficial to market stability in general and to users in particular. This would result in more clarity on the steps to be followed by administrators upon the occurrence of the relevant trigger events.

Otherwise, as for **supervised entities (art. 28(2)),** we believe that would be **neither reasonable nor useful to apply the same level of obligations for benchmark cessation plan.** Asset managers should be allowed to establish their own cessation plans **without the need of approval by competent authorities** since they may have a variety of approaches in view of the nature of their contracts, clients, fallbacks to be applied, defined courses of action and internal procedures to comply with in a benchmark cessation scenario.

QUESTION 5: DO YOU CONSIDER THAT SUPERVISED ENTITIES SHOULD DRAW UP CONTINGENCY PLANS TO COVER INSTANCES WHERE A CRITICAL BENCHMARK CEASES TO BE REPRESENTATIVE OF ITS UNDERLYING MARKET?

{No}.

Users are obliged to draw contingency plans under art. 28 (2) to cover instances where a benchmark (also a critical one) materially changes or ceases to be provided.

We believe that the current broad provision of "benchmark's material changes" would capture most instances of material changes, not only when the change is driven by the administrator but also when it is no longer representative of its underlying market. Therefore, to avoid a stricter interpretation of what could be considered "material changes", we do not support making such clarification.

QUESTION 6: TO WHAT EXTENT DO YOU CONSIDER THE SYSTEM OF SUPERVISION BY COLLEGES AS CURRENTLY EXISTING APPROPRIATE FOR THE SUPERVISION OF CRITICAL BENCHMARKS? VERY APPROPRIATE – NOT APPROPRIATE AT ALL (5 CATEGORIES). IF NOT, WHAT CHANGES WOULD YOU SUGGEST?

Authorisation and Registration

QUESTION 7: DO YOU CONSIDER THAT IT IS CURRENTLY UNCLEAR WHETHER A COMPETENT AUTHORITY HAS THE POWERS TO WITHDRAW OR SUSPEND THE AUTHORISATION OR REGISTRATION OF AN ADMINISTRATOR IN RESPECT OF ONE OR MORE BENCHMARKS ONLY? VERY UNCLEAR – VERY CLEAR (5 CATEGORIES)

{Very unclear}

In our understanding, it appears clear that the suspension or withdrawal of authorisation applies to all benchmarks provided by a particular administrator. Indeed, a supervised entity may use a benchmark provided by an administrator located in the Union if the administrator itself - and not the individual benchmark provided - is included in the ESMA Register (art. 29).

However, in the case of an EU administrators of a multitude of benchmarks, we understand that it would be problematic to prevent the use of all its benchmarks when only one of them becomes not compliant.

If it would be clarified that competent authorities may withdraw authorisation or registration on a benchmark by benchmark basis, **we strong believe that legal certainly is important from a user perspective and needed in case an individual benchmark become non-compliant**. In this case, art. 29 should be revised and the ESMA Register should be updated consistently so that supervised entity would know not only the registered EU administrator but also the benchmark compliant with BMR. Please see also our responses to questions 14 and 15.

QUESTION 8: DO YOU CONSIDER THAT THE CURRENT POWERS OF NCAS TO ALLOW THE CONTINUED PROVISION AND USE IN EXISTING CONTRACTS FOR A BENCHMARK FOR WHICH THE AUTHORISATION HAS BEEN SUSPENDED ARE SUFFICIENT? TOTALLY SUFFICIENT – TOTALLY INSUFFICIENT (5 CATEGORIES). PLEASE EXPLAIN

{Insufficient}

In line with our response to question 7, we support the necessary changes for competent authorities to allow the continued use of benchmarks provided by benchmark administrators who have had their authorisation or registration either withdrawn or suspended.

In addition, art. 35 (3) BMR is confined to legacy agreements only: if new “contracts” could not be issued anymore, asset managers would no longer be able to risk-manage their existing exposures other than by decreasing their exiting positions. This should be avoided.

QUESTION 9: DO YOU CONSIDER THAT THE POWERS OF COMPETENT AUTHORITIES TO PERMIT CONTINUED USE OF A BENCHMARK WHEN CESSATION OF THAT BENCHMARK WOULD RESULT IN CONTRACT FRUSTRATION ARE APPROPRIATE? VERY APPROPRIATE – NOT APPROPRIATE AT ALL (5 CATEGORIES). PLEASE EXPLAIN

{Very appropriate}

To avoid any disruption, we believe it appropriate for competent authorities to have the power to allow the continued use of such benchmarks. Legal certainty of such a use should also be improved with a review of the contents of ESMA Register. ESMA Register should become a centralised hub and also include the “non-compliant” benchmark whose use is continuing to be allowed.

Scope of the BMR

QUESTION 10: DO YOU CONSIDER THAT THE REGULATORY FRAMEWORK APPLYING TO NON-SIGNIFICANT BENCHMARKS IS ADEQUATELY CALIBRATED? WHICH ADJUSTMENTS WOULD YOU RECOMMEND? COMPLETELY ADEQUATELY CALIBRATED – NOT WELL CALIBRATED AT ALL (5 CATEGORIES). PLEASE EXPLAIN. {Not well calibrated}

In line with our general remarks, we support the objective of fostering efficiency, transparency and integrity in the financial markets, but we believe that BMR should be substantially revised. The deliberate choice to include in the scope of BMR any benchmark that may pose risk in the future has not proved appropriate.

The EU intended to be a pioneer with the BMR but, as a matter of fact, the other jurisdictions have not followed its approach: several jurisdictions have begun codifying the IOSCO principles, and regulation or supervision is usually limited to the most critical or systemic financial benchmarks. Therefore, the requirements for EU entities are more challenging than in other jurisdictions.

It is important to note that not all benchmarks are the same; the BMR review should be based on a risk-based approach that limits the scope to those benchmarks having significant impact on the economy or on financial stability and/or where use of discretion or risk of manipulation may exist. Therefore, critical benchmark, such as IBOR, should be included in the scope as they pose fundamental issues and should be tackled appropriately, while non-critical benchmark, such as regulated data benchmark, should be out of scope.

Using too broad a scope of application has several side effects.

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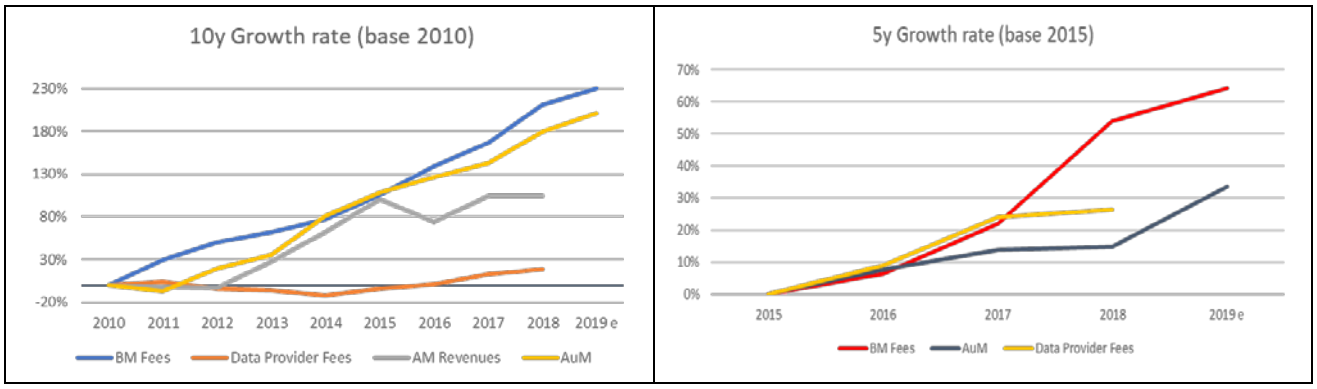

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Several factors could explain the cost increase, however it is important to highlight:

- 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.
- to promote competitiveness and avoid possible undesirable effects on price control.

QUESTION 11: DO YOU CONSIDER QUANTITATIVE THRESHOLDS TO BE APPROPRIATE TOOLS FOR THE ESTABLISHMENT OF CATEGORIES OF BENCHMARKS (NON-SIGNIFICANT, SIGNIFICANT, CRITICAL BENCHMARKS). IF APPLICABLE, WHICH ALTERNATIVE METHODOLOGY OR COMBINATION OF METHODOLOGIES WOULD YOU FAVOUR? COMPLETELY APPROPRIATE – NOT APPROPRIATE AT ALL (5 CATEGORIES). PLEASE EXPLAIN.

QUESTION 12: DO YOU CONSIDER THE CALCULATION METHOD USED TO DETERMINE THE THRESHOLDS FOR SIGNIFICANT AND CRITICAL BENCHMARKS REMAINS APPROPRIATE? IF APPLICABLE, PLEASE EXPLAIN WHY AND WHICH ALTERNATIVES YOU WOULD CONSIDER MORE APPROPRIATE. COMPLETELY APPROPRIATE – NOT APPROPRIATE AT ALL (5 CATEGORIES). PLEASE EXPLAIN.

QUESTION 13: WOULD YOU CONSIDER AN ALTERNATIVE APPROACH APPROPRIATE FOR CERTAIN TYPES OF BENCHMARKS THAT ARE LESS PRONE TO MANIPULATION. IF SO, PLEASE EXPLAIN FOR WHICH TYPES. COMPLETELY APPROPRIATE – NOT APPROPRIATE AT ALL (5 CATEGORIES). PLEASE EXPLAIN.
Please see our response to question 10.

ESMA Register of Administrators and Benchmarks

QUESTION 14: TO WHAT EXTENT ARE YOU SATISFIED WITH YOUR OVERALL EXPERIENCE WITH THE ESMA REGISTER FOR BENCHMARKS AND ADMINISTRATORS? IF NOT, HOW COULD THE REGISTER BE IMPROVED? COMPLETELY SATISFIED – NOT SATISFIED AT ALL (5 CATEGORIES). PLEASE EXPLAIN.

While the ESMA Register represents a good start, **there are still a number of issues, in particular related to the inability to identify which benchmarks are produced by benchmarks administrators authorised or registered under art. 33**. This is especially problematic when on the ESMA Register is not possible to identify whether a specific benchmark is produced by the firm on the register or by another firm belonging to the group. This causes real practical problems for users of benchmarks.

ESMA Register should become a centralised hub and should include also the "non-compliant" benchmark which use is continuing to be allowed (see our answer to question 9).

In addition**, controls on the completeness and accuracy of the information included in the register should be enhanced**. Web links of the administrators included in the register are not accurate and lead to the generic URL to the administrator's website. It would be more useful to include in the register the relevant document or, as fallback option, a URL to a page specific to the benchmark administrator which includes all the relevant benchmark documentation.

It would be also good to include a **'search tool' in the Register** to enable users to easily identify individual benchmarks provided by EU and "non-EU" that are compliant with BMR (see our answer to question 15). A market identification code of such benchmarks such as a "ISIN" would be welcomed.

Finally, an email service by means of which subscribers to such service would receive any information or update relating to the Register would be very appreciated.

QUESTION 15: DO YOU CONSIDER THAT, FOR ADMINISTRATORS AUTHORISED OR REGISTERED IN THE EU, THE REGISTER SHOULD LIST BENCHMARKS INSTEAD OF/IN ADDITION TO ADMINISTRATORS? AGREE COMPLETELY – DO NOT AGREE AT ALL. (5 CATEGORIES)

{Agree completely}

The ESMA Register should be a centralized benchmark log. Benchmarks should be listed in addition to the administrators, 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. As some administrators could – at one point in time or another - provide both compliant and non-complaint benchmarks, it would be extremely useful to avoid confusion and publish **a list of the BMR compliant benchmark together with a list of the EU administrators** (see question 7, when one or more benchmark provided by an administrator become non-compliant).

Benchmark Statement

QUESTION 16: IN YOUR EXPERIENCE, HOW USEFUL DO YOU FIND THE BENCHMARK STATEMENT? VERY USEFUL – NOT USEFUL AT ALL (5 CATEGORIES)
In the experience of our Members, the **benchmark statement is not very useful.**

The current proposal does not consider in the benchmark disclosure, all the additional set of requirements requested by UCITS framework for the investment in an index derivative, among them **the availability of a full transparency on constituents and their respective weightings. Under BMR and UCITS framework, asset managers have a double burden of information to obtain in order to comply with both BMR and UCITS framework and this should be avoided.**

In addition, the information in the benchmark statement often overlaps with the benchmark's methodology.

Therefore, if the benchmark statement is maintained it should be improved and be readily available and accessible. For example, including it in the ESMA Register would improve the centralised hub, alternatively, the URL of a specific page of the benchmark administrator that includes all the relevant documentation could be included in the ESMA Register.

QUESTION 17: HOW COULD THE FORMAT AND THE CONTENT OF THE BENCHMARK STATEMENT BE FURTHER IMPROVED?

QUESTION 18: DO YOU CONSIDER THAT THE OPTION TO PUBLISH THE BENCHMARK STATEMENT AT BENCHMARK LEVEL AND AT FAMILY LEVEL SHOULD BE MAINTAINED?

Please see our response to question 16.

Supervision and Climate Related Benchmarks

QUESTION 19: DO YOU CONSIDER THAT COMPETENT AUTHORITIES SHOULD HAVE EXPLICIT POWERS TO VERIFY (1) WHETHER THE CHOSEN CLIMATE-RELATED BENCHMARK COMPLIES WITH THE REQUIREMENT OF THE REGULATION AND (2) WHETHER THE INVESTMENT STRATEGY REFERENCING THIS INDEX ALIGNS WITH THE CHOSEN BENCHMARK? AGREE COMPLETELY – DO NOT AGREE AT ALL (5 CATEGORIES). PLEASE EXPLAIN.

We agree that competent authorities should have explicit powers to verify that climate-related benchmarks comply with the requirements of the Regulation when the benchmark is applying for authorisation or registration as an EU Climate transition Benchmark or an EU Paris aligned Benchmark.

However, such power should not be applied **by the competent authority when a supervised entity decides to use climate-related benchmarks.** In particular, we find the following statement confusing: "*this implies that the competent authority, when authorising… UCITS management company or alternative fund manager to offer an investment product that references one of the two climate-related benchmarks, needs to verify (1) whether the chosen reference index complies with the requirements of the Regulation and (2) whether the investment strategy aligns with the chosen benchmark*".

Empowering an NCA to verify whether a particular investment strategy aligns with a given Climate Benchmark would amount to investment product regulation within the framework of BMR. We believe that it is not in the scope of BMR and the supervision power should not be overlap/conflict **with the UCITS and AIFMD related regulatory framework.** Supervised entities should be able to use any benchmark which is on the ESMA Register and labelled as being an EU climate transition benchmark or an EU Paris-aligned Benchmark.

In any case, it should be left to investors to assess if they are happy with a particular investment strategy and the way a climate-related benchmark is used as part of such strategy. It is the same for other investment strategies referencing ESG criteria, including ESG benchmarks not meeting the criteria of a climate-related benchmark.

QUESTION 20: DO YOU CONSIDER THAT COMPETENT AUTHORITIES SHOULD HAVE EXPLICIT POWERS TO PREVENT SUPERVISED ENTITIES FROM REFERENCING A CLIMATE-RELATED BENCHMARK, IF SUCH BENCHMARK DOES NOT RESPECT THE RULES APPLICABLE TO CLIMATE-RELATED BENCHMARKS OR OF THE INVESTMENT STRATEGY REFERENCING THE CLIMATE-RELATED BENCHMARK IS NOT ALIGNED WITH THE REFERENCE BENCHMARK? AGREE COMPLETELY – DO NOT AGREE AT ALL (5 CATEGORIES). PLEASE EXPLAIN.

If the benchmark does not comply with the requirements for it to claim to be a climate-related benchmark, then it should not claim such credentials. Competent authorities should have the power to verify such compliance and if so the permitted use of such credential.

The compliance onerous for the respect of the rules applicable to climate-related benchmark should not be on supervised entities. In any case, if the benchmark does not respond to the climate-related characteristics, it may still be compliant with BMR and its administrator (or the benchmark itself) can be authorised or registered and appear on the ESMA Register. If it is on the ESMA Register, then the supervised entity can use it. They merely may not claim that it is an EU Climate Transition Benchmark or an EU Paris aligned Benchmark.

Under BMR the NCA should not have a power to prevent supervised entities from referencing climate-related benchmarks if the reference benchmark is not aligned with the investment strategy. This would restrict the flexibility of the investment manager and turn the Benchmark Regulation into a product legislation. In line with the answer to question 19 we believe that this supervision is out of scope of BMR. Supervised entities should ensure that they are using administrator/benchmarks which are on the ESMA Register and are suitable for their investment strategy.

Commodity Benchmarks

QUESTION 21: DO YOU CONSIDER THE CURRENT CONDITIONS UNDER WHICH A COMMODITY BENCHMARK IS SUBJECT TO THE REQUIREMENTS IN TITLE II OF THE BMR ARE APPROPRIATE? COMPLETELY APPROPRIATE – COMPLETELY INAPPROPRIATE (5 CATEGORIES). PLEASE EXPLAIN.

QUESTION 22: DO YOU CONSIDER THAT THE COMPOUND DE MINIMIS THRESHOLD FOR COMMODITY BENCHMARKS IS APPROPRIATELY SET? COMPLETELY APPROPRIATE – COMPLETELY INAPPROPRIATE (5 CATEGORIES). PLEASE EXPLAIN.

Non EEA Benchmarks

QUESTION 23: TO WHAT EXTENT WOULD THE POTENTIAL ISSUES IN RELATION TO FX FORWARDS AFFECT YOU? VERY MUCH – NOT AT ALL (5 CATEGORIES) IF SO, HOW WOULD YOU PROPOSE TO ADDRESS THESE POTENTIAL ISSUES?

Commission said, in substance, that FX rate is in scope of the definition of 'use of a benchmark' under BMR when it falls in the scope of BMR e.g. when it is used to determine the amount payable under any of the financial instruments listed in Section C of Annex I of 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.

In our understanding, the **issue could be broader than just in NDF**, if FX rates in third country currencies are in scope of the BMR. In this case, if the FX rate is provided by a private provider and not by a central bank, such data provider should have the right authorisation under BMR.

Therefore, it might be a serious disruption to the market if exchange traded derivatives and derivatives traded via systematic internalisers (which includes most of the major banks) for which the FX rate is not provided by a central bank are no longer tradable if such data provider did not have the right authorisation under BMR. If most European banks would not be able to provide financial instruments exposed to a particular non-EEA "currency" this would be a problem for the market because asset managers would have less counterparties to trade OTC with, for example, but not only, for hedging purpose.

We believe therefore that FX rates should be out of scope of BMR.

QUESTION 24: WHAT IMPROVEMENTS IN THE PROCEDURES FOR EQUIVALENCE, ENDORSEMENT AND RECOGNITION DO YOU RECOMMEND?

As regards the general principles of third country regime, it is crucial for asset managers to maintain access to the wide range of indices they have today. This will ensure that the index used reflects the exact segment of the market that corresponds to the investment fund's strategy. We obviously agree that the extension of the transitional provision offers some relief but we still do not anticipate that by the end of 2021 there will be many equivalent jurisdictions. This means that administrators of non-equivalent jurisdictions will need to fulfil the endorsement or recognition requirements in order for EU users to be able to continue using their benchmarks. We are particularly concerned that for small and medium sized non-EU administrators the price to pay for fulfilling these requirements will be onerous and therefore a disincentive.