
European Venues and Intermediaries Association [“EVIA”] and WMBA Limited response to ESMA draft Regulatory Technical Standards (RTS) under the Benchmarks Regulation (BMR) covering governance, methodology, infringements reporting, critical benchmarks

The European Venues and Intermediaries Association [“EVIA”] together with the wholly owned benchmark administrator, WMBA Limited [“WMBA”] are responding as a substantial segment of market infrastructure and an FCA authorised Benchmark Administrator [“BA”].

WMBA Limited was one of the very first BA’s to enter the ESMA register having been a specified benchmark administrator under the UK MAR8 regime since its inception by dint of creating and administrating UK SONIA, UK RONIA and EU EURONIA over 25 years ago. The administrator is part of a group including EVIA¹ and LEBA² whose members arrange the majority of on venue traded risk across wholesale non-equities, financial markets, together with FX and commodities markets around the globe. LEBA Limited publishes a wide variety of energy market volume weighted indices on a daily basis, principally in wholesale energy products [“WEPs”] from trades concluded on OMPs under REMIT.

We welcome the opportunity to respond to this review as both a BA and also as a set of significant market users of Benchmarks and would be keen to further engage on topics related to the questions identified below.

2.2 Content of the draft RTS

Question 1: Do you agree with the governance arrangements set above? Do you have any additional suggestions? Please specify.

EVIA/WMBA agree that the governance arrangements set out are reasonable.

EVIA/WMBA is also very encouraged that proportionality is touched on at length throughout the text and feel that if applied correctly and consistently, the regulation can achieve its objectives whilst not proving unduly burdensome on administrators of less significant benchmarks or benchmarks created from input data that has already undertaken regulatory obligations.

The FCA’s Senior Managers Regime (SMR), which identifies important responsibilities supported by a robust framework of accountability and transparency, will become applicable to Benchmark Administrators in the UK in December 2020. EVIA/WMBA encourage ESMA to utilise the SMR as a tool to implement the governance arrangements in the BMR effectively.

We note that no mention is made of the Composition of Oversight Committees. This should include a clear statement concerning the definition of management, specifically to recognise that Independent Non-Executives are not considered to be management under Codes of Corporate

¹ www.EVIA.org.uk

² www.LEBA.org.uk

Conduct.

Question 2: Do you agree that administrators should have in place a remuneration framework?

EVIA/WMBA support the concept of a remuneration framework. However, rather than embedding a full framework and where remuneration is not in any way impacted by the published level of benchmark(s) administered by that entity, a statement to this effect should suffice.

By way of an example, remuneration of staff within EVIA/WMBA is based on the quality of administration for benchmark determinations, and not with the actual published levels. In this instance, a remuneration framework might not be considered proportionate.

EVIA/WMBA staff are restricted within employment contracts from having interest in investments which are linked to benchmarks it administers to avoid conflicts of interest in this regard.

Question 3: Do you agree that the same requirements should apply to an administrator that is a natural person? Please elaborate.

Yes, this would be appropriate should the natural person be remunerated for quality of administration as opposed to level of the published benchmarks.

3 Methodology (Article 12 BMR)

Question 4: Do you think that other conditions should be taken into account to ensure that the methodology complies with the requirements of the BMR? Please specify.

EVIA/WMBA feel that the existing conditions identified to ensure a methodology complies with the BMR are sufficient. We would however like clarity on one specific point regarding selecting input data.

Article 11 (1a) of the BMR states that “input data shall be transaction data, if available and appropriate”. Article 1 (3) of the draft RTS appears to drop the word ‘appropriate’ by stating an administrator shall use a methodology that “uses transaction data where available”. Whilst all benchmarks that are administered by EVIA/WMBA are determined solely from transaction data, in certain circumstances and market conditions it may not always be appropriate to use transaction data even if available. EVIA/WMBA would therefore request that ESMA consider restating the words ‘where appropriate’ into the RTS to ensure there is no confusion between text when determining the input data for determination of the benchmark.

Question 5: Do you consider that additional requirements are needed to ensure that the methodology is traceable and verifiable? Please specify.

EVIA/WMBA, as benchmark administrators believe that it is a fundamental tenet of any methodology to be straightforwardly *traceable and verifiable*. Without this attribute the process would not be a methodology but purely a narrative. Therefore, the requirement needs to further stipulate that the BA should be able to reconstruct and replay the construction of the output at any time and in a timely manner. This capability should be regularly demonstrated to the supervisors, oversight committee and to the auditors such that a public attestation can be disclosed. We believe similar requirements should be made in respect of operational resilience and penetration tests.

Question 6: Do you think that the back-testing requirements are appropriate? Please specify.

EVIA/WMBA agree with the RTS requirements for back testing which form a very normal part of any benchmark administrator's day-to-day activities. The capability for back-testing and results obtained should form a part of the regular controls "dashboard" and should therefore be regularly demonstrated to the supervisors, oversight committee and to the auditors such that a public attestation can be disclosed.

4 Reporting of infringements (Article 14 BMR)

Question 7: Do you agree with the requirements set out above? Do you have any additional suggestions? Please specify.

Because Article 17(1) of the BMR excludes the application of Article 14 of the BMR on Reporting of infringements in respect to regulated data benchmark, EVIA/WMBA are not responding to this question in their capacity as administrators.

From the point of view of trading venues consuming a broad variety of benchmarks, especially those relating to interest rates, credit markets, currencies and commodities, we do agree with the approach of ESMA and emphasise how much the integrity of the markets that we operate depends upon the proven and validated integrity of the settlement and assessment prices used by trading venues.

Question 8: Do you agree with the systems suggested for the surveillance of market manipulation? In particular, do you think that an automated system should be required only when it appears to be adequate according to the nature, scale and complexity of the benchmark? Please specify.

Yes EVIA/WMBA does agree with the approach suggested for the surveillance of market manipulation, because ESMA in paragraph 77 has taken into account the heterogeneity faced by NCAs and the limited resources many BAs are able to bring to bear where they cover narrow market

segments, often as a service to participants rather than purely commercial endeavours. Therefore, the level of monitoring needs to be appropriate for and proportionate to the nature, scale, and complexity of the benchmark, and indeed we concur that administrators should not necessarily be required to have an automated system to detect potential manipulation. It remains equally important that administrators should also be able to explain upon request why the level of automation chosen is appropriate in respect to their benchmark production, and supervisors should activity exercise these requests on behalf of benchmark consumers. We would also urge level II measures to encourage oversight committees or functions to do the same. Transparency of thought and action is key.

The indices and benchmarks published by WMBA Limited and LEBA Limited are volume weighted averages of regulated on venue traded data. Therefore, the market surveillance and monitoring are a part of the ongoing day to day systems and controls of the contributing trading venues as required by both the licencing systems and controls standards, but also by MAD II/MAR, MiFID II/MiFIR and Money Laundering Standards³. Further automated checks and systems are deployed on the part of the Benchmark Administrator, but this illustrates that the level 2 approach needs to be very proportional across the methodologies deployed.

5 Mandatory administration of a critical benchmark (Article 21 BMR)

Question 9: Do you think that other criteria should be considered in relation to the transition of the provision of the critical benchmark to a new administrator? Please specify.

As EVIA/WMBA does not administer any critical benchmarks, there may be other administrators whose responses should be considered first. However, EVIA members are wholesale consumers of all the critical benchmarks as they operate the global interest rate and derivatives markets. Indeed, as WMBA Limited previously administered critical benchmarks under UK MAR, we would urge ESMA to consider the financial implications on the administrator where it has been mandated by the NCA to continue to produce the critical benchmark. Especially where this mandatory administration can last for up to 5 years. We would pose the use case of Bloomberg/ISDA "Fallbacks" as a case where a new administrator may be taking over the transition of the provision of the critical benchmark, and note that both ESMA and the FCA have been silent on the status as well as the potential costings of this reference data so far.

Given the primary reason for a benchmark to be determined as critical is based on the volume of its use, it would ordinarily be considered that revenues generated for the commercialisation of that benchmark would cover the costs of its administration. There is however a great deal of focus on the cost of market data and benchmark administrators are under scrutiny to not over charge users for access to their data. EVIA/WMBA fully support the application of FRAND on commercialisation of data and agree that users need protection where an administrator is charging fees well in excess of the costs of administering that benchmark. However, the decision to cease provision of a benchmark may be financially driven where an administrator may establish that it is no longer financially viable to continue to produce a benchmark. This may be more evident where a benchmark has been deemed to be critical based on the lack of market alternatives rather than on volume of

³ <https://jmlsg.org.uk/>

use.

Whilst EVIA/WMBA agree that mandatory administration is necessary to prevent market disruption where a benchmark might otherwise become unavailable, the financial implications on the administrator should be a consideration of the NCA when deciding how long it shall mandate continued administration of a benchmark.

Question 10: Do you think that other criteria should be considered in relation to the cessation of the provision of a critical benchmark? Please specify.

EVIA/WMBA are not responding to this question because our benchmarks are regulated data only and our trading venue and Intermediary members are not submitters to any critical benchmark.

6 Non-significant benchmarks (Article 26 BMR)

Question 11: Do you agree with the criteria under which competent authorities may require changes to the compliance statement? Please specify.

Yes, EVIA/WMBA does broadly concur with the criteria laid out in the draft RTS under which competent authorities may require changes to the compliance statement. The approach accords with a “comply or explain” logic that we believe is well able to provide for sufficient autonomy at the level of individual NCA supervisor to reflect the diversity of indices brought under the scope of the BMR. It is important therefore that NCAs have sufficient powers to exercise this proportionality where they consider governance failings are a risk, and we would consider that they do indeed.

Clearly the ESMA Final Report on the Guidelines on non-significant benchmarks⁴ from December 2018 includes some 13 direct references to *Regulated Data Benchmarks* which indicates that these are also considered to be a subset of non-significant benchmarks, even though neither the level 1 text nor the Q&A clarify this [opting for the parallel annex approach].

Question 12: Do you agree with the criteria under which competent authorities may require changes to the control framework requirements? Please specify.

Conversely EVIA/WMBA would contend that there is too much leeway and proportionality in respect of the criteria under which competent authorities may require changes to the control framework requirements. Even for Regulated Data Benchmarks, commodity benchmarks and other non-significant benchmarks, we fail to see why any licenced benchmark administrator should not be carrying out a basic minimum set of validity checks, interrogation of the data sources and logical monitoring verses parallel and expected outcomes.

⁴ [esma70-145-1008_fr_bmr_gl.pdf](#) 20 December 2018 | ESMA70-145-1008

Furthermore, given that the BMR turns on the benchmark state and the benchmark methodology, we see no reason why, in the case of any benchmark, methodologies should not be objectively transparent and able to be provisioned with adequate notice and consultation before any changes would be made.

Ends.
