EVIA European Venues & Intermediaries Association

WMBA LIMITED

EVIA and WMBA Limited response to ESMA 'Review of the EU Benchmark Regulation'_2019

Dear ESMA,

Response to ESMA Review of the EU Benchmark Regulation_2019

WMBA Limited ("WMBA") is responding as an FCA authorised Benchmark Administrator ("BA"). WMBA was one of the very first BA's to enter the ESMA register have 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 wholly owned by the European (Trading) Venues and Intermediaries Association "EVIA" whose members arrange the vast majority of trades across wholesale non-equities financial markets around the globe. We welcome the opportunity to respond to this review and specifically would be keen to further engage on topics related to the questions identified below.

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). Please explain.

Having transferred responsibility for SONIA across to the Bank of England in 2018, WMBA Limited does not currently administer any critical benchmarks. In our opinion, unless the competent authority has the necessary skills to provide input and analysis about suggested changes to the methodology, then this should be left to the BA. Giving the competent authority broader powers to require methodology changes may suggest the competent authority is more competent in benchmark design than the administrator. To date this has not been the case either in the EU or beyond. Indeed, under the postulated scenario, the competent authority could even be deemed to be part responsible for the administering arrangements for which they may not hold the appropriate mandate.

Paragraph 2 under 'IBOR reform' of this consultation suggests that in a situation where one or several contributors' plans to withdraw from an IBOR panel, "*the IBOR rate will then lose the 'capability' to measure its underlying market*". We would question the use of the word 'will' and that 'may' would be more appropriate. Following the withdrawal of one or several contributors, it would expect that the administrator would assess if the methodology was still representative of the market or economic reality it intends to measure and consult on changes should a material change be required.

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.

WMBA are not responding to this question.

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.

WMBA are not responding to this question.

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

WMBA does not agree. The BMR sets out that a BA must put in place a cessation plan and what it should include to mitigate market disruption. WMBA believe that the NCA already has enough powers to sanction any such changes. Enforcing this approval of the benchmark cessation plan would require the competent authority to have the time and skilled resources to assess and approve or recommend/enforce changes.

If there were to be a requirement on a competent authority to approve cessation plans, it could be argued that other documentation should also be approved; which could quickly become very onerous for the NCA.

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?

Article 28 (2) already requires supervised entities to have written plans for when a benchmark materially changes or ceases to be provided. Given the deep knowledge required of a BA about the benchmarks it administers, it should be down to the BA to determine whether a benchmark ceases to be representative of the underlying market and when a methodology change may be required (following consultation if appropriate).

Should the supervised entity decide that they no longer deem a benchmark to be representative, or more appropriately not fit for purpose, they can consider transition to an alternative benchmark or to continue to use that benchmark. For an administrator to specify alternative benchmarks within its cessation plan appears to be the wrong approach, especially where that alternative benchmark is administered by another administrator who is likely to be a competitor.

Any competent authority empowered to determine a critical benchmark to be non-representative of its underlying market, should in the first instance allow this determination to trigger the transition to an alternative rate following processes in the supervised entities written contingency plans.

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?

WMBA are not responding to this question.

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)

WMBA believes the scope of a competent authority to suspend or withdrawal to be very unclear.

Article 35 states "*A competent authority may withdraw or suspend the authorisation or registration of an administrator….*". It does not suggest that this withdrawal or suspension can be done for only one or some of the benchmarks administered by that administrator. This should be changed within the regulation to empower a competent authority to withdraw or suspend at the benchmark level. Otherwise this might have unintended consequences whereby an administrator's overall authorisation is withdrawn based on non-compliance of one non-significant benchmark, thus deeming all its benchmarks non-compliant and non-usable.

WMBAL would also question in what circumstances a competent authority would deem it necessary to withdraw or suspend the authorisation or registration of an administrator on the sole basis that is has not "*provided benchmarks for the preceding 12 months*". If that administrator has been deemed capable and where that administrator would meet all the requirements of the regulation should it administer a benchmark, what is the objective in deauthorising? Whilst the text reads "*a competent authority may withdraw or suspend*", if the authority were to withdraw or suspend, it may be time consuming or costly for that administrator to re-apply or it may give that administrator a competitive disadvantage when offering administration services to third party clients.

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.

Sufficient. These powers are needed to ensure legacy contracts can continue to reference indices that are not or shall never be BMR compliant. Article 35(3) does not specify a time limit by which a competent authority must withdraw the authorisation or registration of an administrator and therefore it would seem, that a suspension could last indefinitely, or at least until reliance on that benchmark no longer exists.

Where a decision is made by the administrator to cease a benchmark, or where an administrator becomes aware that their index is used as a benchmark, it may not be commercially viable for the administrator to become BMR compliant for that index. An administrator should never be compelled to continue in these circumstances and therefore it is important for there to be provisions in place to allow for an orderly transition to another benchmark or for the contract term to come to a natural

end.

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.

Appropriate. Whilst WMBAL does agree with the proportionality principle for this approach, we would caution that this may allow for an administrator to continue as non-compliant, and thus users using lower quality benchmarks, for some time depending on the contracts referencing the benchmarks.

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.

Well calibrated.

WMBA Limited fully supports the objectives of both the Benchmark Regulation and IOSCO Principles in creating a common framework for the regulation of indices used as benchmarks in financial markets, and shall where it is possible and proportionate to do so, apply the framework to all indices that it administers whether or not they are within scope of the regulation.

Non-significant benchmarks (NSB's) should not pose as much riskto both users, nor to the infrastructures as systemically important significant orcritical benchmarks. Whilst the regulation does provide exemptions from some articles wholly or in part where benchmarks are non-significant, WMBA would suggest that they should stay within scope of the regulation but request that the competent authorities continue to apply proportionality in their supervisory approach to NSB's. To this point, we further underline that benchmark classification can change from time to time with status moving from non-significant to significant based on defined criteria. It would seem to add uncertainty to the process should NSB's be carved out entirely from the scope of the regulation and where a benchmark may evolve or even fluctuate between non-significant and significant.

The preferred option would be to move back to a principle orientated framework although WMBA do not believe in the exemption of NSB's from the regulation entirely as previously set out and is necessary to support the objectives of the regulation. So long as proportionality continues to be applied for NSB's, the BMR provides a regulatory framework in which both conduct and data are produced effectively. Clearly commodity benchmarks are a prime example of the benefits of proportionality.

We observe that the adoption of the regulation has seen some data providers stop making data available in order to prevent that data being used as or in the creation of benchmarks. This was an unintended consequence of the regulation and has stemmed transparency to some extent. By keeping the scope of the regulation broad and not appropriately applying proportionality when

supervising NSB's, there is the danger that this could be perceived as setting too high barriers and disincentivising data providers from publishing market data and thus resulting in less choice and potentially higher costs for the end user where providers have less incentive to price competitively.

In line with our response to question 24 and to better calibrate the regulatory framework for NSB's, compliance of a benchmark should be achievable by an index provider either through endorsement by a third-party authorised benchmark administrator or effectively being able to outsource the governance and oversight of the benchmark. This should be available to both EU and Non-EU index providers and would satisfy the objectives of the regulation of providing integrity to the provision of benchmarks.

In order to promote greater usage of trading venue derived transparency data, WMBA would also argue for a broadening of the definition of 'regulated-data benchmark' to expand the scope to include data coming from an already regulated source. We would advocate the greater reliance on disclosures by the trading venues to the BA as a more adaptive approach for NSB's. These may include Both indicative and tradeable Bid/Offers, auction systems, and non-MiFID venues which are governed under CRR.

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.

Not appropriate at all. Whilst we understand that thresholds can assist to measure the importance of a benchmark based on the risk to market disruption should that benchmark no longer be available; given the difficulty in determining total value of investment linked to a benchmark, we would deem this measure to not be appropriate.

WMBA would favour the adoption of a disclosure and designation model. The national competent authority (perhaps in collaboration with ESMA in certain cases where colleges are deployed) could designate those benchmarks which are deemed to be significant or critical to the functioning of those markets and would materially impact those markets should the benchmark no longer be available. Quantitative thresholds, validated by the European Commission, could be used as a supervisory tool or guide in this designation process.

This approach would simplify the scope of the regulation for all parties inclusive of users, administrators and competent authorities. It would remove the issues around benchmark classification based on threshold and provide clarity to the markets as a whole as to what the benchmark is and to what level it is supervised.

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.

Not appropriate at all, as per question 11 above. Whilst WMBAL understand why this methodology was adopted in order to assess a benchmarks importance based on use, quantitative thresholds are subjective in their measurement and extremely difficult to use when classifying benchmarks. WMBA would welcome the designation approach with the complete abolition of the quantitative thresholds for determining category of benchmarks. The quantitative measurements could remain as indicative guides for the NCA's when designating which benchmarks are significant/critical.

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.

Completely appropriate. WMBA would advocate a different approach, at least to the application of thresholds to Regulated Data Benchmarks ["RDBs"] which should be removed from any escalation and possibly be re-categorised from not being benchmarks at all. Rather trading venue transparency could be disclosed as exactly that in order to align market incentives.

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.

Not satisfied. The regulation should impose mandatory obligations on administrators to provide a list of benchmarks that they administer (either their own, or through endorsement). Noting that the consultation states that "*maintaining an up-to-date list of benchmarks approved for use in the Union could be challenging for large administrators whose portfolio of benchmarks is subject to frequent change";* then surely a user will find even more difficulty in determining if an index is regulated and thus available to use.

Whilst this may be challenging, the onus should be on the administrator to maintain an up to date list of benchmarks. Presumably administrators are commercialising these benchmarks and therefore the incentive is there to ensure this list is up to date.

WMBA also note that there are third parties trying to provide market services for identifying benchmarks administered by those administrators listed on the ESMA register. This could lead to unnecessary disruption (or cost) where the services offered by these third parties become misaligned in what must be a manual process. To avoid this, WMBA feel that in addition to the list of administrators, ESMA should maintain a central register of benchmarks that users can rely on when determining which benchmark to use. As an authorised BA, WMBA would support this initiative in providing details and keeping up to date a list of its benchmarks in a format requested.

WMBA also request, as it has done, that ESMA imposes a requirement on administrators to assign an identifier, ISIN or alternative, to each of its benchmarks. Whilst WMBA remain impartial to which identifier could be adopted as the standard, by way of an example, the Financial Instrument Global Identifier (FIGI) is provided to the market by Bloomberg free of charge and so long as that remains the case, could be a viable option. Applying an identifier at inception would allow for a benchmark to be traceable throughout its lifecycle and could also assist in quantitative thresholds for classifying benchmarks should these remain.

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. In addition to administrators. As above.

Question 16: In your experience, how useful do you find the benchmark statement? Very useful –not useful at all (5 categories)

Very useful. Benchmark Statements should continue to be a requirement for the administrator to create and maintain. However, the format of the statements should be standardised and provided by ESMA for administrators to complete for each benchmark or family of benchmarks. There could be a great deal of cross-over between the Benchmark Statement and the Benchmark Methodology.

The Benchmark Statement should provide top-level key information listed in Article 1 (General Disclosure) in a standardised format. Such as:-

- Benchmark Name
- Benchmark Family
- Type of Benchmark
- ISIN / ID
- Date of Publication
- Date of Last Update

If it were possible to make the benchmark statements machine readable, this could go some way towards solving the issues identified by Q14 and Q15 should an administrator be able to load these to a central register.

Whilst WMBA fully support the approach that an administrator need to provide full disclosure and supplementary information over such things as controls and rules that govern any exercise of expert judgement, these could be provided external of the Benchmark Statements which should be high level and standardised.

Question 17: How could the format and the content of the benchmark statement be further improved?

The Benchmark Statement should provide top-level key information listed in Article 1 (General Disclosure) in a standardised format. Such as:-

- Benchmark Name
- Benchmark Family
- Type of Benchmark
- ISIN / ID
- Date of Publication
- Date of Last Update

Question 18: Do you consider that the option to publish the benchmark statement at benchmark level and at family level should be maintained? Should definitely be maintained –should definitely be removed (5 categories). Please explain.

Should be maintained, so long as Benchmark Families are appropriately used, i.e. methodologies the same across the family.

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.

Agree completely. Climate Benchmarks should comply with the BMR in the same way as other benchmarks.

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.

WMBA are not responding to this question.

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.

WMBA are not responding to this question.

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.

WMBA are not responding to this question.

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?

WMBA are not responding to this question.

Question 24: What improvements in the above procedures do you recommend?

WMBA welcome the update to the Q&A on the BMR published on 11th December 2019 which has gone some way in providing more clarity over the tasks and responsibilities expected of a Legal Representative during recognition of a third-country benchmark. We would welcome any further clarity that can be provided which would assist both the regulator and the entities involved in ensuring that the demands of the regulation are met effectively.

WMBA strongly believe that endorsement or joint administration should be available to EU index providers who either may not be able to meet the demands of being a regulated BA or may not wish to do so in order to concentrate on other lines of business such as index creation. When this type of arrangement existed under the UK MAR regime, where roles such as Calculation Agent where separately defined, we observed the unintended and adverse consequence of the approach whereby any firm producing any index that was intended to be used as a benchmark was automatically required to become regulated for this activity. This blurred the perimeter and dissuaded participation due to the costs and risks involved. WMBA therefore believe that the governance and oversight framework could be applied by a third-party administrator in order to achieve the objectives of the regulation without the requirement for the index provider to become regulated themselves. Whilst under the BMR it is possible for a BA to outsource functions such as the calculation of the benchmark to third parties, it is not so clear that an index provider can outsource the oversight and governance functions of administration to a third party.

Oddly, this framework would solely appear to be available to non-EU entities through endorsement, whereby an EU authorised entity can endorse a third-country benchmark for use in the Union. Where there would be less or perhaps no regulatory requirement for the benchmark to be compliant within its own jurisdiction, the non-EU entity may have a competitive advantage by effectively outsourcing the administration to an EU authorised entity.

We would encourage a significant change to the language in the BMR to allow endorsement to be available to EU entities.