WMBA Limited and LEBA Limited response to FCA CP 17/17:
Handbook changes to reflect the application of the EU Benchmarks Regulation

22nd August 2017

Markets Policy Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

For the attention of Mr. Richard Grafen

Dear Sirs,

Response to FCA Consultation paper CP17/17 - Handbook changes to reflect the application of the EU Benchmarks Regulation

As per the FCA's request, responses to questions 3 and 4 in respect of the draft application forms were submitted prior to the deadline of 6th August 2017.

In this letter, WMBA Limited and LEBA Limited (together known as "We" unless otherwise stated) submit our response to the remaining questions within CP17/17.

Q1 Do you agree with our proposals to adapt the Handbook to be consistent with the BMR?
We generally support the approach to changing the Handbook to be consistent with the BMR but have provided specific responses within this consultation on where we would welcome a reconsideration of the proposed changes.

We provide the following comments:

1) Certification Regime
We agree with the approach to not apply the Certification Regime to benchmarks as the BMR already covers an administrator ensuring employees are fit and proper to undertake their roles.

2) Transitional Provisions TP 1(4)
WMBA Limited does not agree with the transitional provisions as stated within 4.25 of the consultation paper as follows: *"existing regulated activities in relation to benchmark administration will continue to apply to the administrators of the eight benchmarks which are currently regulated until those administrators are authorised or registered under the BMR".*

In line with Part 4 of the response to question 3 of this consultation, WMBA Limited does not agree with this approach. This should only apply to existing benchmark administrators where the benchmarks they administer, as currently identified by The Financial Services and Markets Act 2000[1], will be subject to the EU Benchmark Regulation on 1st January 2018. Where an index would not be classified as a benchmark under the BMR, the

[1] The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015- www.legislation.gov.uk/ukdsi/2015/9780111127629

regulated activities in relation to benchmark administration should no longer apply to those administrators as of 1st January 2018.

Under the proposed Handbook changes, an administrator in this situation would not be 'administering a regulated benchmark' and therefore would not be subject to the BMR and should not be subject to existing regulation under a transitional regime.

3) Composition of the oversight function

We note that Article 1(2) of the Draft technical standards under the Benchmark Regulation[2] state *"where a benchmark is a critical benchmark, the oversight function shall be carried out by a committee with at least two independent members. Independent members shall be natural persons sitting on the oversight function who are not directly affiliated with the administrator other than through their involvement in the oversight function".*

Whilst we agree that an oversight committee should have at least two independent members, we wish to ensure that the regulator is agreeable that a non-executive director of the administrator's Board of Directors, is by the very nature of being a non-executive, an independent. Therefore, non-executive directors of the administrator's Board shall be eligible to be an independent member of the oversight function despite their affiliation with the administrator. This view is supported by the changes to the Handbook which restrict a CF2 (non-executive director function) from being allocated responsibility for the firm's benchmark activities.

We note that of all the current oversight committees of regulated benchmarks, their oversight functions include a non-executive director of the administrator's Board to fulfil an independent position.

We remain consistent with previous correspondence that, in line with the BMR, there should be no restriction on individuals sitting on multiple oversight committees. Where there is distinctly no competition between oversight committees, it would go against the aims of the regulation to prevent knowledge transferral across committees and we feel that the Handbook should not restrict this.

4) Readily available data

We still request further guidance on a definition for 'readily available' as identified in Article 3(8) of the BMR. This should be broad to ensure that where data is used for the determination of a benchmark, should it not be provided solely for this purpose, it does not constitute input data and thus the person providing that data is not classified as a contributor as defined by the BMR.

Q2 Do you agree with our approach to implementing the additional mortgage disclosure required by the Regulation and to correcting our transposition of the MCD?

N/A

Q5 Do you have any comments on our proposals on fees?

We agree with the approach the FCA has taken with regards to distributing cost recovery between fee-payers as fairly and efficiently as possible.

We do however have the following comments:

[2] Final Report- Draft technical standards under the benchmark regulation- www.esma.europa.eu/sites/default/files/library/esma70-145-48_-_final_report_ts_bmr.pdf

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1) Existing Benchmark Administrators

We fully support the approach taken by the FCA with regards to existing benchmark administrators not being charged again for authorisation under BMR.

2) Minimum fee and minimum fee threshold

The minimum fee to benchmark administrators of £1,095 is a reasonable minimum amount for administration and the threshold of £100,000 seems proportionate with this approach. We would, however, consider administration costs to be a more appropriate measure of supervisory fees than an income based model.

3) Variable fee

Whilst the FCA is funded entirely by the firms it regulates, by charging a variable rate fee this may be seen as a 'supervisory tax'. Under this variable model, the commercial success of a firm's business model could mean that the firm is penalised by paying more than other administrators despite their level of supervision being equivalent. We do not agree with this approach and would urge the FCA to both consider changing the basis by which the threshold is measured (income to cost), and to place an upper limit on the total supervisory fee that an administrator could pay.

We do not have a view on the proposed range of variable fee from £10-£20 per £1,000.

4) Timing

"The existing benchmark administrators will pay their full 2017/18 fees as usual. Regardless of when they obtain authorisation under the BMR, they will be charged on the basis of the new structure from 1 April 2018."

WMBA Limited as the existing benchmark administrator of RONIA, does not agree with this approach. This should only apply to existing benchmark administrators where the benchmarks they administer, as identified by The Financial Services and Markets Act 2000, will be subject to the EU Benchmark Regulation on 1st January 2018.

Q6 Do you agree with the cost benefit analysis for our policy proposals set out in Annex 2?

We agree with the cost benefit analysis for the following areas, application of the SMR and APR regime and notification of suspicion of market manipulation as both will pose minimum additional resources and costs to benchmark administrators.