

## Regulatory News Alert

### New ESMA Q&A on Benchmarks Regulation (EU) 2016/1011

12 July 2017

#### Overview

The Benchmarks Regulation (“BMR”) introduces a regime for benchmark index providers that will ensure the accuracy and integrity of benchmarks across the EU.

A benchmark is any index by reference to which the amount payable under a financial instrument or financial contract, or the value of a financial instrument, is determined. It might also be an index used to measure the performance of an investment fund. In general, these benchmarks are therefore widely used by EU supervised entities such as banks, credit institutions, investment firms, UCITS, management companies, AIFMs, etc.

The Regulation must be seen as a key response to the LIBOR scandal (collusion of banks among the LIBOR panel, intending to profit from derivative trades indexed on LIBOR interest rates) and the alleged manipulation of other benchmark indices. It has the following objectives:

- Improving governance and controls over the benchmark process, in particular to avoid any conflict of interest from the benchmark providers;
- Improving the quality of input data and methodologies used by index providers; and
- Protecting consumers, investors and the market sanity through greater transparency.

The Regulation defines three categories of benchmarks: (i) critical benchmarks, (ii) significant benchmarks and (iii) non-significant benchmarks. For each of them, the index provider is subject to different types of requirements and supervision by regulatory bodies. In particular, the Regulation requires index providers to be “authorized” or “registered”, the latter process meant to be faster and less stringent.

#### Agenda and transitional provisions

The Regulation entered into force on 30 June 2016 and will generally apply from 1 January 2018. As a matter of exception, provisions relating to critical benchmarks administration (only EURIBOR as of today) are applied immediately.

EU index providers that provide benchmarks on 30 June 2016 will need to apply for authorization or registration before 1 January 2020.

Transitional provisions, defined in Article 51 of the Regulation, allow index providers to continue the use of their benchmarks until 1 January 2020 or until their authorization/registration is refused.

## ESMA questions and answers

ESMA Q&A addresses the specifics of the transitional provisions of the BRM.

The first question deals with EU benchmark providers that were already active (i.e. providing at least one benchmark index) before 30 June 2016. According to ESMA, benchmark indices introduced by such providers can be used by EU supervised entities before 1 January 2020, as long as the provider's authorization/registration has not been refused. This applies without distinction for:

- Benchmark indices already provided before 1 January 2018;
- Updates and modifications of benchmarks indices already provided before 1 January 2018; and
- New benchmark indices provided for the first time after 1 January 2018.

The second question deals with EU benchmark providers that start their activities between 30 June 2016 and 31 December 2017. According to ESMA, benchmark indices introduced by such providers **before 1 January 2018**, can be used by EU supervised entities before 1 January 2020, as long as the provider's authorization/registration has not been refused. In other words:

- Benchmark indices provided for the first time between 30 June 2016 and 31 December 2017 can be used by EU supervised entities; and
- Benchmark indices provided for the first time between 1 January 2018 and 31 December 2019 **cannot** be used by EU supervised entities, unless the provider has been authorized/registered when starting providing the index.

## Useful links

[Regulation \(EU\) 2016/1011](#) of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds

[Questions and Answers on the Benchmarks Regulation, ESMA70-145-11, Version 1, 5 July 2017](#)

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