

13 July 2022

## ESMA Consults on Rules for Recognition Under the Benchmarks Regulation

This circular is being addressed to market participants, particularly those falling within the scope of Regulation (EU) 2016/1011 of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (hereinafter referred to as 'the Benchmarks Regulation' or 'BMR'), *inter alia* administrators of benchmarks<sup>1</sup>, contributors of benchmarks<sup>2</sup> and users of benchmarks<sup>3</sup>. This circular may also be of interest to third country administrators of benchmarks.

### 1.0 Introduction

The Authority would like to inform market participants that on 08 July 2022, the European Securities and Markets Authority ('ESMA'), launched a [consultation](#) on amendments to the Regulatory Technical Standards ('RTS') under the Benchmarks Regulation. The proposed amendments cover the form and content of an application for recognition.

### 2.0 Background Information

In terms of Article 32(5) of the BMR, an administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with ESMA. The applicant administrator shall provide all information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective

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<sup>1</sup> In terms of Article 3(1)(5) of BMR, provision of a benchmark means; (a) administering the arrangements for determining a benchmark; (b) collecting, analysing or processing input data for the purpose of determining a benchmark; and (c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

<sup>2</sup> Pursuant to Article 3(1)(8) of BMR, contribution of input data refers to providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark and is provided for that purpose

<sup>3</sup> Article 3(1)(7) of BMR defines use of a benchmark as; (a) issuance of a financial instrument which references an index or a combination of indices; (b) determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices; (c) being a party to a financial contract which references an index or a combination of indices; (d) providing a borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party; and (e) measuring the performance of an investment fund through an index or a combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees.

benchmarks which are intended for use in the Union and shall, where applicable, indicate the competent authority in the third country responsible for its supervision.

Pursuant to Article 32(9) of the BMR, ESMA is afforded the discretion to develop regulatory technical standards to determine the form and content of the application for recognition and the presentation of the information necessary to satisfy the competent authority that the conditions for recognition are met. Accordingly, in 2018 ESMA published Delegated Regulation (EU) 2018/1645 which delineates that an application for recognition of a third country administrator needs to include information on (i) the applicant and its legal representative in the Union; and (ii) the benchmarks provided by the applicant.

### **3.0 Proposed Amendments to the RTS**

ESMA's objective for this review is to align the information provided in a recognition application with the changes introduced to the BMR in the European Supervisory Authorities Review, more specifically the amendments introduced by way of Regulation (EU) 2019/2175. It also aims at ensuring that the application includes all relevant information to enable ESMA to assess whether the applicant has established all the necessary arrangements to fulfil the Regulation's requirements.

The proposed amendments mainly emanate from the:

- I. transfer of supervisory responsibilities over third country recognised administrators to ESMA as of January 2022; and
- II. need to request additional information or provide further specifications on some information already requested under the current RTS.

### **4.0 Next Steps**

ESMA will consider the responses to this consultation when amending the draft RTS for submission to the European Commission for adoption in the final legal text. The closing date for responses from stakeholders is 9 September 2022.

### **5.0 Submitting Your Response**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1 of the Consultation Paper. ESMA further explains that comments are most helpful if they respond the question stated, indicate the specific question to which the comment relates, contain a clear rationale and describe any alternatives ESMA should consider.

Please note that responses should be submitted online at the ESMA website ([www.esma.europa.eu](http://www.esma.europa.eu)) under the heading 'Your input – Consultations' (accessible through the following [link](#)), using the following specific [response form](#).

## 6.0 Contacts

Should you have any queries in relation the above, please do not hesitate to contact the Authority on [Benchmarks@mfsa.mt](mailto:Benchmarks@mfsa.mt) for any further clarifications.