

**MSCI RESPONSE TO THE PROPOSAL FOR A
REGULATION AMENDING REGULATION (EU)
2016/1011 ON LOW CARBON BENCHMARKS
AND POSITIVE CARBON IMPACT BENCHMARKS**

MSCI

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MSCI appreciates opportunity to comment on this consultation and we are available for any questions that the EU Commission may have.

ABOUT MSCI

MSCI is a leading provider of investment decision support tools to institutional investors globally, including asset managers, banks, hedge funds and pension funds. MSCI products and services include indexes and portfolio risk and performance analytics. MSCI is headquartered in New York, with research and commercial offices around the world. MSCI has over 7000 clients worldwide across MSCI's different business units.

MSCI's flagship equity indexes include the MSCI Global Equity Indexes. The MSCI Global Equity Indexes have been calculated for more than 40 years, and today MSCI calculates over 533,000 equity indexes per day (down to the variant and currency level). MSCI equity index suites include country and regional indexes, size indexes (large cap, small cap, and micro-cap), sector indexes, style (value/growth) indexes, strategy indexes, thematic indexes and ESG indexes. MSCI also calculates custom indexes at the request of clients, by applying client screens and constraints to MSCI Global Equity Indexes.

MSCI equity indexes are used worldwide by:

- assets owners to help them with their mandate decisions and with reviewing their managers' performance;
- active asset managers so that they can actively manage their funds against an index and report performance;
- passive fund managers to issue passive funds and ETFs based on the indexes;
- broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally;
- stock exchanges to create equity index linked futures and options contracts; and
- CCPs to calculate the risks of its positions for index linked futures and options contracts.

MSCI Limited is a UK regulated benchmark administrator for all MSCI equity indexes and is listed on the ESMA register.

In each of 2014, 2015 and 2016, MSCI announced that it successfully completed an assurance review of its implementation of the IOSCO Principles for Financial Benchmarks. MSCI engaged PricewaterhouseCoopers LLP (PwC) to perform the reviews. The full report, including the PwC assurance review, for MSCI equity indexes (as well as select IPD real estate indexes and benchmarks) are available at www.msci.com/products/indexes/regulation.html. During 2017, MSCI devoted those resources to the implementation of the EU Benchmark Regulation. MSCI

amended its IOSCO compliance statement in 2017, which is posted on the website referenced above.

MSCI COMMENTS

MSCI supports the Commission's goals and work with sustainable finance. (For years, MSCI ESG Research has been publishing research in this area and MSCI has been designing, calculating and maintaining ESG indexes.)

That said, there are a few key areas of concern with the sustainable finance proposal that we wish to highlight and we have outlined them in the chart below.

In addition, given that the EU Benchmark Regulation Level 1 text is being amended, we recommend taking the opportunity to address the outstanding issues with the definition of regulated-data benchmarks to allow equity indexes to be included as originally intended. We recommend the following changes:

Article 3(1)(24)

(24) 'regulated-data benchmark' means a benchmark determined by the application of a formula from:

(a) input data contributed entirely and directly from:

~~(i) a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council (2), or a regulated market considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to transaction data concerning financial instruments;~~

(ii) an approved publication arrangement as defined in point (52) of Article 4(1) of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of Article 4(1) of Directive 2014/65/EU, in accordance with mandatory post-trade transparency requirements, but only with reference to transaction data concerning financial instruments that are traded on a trading venue;

(iii) an approved reporting mechanism as defined in point (54) of Article 4(1) of Directive 2014/65/EU, but only with reference to transaction data concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements; (iv) an electricity exchange as referred to in point (j) of Article 37(1) of Directive 2009/72/EC of the European Parliament and of the Council (3); ~~(iiiiv)~~ a natural gas exchange as referred to in point (j) of Article 41(1) of Directive 2009/73/EC of the European Parliament and of the Council (4);

~~(ivi)~~ an auction platform referred to in Article 26 or 30 of Commission Regulation (EU) No 1031/2010 (5);

~~(vii)~~ a service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, provided that the service provider receives the data entirely and directly from an entity referred to in points (i) to ~~(iv)~~;

(b) net asset values of investment funds;

(c) stock prices directly from regulated stock exchanges or indirectly from regulated stock exchanges through market datafeeds provided by data aggregators;

Article 17

- Article 11(1)(d) and (e), Article 11(2) and (3), Article 14(1) and (2), and Articles 15 and 16 shall not apply to the provision of and the contribution to regulated-data benchmarks. Article 8(1)(a) shall not apply to the provision of regulated-data benchmarks ~~with reference to input data that are contributed entirely and directly as specified in point (24) of Article 3(1).~~

We also wish to express our concerns about the ESAs review and the disproportional impact of dual supervision on third country benchmark administrators that will already be regulated in their home country. We would recommend that where the benchmark administrator is already regulated in their home country there is no dual supervision by ESMA.

MSCI’s Recommendations of the Sustainable Finance Proposal:

Proposal Comments		
Articles	Key Issue	MSCI response
Article 1.1 modifying BMR Articles 3(1)(23a) and (23b)	Definitions of low-carbon benchmark and positive carbon impact benchmark	<ul style="list-style-type: none"> To be consistent with the EU Benchmark Regulation text, we believe that the phrase “benchmark portfolio” should be replaced with “benchmark”. The reference to “capital-weighted” should refer to “market cap weighted”. (Please note that other uses of indexes include asset owners using indexes as policy benchmarks for the basis of their strategic asset allocation. This use allows for a more balanced allocation to the economic weight of the different regions of the world as well as global sectors by using the natural free-float-adjusted market capitalization weights of indexes.)
Annex	General	<ul style="list-style-type: none"> We are concerned that the criteria is too restrictive and prescriptive, and will stifle the natural and desired evolution of ESG indexes as ESG criteria itself advances. ESG is still in its early days and is constantly evolving through greater transparency from companies, more research from academic and practitioners, and more pressure from stakeholders globally. Being too restrictive or prescriptive now would not allow for potential enhancements of methodologies in the future, and could lock current thinking into the future when that thinking will be improved over time.

		<ul style="list-style-type: none"> • For Positive Carbon Benchmarks, we believe that defining eligibility based on the carbon impact ratio at the asset level instead of the portfolio level could be problematic for the several reasons: <ol style="list-style-type: none"> 1. There are only a handful of companies which have a positive carbon impact ratio. Those would typically be renewables. Therefore, using this criteria at the asset level will lead to very few companies being included in the indexes and the index universe being undiversified. Having so few companies (which are already renewables) in the index universe may not have the desired effect of shifting the capital required to achieve a 2 degree target. 2. Today, only a handful of companies report on avoided emissions. That would result in an index using mostly modelled data, which raises potential quality concerns. 3. There is no consensus on the market on how to calculate avoided emissions and only a handful of players have commercialized a methodology around avoided emissions. Defining a category of indexes based on a concept that is in early stages and developed by a handful of players may result in unfair treatment in the market. 4. There are other metrics beyond carbon emissions that enable assessment of a company’s exposure to climate issues including cleantech revenue shares, capex plans, future targets and governance around climate issues. • Generally, we would recommend that: <ul style="list-style-type: none"> • The second category of benchmarks aims for a broad, diversified and investable index aimed at having positive impact on climate change tailored for investors with true climate beliefs. In order to do so, the methodology should focus on determining a broad and diversified set of securities that would allow the capture of climate related opportunities and promote long term management while reducing climate related risk. • By contrast, the first category could aim at solely reducing risks associated with climate change and that would meet the requirements of investors less versed around climate.
Annex	1(a) List of underlying assets	<ul style="list-style-type: none"> • We believe that this requirement is unclear and should be clarified. If it refers to the constituent companies in the index, we believe that this would be inconsistent with, and contrary to, the Level 1 text of the EU Benchmark Regulation. While we support transparent methodologies posted on the administrator’s website, we do not support posting the constituents and weights on the website as

		<p>well, as that is the administrator’s intellectual property rights. Forcing indexes providers to make all of their intellectual property for free on their websites, allows free-riding by those who are not spending the time and effort on the research and proper benchmark administration, and does not allow index providers to recoup their investment and support the development, design, calculation and maintenance of new index products.</p> <ul style="list-style-type: none"> • Again, we are concerned that a prescriptive list of methodological requirements locks ESG in time. What is described in the methodology should reflect rules around index calculation, but any requirements at the methodological level need to be flexible enough to allow for and enable change over time.
Annex	1(a), 1(e), 1(f), 1(g), 2	The data described in these sections are data points in the index and the index files, not methodological index calculation rules.
	3, 4	These sections should not be necessary and should be deleted. Requirements around changes to the methodologies should be the same requirements as already set out in the EU Benchmark Regulation.

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Our line of products and services includes indexes, analytical models, data, real estate benchmarks and ESG research.

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