

22 January 2024

## MSCI Feedback on the European Commission Proposal to Amend the EU Benchmark Regulation (Regulation (EU) 2016/1011)

### Submitted via file upload

MSCI<sup>1</sup> welcomes the review of the European Union Benchmark Regulation ("BMR")<sup>2</sup> by the European Commission (the "Commission") and its broader efforts to enable the long-term competitiveness of the European Union ("EU"). We support the Commission's proposal to amend the BMR and to reduce the administrative and regulatory burden imposed both on benchmark users and benchmark administrators without undermining related investor protection policy objectives of BMR (the "Proposal").<sup>3</sup> Below we set out our primary observations on the review of the BMR and offer targeted recommendations to further enhance the Proposal.

### 1. The Proposal rightly focuses on 'critical' and 'significant' benchmarks

We support the Proposal to revise the scope of the BMR to regulate 'critical' and 'significant' benchmarks and exclude EU and non-EU 'non-significant' benchmarks.<sup>4</sup> The revised scope will focus on benchmarks which have the greatest economic significance to the EU. We agree that the threshold should continue to be set at €50 billion to distinguish between non-significant and significant benchmarks consistent with the existing BMR. By maintaining the €50 billion threshold for 'significant' benchmarks, the Proposal will capture benchmarks with the greatest economic significance while also providing the market, including benchmark

---

<sup>1</sup> MSCI is a leading provider of critical decision support tools and services for the global investment community. MSCI voluntarily adheres to the International Organization of Securities Commissions Principles for Financial Benchmarks ("IOSCO Principles"). MSCI Deutschland GmbH is an authorised benchmark administrator in the EU and is regulated by the Federal Financial Supervisory Authority (BaFin). MSCI Deutschland GmbH appears on the ESMA Benchmark Registry. MSCI Limited (Reference number: 792681) is an authorised benchmark administrator in the United Kingdom (UK) and is regulated by the Financial Conduct Authority (FCA). MSCI Limited appears on the FCA Financial Services Register.

<sup>2</sup> 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 and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.

<sup>3</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements, available at [https://finance.ec.europa.eu/system/files/2023-10/231017-proposal-benchmarks\\_en.pdf](https://finance.ec.europa.eu/system/files/2023-10/231017-proposal-benchmarks_en.pdf).

<sup>4</sup> See Articles 22-26 of the BMR.

users and administrators, with consistency and certainty in terms of regulatory scope of the future benchmark supervisory regime.

## **2. Designations by National Competent Authorities (“NCAs”) should apply a clear and consistent criteria**

The Proposal provides a mechanism for NCAs to designate a benchmark under the €50 billion threshold as “significant” but does not provide a clear and consistent criteria for doing so.<sup>5</sup> For NCA designations, a benchmark could be designated as “significant” on the basis of its potential ‘adverse impacts on market integrity’ of only one Member State.<sup>6</sup> This criteria is subject to widely divergent and inconsistent outcomes within the EU depending on the particular Member State.

We propose the criteria to be amended so that benchmarks below the €50 billion threshold may be designated where that benchmark is of systemic importance to the financial stability of the EU, as opposed to only one Member State. This criteria would reduce the risk that NCA designations would bring numerous benchmarks within the scope of the BMR despite being below the €50 billion threshold. Such an adjustment to NCA designation mechanism would be clear and consistent with the risk-based approach of the Proposal and its broader policy objective to reduce regulatory burden.

## **3. The BMR should provide a third-country regime that works in practice**

We support that the Proposal retains both endorsement and recognition as available options for non-EU benchmark administrators to access and provide services to EU clients. It is critical that the Proposal retains endorsement through NCAs as part of the third country framework.<sup>7</sup> Endorsement provides users of benchmarks in the EU access to the full range of benchmarks administered outside of the EU that meet EU standards and provides the necessary flexibility for benchmark administrators to make these benchmarks available in the EU. The relevant NCA has supervisory oversight of the endorsement process allowing for full visibility into the quality of third-country benchmarks used in the EU.

In addition, we also support continuation of the recognition mechanism through ESMA as a permanent route into the EU.<sup>8</sup> Similar to endorsement, the recognition regime provides users of benchmarks in the EU access to the full range of benchmarks administered outside of the EU that meet EU standards.

## **4. Non-EU benchmark administrators should be enabled to provide EU Climate Transition Benchmarks (CTB) and Paris-aligned Benchmarks (PAB)**

We support efforts to ensure that CTBs and PABs are administered in accordance with BMR standards but recommend against adopting measures that would unnecessarily restrict non-EU benchmark administrators from providing them.

---

<sup>5</sup> Draft BMR Article 24(3) in the Proposal.

<sup>6</sup> *Id.*

<sup>7</sup> Article 33 of the BMR.

<sup>8</sup> Article 32 of the BMR.

The CTB and PAB benchmark labels should continue to be accessible to non-EU benchmark administrators so that EU investors have a broad range of options available to them in selecting a benchmark administrator. Especially where benchmark administrators have market recognition in other countries, non-EU benchmark administrators should be encouraged to assign EU labels which will further facilitate investment by international investors into the EU capital market.

As an alternative, we recommend replacing the EU-location requirement with a requirement that non-EU administrators can only provide CTBs and PABs to EU clients through the equivalence, endorsement, or recognition mechanisms. This approach would facilitate investment in the EU capital markets while remaining consistent with the broader Proposal and ensuring that CTBs and PABs are administered in accordance with EU standards.

## **5. The Proposal should avoid dual supervision in the European Union**

Any amendments to the BMR should not result in the supervision of a benchmark administrator by an NCA and ESMA at the same time. Any dual supervision by the home NCA for EU activities paired with supervision by ESMA for non-EU activities for the same benchmark administrator/group creates unnecessary compliance and administrative costs and burdens, as well as supervisory inefficiencies.

We recommend that where a benchmark administrator is authorised or registered in the EU, the respective home NCA for the benchmark administrator should serve as the regulatory anchor point for all benchmark related activities of that benchmark administrator in the EU, including oversight of the endorsement of benchmarks into the EU.

## **6. The Proposal should not introduce new registration requirements**

The Proposal introduces an amendment to Article 51 of the BMR that suggests an authorised, registered, endorsed or recognised benchmark administrators could be required to re-apply to become an authorised, registered, endorsed or recognised benchmark administrators following the entry into force of the Regulation.<sup>9</sup> Any benchmark administrator that is already authorised, registered, endorsed, or recognised should keep its current authorisation, registration, endorsement, or recognition. A re-application would create considerable compliance and administrative costs and burdens without any conceivable benefits.

Therefore, we strongly recommend ensuring that only benchmark administrators that are not authorised, registered or recognised and which have not received approval for endorsement at the effective date of the Regulation should have to submit the relevant application.

\*\*\*

We look forward to continued engagement with the Commission on the Proposal. Please do not hesitate to contact us with any queries.

Yours faithfully,

**/s Nicolas Kügler**  
**Vice President**  
**Head of External Affairs (EMEA)**

---

<sup>9</sup> Draft Article 51(4c) of the Proposal.