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London, December 2nd 2016

Consultation Paper - Draft technical standards under the Benchmarks Regulation

Dear Sirs,

IHS Markit is pleased to submit the following comments to the European Securities and Markets Authority ("**ESMA**") in response to its Consultation Paper (**CP**) on Draft technical standards under the Benchmarks Regulation.

IHS Markit¹ (Nasdaq: INFO) is a world leader in critical information, analytics and solutions for the major industries and markets that drive economies worldwide. The company delivers next-generation information, analytics and solutions to customers in business, finance and government, improving their operational efficiency and providing deep insights that lead to well-informed, confident decisions. IHS Markit has more than 50,000 key business and government customers, including 80 percent of the Fortune Global 500 and the world's leading financial institutions. Headquartered in London, IHS Markit is committed to sustainable, profitable growth.

IHS Markit is a leading independent provider of fixed income and macroeconomic indices, calculating more than 17,000 indices globally. Our indices include the iBoxx bond indices, the iTraxx® and CDX® credit derivative indices.

Comments

Indices and benchmarks play an important role in enhancing transparency, liquidity and access in financial markets around the globe, they contribute to broadening the base of investable assets in the EU and are crucial elements driving economic development. We welcome the EU Benchmark Regulation ("**BMR**") as an important framework to protect investors and restore confidence in benchmarks.

¹ See www.ihsmarkit.com for more details

We have provided detailed answers on some of the questions but would like to make the following general points:

- i) IHS Markit strongly supports the BMR and ESMA's work but believes that the final rules need to be proportionate and workable across the very diverse universe of benchmarks;
- ii) we appreciate that ESMA have addressed a number of concerns the industry had about the practical application of the rules it is due to propose in the RTS; but
- iii) some concerns remain that ESMA's rules do not reflect the full diversity of the benchmark industry and we have suggested some areas where the RTS could be altered to be clear that the flexibility and proportionality envisaged under the BMR and by ESMA can be applied with confidence.

Questions

Characteristics and Procedures of the Oversight Function

Q1: Do you consider the non-exhaustive list of governance arrangements to be sufficiently flexible? Are there any other structures which you would like to see included?

IHS Markit appreciates and generally supports the flexibility ESMA provides for the oversight function. Although we do believe that the RTS could include reference to the use of independent index administration (for example in Article 4(2) as a potential way of resolving conflicts of interest), we welcome ESMA's view that independent administration could be considered within the context of managing conflicts of interest under Article 4 of the BMR.²

Q3: Do you support the concept of observers and their inclusion in the oversight function?

We support the flexibility provided in not compelling nor forbidding any specific approach.

Q4: Do you think that the draft RTS allows for sufficient proportionality in the application of the requirements? If no, please explain why and provide proposals for introducing greater proportionality.

Please see Question 5.

² CP Para 5

Q5: Do you have any other comments on the oversight function (composition, positioning and procedures) as set out in the draft RTS?

Although we appreciate the flexibility foreseen in the RTS, we would encourage ESMA to ensure that the final rules are workable for all types of firms involved in benchmark administration. In particular, there are unlikely to be many people in smaller or more specialist benchmark firms who have relevant expertise but are not involved in the production or administration of benchmarks in any way. Many specialist benchmark firms do not have a financial interest in instruments referencing their benchmarks and so these firms are not subject to conflicts of interest inherent in other benchmark administrators. Specifically, we believe that senior staff in specialist benchmark firms would have important knowledge and expertise. If these individuals are not involved in the day to day administration of a particular benchmark, they should be encouraged to join the oversight function as voting members. Any approach that suggested such individuals were barred from the oversight function would be disproportionate and potentially counterproductive. We believe ESMA should clarify this in the RTS.

Input Data

Q6: Do you agree with the appropriateness and verifiability of input data that the administrator must ensure are in place? Please elaborate.

We agree that benchmark administrators should not be required to obtain all relevant data and instead should be able to ask for the data they require from contributors as and when needed.

More generally, it would be helpful if ESMA could clarify the situation around input data and data 'readily available to an administrator' as soon as possible.³ IHS Markit would support the interpretation suggested by ESMA during the recent open hearing that input data is data prepared exclusively for purpose of contributing to the benchmark and, therefore, any other input falls into the category of 'readily available to an administrator'.

Q7: Do you agree with the internal oversight and verification procedures that the administrator must ensure are in place where contributions are made from a front-office function in a contributor organisation? Please elaborate.

As a specialist in Benchmark Administration, IHS Markit (and our clients using IHS Markit Independent Index Administration Services) is not subject to conflicts of interest because of front office activity. However, should contributions from front office functions be received, we would agree with the principle that extra checks should be made. Even so, it is important that the RTS should explicitly reflect a proportionate approach and ensure any measures to be implemented are in line with the risk posed by those individual contributions to the overall integrity of the Benchmark.

³ For example as in BMR Article 3(8)

As an example, ESMA's proposals would be extremely arduous and disproportionate if the Benchmark administrator was required to directly check enforcement in each contributor (especially if there were a large number of contributors, and the potential for a single contributor to affect the overall benchmark was limited) or, in extremis, if the benchmark administrator needed a physical presence.⁴ Such requirements would often be unworkable and increase the likelihood of contributors stopping their contributions, which would be detrimental to the quality of benchmarks and so likely to work against the interests of the investors the regulation is intended to protect. Instead we would support a requirement that was more explicit that the administrator ought to be able to confirm enforcement of such requirements in the event that it had cause for concern that conflicts of interest might be impacting on the integrity of the benchmark and leading to investor detriment.

Transparency of Methodology

Q8: Do you agree with the list of key elements proposed? Do you consider that there are any other means that could be taken into consideration to ensure that the benchmark's methodology is traceable and verifiable?

IHS Markit makes the index description and methodology for 'Markit Proprietary Benchmark' readily available on Markit's public web site free of charge. Additionally, Markit has established an external challenge process on Benchmark determination that provides a standardised, rules-based and transparent process of dealing with index enquiries. We would strongly agree with ESMA that users should understand a benchmark and so support requirements for transparency about methodology unless there were compelling reasons why not to be transparent and such an approach would not lead to potential detriment for users of the benchmark.

Q10: Do you agree with the procedure for consultation on material changes to the methodology?

ESMA rightly requires that, when methodologies are subject to material change, benchmark administrators should consult with stakeholders. In the draft RTS, ESMA requires administrators to "ensure that stakeholders are at a minimum informed" of the key elements of proposed methodology and to "inform stakeholders of the reasoning".⁵ ESMA should be aware that it could be extremely onerous to require the administrator to actively identify and then inform all stakeholders whenever the methodology was due to change. We do not believe ESMA intends such an approach, but it would be useful to clarify that, similar to ESMA's own consultations with stakeholders, administrators would need to ensure the relevant information was available and easily accessible for interested stakeholders.

⁴ As suggested in Article 6(3)(d) in the draft RTS on Input Data (page 40)

⁵ Draft RTS: Transparency of Methodology Article 3(1) – page 52

Code of Conduct for contributors

Q11: Do you agree with this approach? Please explain your response.

As set out in our response to Question 6, it will be important for clarity to be provided around 'readily available' data and that a code of conduct is not required for the use of this data. This would ensure consistency between benchmarks and avoid an unworkable regime of requiring a code of conduct for data being produced for purposes other than the benchmark.

Q16: Do you have any further comments or suggestions relating to the draft RTS on the code of conduct?

The universe of benchmarks is extremely large and diverse so flexibility is important in the requirements to ensure the code of conduct works in a way that supports and adds value to each benchmark.

We would like to draw ESMA's attention to the need for a sensible and proportionate approach to expectations around benchmark administrators ensuring adherence to the code of conduct. As an example, for benchmarks which rely on a large number of contributors and where a single contributor is unlikely to significantly affect the index, the benchmark administrator should be able to rely upon the annual attestation of a contributor that the code of conduct has been complied with. If each contributor must be actively monitored it will obviously consume time and resources that could be better used monitoring the quality of the Benchmark. Of course, benchmark administrators should be able to closely monitor contributors' adherence to the code of conduct where it is appropriate. However, the RTS should be clear that this is at the discretion of the administrator, where there are reasonable grounds for doing so and where such a process would not jeopardise a contributor's willingness to continue submitting to a benchmark. This will help reduce the likelihood that contributors would cease submissions, something that would be detrimental to the quality of the benchmark. It would be helpful if this was made clear in the RTS.

Benchmark Statement

Q21: Do you agree with the proposed specifications of the contents of a benchmark statement?

We generally support the draft RTS on the Benchmark Statement, but there are two areas where we have cause for concern. First, ESMA proposes including in the Benchmark Statement an "outline, on an aggregate level, the professional profiles of the contributors to the benchmark and explain, where applicable, why the benchmark is predominantly based on contributions by non-supervised entities".⁶

⁶ Draft RTS: Benchmark Statement – Article 4(f). Page 106

We believe that this requirement could be onerous and would be superfluous given the requirements to provide information on the methodology elsewhere. It also does not appear to be foreseen in Article 27 of the BMR and is therefore at odds with ESMA's statement that "the RTS per se does not include additional elements in the benchmark statement, but rather specifies how the elements in Article 27 must be incorporated in practice in the published benchmark statement".⁷

Second, ESMA proposes that the benchmark statement indicates the benchmarks qualification (critical, significant and non-significant).⁸ IHS Markit would like to remind ESMA the difficulty of gaining accurate figures around the usage of benchmarks and would ask that the RTS specify that these figures can be done on a best effort basis, as ESMA has done for the authorisation process (see Question 28).⁹

Authorisation and registration of an administrator

Q23: Do you agree with the general approach to distinguish the contents of the application with reference to the cases of authorisation or registration?

We agree that there should be minimal duplication and that authorisation and registration should be a "one-off" process. However, we would be concerned if previously supervised firms were able to follow the abbreviated registration process for significant benchmarks even though, as they are more likely to have a financial interest in the benchmark, there are more likely to be conflicts of interest. We would therefore encourage ESMA to allow competent authorities to add further requirements to the registration process or streamline the authorisation process where potential conflicts of interest might or might not exist.

Q26: Are the requirements described dealing with the benchmarks provided appropriate? In particular, is the way in which the commodity benchmarks requirements are handled acceptable?

In respect of commodity benchmarks, IHS Markit would like to see ESMA providing more specific clarity across its proposed RTSs about where they do not apply to commodities benchmarks. In the RTS under discussion here, for example, this could be done by adding a new Article 1(4)(d):¹⁰

"for commodity benchmarks subject to Annex II of Regulation (EU) No 2016/2011, the external audit provided for in Annex II (18)".

⁷ CP Page 169

⁸ Draft RTS: Benchmark Statement – Article 5(a), 6(1), 7(1). Page 106-107

⁹ Draft RTS: Authorisation and Registration – Recital 9. Page 117

¹⁰ CP Page 118

We would also support similar clarifications in other relevant RTS.

Q28: Do you agree with the proposals outlined for requirements for other information?

ESMA proposes that, during the authorisation process, the administrator indicates the category of the benchmark. We appreciate ESMA's clarification here that the information can be supplied as "assessed to the best of the knowledge of the applicant administrator".¹¹ This should also be introduced in other RTS where the administrator is required to estimate usage.

Recognition of an administrator located in a third country

Q29: Do you agree with the approach followed in the draft RTS as regards the general information that a third-country applicant should provide to the competent authority of the Member State of reference?

ESMA's intention in the draft RTS Article 1(4) appears to be to help the applicant avoid the need to duplicate information that was contained in either a report by an independent auditor or certification by a third country competent authority.¹² To require both would seem disproportionate and contrary to the objective of reducing the burden.¹³ To add clarity, we would recommend separating Article 1(4) (a) and (b) by inserting "or" between them.

We hope that our above comments are helpful. We would be more than happy to elaborate or further discuss any of the points addressed above in more detail. If you have any questions, please do not hesitate to contact us.

Yours sincerely,

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¹¹ Draft RTS: Authorisation and Registration – Recital 9. Page 117

¹² Page 142 of the CP

¹³ For example, CP para 253

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