

25 April 2023

## Updated Questions and Answers on the Benchmarks Regulation ('BMR')

This circular is being addressed to administrators of benchmarks, the contributors of input data to a benchmark and the users of a benchmark within the Union.

This circular should be read in conjunction with Regulation (EU) 2016/1011 of the European Parliament and of the Council of 08 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (hereinafter referred to as 'the Regulation'/'BMR'), its delegated regulations and previous circulars issued by the Authority.

### 1.0 Updates to the Questions and Answers relating to the Implementation of BMR

The Authority would like to inform market participants that the European Securities and Markets Authority ('ESMA') has on 31 March 2023 updated its Questions and Answers (Q&As) on the Benchmarks Regulation.

The Q&As are intended to promote common, uniform and consistent supervisory approaches and to provide responses to questions posed by the general public and market participants in relation to the practical application of legal provisions relating to unlawful behaviour in the financial markets.

ESMA has updated its Q&As on Benchmarks, as follows:

- **Q&A 7.5 relating to information which may be relied on when an IOSCO principles assessment of compliance report is conducted.**

ESMA has amended this Q&A to remove any reference to *national competent authority of the Member State of Reference* and instead referred to ESMA throughout the Q&A. In this regard, the Q&A clarifies that ESMA may rely on an assessment by an independent external auditor to assess compliance with the IOSCO principals for Oil Price Reporting Agencies (PRAs). The Q&A further clarifies that the BMR does not require ESMA to rely on the assessment carried out by an independent external auditor, but rather ESMA may use the assessment as a piece of evidence.

- **Q&A 7.7 relating to the roles and responsibilities of a legal representative under Article 32(3) of BMR.**

This Q&A has been amended to provide market participants with guidance on what entities may be considered to be suitable candidates to perform the roles and responsibilities of a legal representative under Article 32(3) of BMR. In this respect, the second part of Q&A 7.7 explains that the BMR does not include any specific requirement regarding the types of entities that may act as a legal representative when a legal person is appointed to perform this role. However, functions and responsibilities specified in the first part of Q&A 7.7 are the key elements that the administrator should consider throughout the selection and appointment of its legal representative in the Union.

ESMA further explains that for the legal representative to effectively perform its functions and responsibilities, and notably to perform the oversight function together with the administrator, an entity that forms part of the administrator's group and, where possible, that is either a benchmark administrator or another supervised entity located within the Union, is a suitable candidate.

A copy of the updated Q&As can be accessed through the following [link](#).

## **2.0 Contacts**

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