

16 October 2023

Circular on the Benchmarks Regulation ('BMR') – Update to the Information Gathered relating to the Use of Benchmarks

This circular is being addressed to market participants, but particularly users of benchmarks 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').

1.0 Background

Benchmarks play an important role in the determination of the price of many financial instruments and financial contracts as well as the measurement of performance for many investment funds. In order to fulfill their economic role, benchmarks need to be representative of the underlying market or economic reality they intend to measure. Should a benchmark no longer be representative of an underlying market, there is a risk of negative effect on, *inter alia*, market integrity, the financing of households and businesses in the Union and there may also possibly be financial stability implications.

The Benchmark Regulation distinguishes between different types of benchmarks and specifies the requirements which are applicable to each type of benchmark or the provisions which a particular benchmark could be exempted from.

2.0 Required Action

As market participants are well aware, and as detailed within the Authority's circular of 13 September 2022, the MFSA has in the last couple of years, carried out various information gathering exercises on the use of benchmarks within the local industry.

In view of the fact that the MFSA is the competent authority for the supervision of users, administrators, and contributors falling within the scope of the Benchmarks Regulation, and for the purpose of effectively carrying out its duties, it is essential that the Authority has the latest information on the use of benchmarks by market participants available.

Accordingly, for the purpose of continuing assessing the use of benchmarks within the local industry, by way of this Circular, the Authority requests all market participants, with the exception of insurance intermediaries, to complete and return a form setting out details of their exposure to the critical benchmarks and any other benchmarks currently in use, which

form can be accessed through the following [link](#). The information on the use of benchmarks is required as at 30 September 2023.

This form, duly completed, is to be submitted via email to benchmarks@mfsa.mt, by not later than Friday, 01 December 2023.

Only entities making use of benchmarks as at 30 September 2023 are required to respond to this information gathering exercise, hence NIL returns are not required. Please be aware that entities which do not provide feedback by the timeframe indicated above will be considered as non-users of Benchmarks for regulatory purposes.

The content of this circular applies to all MFSA license holders on a cross-sectorial basis, particularly (but not limited to), credit institutions, financial institutions, investment funds (UCITS, AIFs, etc.), investment service providers, insurance undertakings, market operators etc.

For ease of reference, may we remind you that in terms of the Benchmark Regulation, use of a benchmark includes;

- (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 credit 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 return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees.

Contacts

Should you have any queries relating to the Benchmarks Regulation kindly contact the Authority on benchmarks@mfsa.mt.

Any requests for clarification required in connection with the form and the information being requested, should be submitted to the Authority on statistics@mfsa.mt.

We thank you in advance for your cooperation.