General comments

The Index Industry Association (IIA) welcomes the European Commission (Commission) initiative to reduce reporting requirements by 25%, in line with the objective to boost the EU's long-term competitiveness. The Proposal to review the Benchmark Regulation's (BMR) scope and third-country regime is a concrete and welcomed measure to achieve this objective.

The IIA supports the BMR's aims of promoting investor protection and the orderly functioning of financial markets and shares the Commission's view of the current framework's shortcomings and unintended consequences. In particular, the prescriptive scope, capturing all benchmarks used in the European Union (EU), paired with limited access routes to the EU market for third-country administrators, risks seeing EU-based investors lose access to many of the world's indexes, posing significant financial stability and competitiveness risks.

As such, we welcome the Proposal's (I) re-calibration of the scope to target significant benchmarks as well as (II) the creation of a workable third-country regime.

EP draft report

The IIA welcomes the draft report by Rapporteur Fernandez and appreciates that in the report the rapporteur agrees with the main objectives of the revision as proposed by the European Commission and as predominantly also agreed to by the EU member states in their General Approach. The IIA would stress that the timely finalisation of the revision of the regulation is important for EU investors to maintain access to low-cost, diversified investment opportunities that benchmarks underpin, which could be undermined once the transitional regime for third country benchmarks ends in 2025. Without adaptation of the current regulation, EU investors would see a significant reduction of investment opportunities.

However, the IIA would like to point out several aspects of the draft report which have raised concerns within the IIA membership:

1. Amendment 23 suggests to decrease the threshold for application of the BMR to significant benchmarks from 50 billion to 30 billion. This threshold represents the average value benchmark is used directly or indirectly within a combination of benchmarks within the Union as a reference for financial instruments or financial contracts or for measuring the performance of investments funds. The IIA is concerned that the reduction of this threshold could lead to a significant increase of the scope of the revised BMR, which would be in direct contradiction to the objective of the revision. The European Commission had proposed to maintain the 50 billion threshold. Changing the thresholds, unless a compelling systemically risky argument can be made, will decrease access to investment options for EU investors or increase costs for investors, since the current thresholds are already being used in systems. In addition, IIA is not sure how the thresholds will be quantified since the data is difficult to ascertain. Reducing the threshold exacerbates this issue and increases the risk of inadvertently crossing a threshold causing uncertainty for EU investors, asset managers, and investors.
2. Amendment 40 scopes in ESG benchmarks to the regulation. The European Commission has an ongoing workstream which is investigating the possibility of introducing an EU ESG benchmark label. This policy decision could have wide -ranging impact which is why the European Commission is considering this approach in-depth. The current amendment

would introduce a significant policy shift without adequate legal certainty of the concepts introduced and without the appropriate impact assessment on EU investors and EU competitiveness. The IIA recommends that the Commission continue to be given the proper time to complete it assessments and impact of a potential ESG rating proposal. In addition, there is currently no Social and Governance taxonomy yet and there is an expanding Environmental one. These would be needed to determine legal certainty for ESG factors that is needed to create an ESG benchmark framework.

3. Amendment 22 proposes to give ESMA a mandate to develop regulatory technical standards (RTS) to specify common standards for the names of ESG benchmarks and that these benchmarks pursue ESG objectives or take into account ESG factors. ESG is a thematic approach to investing, similar to other factor (e.g. growth, liquidity, volatility etc) investing. ESG benchmarks are not 'labels'. In addition, the amendment proposes to have ESMA develop draft regulatory technical standards to specify common standards on the names of ESG Benchmarks. These amendments far exceed the scope of the BMR. The European Commission has an ongoing workstream which is investigating the possibility of introducing an EU ESG benchmark label. This policy decision could have a wide-ranging impact which is why the European Commission is considering this approach in-depth. The current amendment would introduce a significant policy shift without adequate legal certainty of the concepts introduced and without the appropriate impact assessment. underpinned by the required impact assessment.
4. We would also point out that, contrary to funds, Benchmarks are not used directly by Retails investors and does not carry the same risk of greenwashing If we pursue with such requirements, that will create separate standards across too many different regimes where there is a strong link between funds regulation and their reflection in benchmarks. We would therefore suggest focusing on funds guidelines and assessing the related impact on benchmarks before creating specific guidelines for ESG benchmark names. We would favour a joint approach during the Sustainable Finance Disclosure Regulation (SFDR) review on minimum criteria for the investment management industry. We would also point out that, contrary to funds, benchmarks are not used directly by retail investors and do not carry the same risk of greenwashing.
5. Amendments 2 and 31 provide the possibility for administrators to voluntarily apply for access to the benchmark registry. This opt-in possibility should be allowed on a Benchmark specific basis, not for an administrator.
6. Amendment 58 suggests to include in the ESMA register a unique identifier by index. The IIA's members are not aware of a global system in place to do this. The only system we are familiar with are ISINs as identifiers of securities not for individual benchmarks. However, benchmarks are not securities. ISINs are not unique to a benchmark, as products linked to benchmarks can have different ISINs. There are currently no globally agreed standards on how national associations assigning ISINs should be assigning ISINs consistently across jurisdictions for benchmarks. Further thought and discussion are needed to understand what this amendment is trying to accomplish. Creating a new system would not only be costly to implement, but confusing in the EU market. At a minimum, a proper impact assessment should be considered to move this forward.
7. Amendments 24, 25, 27, 29, 30 33, and 68 centralise power around ESMA, and give ESMA the authority to designate benchmarks (in parallel to NCAs' designation power). Giving designation powers to ESMA with the existing qualitative thresholds risks significantly broadening the BMR review's scope once more, particularly as the designation mechanism is intended to empower NCAs to supervise smaller local administrators, usually involved in the administration of interest rate benchmarks, in the interest of national financial stability.

Moreover, the proposed amendments present a possibility of dual supervision. For instance, both ESMA and NCAs may put forth requests for information, and administrators are required to provide information to both, regardless of who enquired. The IIA is of the view that the supervisory regime as set out in the proposal (i.e. ESMA as a supervisor for third-country administrators) should be maintained.

8. Amendment 49 imposes an additional burden on the legal representative in the Union, which third-country benchmark administrators using the recognition access route must appoint. The IIA is concerned that this amendment blurs the line of responsibility/liability between the third country benchmark administrator and these legal representatives. Where third country benchmark administrators are supervised, this amendment could even give rise to conflict of law situations.

About the IIA

Many of the leading independent index providers in the world are members of the IIA, including Bloomberg Indices, CBOE Global Indices, the Chicago Booth Center for Research in Security Prices (CRSP), China Bond Pricing Co. Ltd., China Securities Index Co. Ltd., FTSE Russell, Hang Seng Indexes, Morningstar, MSCI Inc., ICE, NASDAQ OMX, ParametaSolutions, Shenzhen Securities Information Co.Ltd.,S&P Dow Jones Indices LLC, ISS STOXX , and JPX Market Innovation and Research (Tokyo Stock Exchange). IIA members calculate over three million indices for their clients, covering a number of different asset classes, including equities, fixed income, and commodities. Part of the IIA's mission is to consider ways to promote best practices for index providers, which makes it a natural supporter of appropriate and proportionate industry standards. Our members are dedicated to promoting transparency, competition, sound operational practices, intellectual property rights, education, and effective index management practices. IIA members are independent index administrators who neither trade the underlying component securities of their indices nor directly create products for investors. Moreover, our members publicly make available methodologies, explain how their indices are created, calculated, or maintained. For more information: http://www.indexindustry.org/