

European Banking Authority & European Securities and Markets Authority  
Sent by ESMA online submission

15 February 2013

To whom it may concern,

### **ESMA / EBA Consultation on Principles for Benchmarks-Setting Processes in the EU**

Barclays welcomes the opportunity to provide our comments on the EBA and ESMA's joint consultation paper on the Principles for Benchmarks-Setting Processes in the EU.

#### **Context**

When reviewing our response, it may be helpful if we provide details of the different ways in which indices are relevant to our business. We are a "submitter" or "contributor" to a number of indices, a user of a number of indices, and the producer of a number of indices. Within the latter category, we have a business called "Index Portfolio and Risk Solutions" (IPRS), which is part of the Barclays Research department, and is responsible for developing and maintaining the Barclays Global Family of Benchmark and Investible Indices.

#### **Scope**

Barclays views it as imperative that the market has access to Benchmarks that are well-constructed, transparent and that inspire the confidence of other market participants and regulators. To this end Barclays advocates both strong oversight and an appropriate control framework.

Barclays is aware, however, that there are a number of indices, produced by a range of public and private entities, using different methodologies and for different purposes. Accordingly, the nature of use varies widely from passive indicative benchmarking in a narrow context to a widely used index on which a significant number of derivative contracts may be based. Barclays therefore strongly supports the view put forward by such groups as the IOSCO Task Force on Financial Benchmarks and the Wheatley Review that a "one-size-fits-all" approach may not be appropriate for all indices and believes that it is important to ensure that any regulatory regime is proportionate and addresses the specific risks posed in each case.

For the purpose of clarity, Barclays will refer to the following definitions: "Benchmark Rates" (systemically important rates such as LIBOR and EURIBOR, which require qualitative submissions) ("**Benchmark Rates**") and with respect to the other "Benchmarks" (such as the FTSE 100; the S&P 500 and the Barclays Global Aggregate Index) ("**Independently Owned Benchmarks**").

A tailored regulatory approach would ensure that all indices benefit from an appropriately robust framework both in terms of governance and control.



We would be happy to discuss any of these comments and our responses with the EBA and ESMA.

Yours sincerely,

**Francois Jourdain**  
Managing Director

For and on behalf of Barclays Bank PLC

## Barclays Response to specific Consultation Questions

### Question 1: Definition of the activities of benchmark setting

Do you agree with the definitions provided in this section? Is this list of activities complete and accurate?

Yes, Barclays does agree in the main with the definitions provided in this section.

Barclays would suggest the addition of a code of conduct definition, which consists of the written rules and procedures according to which the contributing firm compiles the data and supplies it to the administrator.

In addition, it may be useful to further define 'Benchmark Rates' and 'Independently Owned Benchmarks' given the differences between each.

### Question 2: Principles for benchmarks

Would you consider a set of principles a useful framework for guiding benchmark setting activities until a possible formal regulatory and supervisory framework has been established in the EU?

Whilst a set of principles would be useful in guiding benchmark setting activities until a formal regulatory and supervisory framework has been established in the EU; Barclays would request that, as noted within the consultation, due regard is afforded to the work being undertaken internationally in order that the market benefits from regulatory certainty and consistency.

We note that as currently drafted the principles are wide and therefore it may be appropriate to exercise a degree of caution that the breadth of these Principles are consistent with other rules being developed internationally that firms may have to comply with in advance of the EU's framework.

Given that these Principles may inform and may be informed by other regulatory work-streams in respect of benchmark indices (such as those being conducted by IOSCO and the EC). Barclays notes that it may be appropriate to recognise the inherent differences between Benchmark Rates and Independently Owned Benchmarks within the Principles.

### Question 3: General principles for benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, Barclays agrees with the principles cited in this section. Given that these are general principles, it may be advisable to make clearer the distinction within the methodology between the activities of Submitter and Administrator; thereby highlighting each parties respective responsibilities in the benchmark setting process.

### Question 4: Principles for firms involved in benchmark data submissions

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, Barclays agrees with the principles cited in this section. No.

**Question 5: Principles for benchmark administrators**

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, Barclays agrees with the principles cited in this section.

However, Barclays suggests that it could be more explicit within the principles that the Administrator is responsible for setting out a code of conduct that Submitters must comply with.

**Question 6: Principles for benchmark calculation agents**

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, Barclays agrees with the principles cited in this section. No.

**Question 7: Principles for benchmark publishers**

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, Barclays agrees with the principles cited in this section.

However, in the case of Independently Owned Benchmarks there may be no need to obtain confirmation from an index provider that the submission and calculation validation procedures have been followed.

**Question 8: Principles for users of benchmarks**

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Yes, Barclays agrees with the principles cited in this section, with the addition of a reference to compulsion of submissions (see response below to Q9).

**Question 9: Practical application of the principles**

Are there any areas of benchmarks for which the above principles would be inadequate? If so, please provide details on the relevant benchmarks and the reasons of inadequacy.

Barclays is in favour of the establishment of a mechanism to compel submission. Whilst we believe such a mechanism should be used sparingly, it would assist regulatory authorities in ensuring the continuity of submission and the broadest possible range of Submitters, providing sufficient depth of data to dampen volatility and produce the most stable rate. It will also ensure that the Benchmark is credible, transparent and ensure its continuity.

Barclays would encourage the Task Force to recognise that a “one-size-fits-all” approach may not be appropriate when applying the principles.

**Question 10: Continuity of benchmarks**

Which principles/criteria would you consider necessary to be established for the continuity of benchmarks in case of a change to the framework?

As above, Barclays would support the establishment of a mechanism to compel submission for those who meet the defined criteria or are heavy users of the Benchmark and are not participating.

This should ensure that there is appropriate representation on the panel and that a credible benchmark is achieved. Where this is not possible, as noted, efforts need to be made to ensure an orderly discontinuance of the benchmark. Therefore, transparency in the methodology or living will (where these arrangements are contained) is key.

In respect of Independently Owned Benchmarks, Barclays is of the view that a continuity plan is likely not necessary. Benchmark replacement in the main has always been driven by market participants and the active switching of one Independently Owned Benchmark to another is commonplace in the asset owner/manager community. Where a market participant wishes to switch a benchmark for commercial reasons or because it has been terminated, it would usually speak to alternative index providers to see if they have a suitable alternative “off the shelf” and if not, it will look for an alternative index to be constructed.