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Gdansk, 28 June 2016

**FROM: Instytut Badań nad Gospodarką Rynkową – Gdańsk Institute for Market Economics**

**RE: ESMA Consultation Paper, Draft technical advice under the Benchmarks Regulation**

REFERENCES: 27 May 2016 | ESMA/2016/723

WEB: <https://www.esma.europa.eu/>

TOPIC: Your input – Consultations

DEADLINE: 30 June 2016

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*Introductory comments:*

Our Institute (pol. abbr. IBnGR, [www.ibngr.pl](http://www.ibngr.pl)) is since 2012 an administrator of the Money Market Monitoring System (pol. System Monitoringu Rynku Pieniężnego, abbr. SMRP, [www.smrp.pl](http://www.smrp.pl)) that provides transactional data regarding negotiable unsecured term deposits collected by banks. We collect approx. 7.000 records daily amounted to over 20 bln PLN (approx. 5 bln EUR). The system provide price distribution analysis and is used both by contributing banks and local regulators (central bank NBP and supervising authority KNF) in order to monitor a marginal cost of financing of the banking sector and analysis of the yield curve for unsecured liabilities.

We hope that our experience with database audit trial, back testing and cross check of monitored data can be used in favour of practical application of EP Benchmark Regulation in regard of taking into account transactional data in the index determination process. We are convinced that a broad usage of deposit data regarding wholesale funding coming from various sources (banks, non-banking financial institutions, public sector, non-financial corporates and retail private banking) assures determination of real cost of unsecured financing that might be a robust indicator of representativeness of a local money market benchmark. Moreover the collected data are an efficient basis for determination a new index that reflects a marginal price of balance instruments traded on the local money market.

Our comments provided in the Consultation Paper are mostly focused on data sources and verification of non-compliant benchmarks.

**Q1: Do you agree with the conditions on the basis of which an index may be considered as made available to the public?**

Yes.

**Q2: Do you agree with the proposed specification of what constitutes administering the arrangements for determining a benchmark?**

Yes.

**Q3: Do you agree that the 'use of a benchmark' in derivatives that are traded on trading venues and/or systematic internalisers is linked to the determination of the amount payable under the said derivatives for any relevant purpose (trading, clearing, margining, ...)?**

Yes.

**Q4: Do you have any comments on the proposed specification of issuance of a financial instrument?**

All analysis regarding outstanding amounts and benchmark utilisation should take into account all types of loans, including mortgage (both floating rate and fixed) and commercial loans.

**Q5: What are your views on the transitional regime proposed to assess the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds in the case where the regulatory data is not available or sufficient?**

In our opinion an active side of the process should be an administrator of the benchmark and the final number must be accepted by a local regulator that supervise the benchmark regulation adoption process. The data can be provided in numerous ways by entities using the benchmark in their products and research institutes analysing the local market with strict assistance of the administrator, contributing banks, the central bank and the supervising authority.

**Q6: Do you agree with the measurement performed at a specific point in time for assessing whether a benchmark hits the thresholds specified in Article 20(1) to be considered as critical?**

One can use i.e. an average amount estimated for a series of end of months for a selected period.

**Q7: What are your views on the use of licencing agreements to identify financial instruments referencing benchmarks? Would this approach be useful in particular in the case of investment funds?**

Licencing agreements might be not enough for determination of an outstanding amount. One should take into account such diversified products like loans that usually are not registered, NDF/NDO contracts using FX reference rates and concluded on OTC market that might be not monitored under EMIR requirements, cross border OTC basis swaps and structured investment products offered for retail.

**Q8: Do you agree with the criteria proposed? Do you consider that additional criteria should be included in the technical advice?**

Yes, the list is complete.

**Q9: Do you think that the concept of "significant share of" should be further developed in terms of percentages or ranges of values expressed in percentages, to be used for (some of) the criteria based on quantitative data? If yes, could you propose percentages of reference, or ranges of values expressed in percentages, to be used for one or more of the proposed criteria?**

In our opinion, apart from quantitative data, one should consider qualitative approach assessing the significance of the benchmark for stability of the financial market and social consequences of its disruption for non-financial customers.

***Q10: Do you agree with the suggested indicators for objective reasons for endorsement of third-country benchmarks?***

Yes.

***Q11: Do you agree with the criteria, included in the draft technical advice, that NCAs should use when assessing whether the transitional provisions could apply to a non-compliant benchmark? Could you suggest additional criteria?***

Some local benchmarks undoubtedly should be considered as non-compliant if there is no transactional data (i.e. some longer term IBOR indices have almost null underlying market due to lack of unsecured term interbank deposits). The transitional provisions should act as a waiver for quite a long period in order not to disrupt a credibility of such indices as it would have severe adverse consequences for a stability of the local market through activation of Material Adverse Change ISDA clauses in financial contracts. Seamless transition of such benchmarks is almost not possible as levels and variance of a real reference market is significantly different that provided by the original benchmark. Therefore in our opinion a parallel listing is a preferred form of transition. A Benchmark Regulation, EBA/ESMA guidelines, FSB report and IOSCO principles all encourages to create new benchmarks that are compliant with market data and are published on the basis of concluded transactions. In longer term one could focus a gradual convergence process of the new transaction based and the old declaration only benchmarks that can eventually allow to calculate the old one via the new benchmark conversion without costly and sensitive current contribution procedure.