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Additional Information

Level 1 Regulation

Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic

Benchmark

Subject Matter

Commodity benchmark definition (ESMA70-145-114_Q&A 5.14)

Question

Is the scope of the definition of commodity benchmarks for the purposes of the BMR identical to the scope of the definition of commodity derivatives for the purposes of MiFID II and MiFIR?

11-07-2019

Original language

No, the scope of the definition of commodity benchmarks for the purposes of BMR is not identical to the scope of the definition of commodity derivatives for the purposes of MiFID II / MiFIR.

Pursuant to Article 19 of BMR, some commodity benchmarks (commodity benchmarks that are not regulated-data benchmarks or are not based on submissions by contributors the majority of which are supervised entity or are not critical benchmarks with an underlying asset of gold, silver or platinum) should apply specific requirements laid down in Annex II of the same regulation. Further, Recital (34) of the BMR mentions in relation to the provisions in Annex II of BMR that *“Physical commodities markets have unique characteristics which should be taken into account”*.

Pursuant to Article 3(1)(23) of BMR a commodity benchmark refers to the underlying asset of the benchmark that is a commodity as defined in Article 2(6) of Commission Delegated Regulation (EU) 2017/56514: *“any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity”*. The scope of this definition is limited compared to the definition of commodity derivatives pursuant to Article 2(1)(30) of MiFIR : *“those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; which relate to a commodity or an underlying referred to in Section C(10) of Annex I to Directive 2014/65/EU; or in points (5), (6), (7) and (10) of Section C of Annex I thereto;”*.

In addition, the BMR definition of a commodity benchmark does not refer to the underlying in Section C(10) of Annex I to Directive 2014/65/EU (MiFID II) but only mentions the exclusion of emission allowances as referred to in point (11) of Section C(10) of Annex I to MiFID II.

Therefore, ESMA considers that the underlying asset of a commodity benchmark should be a fungible physical commodity. As a consequence, the underlying referred to in Section C(10) of Annex I to MiFID II, for example freight rates, are not included within the scope of

commodity benchmarks and therefore should not be considered as a commodity benchmark under the BMR.