
ANSWER TO EBA's AND ESMA's JOINT CONSULTATION ON PRINCIPLES FOR BENCHMARKS-SETTING PROCESSES IN THE EU

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Amundi is a leading asset manager, ranking second in Europe and among the top ten in the world with assets under management above 710 billion euros at the end of September 2012. It is active in many different countries and serves a diversified clientele of retail, corporate and institutional investors through a large range of products and investment solutions.

If Amundi is not a direct participant of the industry of indices it is a regular user of benchmarks produced by others. As any asset manager, Amundi relies on market indices in different circumstances and specifically when it invests in financial instruments referenced to standard indices or duplicates performances of a benchmark through an ETF (Exchange Traded Fund)...

More commonly when discussing with clients and potential clients and presenting its expertise, Amundi will make references and comparisons to indices. But this usage for reporting and marketing purposes was not included in the recent consultation issued last November by the European Commission. Amundi understands that it is also not the intent of EBA and ESMA to regulate the use of indices in the fund industry but only the use of benchmarks in financial transactions.

Amundi thanks EBA and ESMA for the opportunity they offer through the present consultation to express views on the possibility to regulate production and use of benchmarks in financial contracts. It takes this opportunity to share its experience as representative of the buy-side.

As a foreword Amundi wants to outline the following key messages:

- Amundi considers that **ESMA and EBA should not propose principles** “designed to bridge the interim period until a potential formal regulatory and supervisory framework for benchmarks has been devised in the EU”; except for interbank offered rate benchmarks as Libor or Euribor, there is no urgency nor imminent danger that could justify such a rapid action;
- Amundi thinks that time is needed to let analysis and reflexion conducted by IOSCO and European Commission lead to the mature and adequate regulation that is expected; Amundi is keen to participate to this consultation process in order to achieve a better **regulation** or conclude that **self-regulation** is more efficient;
- Amundi shares the opinion that transparency, responsibility, accountability are principles that should apply through all the steps of the benchmark-setting process and impact methodology, governance and supervision; in particular, the examples of interbank

offered rates as Libor or Euribor evidence the need for a better organisation relying on principles that could be applied on a voluntary basis;

- Amundi is concerned with the economic consequences of new regulation introduced by ESMA's *guidelines on ETF and other UCITS matters* with respect to **free access by investors to information on the methodology and the components of benchmarks**. As subscribers to the services of the benchmark producer, asset managers have access within short delay to most of the required information. On the other hand, public at large can only get a restricted access (if any) free of charge. The case of investors in the funds that refer to benchmarks (like ETFs) has to be addressed as they should legitimately have a larger access than the public at large but cannot require the asset manager to be in breach of its license contract and communicate confidential information. A realistic compromise should be found or imposed by regulation on the level of necessary information accessible at a reasonable cost;
- The **global responsibility of the administrator of the benchmark** should be expressed as an overarching principle, irrespective of the fact that it delegates to third parties different functions (contribution, collection of data, calculation, publication).

Amundi responses to the specific questions are given below.

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?

With respect to §11-i : it is of prime importance that we reach a common definition of “benchmark” at an international level. More precisely, the 3 additions suggested by ESMA to the definition proposed by the Commission in its November consultation are not necessary. “Entirely or partially” is unnecessary a precision at that level, as plain wording does suggest it; “or an assessment of” raises more questions than it clarifies anything; “or the value of a financial instrument” is too wide an extension of the scope, since arguably all financial instruments will be concerned which are valued or estimated on the basis of a model that will refer to a risk free or short term rate.

With respect to item x: “Benchmark users” definition should explicitly exclude asset managers when they refer to an index for reporting purpose with a view to compare performances or to give some indication on the investment universe of a portfolio. On the contrary index-linked funds among which ETFs are real users of indices and are highly concerned with their setting process.

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?

No, Amundi considers that there is no need to hurry to anticipate the current process conducted by the European Commission on one side and IOSCO and the other to issue guidance on benchmark setting activities. The Libor scandal is now at the stage of prosecutions for malpractices and market manipulations that is far more threatening for involved parties and

should have a direct and immediate impact. Apparently it is the only area where urgent action was needed.

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?

About methodology, the request for liquid underlyings is not adequate as it would prevent indices on many types of markets of interest for investors. For example, we cannot pretend that high yield bonds are sufficiently liquid in general terms. It should be considered on a relative basis with reference to instruments sufficiently liquid within their asset class. Better, reference should be made to an adequate price formation process. Otherwise, Amundi totally agrees with the preference for the use of actual transaction prices (at arm's length) in benchmarks.

With respect to the supervision, it is important not to jump to the conclusion that the relevant supervisory authorities should exist and be governmental bodies, as a SRO run by professionals might be appropriate.

If Amundi totally agrees with the principle of transparency, it wishes to share its concerns about the cost of transparency. As an asset manager Amundi pays a data license to access (and load) many benchmarks, what is considered as proprietary information by their promoters. In that contractual framework it may negotiate a better transparency, but some promoters might be uneasy with the communication of some pieces of information ahead of their application. It further pays in many instances a fee based on the amount under management of indexed funds. On the other hand, an asset manager has duties towards investors in its funds. ESMA has recently issued *guidelines on ETFs and other UCITS issues* that include a lot of wishful thinking in comparison to existing standard attitude of many benchmark producers. Investors do belong to the general public and as such may access web site and commercial presentations of benchmarks producers free of charge. To transfer additional information to investors in its funds, an asset manager is required by benchmark producers to pay an extra license on top, even to simply comply with regulatory requirements. Any potential regulation should address that issue and refer to a "reasonable cost" approach.

Continuity problematic is clearly analyzed in A.5 and Amundi would just like to mention the need for real transparency in that field too.

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?

Amundi agrees on the principles expressed by EBA and ESMA about benchmark data submission with the exception of the last one, B.11, that should only apply if regulation is based on a professional code of principles which does not amount to hard legal framework. There is no need to ask anyone to comply with the law.

Furthermore, we consider it might be difficult, not to say impossible, to perform controls as they are described in B.8.

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?

Amundi is in favor of the institution, explicitly discussed by IOSCO and only implied here in C.2, of an “oversight committee” within benchmark administrators. It would be very helpful to make many of the principles envisioned by EBA and ESMA workable.

Another overarching principle is not explicit in the present consultation: the fact that the administrator is responsible for the whole process of benchmark setting, even if it relies on outside parties for different functions.

The principles should address the issue of the license policy of the benchmark producers and the cost for users. The “reasonable price” approach could then be part of best practices or regulation.

C.8 sounds inquisitive and will certainly conflict with justified confidentiality rules of benchmark administrators. If minutes of the meetings should be established and recorded, it is not adequate to require them to be posted. If there is a supervisory authority these minutes should be made available to it on first demand, but public or subscribers should not have access to them, except in the framework of a judicial action.

Same commentary as on B.11 concerns item C.14: irrelevance of this disclosure.

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?

Relationships between benchmark administrators and calculation agents should, in Amundi’s view, be contractually defined. Delegation is the appropriate framework that should be used with all the consequences it implies, notably in terms of liabilities. As a consequence D.6 is redundant with the due diligences conducted by the administrator.

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?

Delegation is an appropriate framework to fix relationships between administrators and publishers and define their respective roles.

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?

Asset managers in general (and Amundi in particular) do assess the quality of a benchmark before using it as a reference for an indexed fund. However it is not appropriate that they should conduct any due diligence on benchmarks that are underlyings of listed and actively traded futures or options on which they may trade in the ordinary course of their fund management activities. In this case, asset managers should rely on the procedures of the market infrastructure that listed those instruments. *ESMA guidelines on ETFs and other UCITS issues* are not clear on that point.

In the process of assessing the quality of a benchmark that will be used as reference for an indexed fund, the access to the confirmation of compliance publicly disclosed by the administrator and the calculator is rightly considered as non-conclusive in F.2. The mere existence of these documents might just be counterproductive as it suggests transforming a diversified analysis into an administrative review of the existence of formal declarations. Amundi shares the concern expressed in F.3 about cases of unavailability of a benchmark.

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.

Globally, the principles as expressed in this consultation are not yet crafted with sufficient clarity to envision their application. Many questions of interest have been raised and discussed by IOSCO on which it is important to come to a common view at an international level before any regulatory decision.

The only area where malpractices have been alleged or evidenced is interbank interest rate benchmarks. Improvement of former habits is rapidly underway, as some are now qualified as manipulations and subject to prosecution.

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?

This concern is a very good example of an important issue where IOSCO provides interesting thoughts to be discussed in the framework of its consultation paper (Chapter 4, section B. Transition issues).

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