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*EUROPEAN SECURITIES AND  
MARKETS AUTHORITY  
Discussion Paper Benchmarks  
Regulation*

Concerning the discussion held by the European Securities and Markets Authority on the EU Parliament Regulation on indices used as benchmarks in financial instruments and financial contracts ACI POLSKA as the current administrator of WIBID and WIBOR and POLONIA indices has the following remarks:

1. European Securities and Markets Authority should take into account that WIBID and WIBOR are transaction rates. The Banks quoting in the Fixing process are obliged to conclude transactions at the quoted rates during 15 minutes after the fixed rates have been published. Once a quotation has been made, there is an obligation to conclude transactions. Quotations made on the OTC market are discretionary to some extent, with the dealers taking instant decisions to respond to rapid changes on the market. Consequently, Regulatory Technical Standards should consider the specific nature of the WIBID and WIBOR reference rates which are of vital importance for the Polish interbank market and loans. In the process of Fixing a reference rate, transactions appear after and not before the Fixing process. As regards WIBOR, making a quotation results in an obligation to conclude transactions.
2. ESMA should take into account that the specific role of the Calculation Agent in the WIBID and WIBOR fixing process. The Warsaw fixing process involves the banks making their quotations directly to the calculation agent (the administrator does not hold and has no influence on this data). The administrator receives the data once the fixing has been made by the Calculation Agent along with the input data as this is data to be used in transactions. The data is published in the Thomson Reuters system. Consequently, this provisions should be extended to include the Calculation Agent. "contribution of input data" means providing any input data to an administrator or the Calculation Agent or to another person for the purposes of passing to an administrator, that is required in connection with the determination of that benchmark, and is provided for that purpose.
3. In the process of Fixing the WIBOR and WIBID reference rates, the input data, which gives rise to an obligation to conclude transactions, can be subsequently checked for its compliance with the wibor rules (code) <http://www.acipolska.pl/index.php/wibor-en/regulations-6895.html>
4. Please note also that the administrator cannot accept the rate proposed by the bank, as the rate quoted by the bank is a rate at which the bank is ready to conclude transactions.

Additionally, the WIBID and WIBOR rates in Poland are not model-based but market-related and cannot be accepted by the bank's managing authority as it would change the market-oriented nature of the rate. Dealers are authorised to conclude such transactions.

5. Rates quoted by the dealer are not model-based. Consequently, the dealers have to work in dealing rooms to actively follow market developments. The data is provided by dealers and not by "those responsible for submitting rates"
6. In POLONIA FIXING EBA should take into account the fact that the Central Bank is the Calculation Agent for the reference rate. (POLONIA index, which is the reference rate for all OIS transactions denominated in PLN). The Banks provide the National Bank of Poland with all details of the ON deposit transactions concluded on a given day through an application of the Central Bank. The Central Bank calculates and publishes the relevant reference rate. (The rate modelled after EONIA). ACI Polska and the National Bank of Poland, Central Bank act as the administrator and the calculation agent, respectively.
7. In the case of the POLONIA Fixing, the rate is calculated based on the concluded transactions. Consequently, the administrator does not assess the bilateral interbank transactions. The banks provide the Central Bank with all details of the O/N deposit transactions concluded on a given day through the relevant application of the Central Bank. The Central Bank calculates and publishes the reference rate. The Central Bank receives details of concluded transactions from each bank. Thus the Central Bank would have to publish a list of transactions which were concluded on the market. Please note these are bilateral transactions which are subject to trade secret protection. Consequently, in the case of such indices, it should be considered that comprehensive statistics, number of transactions, price distribution etc. be published rather than a list of transactions which are used to calculate the benchmark. Even more so, as the Central Bank acts as the Calculation Agent in this Fixing process.

Please find enclosed additional remarks made by the one of the largest Polish bank and member of WIBOR and Polonia quoting panels

1. Input data – verifiability

1) ESMA proposal: To be able to verify input data, the benchmark Administrator should obtain data about substantial exposures of individual traders or trading desks to related instruments, as well as changes therein.

Bank's proposal: We believe that information about the Bank's substantial exposures should not be forwarded outside. In order to comply with the ESMA proposal, we suggest that the data about substantial exposures and changes therein be duly controlled within the Bank.

2) ESMA proposal: To be able to verify input data, the benchmark Administrator should obtain data about remedial actions taken in response to audit findings and progress in their implementation at the Bank.

Bank's proposal: We believe that information about remedial actions taken in response to audit findings and progress in their implementation at the Bank should not be forwarded outside. In order to comply with the ESMA proposal, we suggest that the details of remedial actions and progress in their implementation be independently verified within the Bank.

3) ESMA proposal: Weekly transmission of data needed for the Administrator to verify input data.

Bank's proposal: We suggest that the frequency of transmission of the data required to verify input data could vary depending on Administrator's and benchmark's characteristics.

2. Data provided by the Front Office – conflict of interest policy.

1) ESMA proposal: Physical separation between submitters / approvers and other Bank units in order to discourage improper or inadvertent communication.

Bank's proposal: The proposal for physical separation seems to be too far-reaching. Many businesses are seated in one building (headquarters). In order to comply with the ESMA proposal, we suggest that training be introduced with special focus on the right attitude, code of conduct or "Chinese walls".

Best regards

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Prezes Zarządu



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