

European Securities and Markets Authority
103 rue de Grenelle
75345 Paris

(Submitted online at www.esma.europa.eu)

31 March 2016

Dear Sirs,

ESMA Discussion Paper on Benchmarks Regulation¹

The International Capital Market Association (ICMA) sets out general remarks in relation to the above ESMA Discussion Paper in the Annex to this letter.

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: www.icmagroup.org.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated, vanilla debt securities issues throughout Europe on behalf of corporate borrowers. This constituency deliberates principally through ICMA's Primary Market Practices Committee², which gathers the heads and senior members of the syndicate desks of 48 ICMA member banks, and ICMA's Legal and Documentation Committee³, which gathers the heads and senior members of the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

Yours faithfully,

A handwritten signature in black ink that reads "C. Bellamy".

Charlotte Bellamy

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¹ https://www.esma.europa.eu/sites/default/files/library/2016-288_discussion_paper_benchmarks_regulation.pdf

² More information is available [here](#).

³ More information is available [here](#).

ANNEX

1. ICMA has been highlighting the importance of contractual continuity by engaging with both EMMI (Benchmark Administrator for Euribor) and ICE (Benchmark Administrator for LIBOR) in relation to the evolution of Euribor and LIBOR.
2. ESMA's remarks in paragraphs 337 to 339 of ESMA's Discussion Paper that, *inter alia*, the breach of the terms of a financial contract or financial instrument could occur if:
 - a) an adjustment of a specific benchmark to conform to the Regulation would result in significantly different values for that benchmark, and if these values would result in significant changes to interest rates, prices or other variables used to determine the amount payable under a financial contract or financial instrument which references that benchmark; or
 - b) a financial contract or financial instrument did not include an option to substitute the referenced benchmark with another benchmark, and the referenced benchmark was to be ceased in accordance with the Regulation,would seem to be relevant not only in relation to changes to, or cessation of, a benchmark as a result of the Benchmarks Regulation, but also in relation to the evolution of IBORs to IBORs+.
3. Accordingly, we re-iterate that it is very important to eliminate or reduce the risk for confusion in the evolution of benchmarks, which could lead to market disruption and potentially litigation. In this regard, it is desirable to evolve benchmarks in such a way as to maintain a rate that is commercially as close as possible to the current rate, to avoid:
 - a) "fallback" provisions under standard bond terms and conditions being triggered; and/or
 - b) the current form of the first standard fallback provision in bond contracts (typically to obtain offered quotes for the benchmark rate from reference banks) not becoming too commercially dissimilar from the evolved benchmark rate to be used, were it to be triggered in the circumstances for which it is intended i.e. where the evolved benchmark rate is not available.
4. To assist in achieving this, practical measures such as continuing to publish benchmarks in the same places they are currently published or posting notices on current and new publication sites in relation to any change in publication venue would be desirable. We understand that EMMI and ICE do not intend to change the time for daily publication of Euribor and LIBOR, respectively, and this is welcome.
5. ICMA's previous responses relating to the evolution of LIBOR and Euribor are available via these links:
 - a) [ICMA response to EMMI Consultative Position Paper on the Evolution of Euribor](#), 29 January 2016;
 - b) [ICMA response to the ICE Benchmark Administration Limited Second Position Paper on the Evolution of ICE LIBOR](#), 16 October 2015; and
 - c) [ICMA response to the ICE Benchmark Administration Error Policy Consultation](#), 19 September 2014,

each available on this ICMA webpage: <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/other-projects/>.