

## EU Benchmark Regulation: Article 29(2) statement on benchmarks

### Introduction

In summary Article 29(2) of the EU Benchmark Regulation (Regulation (EU) 2016/1011) (the “BMR”) requires that where a prospectus published under the Prospectus Directive relates to an offer of transferable securities that reference a benchmark, the issuer, offeror or person asking for admission to trading on a regulated market needs to ensure that the prospectus includes clear and prominent information stating whether the benchmark is provided by an administrator included in a public register established and maintained by ESMA pursuant to Article 36 of the BMR (the “Register”).

The Register can be found on ESMA’s website: <https://www.esma.europa.eu/benchmarks-register>.

Note that whilst the obligations under the BMR only apply to administrators located within the EU, restrictions on which benchmarks a supervised entity in the EU may use may mean that an administrator based in a third country needs to be entered on the Register. There are three routes by which this may be achieved – equivalence, endorsement or recognition.

Applicable transitional provisions (Article 52) mean that, in the context of MTN programmes, the Article 29(2) statement should be included on the first occasion after 1 January 2018 or at the latest within 12 months of 1 January 2018. This was confirmed by ESMA in their Q&As on the Benchmark Regulation<sup>1</sup> updated in May 2018 (see Q&A 8.2), where ESMA also confirmed that there is no BMR specific requirement to systematically update prospectuses approved under the Prospectus Directive upon a relevant administrator becoming included in the Register. This is however without prejudice to the obligation under the Prospectus Directive to assess, on a case-by-case basis, the significance and/or materiality of the specific situation.

ICMA suggests the following wording or substantively similar wording to be included in applicable prospectuses to address the BMR Article 29(2) requirements. This drafting is provided for a mainstream/vanilla debt product and may need to be tailored further for a structured note programme or issuance.

It is expected that this language would be included on the front cover of the prospectus/base prospectus<sup>2</sup>.

### Language for stand-alone:

Amounts payable under the [Notes][*other defined term for securities*] are calculated by reference to [*specify benchmark*], which is provided by [*administrator legal name*] (the “Administrator”). As at the

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<sup>1</sup> Available on the ESMA website: <https://www.esma.europa.eu/document/qa-benchmarks-regulation-bmr>

<sup>2</sup> An alternative approach would be to include a signpost to the BMR disclosure on the front cover of the base prospectus and placeholder for the relevant statement in the final terms rather than listing all benchmarks, administrators and applicable registration status on the front cover of the base prospectus. For example, this approach could be used in base prospectuses for products that reference benchmarks that are not known at the time of approval of the base prospectus (such as base prospectuses for structured products). However, certain national competent authorities may require disclosure relating to all benchmarks and administrators that are known at the time of approval of the base prospectus to be made in the base prospectus.

21 August 2018

date of [this Prospectus], the Administrator [appears][does not appear]<sup>3</sup> on the register of administrators and benchmarks established and maintained by the European Securities and Markets Authority ("ESMA") pursuant to article 36 of the Benchmark Regulation (Regulation (EU) 2016/1011) (the "BMR").

**Language for programmes:**

Amounts payable under the [Notes][*other defined term for securities*] may be calculated by reference to [*specify benchmark*], which is provided by [*administrator legal name*][*repeat as necessary*]. As at the date of this Prospectus, [[*administrator legal name*] [appears][does not appear]<sup>4</sup>][*repeat as necessary*] on the register of administrators and benchmarks established and maintained by the European Securities and Markets Authority ("ESMA") pursuant to article 36 of the Benchmark Regulation (Regulation (EU) 2016/1011) (the "BMR")."

**Additional explanatory language where the statement is negative** (i.e. the relevant administrator is not on the ESMA register):

As far as the Issuer is aware, [[*insert benchmark(s)*] [does/do] not fall within the scope of the BMR by virtue of Article 2 of that regulation] OR [the transitional provisions in Article 51 of the BMR apply], such that [*insert names(s) of administrator(s)*] [is/are] not currently required to obtain authorisation or registration (or, if located outside the European Union, recognition, endorsement or equivalence).

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<sup>3</sup> The ESMA BMR Q&A 8.2 of May 2018 confirms that a negative statement should be included where the administrator is not registered.

<sup>4</sup> See above footnote 3.