The EU Benchmarks Regulation in the APAC region: the role of regulators in mitigating the impact of the BMR

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1 EXECUTIVE SUMMARY

The EU Benchmarks Regulation (the **BMR**) came into effect on 1 January 2018, and will prohibit EU supervised entities from "using" an unregulated third country (i.e. non-European) benchmark in the EU from 1 January 2020.

A survey undertaken by ASIFMA and Herbert Smith Freehills in July 2017 indicated that at least 55 important benchmarks used in the Asia-Pacific (**APAC**) region stand to be affected by the BMR, including several in Asia's largest markets – Japan, Hong Kong and South Korea. The severity of the impact of the BMR outside the EU will depend significantly on whether these non-EU benchmark administrators (**Non-EU Administrators**) choose to register their benchmarks in the EU. However, the July 2017 survey also indicates that many benchmark administrators are unclear whether they will seek registration due to the significant difficulties associated with the each of the three registration options available to Non-EU Administrators, (endorsement, equivalence and recognition).

If large numbers of APAC benchmark administrators are unable to obtain registration by 1 January 2020, this is likely to have a significant impact on markets globally and across the APAC region, including reducing the number of benchmarks in the region and denying EU firms, and potentially some of their affiliates, access to financial instruments and contracts that reference non-EU benchmarks, including derivatives, loans, bonds and mortgages.

However, we consider that regulators in the APAC region have the capacity to potentially mitigate at least some of the impact of the BMR on the APAC region, and encourage them to consider taking the steps recommended below in order to mitigate this impact.

Section Two of this paper sets out a number of key areas in which engagement by APAC regulators with ESMA, the European Commission, and other European regulators is likely to be of crucial importance.

Section Three of this paper then focuses on the systemic impact of the BMR on global markets, including those in the APAC region, if Non-EU Administrators do not successfully register their benchmarks.

This paper also includes as Appendix 1 an overview of the BMR and its scope, and includes as Appendix 2 a summary of the difficulties associated with each of registration options available to Non-EU Administrators.

We urge APAC regulators to recognise the significant impact of the BMR on the region and agree upon a path forward for action in this area. In particular we encourage swift and continued dialogue between APAC regulators and ESMA and the European Commission, in respect of the broader issues discussed in this paper.

2 ROLE OF REGULATORS IN MITIGATING THE IMPACT OF THE BMR

The BMR will have a significant systemic impact on global markets, including those in the APAC region, if Non-EU Administrators do not obtain registration by 1 January 2020. Further discussion of this impact is set out in Section Three of this paper below.

However, the ASIFMA/Herbert Smith Freehills survey undertaken in July 2017 indicates that a number of Non-EU Administrators may not register their benchmarks before 1 January 2020, if at all, for a number of reasons. For example, 18% of participants do not consider that their business models would be adversely impacted if their benchmarks were no longer used in the EU, while another 36% said that the impact was "*not possible to determine*". However, an even larger percentage of participants (36%) also considered the process for seeking registration to be unclear or too complex. Further findings of this survey are set out in Appendix Two to this paper, which also provides an overview of the difficulties associated with the options for registration.

Given the systemic impact of non-registration, and the difficulties associated with each of the options for registration, we encourage APAC regulators to consider taking some or all of the steps set out here in order to assist in minimising the likely systemic impact of the failure of Non-EU Administrators to register by 1 January 2020. Our view is that if these steps are taken, they may well potentially consider that the taking of these steps has the capacity potentially mitigate at least some of the impact of the BMR on the APAC region.

Engagement with European regulators

As we note in Appendix Two, if Non-EU Administrators wish to obtain recognition they must apply to a Member State regulator and it is difficult in many instances to identify which Member State regulator to apply to. There is currently a draft European Commission (**EC**) proposal dated 20 September 2017 to amend the BMR to establish ESMA as the competent authority for the recognition or endorsements of third country administrators and benchmarks. These proposed amendments would benefit Non-EU Administrators by streamlining the process for applying for recognition or endorsement by removing the need to identify a Member State of reference. However, this is still very much at the proposal stage and cannot be relied upon. In that respect there is unlikely to be clarity as to whether these proposed amendments will be adopted until the latter half of 2018 at the earliest. We therefore strongly encourage regulators to engage with ESMA and the European Commission in relation to this proposal and communicate their views on how this proposal would assist in mitigating the extra-territorial impact of the BMR.

We also encourage regulators to engage with ESMA and the European Commission in relation to the difficulties associated with the options for registration, and, in particular, the need for guidance from these authorities on key issues, including guidance as to:

- the criteria the EC will consider in determining whether legislation is equivalent to the BMR (which will be of obvious assistance to regulators seeking to introduce benchmark legislation in their home jurisdiction which is designed to achieve equivalence with the BMR);
- the process by which a country would seek equivalence, including the timeframe for this process and the supporting information which would be required;
- the process for identifying a suitable endorsing entity and the nature of the expertise ESMA expects an endorsing entity to have, as well as the application process for endorsement;
- the role of compliance with the IOSCO Principles for Financial Benchmarks (or IOSCO Principles for PRAs) in a determination of equivalence or an application for recognition;
- the legal liability of an EU legal representative of a Non-EU Administrator seeking recognition or endorsement;
- how Non-EU Administrators who lack data on the use of their benchmarks in the EU are to identify their Member State of reference;
- what steps Non-EU Administrators who have identified the United Kingdom as their Member State of reference should be taking given that the United Kingdom is not expected to be a member of the European Union as at 1 January 2020 (and transitional arrangements may not address all related issues); and
- the application process, forms and timeline for recognition.

ASIFMA has recently written a letter to ESMA and the European Commission requesting further guidance on the above matters but further dialogue between APAC regulators and the EU authorities will also help to ensure APAC considerations are taken into account. We are concerned that as matters presently stand, the two year transitional period provided under the BMR has effectively been shortened by a lack of guidance on these key issues, and that continued delay will increase the difficulty for any Non-EU Administrator in obtaining registration by 1 January 2020. This in turn creates uncertainty in the market as to the future status of third country benchmarks. We would welcome engagement by APAC regulators with ESMA and the European Commission in relation to any or all of the above matters. Additional guidance will help Non-EU Administrators make effective use of the remaining transitional period before the BMR takes effect.

Proactively engaging with the EU regarding entry into cooperation arrangements

Both the equivalence and recognition options outlined in Appendix Two require cooperation arrangements between third country regulators and either ESMA (in the case of equivalence applications) or the NCA of the Member State of reference (in the case of recognition applications).

ESMA has drafted technical standards for cooperation agreements with third countries, but these have not yet been endorsed by the European Commission. We consider it would be helpful for APAC regulators to engage as soon as possible with ESMA and the EU NCAs regarding the process and timeline for entry into cooperation arrangements, so as to ensure that applications for registration by Non-EU Administrators in their jurisdictions are not delayed by the need for cooperation arrangements to be negotiated.

We understand that some regulators that do not currently have existing responsibility for supervision of benchmark administrators located within their jurisdiction, may have concerns that entering into cooperation arrangements which impose ongoing supervisory obligations on third country regulators would be tantamount to de facto regulation of benchmark administrators within their jurisdictions. We suggest that for regulators with these concerns, engagement with ESMA and the European Commission as soon as possible regarding these matters is critical.

Encouraging administrators to disclose their plans to the market

The BMR requires EU supervised entities which use a benchmark to 'produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided'. Furthermore, these plans must, where feasible and appropriate, nominate one or more alternatives that could be referenced to substitute for the benchmarks no longer provided, and indicate why the alternative benchmarks would be an appropriate alternative.

While not expressly stated, it seems likely that the failure of a non-EU administrator to seek recognition of its benchmarks within the EU will amount to "material change" in its benchmarks from the perspective of EU supervised entities. ESMA issued guidance on 14 December 2017 to clarify that this obligation applies as of 1 January 2018. Importantly, ESMA noted that it considered that EU supervised entities were required to reflect such plans in contracts entered into with clients after 1 January 2018, and that it expected EU supervised entities to amend existing contracts 'where practicable and on a best effort basis'.

This means that EU supervised entities entering into new contracts prior to 1 January 2020 are already subject to a requirement to specify in those contracts what alternative benchmarks they would use in the event of the cessation or material change in the benchmarks already relied on. Given this, it seems likely that where administrators have not released information to the market regarding their plans to apply for registration (including the option they intend to pursue and / or their Member State of reference), EU supervised entities may avoid using these benchmarks. For some benchmark administrators, this may lead to them ceasing to offer certain benchmarks prior to 1 January 2020, which is likely to lead to the concentration risk issues discussed in Section Three. For these reasons, we encourage regulators to engage with Non-EU Administrators in their jurisdiction regarding their plans for registration, and encourage them to disclose such information to the market. Increased disclosure by Non-EU Administrators (where that disclosure involves disclosure of a concrete plan to pursue registration) is likely to help mitigate the impact of the BMR by reassuring users of that administrators' benchmarks that the administrator is taking steps to comply with the BMR.

Similarly, where regulators do intend to introduce benchmarks legislation which is designed to achieve equivalence with the BMR, we consider it would be very helpful for that intention (as well as any information about the scope and likely timing of that legislation) to be disclosed publicly as soon as practicable in order to provide much needed clarity to the market.

3 THE SYSTEMIC IMPACT OF NON-REGISTRATION

As discussed above, there are significant concerns that a large number of Non-EU Administrators will not obtain registration by 1 January 2020. This means that there will likely be fewer non-EU benchmarks available for reference purposes in the EU once the transitional period has expired. Indeed, it is likely that the move away from non-registered benchmarks will begin before 1 January 2020 as EU supervised entities pre-empt the consequences of the BMR and switch to alternative benchmarks. This raises a number of significant systemic issues of concern to regulators, as set out below.

Market liquidity and fragmentation

If certain non-EU benchmarks can no longer be used by affected EU entities, this may adversely affect the liquidity of APAC products which reference these benchmarks as a substantial portion of the relevant market for such products will disappear. This will further exacerbate market fragmentation issues currently arising from other regulatory developments such as MiFID II. It is anticipated that even a small decrease in the number of available benchmarks will have a significant impact on liquidity.

Market power and access issues

A reduction in the number of non-EU benchmarks in an EU jurisdiction may increase the market power of those "surviving" benchmark administrators. However, this will be less problematic in jurisdictions where benchmarks are provided by industry associations free of charge.

It is likely that EU entities will end up switching to alternative benchmarks, moving away from indices like the Hang Seng and Nikkei indices, further exacerbating market fragmentation issues. However, in many instances there may not be a suitable alternative benchmark and the EU participants may therefore withdraw from the market.

Market expectations and reputation risk

Financial institutions (including those in APAC) are increasingly expecting benchmark administrators to meet global standards, namely the IOSCO *Principles for Financial Benchmarks* or, where applicable, with the IOSCO *Principles for Oil Price Reporting Agencies* (together the **IOSCO Principles**). Significant global divergence may result in market participants globally reducing their exposures to non-compliant benchmarks. Conversely, administrators which already meet these requirements may benefit from a “first mover” advantage. In light of past issues with benchmark manipulation, there is increasing scrutiny on a benchmark’s governance, quality and accountability mechanisms from both regulators and financial institutions.

Concentration risk

There are a number of ways in which concentration risk may develop. A decrease in the number of benchmarks being relied upon or referenced will increase concentration risk associated with each of the "surviving" benchmarks as the volume of transactions using these benchmarks increase. Similarly, where only some Non-EU Administrators in the APAC region seek registration, this will lead to concentration risk as EU firms shift towards using registered benchmarks.

In addition, EU firms may increasingly rely on benchmarks administered by EU benchmark administrators while entities outside the EU rely on those benchmarks administered by Non-EU Administrators, thereby potentially resulting in the build-up of systemic risk at a regional level in relation to those benchmarks.

Hedging risk

The ability of EU banks, corporates and investment institutions to hedge interest rate and other risks may be severely impacted as important products currently used for hedging purposes will no longer be available. If EU registered administrators respond to the BMR by launching new benchmarks to replace those benchmarks which are currently administered by Non-EU Administrators, then this decreased ability to hedge may only cause problems in the short term.

However, during this period of uncertainty, while banks may be able to bear this risk (potentially at a capital cost), many end-users may choose not to take on such risks and may pass the underlying and associated costs onto their commercial contractual counterparties who presumably have an APAC nexus. The building of liquidity in new EU-compliant benchmarks may lead to either whole market shifts or market fragmentation.

This hedging risk is in addition to the potential loss of investment in Asian stock markets – for example, an EU investment fund investing in Asian stock markets may traditionally buy a put option on an Asian stock

index to hedge against the risk of the index falling. If the put option is classified under the BMR as a financial instrument and the Asian stock index is not registered as a benchmark for use in the EU under the BMR, that fund's manager may not be able to buy the put option. Deprived of that hedging opportunity, the fund may have to reconsider how much it invests in Asian stock markets. This may have a significant impact on Asian economies.

APPENDIX 1: OVERVIEW OF THE BMR

The BMR introduces a harmonised set of rules on benchmarks across the EU. It sets out an authorisation process for EU benchmark administrators, sets out rules applicable to those who contribute or provide submissions to a benchmark, and prohibits use in the EU of a benchmark that is not authorised or registered. Additional rules apply to benchmarks deemed to be significant or critical.

What is a benchmark according to the BMR?

The BMR generally defines a **benchmark** as any *index* which is referenced in a financial instrument (e.g. an option, forward, future or other derivative, note or equity product which is traded on a trading venue) or a financial contract (i.e. a regulated mortgage or credit agreement) in order to determine the amount payable under that contract or determine the value of a financial instrument. For investment funds a benchmark is any index referenced in a financial instrument to measure the performance of an investment fund (i.e. a UCITS or an Alternative Investment Fund) with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees.

An **index** is then defined to mean any figure that is published or *made available to the public*, that is regularly determined: (i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and (ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values and surveys. Interest rate, fixed income and equity indices may be covered by this definition.

An index is **made available to the public** if it is made accessible to a potentially indeterminate number of people either directly or indirectly. Where a recipient of a benchmark provides this onwards to one or more of their own clients, and these clients may provide the benchmark to other third parties, the benchmark may be deemed to be made available to the public. This may raise issues in relation to the sharing of benchmarks with private wealth clients, depending on the number of clients the benchmark is shared with and the degree to which these clients might themselves disseminate it more broadly.

In summary the BMR is very broad in its approach to identifying benchmarks and the definitions would include proprietary indices, which are often used in the private wealth context. There is currently some uncertainty as to whether baskets, portfolios or strategies which are used to determine the value of a financial instrument are "benchmarks" within the meaning of the BMR.

Whom does the BMR apply to?

The BMR applies to EU "supervised entities" in relation to their "use" of a benchmark. These entities include EU banks, investment firms (broadly equivalent to entities regulated by the Securities and Futures Commission in Hong Kong or which hold a capital markets services licence in Singapore), UCITS, UCITS management companies, Alternative Investment Fund Managers (**AIFMs**), insurance providers and exchanges and markets. End-users of benchmarks, such as investors or consumers, will also be affected by extension.

What does "use of a benchmark" mean?

Use of a benchmark means:

- issuance of a financial instrument which references an index or a combination of indices;
- determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices;
- being party to a regulated credit agreement or mortgage which references an index or a combination of indices;
- providing a borrowing rate in a regulated credit agreement or mortgage calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party; or

- measuring the performance of an investment fund through an index or combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees.

The “use” of such benchmarks must occur "in the EU" to be captured by the BMR. However, the meaning of "in the EU" is unclear, and as a result the APAC operations of EU supervised entities may be caught. For instance the issuance of a note within the EU by an EU bank that is then sold into the APAC region could be caught, as even if the secondary market in the notes is in APAC, the initial issuance takes place in the EU. Similarly, derivatives contracts entered into by APAC counterparties with EU counterparties – or even APAC branches of EU counterparties – could also be in scope.

ESMA has recently updated its Q&A to indicate that the BMR does not apply to the provision of benchmarks that are used exclusively outside the Union. However, the meaning of “exclusively used outside the Union” is unclear and remains problematic. There is hope that ESMA will issue more guidance to clarify what constitutes "use in the EU" and "exclusively used outside the Union", but it is not yet clear whether such guidance will be forthcoming.

We understand that many non-EU administrators within the APAC region currently administer benchmarks that are currently "used" in financial instruments in the EU, as well as by EU supervised entities outside the EU. We therefore expect that the BMR will have an impact on the markets for those products in the EU (and, ultimately, the end-users of benchmarks such as investors or consumers), if measures are not taken to permit the use of these non-EU benchmarks under the BMR.

Do any exceptions apply?

The BMR does not apply to EU and non-EU central banks, and certain other limited persons, including public authorities such as national statistics agencies, as well as persons or entities performing public administrative functions or providing public services (such as measures of employment and economic activity) under the control of a government entity.

APPENDIX 2: THE REGISTRATION OPTIONS AVAILABLE TO NON-EU ADMINISTRATORS

As referred to above, there are significant concerns amongst both industry participants and Non-EU Administrators that the three registration options available to Non-EU Administrators through which a non-EU benchmark may be permitted to be "used" by EU firms are overly complex.

The three options are as follows:

- **Equivalence**: the European Commission can adopt an equivalence decision which declares that the legal framework and supervisory practice of the local jurisdiction is "equivalent" to the regime established by the BMR;
- **Recognition:** a "home" EU Member State regulatory authority can "recognise" a specific Non-EU Administrator if an application is successful. This will require substantial compliance with the BMR; or
- **Endorsement:** a non-EU benchmark or group of benchmarks can be "endorsed" by an EU benchmark administrator, or another regulated entity within the EU that has a clear and well defined role within the accountability framework of the relevant Non-EU Administrator.

Recognition was the option most Non-EU Administrators who participated in the ASIFMA/Herbert Smith Freehills survey said that they would pursue, although an equal number were still unsure. One participant felt that the three options were not defined clearly enough whilst another said that they are "*difficult and costly for us to proceed*". All three options raise their own challenges and further dialogue will be needed to ensure all administrators can successfully register.

In relation to equivalence, while some APAC jurisdictions have introduced legislation to facilitate seeking equivalence or have indicated that they will do so, it is highly unlikely that all APAC jurisdictions will be willing or able to do so before the BMR takes full effect from 1 January 2020. This is particularly problematic given recent statements by ESMA that the transitional period will not under any circumstances be extended beyond 1 January 2020. As such, equivalence is unlikely to be a viable solution for all Non-EU Administrators in APAC, at least in the first instance. This is the case even though equivalence requires adherence to certain IOSCO principles, which banks and other institutions are already considering as constituting market practice and which Non-EU Administrators will generally already be reviewing and working towards.

As discussed further below, both the recognition and endorsement options require the appointment of a representative in the EU, who will be accountable to EU regulatory authorities for the conduct of a Non-EU Administrator. From discussions to date it appears that it will be very difficult if not impossible for Non-EU Administrators without EU affiliates to find anyone willing to take on this role. This is particularly likely to be the case in relation to endorsement, given the significant obligations imposed on the EU representative (as discussed further below). It is still unclear as to how onerous the requirements will be for EU representatives of firms which seek and obtain recognition. This lack of clarity, at this late stage, is problematic.

Further, the ASIFMA/Herbert Smith Freehills survey of Non-EU Administrators indicated that there was significant variation in relation to the data available to these administrators as to the use of their non-EU benchmarks within the EU. In particular, only 18% of participants indicated that data regarding the location of EU trading venues on which instruments referencing their benchmarks were admitted to trading or traded for the first time was available; the same figure said that they knew the location of EU supervised entities using their benchmarks. As discussed below, this information is an important part of applying for recognition and as such, lack of available data will raise further challenges in applying for recognition. This may be mitigated by recent EU proposals, which suggest that recognition of third country benchmarks may be overseen directly by ESMA so that Non-EU Administrators need not have to choose a Member State for application and supervision purposes. However, these proposals are not finalised and need to be monitored.

Equivalence: what are the requirements?

Equivalence requires an application to be made to the European Commission by the regulator in the relevant non-EU jurisdiction (**Non-EU Regulator**). In order to adopt an equivalence decision, the European Commission has two options.

First, it can declare equivalence on the basis that administrators authorised in the relevant non-EU jurisdiction comply with binding requirements which are equivalent to the requirements under the BMR, in particular

taking into account whether the legal framework and supervisory practice of the non-EU jurisdiction ensures compliance with the IOSCO Principles. These binding requirements must be subject to effective supervision and enforcement on an on-going basis in the relevant non-EU jurisdiction.

The second option for equivalence is where the European Commission is satisfied that binding requirements with respect to specific Non-EU Administrators or non-EU benchmarks (or families of benchmarks) are equivalent to the requirements under the BMR, and that those requirements are subject to effective supervision and enforcement.

The need for equivalence between the BMR and the relevant local regime under both options requires binding requirements in respect of benchmark regulation in the third country jurisdiction. A “binding” requirement could mean that overarching benchmark regulation is needed in the jurisdiction in which the Non-EU Administrator is located. Such regulation does not currently exist in most APAC jurisdictions.

In addition, ESMA is required to establish cooperation arrangements with relevant Non-EU Regulators in the relevant non-EU jurisdiction. The purpose of these cooperation arrangements is, very broadly, to establish mechanisms for the exchange of information between ESMA and Non-EU Regulators, and to allow ESMA to be notified in the event that a relevant Non-EU Administrator is in breach of local requirements. However, as discussed above, it is unlikely that cooperation agreements will be entered into with all APAC regulators before 1 January 2020.

Recognition: what are the requirements?

In order to rely on the recognition route, the Non-EU Administrator needs to be recognised by the regulator located in the "Member State of reference". There are a number of criteria for identifying the Member State of reference, set out in the BMR. In short:

a) where the Non-EU Administrator is part of a group that contains an EU regulated firm, the Member State of reference is the jurisdiction in which that firm is located;

b) where the Non-EU Administrator is not part of a group, where one or more benchmarks provided by that Administrator are referenced in financial instruments which are admitted to trading in one or more Member States, the Member State of reference is the jurisdiction in which the relevant financial instrument was admitted to trading or traded for the first time and is still traded. We would recommend Non-EU Administrators contact trading venues in the first instance to obtain any information needed in this regard, although for over-the-counter contracts such information may be difficult to obtain;

c) Where neither (a) nor (b) apply, where one or more benchmarks provided by the Non-EU Administrator are used by entities in more than one Member State, the Member State of reference is the jurisdiction in which the highest number of those entities are located. Non-EU Administrators will need to ensure that they have the relevant data available in order to determine their Member State of reference, if they seek recognition.

There is a draft European Commission proposal dated 20 September 2017 to amend the BMR to establish ESMA as the competent authority for the recognition and approval of endorsements of third country administrators and benchmarks. Whilst these proposed amendments would benefit Non-EU Administrators, they are still in a proposal stage and cannot be relied upon. There is unlikely to be clarity as to whether these proposed amendments will be adopted until the latter half of 2018 at the earliest.

Once the Member State of reference is identified, the Non-EU Administrator must apply directly to the regulator of that Member State for recognition. The applicant Non-EU Administrators must have appointed a legal representative within their Member State of reference to act on their behalf in respect of the EU national competent authority (**NCA**) and other authorities and to perform an oversight function over the Non-EU Administrator. We are not aware of any firms offering this legal representative service at this stage.

Once recognised, a Non-EU Administrator will be required to comply with most of the requirements of the BMR on an ongoing basis. The administrator can meet this requirement by applying the relevant IOSCO Principles provided such application is equivalent to the BMR. However, compliance with the IOSCO Principles is itself not sufficient. Certification of compliance with the relevant IOSCO Principles must be provided by either an independent external auditor or, if the administrator is supervised by a competent authority of a third country, certification from that competent authority.

Endorsement: what are the requirements?

An administrator located within the EU, or another regulated entity within the EU that has a clear and well defined role within the accountability framework of the relevant Non-EU Administrator (each an **EU Endorsing Entity**) can "endorse" a non-EU benchmark, such that the relevant non-EU benchmark is considered to be a benchmark provided by the EU Endorsing Entity.

Endorsement imposes some fairly material obligations on the EU Endorsing Entity, as follows:

- The EU Endorsing Entity needs to have verified, and be able to demonstrate on an ongoing basis to its own regulator, that the provision of the non-EU benchmark fulfils requirements which are at least as stringent as those set out in the BMR;
- The EU Endorsing Entity needs to have the necessary expertise to monitor the activity of the provision of the non-EU benchmark by the Non-EU Administrator, and manage the associated risks;
- There needs to be an objective reason to provide the non-EU benchmark in a third country and for that benchmark to be endorsed for use in the EU – the Commission is empowered to make regulations as to when such an objective reason may be deemed to exist.

Applications for endorsement are made by the EU Endorsing Entity itself.

The endorsement route is dependent on an EU Endorsing Entity coming forward to provide the relevant endorsement, and in the absence of any affiliated entities seeking to take on this role, then this route may be of less use, especially given the requirement on the EU Endorsing Entity to verify and demonstrate compliance by the Non-EU Administrator with the BMR, monitor the Non-EU Administrator's activities and manage the associated risks.