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PRESS RELEASE

# New Industry Survey Predicts 'Perfect Storm' of Regulatory Change for Non-EU Benchmark Administrators in Asia

*ASIFMA and Herbert Smith Freehill's report examines the ongoing difficulties encountered in the region in preparing for the EU's Benchmarks Regulation*

**Hong Kong, 17 December 2019** – ASIFMA, the financial industry's leading regional trade association, today released the results of its new industry survey "**The EU Benchmarks Regulation and the APAC Region: Keeping Up the Momentum.**" The report was co-authored by member firm Herbert Smith Freehills.

"The two-year extension to the EU Benchmarks Regulation (BMR)'s transitional period for non-EU administrators to 31 December 2021 has given some welcome breathing space to both the administrators and users of their benchmarks within the European Union (EU)," said John Ball, Managing Director and Head of GFXD at ASIFMA.

As highlighted in earlier reports, the complexity and uncertainty surrounding the three avenues for third country registration – equivalence, recognition and endorsement – had generated significant industry concern about whether it would be possible to achieve a smooth transfer to the BMR before the original end to the transition period on 31 December 2020.

"However welcome, this extension has created new difficulties, with the transition period now ending on the same day as LIBOR is due to be discontinued," said Will Hallatt, Partner at Herbert Smith Freehills. "This will create a 'perfect storm' of regulatory change for benchmark administrators and users as we approach the end of 2021."

"Despite the extended transition period, seeking registration for benchmarks still remains a significant challenge. This was made clear by the results of our third survey of non-EU administrators across the Asia-Pacific (**APAC**) region," added Mr. Ball.

The October 2019 survey indicated that although non-EU administrators have warmly welcomed the two-year grace period, they still need more guidance and reform from the European Securities and Markets Authority (**ESMA**) and the European Commission (**Commission**), particularly as the proposed changes to the regime under the European Supervisory Agencies Review have yet to come into force under EU law.

As such, non-EU administrators trying to become BMR-compliant continue to face practical difficulties over equivalence, recognition and endorsement.

"This is concerning both regulators and the market, given the potential for significant disruption if widely used third-country benchmarks are no longer available," added Mr. Hallatt.



ASIA SECURITIES INDUSTRY & FINANCIAL MARKETS ASSOCIATION | Unit 3603, Tower 2 Lippo Centre | 89 Queensway Admiralty, Hong Kong | Tel: +852 2531 6500 www.asifma.org

In the APAC region, a recent survey of members of the Executives' Meeting of East Asia-Pacific Central Banks (**EMEAP**) showed that regulators are concerned that the failure of non-EU administrators to seek registration under the BMR could potentially force EU supervised entities to exit certain markets due to the unavailability of funding and hedging instruments in EMEAP markets.

Likewise, non-EU administrators surveyed by ASIFMA and Herbert Smith Freehills indicated that if they were not able to register their benchmarks before the end of the transition period, some funding and hedging instruments would no longer be issued, as a significant majority of counterparties to these instruments are EU-supervised entities.

This report considers each of the persistent difficulties encountered by non-EU administrators in relation to each of the three options available for registration of benchmarks: equivalence, recognition and endorsement.

"It is clear from the results of our survey that non-EU administrators continue to face many of the same issues that they have struggled with in our first survey in 2017. However, the complexities of the issues encountered by these non-EU administrators as they seek registration to use their benchmarks within the EU from 1 January 2022 have been further magnified against the market uncertainty caused by Brexit, the current status of the ESA Review and the upcoming discontinuation of major interest rate benchmarks such as LIBOR," concluded Mr. Ball.

The full report can be downloaded here.

**For media queries, please contact:**
Corliss Ruggles, Head of Communications, ASIFMA
Tel: +852 2537 3029 / +852 9359 6996
Email: cruggles@asifma.org

Sally Greig, Head of Communications, Asia, Herbert Smith Freehills
Tel +852 2101 4624 /+852 9815 4096
Email: Sally.Greig@hsf.com

**About ASIFMA**

ASIFMA is an independent, regional trade association with over 125 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

More information about ASIFMA can be found at: www.asifma.org.

**About Herbert Smith Freehills**

Operating from 27 offices across Asia Pacific, EMEA and North America, Herbert Smith Freehills is at the heart of the new global business landscape. It provides premium quality, full-service legal advice on dispute resolution, projects and transactions to many of the world's most important organisations. The firm has expertise across industry sectors, including banks, consumer products, energy, financial buyers, infrastructure and transport, mining, pharmaceuticals and healthcare, real estate, TMT, and manufacturing and industrials. With a 30-year history in Asia, Herbert Smith Freehills has over 300 lawyers and legal professionals in the region, advising clients on complex corporate, disputes and finance matters from offices in Bangkok, Beijing, Hong Kong, Jakarta, Kuala Lumpur, Seoul, Shanghai, Singapore and Tokyo.