

EU BENCHMARK REGULATION (BMR)

MSCI real estate indexes

Jamie Pawliczek, Global Head of Regulatory Affairs/Head of EMEAI Legal

3 May 2018

INTRODUCTION

- BMR overview
- MSCI's plans
- Use of a benchmark under the BMR
- Contributions under the BMR

BMR OVERVIEW

- **Timeline**
 - Published: June 2016
 - Application date: 1 January 2018, *subject to a 2 year transitional period for EU and non-EU benchmark administrators (per ESMA Q&As of 5 July 2017, 8 November 2017)*
- **What does it mean?**
 - Administrators
 - Benchmark administration is a regulated activity in the EU
 - Benchmark administrators have to be authorized/registered in the EU for their indexes to be used in the EU
 - Users
 - can only “use” EU regulated benchmarks in relation to EU financial instruments and investment funds after 1 January 2020
 - must update their prospectuses *as of 1 January 2018*
 - must put index transitional plans in their contracts/prospectuses *as of 1 January 2018 (per ESMA Q&A of 14 December 2017)*
 - Contributors/Supervised Contributors – regulated as of *as of 1 January 2018 (per ESMA Q&A of 22 March 2018)*
- **New regulation – many uncertainties still exist**

WHAT ARE MSCI'S PLANS?

- As a point of interest, MSCI filed its application for the MSCI equity indexes in October 2017 and was granted authorization by the FCA on March 5, 2018, and we are the first and still the only major global equity index provider to have attained authorization*
- For MSCI real estate indexes, we had intended to submit our application to the FCA in Q2 2019
- However, things changed in Q1 and that prompted us to do a consultation*

* Information can be found on our index regulation page of our website (<https://www.msci.com/index-regulation>)

“USE OF A BENCHMARK” UNDER THE BMR

- What is “use of a benchmark” that pulls users into the BMR?
 - Using the index for a **financial instrument**
 - Using the index for an **AIF/UCITS** for:
 - Index tracking (physical/synthetic replication *per ESMA Q&A of 5 February 2018*)
 - Asset allocation
 - *“ESMA considers that an index is **used to measure the performance of an investment fund with the purpose of defining its asset allocation when the documentation, and in particular its investment policy or investment strategy, define constraints on the asset allocation of the portfolio in relation to an index. For example the investment policy or strategy may require the investment fund to invest a percentage or the whole portfolio in securities that are constituents of an index. Investment funds using indices to measure their performance with the purpose of defining the asset allocation thus may include investment funds that are actively managed (where the manager has discretion over the composition of its portfolio subject to the investment objectives and strategies as opposed to a fund that tracks the return of the index)” (per ESMA Q&A of 5 February 2018)***
 - Determining managers’ performance fees
- What is not included as “use of a benchmark”?
 - Segregated mandates/separate accounts
 - “Indices referenced in the documentation of an investment fund **solely to compare the performance of the investment fund ... where no investment constraint on the asset allocation of the portfolio is established in relation to the index.**” (*per ESMA Q&A of 5 February 2018*)

CONTRIBUTIONS UNDER THE BMR

- Definitions:
 - “Input data” means the data in respect of the value of one or more underlying assets, or prices, including estimated prices, quotes, committed quotes or other values, used by an administrator to determine a benchmark
 - “Contribution of input data” means providing any input data **not readily available** to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose
 - “Supervised contributor” means a supervised entity that contributes input data to an administrator located in the Union
- Question:
 - Are MSCI’s real estate data providers “contributors” or “supervised contributors” under the BMR?

MSCI'S VIEW

- It is our current view that our clients should not be considered “contributors” or “supervised contributors”
- This is based on the following:
 - “input data” refers to the price of the underlying asset which we view as the valuations/transaction price for asset level indexes and the fund NAV for fund level indexes, and
 - “readily available” refers to data with an *independent purpose not created for the purpose of benchmark calculation*
 - Property valuations and NAV clearly have an independent purpose, the calculation of returns for existing investors in the fund and the establishment of share prices for investors coming in or out of the fund each reporting period, and are not created for the purpose of benchmark calculation
- *This is not legal advice and we do not yet have final guidance from ESMA*

MSCI'S CONSULTATION

- Q4 2017 vs Q1 2018
 - Is transparency under threat?
- Things changed in Q1 and that prompted us to do a consultation
 - We had to go to the market all at the same time
 - We worded it the way we did, but no decision has been made
 - We want to understand the impacts on clients, whether or not the MSCI indexes are regulated
- What we need is
 - Comprehensive information on our clients' "use of a benchmark" and the impacts of MSCI real estate indexes being regulated or unregulated
 - Comprehensive information about the impact to our clients if they are supervised contributors (even if they are not users)
- Consultation runs through **May 18** and we will announce our results on or before **June 6**

ABOUT MSCI

For more than 40 years, MSCI's research-based indexes and analytics have helped the world's leading investors build and manage better portfolios. Clients rely on our offerings for deeper insights into the drivers of performance and risk in their portfolios, broad asset class coverage and innovative research.

Our line of products and services includes indexes, analytical models, data, real estate benchmarks and ESG research.

MSCI serves 97 of the top 100 largest money managers, according to the most recent P&I ranking.

For more information, visit us at www.msci.com.

NOTICE AND DISCLAIMER

This document and all of the information contained in it, including without limitation all text, data, graphs, charts (collectively, the “Information”) is the property of MSCI Inc. or its subsidiaries (collectively, “MSCI”), or MSCI’s licensors, direct or indirect suppliers or any third party involved in making or compiling any Information (collectively, with MSCI, the “Information Providers”) and is provided for informational purposes only. The Information may not be modified, reverse-engineered, reproduced or disseminated in whole or in part without prior written permission from MSCI.

The Information may not be used to create derivative works or to verify or correct other data or information. For example (but without limitation), the Information may not be used to create indexes, databases, risk models, analytics, software, or in connection with the issuing, offering, sponsoring, managing or marketing of any securities, portfolios, financial products or other investment vehicles utilizing or based on, linked to, tracking or otherwise derived from the Information or any other MSCI data, information, products or services.

The user of the Information assumes the entire risk of any use it may make or permit to be made of the Information. NONE OF THE INFORMATION PROVIDERS MAKES ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE INFORMATION (OR THE RESULTS TO BE OBTAINED BY THE USE THEREOF), AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH INFORMATION PROVIDER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF ORIGINALITY, ACCURACY, TIMELINESS, NON-INFRINGEMENT, COMPLETENESS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO ANY OF THE INFORMATION.

Without limiting any of the foregoing and to the maximum extent permitted by applicable law, in no event shall any Information Provider have any liability regarding any of the Information for any direct, indirect, special, punitive, consequential (including lost profits) or any other damages even if notified of the possibility of such damages. The foregoing shall not exclude or limit any liability that may not by applicable law be excluded or limited, including without limitation (as applicable), any liability for death or personal injury to the extent that such injury results from the negligence or willful default of itself, its servants, agents or sub-contractors.

Information containing any historical information, data or analysis should not be taken as an indication or guarantee of any future performance, analysis, forecast or prediction. Past performance does not guarantee future results.

The Information should not be relied on and is not a substitute for the skill, judgment and experience of the user, its management, employees, advisors and/or clients when making investment and other business decisions. All Information is impersonal and not tailored to the needs of any person, entity or group of persons.

None of the Information constitutes an offer to sell (or a solicitation of an offer to buy), any security, financial product or other investment vehicle or any trading strategy.

It is not possible to invest directly in an index. Exposure to an asset class or trading strategy or other category represented by an index is only available through third party investable instruments (if any) based on that index. MSCI does not issue, sponsor, endorse, market, offer, review or otherwise express any opinion regarding any fund, ETF, derivative or other security, investment, financial product or trading strategy that is based on, linked to or seeks to provide an investment return related to the performance of any MSCI index (collectively, “Index Linked Investments”). MSCI makes no assurance that any Index Linked Investments will accurately track index performance or provide positive investment returns. MSCI Inc. is not an investment adviser or fiduciary and MSCI makes no representation regarding the advisability of investing in any Index Linked Investments.

Index returns do not represent the results of actual trading of investable assets/securities. MSCI maintains and calculates indexes, but does not manage actual assets. Index returns do not reflect payment of any sales charges or fees an investor may pay to purchase the securities underlying the index or Index Linked Investments. The imposition of these fees and charges would cause the performance of an Index Linked Investment to be different than the MSCI index performance.

The Information may contain back tested data. Back-tested performance is not actual performance, but is hypothetical. There are frequently material differences between back tested performance results and actual results subsequently achieved by any investment strategy.

Constituents of MSCI equity indexes are listed companies, which are included in or excluded from the indexes according to the application of the relevant index methodologies. Accordingly, constituents in MSCI equity indexes may include MSCI Inc., clients of MSCI or suppliers to MSCI. Inclusion of a security within an MSCI index is not a recommendation by MSCI to buy, sell, or hold such security, nor is it considered to be investment advice.

Data and information produced by various affiliates of MSCI Inc., including MSCI ESG Research LLC and Barra LLC, may be used in calculating certain MSCI indexes. More information can be found in the relevant index methodologies on www.msci.com.

MSCI receives compensation in connection with licensing its indexes to third parties. MSCI Inc.’s revenue includes fees based on assets in Index Linked Investments. Information can be found in MSCI Inc.’s company filings on the Investor Relations section of www.msci.com.

MSCI ESG Research LLC is a Registered Investment Adviser under the Investment Advisers Act of 1940 and a subsidiary of MSCI Inc. Except with respect to any applicable products or services from MSCI ESG Research, neither MSCI nor any of its products or services recommends, endorses, approves or otherwise expresses any opinion regarding any issuer, securities, financial products or instruments or trading strategies and MSCI’s products or services are not intended to constitute investment advice or a recommendation to make (or refrain from making) any kind of investment decision and may not be relied on as such. Issuers mentioned or included in any MSCI ESG Research materials may include MSCI Inc., clients of MSCI or suppliers to MSCI, and may also purchase research or other products or services from MSCI ESG Research. MSCI ESG Research materials, including materials utilized in any MSCI ESG Indexes or other products, have not been submitted to, nor received approval from, the United States Securities and Exchange Commission or any other regulatory body.

Any use of or access to products, services or information of MSCI requires a license from MSCI. MSCI, Barra, RiskMetrics, IPD, FEA, InvestorForce, and other MSCI brands and product names are the trademarks, service marks, or registered trademarks of MSCI or its subsidiaries in the United States and other jurisdictions. The Global Industry Classification Standard (GICS) was developed by and is the exclusive property of MSCI and Standard & Poor’s. “Global Industry Classification Standard (GICS)” is a service mark of MSCI and Standard & Poor’s.