

Frequently Asked Questions European Union Benchmark Regulation

January 26, 2018

From January 1, 2018, a new EU regulation will apply to the use of, provision of, and contribution to indices used as financial benchmarks in the EU. This document intends to answer key questions in relation to the objectives, timing, and requirements of this regulation as it relates to S&P Dow Jones Indices.

- 1. What is the purpose of the new regulation?** The European Union Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (BMR or Regulation)¹ is intended to protect consumers and investors through placing transparency and governance requirements on firms that provide, contribute to, or use a wide range of interest rate, currency, securities, commodity, and other indices or reference prices.

The BMR is a key part of the EU's response to the LIBOR scandal and the allegations of manipulation of foreign exchange and commodity benchmarks.

The BMR builds upon the Final Report of the Board of the International Organization of Securities Commission (IOSCO) for Principles for Financial Benchmarks dated July 2013 (IOSCO Principles).

S&P Dow Jones Indices (S&P DJI) adheres to the IOSCO Principles and has done so since its inception, publishing our Management Statement of Adherence since 2014. We have had practices, policies, and procedures that address many of the standards set forth in the IOSCO Principles, including by way of example, the separation of our commercial and index operation functions as well as methodology transparency, long before the IOSCO Principles were published.

For the past three years, S&P DJI has engaged one of the Big Four international accounting firms to conduct independent reasonable assurance examinations. The results of our 2017 examination along with our most recent Management Statement of Adherence can be found by clicking [here](#).

S&P DJI fully supports the concepts the BMR seeks to achieve and believes that we are well placed to meet the new requirements.

¹ Regulation (EU) 2016/1011

- 2. When does it apply?** The BMR applies from January 1, 2018.² The Regulation allows for a transition period,³ and the use restrictions (please refer to question 3) will be phased in. The transition period applies from January 1, 2018, until January 1, 2020; during this time, users may continue to “use” a benchmark in the EU.
- 3. What does the BMR apply to?** The BMR applies to the “provision of benchmarks, the contribution of input data to a benchmark, and the use of a benchmark within the Union.”⁴ The BMR will apply to those firms that use a benchmark in the EU, administrators that have control over the provision of benchmarks for use in the EU, and contributors that provide input data for the calculation of benchmarks used in the EU.

Note that the BMR applies to benchmarks used in the EU regardless of whether the administrator for such benchmark is located within or outside of the EU.

From January 1, 2018, users may continue to “use” a benchmark in the EU pursuant to the transition provisions that run until January 1, 2020.

- 4. How does the BMR define a user?** You are using a benchmark if you do any of the following.
- Issue a financial instrument that references an index (i.e. notes, derivatives, options, swaps, forwards, etc.).
 - Determine the amount payable under a financial instrument, mortgage, or consumer credit contract by referencing an index.
 - Are a party to a mortgage or consumer credit contract that references an index.
 - Provide a borrowing rate 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 consumer credit contract to which the creditor is a party.
 - Measure the performance of an investment fund (meaning an alternative investment fund [AIF] or an undertaking for collective investment in transferable securities [UCITS]) against an index for the purposes of tracking the return of the index, setting portfolio asset allocations, or calculating performance fees.

For clarity, the BMR does not place any requirements on those investing in financial products.

- 5. How will users know if an index can be used in the EU?** As outlined in question 2, the BMR does provide for a transition period.⁵ The European Securities and Markets Authority (ESMA) maintains a public register,⁶ which will include: (a) a list of the identities of administrators authorized, registered, or recognized by the relevant European national competent authority; and (b) the third country benchmarks that are endorsed in accordance with the procedures laid down by the BMR.

² Art 59 BMR

³ Art 51 BMR

⁴ Article 2.1 BMR

⁵ Article 51 BMR

⁶ [ESMA Benchmarks Register](#)

- 6. How will it affect S&P Dow Jones Indices?** S&P DJI is a benchmark administrator located in the U.S. and is therefore considered a third country administrator under the BMR.
- 7. What is S&P Dow Jones Indices doing in response to the BMR?** S&P DJI is focused on implementing any required changes under the BMR and our team is working closely with EU policy makers, regulators, and market participants to ensure a seamless transition.

An administrator located outside of the EU may use the following mechanisms to meet the requirements of the BMR: equivalence;⁷ recognition;⁸ or endorsement.⁹ For our purposes, an equivalence decision (i.e., a decision by the EU Commission that a third country has laws equivalent to the BMR) is unlikely since there is no regulation similar to the BMR in the U.S. Therefore, we are seeking to ensure the continued use of our indices in the EU through one of the two other mechanisms available to administrators located outside of the EU: (i) recognition (meaning an EU national competent authority acknowledges that an administrator located outside of the EU meets the requirements of the BMR by reference to its compliance with the IOSCO Principles via an EU-based legal representative); or (ii) endorsement (meaning an EU national competent authority acknowledges that an index provided by an administrator located outside of the EU meets the requirements of the BMR by reference to its compliance with the IOSCO Principles and there is an objective reason to provide the benchmark in a third country for the use in the EU). Under this provision, an EU “supervised” entity (which includes an EU administrator authorized or registered under the BMR), endorses the benchmark(s) of the administrator located outside of the EU.

From January 1, 2018, users may continue to “use” an S&P DJI benchmark in the EU, pursuant to the transition provisions, until January 1, 2020.

We will continue to keep our clients informed of our progress with complying with the requirements of the BMR.

For more information please contact Client Services at: index_services@spglobal.com

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⁷ Article 30 BMR

⁸ Article 32 BMR

⁹ Article 33 BMR

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