Benchmark Regulation: Fallback Factsheet

What is the Benchmark Regulation (BMR) about?

The BMR is the European Union's response to LIBOR / EURIBOR scandals and allegations of manipulation of foreign exchange and commodity benchmarks. It intends to reduce risk of manipulation of benchmarks by addressing conflicts of interest, governance controls and use of discretion in the benchmark-setting process. The *Benchmark Regulation EU 2016/1011* of the European Parliament and of the Council came into force on 30 June 2016 and entered into application 1 January 2018

What is the Benchmarks Supplement?

To address the BMR requirement for transactions to contain a fallback providing for the cessation of a benchmark, the International Swaps and Derivatives Association ("ISDA") has published the Benchmarks Supplement.

- ❖ The Benchmarks Supplement specifies trigger events relating to the cessation of a benchmark or the inability of entities to continue to reference a benchmark in a transaction due to regulatory constraints, and fallbacks for those circumstances
- ❖ The Benchmarks Supplement is an elective supplement to the following ISDA definitions booklets: *2006 ISDA; 2002 Equity Derivatives; 1998 FX and Currency Option; 2005 ISDA Commodity*
- ❖ Unlike certain other supplements to ISDA Definitions, parties need to take positive steps to incorporate the terms of the Benchmarks Supplement into their OTC derivatives documentation in order for it to apply

How does the Benchmarks Supplement benefit you?

- ❖ The terms of the supplement have been drafted to apply in respect of contract terms set out in the definitions. ISDA has stated that the problem with existing fallbacks is that these fallbacks were not drafted with permanent cessation in mind. They are therefore not robust enough to cover the permanent cessation of a benchmark.
- ❖ The Benchmark supplement in addition to ensuring compliance with BMR requirements covers inadequacies in contract terms. Therefore, applying the Benchmarks Supplement in the contractual relationship with our Clients protects them in the event that a benchmark is materially changed or ceases to be provided

What is the scope of the application of these requirements to our business?

The relevant scope includes Clients serviced by an EU marketer trading OTC transactions

If I am located outside the EU, do I still need to comply?

While a party with which we are dealing can, itself be outside of the scope of direct application of the BMR, as a supervised entity located in the EU, BNP Paribas is subject to the requirements of BMR when servicing from an EEA location. Therefore, it is necessary that Benchmarks Supplement is applied to in scope transactions, in order to ensure regulatory compliance.

Timelines

01 January 2018
Entry into application of BMR including requirements on fallbacks

19 September 2018
ISDA Publication of BMR Supplement

10 December 2018
ISDA 2018 BMR Supplement Protocol published

What is required of me in order to comply?

1. **Adhere to ISDA Benchmarks protocol:**
   a. In order to help you adhere to the protocol ISDA has created **a step-by-step guide** which can accessed if you Click here. For further help, ISDA has also created a **FAQ**
   b. **ISDA Benchmarks protocol** enables a multilateral approach to the application of the BMR supplement with all your market counterparts that are similarly adhering (and will prevent requirements for bi-lateral repapering to be effect with other protocol adherents)

2. **Deliver an election in the form of a questionnaire via the ISDA Amend Tool**
   a. To address the question of whether or not legacy transactions should be included in the scope of the coverage of the protocol, it is necessary to deliver an election in the form of a questionnaire via the ISDA Amend Tool a technology based solution developed by ISDA and IHS Markit. Once implemented, this questionnaire will be deemed to have been exchanged with other protocol adherents

BNP Paribas' position is to use the ISDA Benchmarks protocol to apply the Benchmarks Supplement **to new and legacy trades.**

What happens if I do not adhere?

The fallback and related provisions contained in the Benchmarks Supplement will not apply to your transactions. This will inhibit your (if relevant) and our compliance with the BMR 28(2) requirements. As mentioned above, the terms of the supplement have been drafted to apply in respect of contract terms set out in the definitions. ISDA has stated that the problem with existing fallbacks is that these fallbacks were not drafted with permanent cessation in mind. They are therefore not robust enough to cover the permanent cessation of a benchmark. The Benchmark supplement in addition to ensuring compliance with BMR requirements covers inadequacies in contract terms so, applying the supplement can cover inadequacies in the contract terms.

For further questions, please contact our Benchmark Regulatory Client request team at benchmark.protocol@bnpparibas.com

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