

EU Benchmark

Background

The Benchmark Regulation EU 2016/1011 of the European Parliament and of the Council dated 8 June 2016 (“BMR”), was introduced due to concerns about the accuracy and integrity of indices used as benchmarks in financial markets. The BMR builds upon the global standards set out in principles published by the International Organisation of Securities Commissions (IOSCO) known as the “Principles for Financial Benchmarks” and imposes certain requirements on firms that provide, contribute to or use benchmarks in the European Union (“EU”) as defined in the BMR.

Although the BMR came into effect on 1 January 2018, it contains transitional arrangements for existing EU and third country benchmark administrators, allowing such administrators to apply for authorisation, recognition or enforcement from the relevant EU bodies prior to a specific date. This date was originally 1 January 2020; however, on 26 February 2019, the European Council and Parliament reached a political agreement to amend EU BMR to extend the transitional provisions for critical and third country benchmarks by a further two years to 1 January 2022. As a result, significant and non-significant EU benchmarks are required to be authorised by 1 January 2022 for use within the EU.

NAB Europe S.A. robust written plan

Article 28.2 of the BMR provides, among other things, that:

EU supervised entities that use benchmarks must produce and maintain a robust written plan setting out the actions to be taken in the event that one or more benchmarks materially change or cease to be provided. Where feasible and appropriate, the plan shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives.

NAB Europe S.A. has written “Financial Benchmark Fallback Plan” to address the requirement in Article 28(2) of BMR (the Plan). This webpage contains a high-level summary of that Plan. Following a benchmark cessation or material change to a benchmark (together, a Trigger Event), NAB Europe S.A. will invoke its Plan.

As a first step a qualitative assessment will be conducted to determine the materiality of the impact of the Trigger Event. Based on this materiality assessment an escalation decision will be made, after which a further, detailed impact assessment may be executed. This detailed assessment will include a quantitative and qualitative assessment of the Trigger Event, including where appropriate:

- Identification of all products, transactions and counterparties including an impact analysis in terms of notional values, risk exposures and type of legal agreements;
- A review of affected agreements, products, counterparties and transactions including checking whether the existing contractual arrangements already contain alternative benchmarks and to what extent a benchmark event frustrates or otherwise breaches the terms of any financial contract or financial instrument; and
- A qualitative review of the impact to internal systems, models and processes.

The overall purpose of the steps outlined above is to identify, where feasible and appropriate, a suitable and appropriate alternative benchmark that can be referenced in substitute of the existing benchmark subject to the Trigger Event. NAB Europe S.A. will follow market standards to identify such alternative benchmarks as much as possible. For example, it is expected that for “critical benchmarks” (as defined in Article 20(1) BMR) the market, for example a Central Bank or working group or calculation agent, will nominate an alternative benchmark which NAB Europe S.A. expects to include in new contractual agreements, where appropriate and relevant.

If it has not been feasible and appropriate to nominate an alternative benchmark based on market standards, a proposal of actions to be taken in relation to the affected benchmark may be prepared. The proposal will take into account the impact assessment and shall consider the replacement of that benchmark with an alternative benchmark, seeking approval or notifying a regulatory body (where relevant), amendment to contractual documentation, and notification of stakeholders.

Once the proposal has been approved, internal stakeholders will work together to implement the proposal. For example, clients may be notified or their consent may be sought to change the benchmark, and contractual documentation may be amended.

The description above is a high-level summary of the Plan only, and the process to be taken in relation to different countries, business lines or circumstances may differ. This summary only serves to provide general background

information, is indicative and not necessarily complete or correct and is not intended to provide any individual, legal or other advice. The Plan and this summary are subject to change without notice.

Details of BMR are available at: https://ec.europa.eu/info/law/benchmarks-regulationeu-2016-1011_e