



Commodity Markets Council - Europe

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To: Ms. Harriet Hunnoble
Manager Benchmarks Policy
Markets Policy, Strategy and Competition Division
UK Financial Conduct Authority

Re: Changes to the FCA Handbook reflecting the application of BMR

Dear Harriet,

I am writing to you on behalf of the Commodity Markets Council Europe (CMCE) regarding the recent changes to the FCA Handbook that reflect the application of the EU Benchmarks regulation (BMR).

As you know, CMCE represents agriculture, energy, metals and other commodity market participants, price reporting agencies, and trading venues established and/or operating in the EU, the European Economic Area (EEA), Switzerland and neighbouring countries.

CMCE Members welcome the statements made by the FCA in paragraphs 3.22 and 3.23 of the Handbook Notice No 56 that confirm the FCA's intention to apply the Handbook to benchmark administrators in a way that does not interfere with the rights and protections journalists have under applicable laws, as well as to apply the Handbook requirements to a Price Reporting Agency (PRA) subject to Annex II of the BMR in a way that is consistent with the distinct requirements and standards that apply to that PRA under the BMR.

We are nevertheless concerned that the inclusion of these statements in the Handbook notice, outside the Handbook itself, does not give them legal effect and fails to provide a permanent record of the approach outlined by the FCA. The text of the notice can easily become forgotten as personnel changes over time and institutional memory fades.

Important European case law under Article 10 of the European Convention of Human Rights shows that the freedom of press is regarded as being of paramount importance for a democratic society - with financial journalism playing an essential role in enhancing market transparency and in maintaining orderly markets - and should therefore be supported by giving effect to editorial safeguards (see the 'Interbrew case' on the protection of journalists' relationships with market sources¹). Such safeguards are reflected in European legislation such as the Market Abuse Regulation². We believe this should be

¹ Financial Times Ltd & Ors v United Kingdom [2009] ECHR 2065 (15 December 2009)

² We also note that similar safeguards are provided in Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT), which does not fall within the FCA's competences, but which applies to some energy Price Reporting Agencies.

reflected in the Handbook to ensure an enduring regulatory framework that pre-empts future challenges.

The importance of a robust regulatory framework that is clear about the regulator's intention to respect editorial freedoms and the distinct regime that applies to Annex II commodity benchmark administrators under BMR has also been recognised by the FCA, including at very highest level.

For these reasons, CMCE Members ask the FCA to include a statement of general intent in guidance within the Handbook reflecting the statement in paragraphs 3.22 and 3.23 of the Handbook notice.

CMCE Members are also concerned that the ambiguity of section 2.2. of the updated General guidance on Benchmark Submission and Administration (BENCH) as regards the application of Handbook requirements to contributors to Annex II benchmarks could lead to some contributors ceasing to participate in the price formation process.

In BENCH 2.2. where contributors are reminded of BMR provisions such as article 15 on Code of conduct, article 16 on Governance and control requirements for supervised contributors and article 23 on Mandatory contribution to a critical benchmark, it is important to clarify that none of these requirements (or any of the provisions arising from Title II of the Benchmarks regulation except the provisions on outsourcing) apply to supervised firms when contributing data in relation to Annex II commodity benchmarks. Similarly, in the concluding statement in BENCH 2.2.6 "*some provisions in MAR are disapplied where a firm is contributing input data in relation to a commodity benchmark the provision of which is governed by Annex II*", it is necessary to clarify that **none** of the provisions of MAR 8 or BENCH 2.2. apply to such contributors when contributing input data in relation to Annex II commodity benchmarks.

This is particularly important for ensuring that commodity Price Reporting Agencies maintain the ability to encourage contributions and produce robust, representative commodity price assessments.

Finally, CMCE Members also note that the FCA is preparing a consultation on its approach to extending the Senior Managers & Certification Regime in respect of benchmark activities. We would be keen to engage with you in this process.

We would welcome the opportunity to further discuss the above issues with you and remain at your disposal for any questions you may have.

Yours sincerely,



Samina Anwar,

CMC Europe Chair