



Investment in derivatives referencing benchmarks

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The speakers



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Moderator



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Managing Director and Senior Counsel, Goldman Sachs International



Patrick Simeon
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Welcome note

- Agathi Pafili, Senior Regulatory Policy Advisor, EFAMA

Current legal framework

- Piotr Giemza-Popowski, Counsel, Arendt & Medernach

Determination of the amount payable under a financial instrument by reference to a benchmark (article 3(1)(7)(b) of the Benchmarks Regulation) (1/3)

- Meaning of the “*financial instrument*” (article 3(1)(16) of the Benchmarks Regulation)
 - financial instrument within the meaning of Directive 2014/65/EU (MiFID II)
 - traded on a trading venue or for which a request for admission to trading has been made
 - traded via a systematic internaliser

Determination of the amount payable under a financial instrument by reference to a benchmark (article 3(1)(7)(b) of the Benchmarks Regulation) (2/3)

- Meaning of “*traded via a systematic internaliser*” (European Securities and Markets Authority’s (“ESMA”) Q&A on the Benchmarks Regulation)
 - all financial instruments described in reference data provided by a systematic internaliser:
 - which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made
 - where the underlying is a financial instrument traded on a trading venue
 - where the underlying is an index or a basket composed of financial instruments traded on a trading venue
 - all other instruments that are actually traded on a systematic internaliser

Determination of the amount payable under a financial instrument by reference to a benchmark (article 3(1)(7)(b) of the Benchmarks Regulation) 3/3

- Meaning of a “*benchmark*” (article 3(1)(1) and 3(1)(3) of the Benchmarks Regulation)
 - Figure that is:
 - regularly determined:
 - entirely or partially by the application of a formula or any other method of calculation, or by an assessment
 - on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys
 - published or made available to the public

Supervised entities determining the amount payable under a derivative by reference to a benchmark (ESMA Q&A on the Benchmarks Regulation)

- To the extent the supervised entity has set the relevant terms of the derivative and thus chosen the specific benchmark to be referenced:
 - a trading venue, where the derivative is the subject of a request for admission to trading on such trading venue or is traded on such trading venue
 - an investment firm acting in the capacity of a systematic internaliser, where the derivative is traded via a systematic internaliser
 - a central clearing counterparty (“CCP”), where the derivative is cleared by such CCP

- Otherwise:
 - each party to a transaction of a derivative

- However, holding of financial instruments referencing a benchmark not considered as use of the benchmark (recital (13) of the Benchmarks Regulation)

House view of expert speakers

- Patrick Chamberlain, Managing Director and Senior Counsel, Goldman Sachs International
- Patrick Simeon, Head of Money Market , Amundi

The Investment Firm Perspective

- Use - “...to the extent the supervised entity has set the relevant terms of the derivative and thus chosen the specific benchmark to be referenced”
 - Is your OTC trading counterparty a Systematic Internaliser in the product you are trading?
 - Have you negotiated the terms of the product and/or the underlying index?
- Is the index you are trading a “Benchmark”?
 - Commonly referenced indices likely to be Benchmarks
 - Banks and investment firm customised indices may not be
- Art 28(2) - Robust written plans
 - ISDA Benchmark Supplement – protocol/bilateral adherence

Use of a Benchmark by Investment Funds

‘Determination of the amount payable under a financial instrument’



Yes when the fund, as a party to a transaction of a derivative, trades on a bilateral basis



- As long as the derivative traded is an exchange traded derivative;
- The derivative is traded on a regulated platform;
- The derivative is centrally cleared by a CCP;
- The derivative uses the service of a systematic internaliser

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Use of a Benchmark by Investment Funds



- When measuring the performance for the purpose of tracking the return of the index;
- When defining the asset allocation of a portfolio in relation to the index;
- When computing performance fees in relation to the index

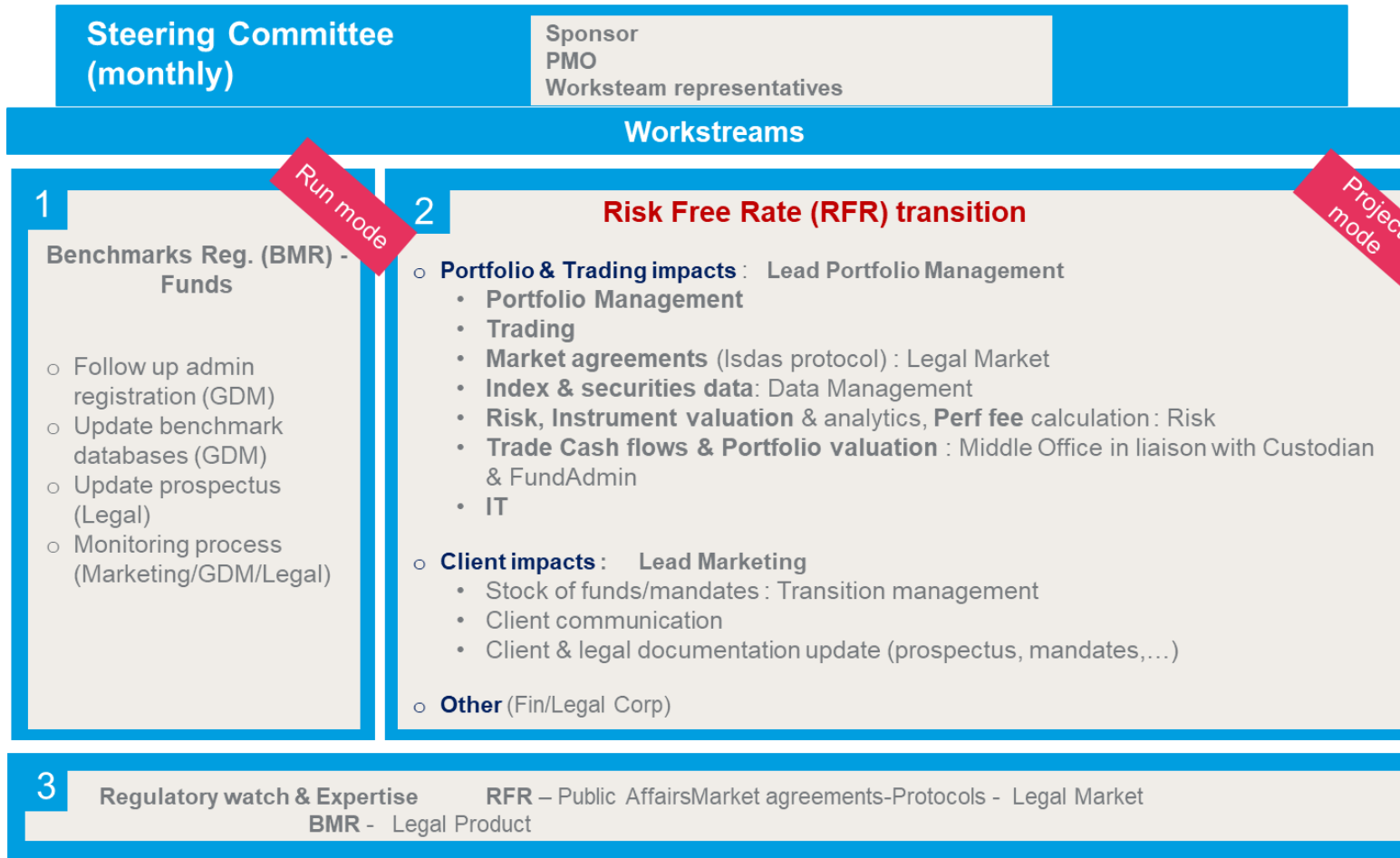


- When indices referenced in the documentation of an investment fund solely to compare the performance of the investment fund;
- When no investment constraint on the asset allocation of the portfolio is established in relation to the index

▶ Pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 08 June 2016, the Management Company has a procedure for monitoring the benchmark indices used, which sets out the action to be taken in the event that a benchmark materially changes or ceases to be provided

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Project Governance - Amundi



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Monitoring Exposure to the Different Benchmarks



- Reference to Administrators authorised or registered by ESMA
- Inventory of Administrators under watch (i. e. not yet authorized or registered)"
- Analysis of IBOR Market place
- Analysis of RFR or Alternative Reference Rates for Major Currencies to IBOR
- Inventory of funds/mandates using Reference Rates for Investment Reference or Performance Fees
- Inventory of the stock of instruments using IBOR invested by funds/mandates before and after 31/12/2021: OTC derivatives / FRN / ABS / LOAN

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Panel discussion with experts moderated by Arendt

- Patrick Chamberlain, Managing Director and Senior Counsel, Goldman Sachs International
- Patrick Simeon, Head of Money Market , Amundi
- Piotr Giemza-Popowski, Counsel, Arendt & Medernach

Questions / Answers

Please do not hesitate to send your questions to BusinessDevelopment@arendt.com

Closing remarks

- Agathi Pafili, Senior Regulatory Policy Advisor, EFAMA

Contact us



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