

## AREF roundtable to discuss MSCI Real Estate Index Consultation – 3<sup>rd</sup> May 2018

Chair – Justin Brown

Further to MSCI releasing a consultation on EU benchmark regulation (**BMR**), AREF's Research and Information Committee convened a roundtable event for members and professional investors in real estate funds, held at AREF's offices.

Jamie Pawliczek, MSCI Global Head of Regulatory Affairs presented an overview of and background to the benchmark regulation (triggered by the LIBOR rigging debacle) and what has led to this consultation. The presentation is circulated along with this note and can be found [here](#).

MSCI believe the data provided by AREF members to the AREF/IPD UK Quarterly Property Fund Index was 'readily available'. However, due to ESMA and FCA not providing clarity of the meaning of 'readily available data' they have not been able to confirm the real estate indices are made up of such data.

If MSCI were to register the real estate indices they would be subject to BMR. In turn, MSCI believe this would bring all contributors to that index under the BMR as 'regulated contributors', which has both procedural consequences for the contributors and potential sanctions.

If MSCI do not register the indices, they cannot be used for regulated purposes – the most likely relevant being AIF/UCITS using them for performance-related fees (PRFs) but also for asset allocation and index tracking purposes.

Furthermore, if the indices are registered and come under BMR, MSCI have until 1/1/20 to be compliant with BMR **but** both users of and contributors to the benchmark would come under BMR from 1/1/2018 – i.e. immediately.

MSCI are concerned that if they register and the index comes under BMR, it may be weakened if fund houses not wanting to be regulated begin to withdraw. Ironically, this would potentially compromise the strength and transparency of the real estate indices overall.

MSCI highlighted that if just one fund management firm were to use a real estate index in a regulated manner, e.g. to calculate PRFs, then that would drag everyone under BMR – users and contributors. By show of hands there were a number of 'regulated users' in the room. (N.B. indices used for comparative performance in marketing materials etc and segregated mandates do not fall under BMR)

MSCI were asked if they could split the benchmark between regulated and unregulated. It was also suggested that MSCI did not look at this in just a binary manner, to register or not. MSCI stated their approach was not 'all or nothing' and they were very open to various solutions, hence the consultation.

The repercussions of becoming regulated contributors were discussed. In summary, contributors would need to demonstrably manage conflicts, show a controlled process, provide training, ensure data retention and document use of discretion. Firms would also need to consider the potential sanctions under BMR, though the main and most severe are clearly saved for those believed to be attempting to manipulate the data. It was generally felt that the potential sanctions should not be an

issue for contributors to the index as the risk should be so low. It would be very difficult for any contributor to manipulate the index, even if they wished to do so.

Implementation of 'Chinese walls' was discussed and concern raised that separate teams may be needed, potentially causing errors through a lack of knowledge. However, it was suggested that 'proportionality' may not mean massive changes are actually required to current processes.

MSCI are also scheduling meetings with valuers to hear their stance.

It was asked whether the FCA were likely to change their stance to the EU BMR post-Brexit. MSCI do not believe this would be the case.

Investors in the room were asked whether they had a view on whether the index should be regulated or not. It was generally felt that it did not matter to them. They have been using an unregulated index thus far.

Attendees were keen for the industry to act in unison to resolve the issue. It was agreed that AREF should also be involved in approaching the regulator (FCA and ESMA) with regard to the application of the 'readily available' interpretation. If that can be resolved, the BMR issue simply goes away. Justin urged everyone to use AREF if needed to solicit views from fund members.

**The MSCI consultation runs to 18<sup>th</sup> May and the results will be announced by 6<sup>th</sup> June. Please find a link to the consultation [here](#).**