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ICIS is a division of the Anglo-Dutch RELX, formerly Reed Elsevier, which provides news and price assessments in commodity markets. A small number of ICIS price assessments are also used as benchmarks. ICIS expects to be regulated under the specialist regime for commodity benchmarks in Annex II of the Benchmark Regulation.

We make the following points in relation to the Consultation:

1. The proposal to create an offence for making a use of a benchmark that is not included in the Registry.

We would ask the Ministry of Finance to clarify in some way that the BMR permits the use of a benchmark that is not listed in the ESMA Register in the cases of any benchmarks:

- exempted under BMR Article 2.2, including small commodity benchmarks exempted under article 2.2(g); and
- coming within the Transitional Provisions in BMR Article 51 (where administrators already providing benchmarks on 30.06.2016 are given until 01.01.2020 to apply for authorisation or registration).

2. Obligations on supervised contributors to benchmarks

We would ask the Ministry of Finance to make it clear that, in accordance with BMR article 19, the provisions of Article 15 (code of conduct) and article 16 (Governance and control requirements for supervised contributors) do not apply to either administrators of Annex II commodity benchmarks or to their supervised contributors. Articles 15 and 16 cover some of the most important areas of difference between the BMR's distinct approaches to financial and commodity benchmarks. These differences reflect the recommendations made by IOSCO in its two separate sets of principles for financial and commodity benchmarks and which received strong endorsement from Ofgem, the UK's energy regulator in its study of benchmarks used in gas and electricity markets published in June 2013.

3. Indices used as a reference for trading on third country trading venues.

Although such indices do not constitute "*benchmarks*" as defined by the BMR, there can sometimes be confusion on this point. We recall the very helpful clarification that the Commission made in its commodity benchmarks non-paper in October 2015:

“..the Regulation only applies to indices which are used in financial instruments for which a request for admission to trading has been made or that are already trading on EU venues”
(emphasis added).

We believe it might be helpful for the Ministry of Finance to provide a similar clarification.

We hope that these comments are helpful and would be very pleased to provide any further information if useful.