

BNP PARIBAS answers to the FCA public consultation on proposed policy with respect to the designation of benchmarks under new Article 23A

Q1 - Do you agree with the factors that we plan to consider when determining whether we can designate a benchmark as an Article 23A benchmark?

Yes, we agree with these factors.

We would welcome more precisions on how the authorities intend to assess those (notably the 'lack of preparedness', or 'risk of harming consumers').

Q2: Do you agree with the factors that we plan to consider when determining whether we should designate a benchmark as an Article 23A benchmark?

Yes, we agree with these factors

An additional factor to be considered - when determining whether to designate a benchmark as an Article 23A benchmark - is whether designation may be necessary to trigger fallback clauses in some financial contracts.

This comment relates to below point of the consultation paper:

2.26 'We envisage that there could be situations in which we might consider that it is not appropriate to designate, even though the qualifying conditions are met.

For example, where the administrator of the benchmark made clear its intention to cease publication of the benchmark within a reasonable time period, we might consider that the cessation of the benchmark over the time period planned would not have a disorderly impact on the market and therefore, that designation was not required.'

Q3: Do you think there are any additional factors that we should take into account?

Yes –

The extra territorial effects of (1) the designation, and (2) a subsequent prohibition of use of the designated benchmark by supervised entities, should be carefully considered. Coordination with other regulatory bodies will likely be necessary to try to make prohibition of use applicable to entities under their supervision.

We consider that any attempt to restore the representativeness of a critical benchmark after its designation would cause more harm than it would do good.