For the attention of

P.O. Box 1800
1000 BV Amsterdam
The Netherlands

**Mr. Steven Maijoor**
Chair of ESMA
103 rue de Grenelle
75345 Paris
France

**Mr. Valdis Dombrovskis**
Vice President for the Euro and Social Dialogue, also in charge of Financial Stability, Financial Services and Capital Markets Union
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

**Subject**
IBOR Transition and EMIR grandfathering

Amsterdam, 2 July 2019

Dear Mr. Maijoor, dear Mr. Dombrovskis,

I am writing to you in my capacity as the Chair of the working group on euro risk-free rates (WG on euro RFR). The WG on euro RFR was established to identify and recommend risk-free rates that could serve as a basis for an alternative to current benchmarks used in a variety of financial instruments and contracts in the euro area, such as EONIA and Euribor.

Its terms of reference also include a deliverable to identify best practices for contractual robustness. This stems from the Financial Stability Board (FSB) recommendation to improve the contractual robustness of financial instruments and contracts which reference the IBORs through the development of robust fallback provisions. In addition, the EU Benchmark Regulation (BMR) requires EU supervised entities that use a benchmark to produce and maintain robust written plans setting out the actions they would take following the occurrence of certain events, such as the benchmark's cessation. The BMR requires those plans to be reflected in the contractual terms governing the relevant product.

Both the FSB's initiative and the requirements of the BMR have resulted in significant efforts to improve the robustness of contracts which reference benchmarks. In the derivatives market, the International Swaps and Derivatives Association (ISDA) is in the process of producing specific fallbacks for IBORs and has also published the ISDA Benchmarks Supplement which provides market participants with robust generic fallback provisions for use across interest rate, equity, commodity and FX benchmarks. In addition, sponsors of local master agreements are considering similar initiatives developing robust fallback provisions.

The degree to which these efforts are effective will depend on their widespread adoption by market participants in both new and existing transactions. The Financial Stability Board has noted concerns among market participants that an amendment to an existing contract to change a definition relating to a widely-used interest rate (whether primary or fall back) might impose a margin requirement under national rules implementing the Basel Committee on Banking Supervision (BCBS) and IOSCO margin requirements. They recommended that national authorities issue guidance or take other steps to clarify or ensure that national rules fully reflect the BCBS and IOSCO requirements that genuine amendments to existing contracts made for the purposes of increasing contract robustness should not, in itself, qualify as a new contract resulting in margin requirements[1].

With respect to derivatives agreements in the scope of the European Market Infrastructure Regulation (EMIR) any uncertainty among market participants on the application of the grandfathering of margin requirements would be likely to pose a material impediment to widespread adoption of fallbacks in existing transactions and/or the transition of existing transactions to alternative benchmarks. The WG on euro RFR notes that the same concern also applies with respect to the clearing obligation under EMIR.

In light of the above, the WG on euro RFR would very much welcome a statement from the European Commission or ESMA which confirms that:

(i) Neither the incorporation nor effect of fallback provisions designed to enhance the contractual robustness of derivatives and other trades which reference a benchmark; and

(ii) amending or replacing transactions which currently reference EONIA so that they reference €STR plus the spread published by the European Central Bank or such other form of compensation (if any) that the parties may agree and which is necessary to minimize value transfer[2] ,

would not on their own (whether individually or in combination) have the effect of imposing a margin or clearing obligation under EMIR. We note that a similar statement has been released by The Basel Committee on Banking Supervision and the International Organization of Securities Commissions on 5 March 2019[3]. Any statement issued by the European Commission or ESMA would need to cover clearing as well as margin and, in order to facilitate adoption of the ISDA Benchmarks Supplement in relation to the clarification requested in (i) above, would need to cover benchmarks generally and not restrict itself to interest rate benchmarks. The WG on euro RFR believes this would also be consistent with the policy objectives of the BMR in promoting the adoption of robust fallbacks for all benchmarks.

[1] See: https://www.fsb.org/wp-content/uploads/P101017.pdf, P.31

[2] On 31 May 2019, the European Central Bank published the value of the fixed spread to be used in the revised methodology for EONIA. This change in methodology was announced by the EONIA administrator, the European Money Market Institute, and will be implemented with effect from 2nd October 2019, consistent with the recommendations of the WG on euro RFR. See: https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190531~a3788de8f8.en.html

[3] https://www.iosco.org/news/pdf/IOSCONEWS526.pdf

We note that further action will likely be required in order to facilitate transition from existing benchmarks to alternative risk-free rates and may engage with you further in relation to those at the appropriate time.

Given that the timelines to embed robust fallbacks and to transition from EONIA to €STR are very challenging for the markets, we would be grateful if this clarification could be provided as soon as possible.

We thank you for considering this letter and are looking forward to receiving your response.

Yours Sincerely,

Steven van Rijswijk,

Chair of the working group on euro risk-free rates