

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council, ANNEX II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## ANNEX II

### COMMODITY BENCHMARKS

#### Methodology

1. The administrator of a commodity benchmark shall formalise, document, and make public any methodology that the administrator uses for a benchmark calculation. At a minimum, such methodology shall contain and describe the following:
  - (a) all criteria and procedures that are used to develop the benchmark, including how the administrator uses input data including the specific volume, concluded and reported transactions, bids, offers and any other market information in its assessment or assessment time periods or windows, why a specific reference unit is used, how the administrator collects such input data, the guidelines that control the exercise of judgement by assessors and any other information, such as assumptions, models or extrapolation from collected data that are considered in making an assessment;
  - (b) procedures and practices that are designed to ensure consistency between its assessors in exercising their judgement;
  - (c) the relative importance that shall be assigned to each criterion used in benchmark calculation, in particular the type of input data used and the type of criterion used to guide judgement so as to ensure the quality and integrity of the benchmark calculation;
  - (d) criteria that identify the minimum amount of transaction data required for a particular benchmark calculation. If no such threshold is provided for, the reasons why a minimum threshold is not established shall be explained, including setting out the procedures to be used where no transaction data exist;
  - (e) criteria that address the assessment periods where the submitted data fall below the methodology's recommended transaction data threshold or the requisite administrator's quality standards, including any alternative methods of assessment including theoretical estimation models. Those criteria shall explain the procedures to be used where no transaction data exist;
  - (f) criteria for timeliness of contributions of input data and the means for such contributions of input data whether electronically, by telephone or otherwise;
  - (g) criteria and procedures that address assessment periods where one or more contributors submit input data that constitute a significant proportion of the total input data for that benchmark. The administrator shall also define in those criteria and procedures what constitutes a significant proportion for each benchmark calculation;
  - (h) criteria according to which transaction data may be excluded from a benchmark calculation.
2. The administrator of a commodity benchmark shall publish or make available the key elements of the methodology that the administrator uses for each commodity benchmark provided and published or, when applicable, for each family of benchmarks provided and published.
3. Along with the methodology referred to in paragraph 2, the administrator of a commodity benchmark shall also describe and publish all of the following:
  - (a) the rationale for adopting a particular methodology, including any price adjustment techniques and a justification of why the time period or window within which input data is accepted is a reliable indicator of physical market values;

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council, ANNEX II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the procedure for internal review and approval of a given methodology, as well as the frequency of such review;
- (c) the procedure for external review of a given methodology, including the procedures to gain market acceptance of the methodology through consultation with users on important changes to their benchmark calculation processes.

#### Changes to a methodology

4. The administrator of a commodity benchmark shall adopt and make public to users explicit procedures and the rationale of any proposed material change in its methodology. Those procedures shall be consistent with the overriding objective that an administrator must ensure the continued integrity of its benchmark calculations and implement changes for good order of the particular market to which such changes relate. Such procedures shall provide:
  - (a) advance notice in a clear time frame that gives users sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the administrator's calculation of the overall circumstances;
  - (b) for users' comments, and the administrator's response to those comments, to be made accessible to all market users after any given consultation period, except where the commenter has requested confidentiality.
5. The administrator of a commodity benchmark shall regularly examine its methodologies for the purpose of ensuring that they reliably reflect the physical market under assessment and shall include a process for taking into account the views of relevant users.

#### Quality and integrity of benchmark calculations

6. The administrator of a commodity benchmark shall:
  - (a) specify the criteria that define the physical commodity that is the subject of a particular methodology;
  - (b) give priority to input data in the following order, where consistent with its methodologies:
    - (i) concluded and reported transactions;
    - (ii) bids and offers;
    - (iii) other information.

If concluded and reported transactions are not given priority, the reasons should be explained, as required in point 7(b).

- (c) employ sufficient measures designed to use input data submitted and considered in a benchmark calculation which are bona fide, meaning that the parties submitting the input data have executed, or are prepared to execute, transactions generating such input data and the concluded transactions were executed at arms-length from each other and particular attention shall be paid to inter-affiliate transactions;
- (d) establish and employ procedures to identify anomalous or suspicious transaction data and keep records of decisions to exclude transaction data from the administrator's benchmark calculation process;
- (e) encourage contributors to submit all of their input data that falls within the administrator's criteria for that calculation. Administrators shall seek, so far as they

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council, ANNEX II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

are able and is reasonable, to ensure that input data submitted is representative of the contributors' actual concluded transactions; and

- (f) employ a system of appropriate measures to ensure that contributors comply with the administrator's applicable quality and integrity standards for input data.

7. The administrator of a commodity benchmark shall describe and publish for each calculation, to the extent reasonable without prejudicing due publication of the benchmark:

- (a) a concise explanation, sufficient to facilitate a benchmark subscriber's or competent authority's ability to understand how the calculation was developed including, at a minimum, the size and liquidity of the physical market being assessed (such as the number and volume of transactions submitted), the range and average volume and range and average of price, and indicative percentages of each type of input data that have been considered in a calculation; terms referring to the pricing methodology shall be included such as transaction-based, spread-based or interpolated or extrapolated; and
- (b) a concise explanation of the extent to which, and the basis upon which, any judgement including the exclusions of data which otherwise conformed to the requirements of the relevant methodology for that calculation, basing prices on spreads or interpolation, extrapolation, or weighting bids or offers higher than concluded transactions, if any, was used in any calculation.

Integrity of the reporting process

8. The administrator of a commodity benchmark shall:

- (a) specify the criteria that define who may submit input data to the administrator;
- (b) have in place quality control procedures to evaluate the identity of a contributor and any submitter who reports input data and the authorisation of such submitter to report input data on behalf of a contributor;
- (c) specify the criteria applied to employees of a contributor who are permitted to submit input data to an administrator on behalf of a contributor; encourage contributors to submit transaction data from back office functions and seek corroborating data from other sources where transaction data is received directly from a trader; and
- (d) implement internal controls and written procedures to identify communications between contributors and assessors that attempt to influence a calculation for the benefit of any trading position (whether of the contributor, its employees or any third party), attempt to cause an assessor to violate the administrator's rules or guidelines or identify contributors that engage in a pattern of submitting anomalous or suspicious transaction data. Those procedures shall include, to the extent possible, provision for escalation of the inquiry by the administrator within the contributor's company. Controls shall include cross-checking market indicators to validate submitted information.

Assessors

9. In relation to the role of an assessor, the administrator of a commodity benchmark shall:

- (a) adopt and have in place explicit internal rules and guidelines for selecting assessors, including their minimum level of training, experience and skills, as well as the process for periodic review of their competence;

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council, ANNEX II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) have in place arrangements to ensure that calculations can be made on a consistent and regular basis;
- (c) maintain continuity and succession planning in respect of its assessors in order to ensure that calculations are made consistently and by employees who possess the relevant levels of expertise; and
- (d) establish internal control procedures to ensure the integrity and reliability of calculations. At a minimum, such internal controls and procedures shall require the ongoing supervision of assessors to ensure that the methodology was properly applied and procedures for internal sign-off by a supervisor prior to releasing prices for dissemination to the market.

#### Audit trails

- 10. The administrator of a commodity benchmark shall have rules and procedures in place to document contemporaneously relevant information, including:
  - (a) all input data;
  - (b) the judgements that are made by assessors in reaching each benchmark calculation;
  - (c) whether a calculation excluded a particular transaction which otherwise conformed to the requirements of the relevant methodology for that calculation, and the rationale for doing so;
  - (d) the identity of each assessor and of any other person who submitted or otherwise generated any of the information in points (a), (b) or (c).
- 11. The administrator of a commodity benchmark shall have rules and procedures in place to ensure that an audit trail of relevant information is retained for at least five years in order to document the construction of its calculations.

#### Conflicts of interest

- 12. The administrator of a commodity benchmark shall establish adequate policies and procedures for the identification, disclosure, management or mitigation and avoidance of any conflict of interest and the protection of integrity and independence of calculations. Those policies and procedures shall be reviewed and updated regularly and shall:
  - (a) ensure that benchmark calculations are not influenced by the existence of, or potential for, a commercial or personal business relationship or interest between the administrator or its affiliates, its personnel, clients, any market participant or persons connected with them;
  - (b) ensure that personal interests and business connections of the administrator's personnel are not permitted to compromise the administrator's functions, including outside employment, travel, and acceptance of entertainment, gifts and hospitality provided by the administrator's clients or other commodity market participants;
  - (c) ensure, in respect of identified conflicts, appropriate segregation of functions within the administrator by way of supervision, compensation, systems access and information flows;
  - (d) protect the confidentiality of information submitted to or produced by the administrator, subject to the disclosure obligations of the administrator;

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council, ANNEX II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (e) prohibit managers, assessors and other employees of the administrator from contributing to a benchmark calculation by way of engaging in bids, offers and trades on either a personal basis or on behalf of market participants; and
  - (f) effectively address any identified conflict of interest which may exist between the administrator's provision of a benchmark (including all employees who perform or otherwise participate in benchmark calculation responsibilities), and any other business of the administrator.
13. The administrator of a commodity benchmark shall ensure that its other business operations have in place appropriate procedures and mechanisms designed to minimise the likelihood that a conflict of interest will affect the integrity of benchmark calculations.
14. The administrator of a commodity benchmark shall ensure that it has in place segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator's most senior level management and its board to ensure:
- (a) that the administrator satisfactorily implements the requirements of this Regulation; and
  - (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.
15. The administrator of a commodity benchmark shall disclose to its users as soon as it becomes aware of a conflict of interest arising from the ownership of the administrator.

#### Complaints

16. The administrator of a commodity benchmark shall have in place and publish a complaints handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made about an administrator's calculation process. Such complaint mechanisms shall ensure that:
- (a) subscribers of the benchmark may submit complaints on whether a specific benchmark calculation is representative of market value, proposed benchmark calculation changes, applications of methodology in relation to a specific benchmark calculation and other editorial decisions in relation to the benchmark calculation processes;
  - (b) there is in place a target timetable for the handling of complaints;
  - (c) formal complaints made against the administrator and its personnel are investigated by that administrator in a timely and fair manner;
  - (d) the inquiry is conducted independently of any personnel who may be involved in the subject of the complaint;
  - (e) the administrator aims to complete its investigation promptly;
  - (f) the administrator advises the complainant and any other relevant parties of the outcome of the investigation in writing and within a reasonable period;
  - (g) there is recourse to an independent third party appointed by the administrator. if a complainant is dissatisfied with the way a complaint has been handled by the relevant administrator or the administrator's decision in the situation no later than six months from the time of the original complaint; and

---

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council, ANNEX II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (h) all documents relating to a complaint, including those submitted by the complainant as well as an administrator's own record, are retained for a minimum of five years.
- 17. Disputes as to daily pricing determinations, which are not formal complaints, shall be resolved by the administrator of a commodity benchmark with reference to its appropriate standard procedures. If a complaint results in a change in price, the details of that change in price shall be communicated to the market as soon as possible.

#### External auditing

- 18. The administrator of a commodity benchmark shall appoint an independent external auditor with appropriate experience and capability to review and report on the administrator's adherence to its stated methodology criteria and with the requirements of this Regulation. Audits shall take place annually and be published three months after each audit is completed with further interim audits carried out as appropriate.

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

Regulation (EU) 2016/1011 of the European Parliament and of the Council, ANNEX II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.