

Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (Text with EEA relevance)

TITLE II

BENCHMARK INTEGRITY AND RELIABILITY

CHAPTER 2

Input data, methodology and reporting of infringements

Article 11

Input data

1 The provision of a benchmark shall be governed by the following requirements in respect of its input data:

- a the input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure.

The input data shall be transaction data, if available and appropriate. If transaction data is not sufficient or is not appropriate to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used, including estimated prices, quotes and committed quotes, or other values;

- b the input data referred to in point (a) shall be verifiable;
- c the administrator shall draw up and publish clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement, to ensure compliance with point (a) and the methodology;
- d where a benchmark is based on input data from contributors, the administrator shall obtain, where appropriate, the input data from a reliable and representative panel or sample of contributors so as to ensure that the resulting benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure;
- e the administrator shall not use input data from a contributor if the administrator has any indication that the contributor does not adhere to the code of conduct referred to in Article 15, and in such a case shall obtain representative publicly available data.

2 Administrators shall ensure that their controls in respect of input data include:

- a criteria that determine who may contribute input data to the administrator and a process for selecting contributors;
- b a process for evaluating a contributor's input data and for stopping the contributor from providing further input data, or applying other penalties for non-compliance against the contributor, where appropriate; and

Status: Point in time view as at 31/01/2020.

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- c a process for validating input data, including against other indicators or data, to ensure its integrity and accuracy.

3 Where the input data of a benchmark is contributed from a front office function, meaning any department, division, group, or personnel of contributors or any of its affiliates that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities, the administrator shall:

- a obtain data from other sources that corroborate that input data; and
- b ensure that contributors have in place adequate internal oversight and verification procedures.

4 Where an administrator considers that the input data does not represent the market or economic reality that a benchmark is intended to measure, that administrator shall, within a reasonable time period, either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market or economic reality, or else cease to provide that benchmark.

5 ESMA shall develop draft regulatory technical standards to specify further how to ensure that input data is appropriate and verifiable, as required under points (a) and (b) of paragraph 1, as well as the internal oversight and verification procedures of a contributor that the administrator has to ensure are in place, in compliance with point (b) of paragraph 3, in order to ensure the integrity and accuracy of input data. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall take into account the different types of benchmarks and sectors as set out in this Regulation, the nature of input data, the characteristics of the underlying market or economic reality and the principle of proportionality, the vulnerability of the benchmarks to manipulation as well as the international convergence of supervisory practice in relation to benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

6 ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.

Article 12

Methodology

- 1 An administrator shall use a methodology for determining a benchmark that:
- a is robust and reliable;
 - b has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;
 - c is rigorous, continuous and capable of validation including, where appropriate, back-testing against available transaction data;
 - d is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity;

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- e is traceable and verifiable.
- 2 When developing a benchmark methodology, a benchmark administrator shall:
- a take into account factors including the size and normal liquidity of the market, the transparency of trading and the positions of market participants, market concentration, market dynamics, and the adequacy of any sample to represent the market or economic reality that the benchmark is intended to measure;
 - b determine what constitutes an active market for the purposes of that benchmark; and
 - c establish the priority given to different types of input data.
- 3 An administrator shall have in place clear published arrangements that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark is to be calculated in such circumstances.

Article 13

Transparency of methodology

1 An administrator shall develop, operate and administer the benchmark and methodology transparently. To that end, the administrator shall publish or make available the following information:

- a the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published;
- b details of the internal review and the approval of a given methodology, as well as the frequency of such review;
- c the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes^[F1];

^[F2]d an explanation of how the key elements of the methodology laid down in point (a) reflect ESG factors for each benchmark or family of benchmarks, with the exception of interest rate and foreign exchange benchmarks.]

^[F2]Benchmark administrators shall comply with the requirement laid down in point (d) of the first subparagraph by 30 April 2020.]

- 2 The procedures required under point (c) of paragraph 1 shall provide for:
- a advance notice, with a clear time frame, that gives the opportunity to analyse and comment upon the impact of such proposed material changes; and
 - b the comments referred to in point (a) of this paragraph, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested by the originator of the comments.

^[F2]2a The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by laying down the minimum content of the explanation referred to in point (d) of the first subparagraph of paragraph 1 of this Article, as well as the standard format to be used.]

3 ESMA shall develop draft regulatory technical standards to specify further the information to be provided by an administrator in compliance with the requirements laid down in paragraphs 1 and 2, distinguishing for different types of benchmarks and sectors as set

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out in this Regulation. ESMA shall take into account the need to disclose those elements of the methodology that provide for sufficient detail to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts and the principle of proportionality. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4 ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify further the elements referred to in paragraph 3 of this Article.

Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation \(EU\) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks \(Text with EEA relevance\)](#).
- F2** Inserted by [Regulation \(EU\) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation \(EU\) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks \(Text with EEA relevance\)](#).

Article 14

Reporting of infringements

1 An administrator shall establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the competent authority any conduct that may involve manipulation or attempted manipulation of a benchmark, under Regulation (EU) No 596/2014.

2 An administrator shall monitor input data and contributors in order to be able to notify the competent authority and provide all relevant information where the administrator suspects that, in relation to a benchmark, any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark, under Regulation (EU) No 596/2014, including collusion to do so.

The competent authority of the administrator shall, where applicable, transmit such information to the relevant authority under Regulation (EU) No 596/2014.

3 Administrators shall have procedures in place for their managers, employees and any other natural persons whose services are placed at their disposal or under their control to report internally infringements of this Regulation.

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