

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 VI

AUTHORISATION, REGISTRATION AND SUPERVISION OF ADMINISTRATORS

CHAPTER 1

Authorisation and registration

Article 34

Authorisation and registration of an administrator

1 A natural or legal person located in the Union that intends to act as an administrator shall apply to the competent authority designated under Article 40 of the Member State in which that person is located in order to receive:

- a authorisation if it provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation;
- b registration if it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation, on condition that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark; or
- c registration if it provides or intends to provide only indices which would qualify as non-significant benchmarks.

2 An authorised or registered administrator shall comply at all times with the conditions laid down in this Regulation and shall notify the competent authority of any material changes thereof.

3 The application referred to in paragraph 1 shall be made within 30 working days of any agreement entered into by a supervised entity to use an index provided by the applicant as a reference to a financial instrument or financial contract or to measure the performance of an investment fund.

4 The applicant shall provide all information necessary to satisfy the competent authority that the applicant has established, at the time of authorisation or registration, all the necessary arrangements to meet the requirements laid down in this Regulation.

5 Within 15 working days of receipt of the application, the relevant competent authority shall assess whether the application is complete and shall notify the applicant accordingly. If the application is incomplete, the applicant shall submit the additional information required by the relevant competent authority. The time limit referred to in this paragraph shall apply from the date on which such additional information is provided by the applicant.

- 6 The relevant competent authority shall:
- a examine the application for authorisation and adopt a decision to authorise or refuse to authorise the applicant within four months of receipt of a complete application;
 - b examine the application for registration and adopt a decision to register or refuse to register the applicant within 45 working days of receipt of a complete application.

Within five working days of the adoption of a decision referred to in the first subparagraph, the competent authority shall notify it to the applicant. Where the competent authority refuses to authorise or to register the applicant, it shall give reasons for its decision.

7 The competent authority shall notify ESMA of any decision to authorise or to register an applicant within five working days of the date of adoption of said decision.

8 ESMA shall develop draft regulatory technical standards to specify further the information to be provided in the application for authorisation and in the application for registration, taking into account that authorisation and registration are distinct processes where authorisation requires a more extensive assessment of the administrator's application, the principle of proportionality, the nature of the supervised entities applying for registration under point (b) of paragraph 1 and the costs to the applicants and competent authorities.

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.

Article 35

Withdrawal or suspension of authorisation or registration

- 1 A competent authority may withdraw or suspend the authorisation or registration of an administrator where the administrator:
- a expressly renounces the authorisation or registration or has provided no benchmarks for the preceding 12 months;
 - b has obtained the authorisation or registration, or has endorsed a benchmark, by making false statements or by any other irregular means;
 - c no longer meets the conditions under which it was authorised or registered; or
 - d has seriously or repeatedly infringed the provisions of this Regulation.

2 The competent authority shall notify ESMA of its decision within five working days of the adoption of said decision.

ESMA shall promptly update the register provided for in Article 36.

3 Following the adoption of a decision to suspend the authorisation or registration of an administrator, and where cessation of the benchmark would result in a force majeure event, or frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark, as specified in the delegated act adopted pursuant to Article 51(6), the provision of the benchmark in question may be permitted by the relevant competent authority of the Member State where the administrator is located until the decision of suspension has been withdrawn. During that period of time, the use of

such benchmark by supervised entities shall be permitted only for financial contracts, financial instruments and investment funds that already reference the benchmark.

4 Following the adoption of a decision to withdraw the authorisation or registration of an administrator, Article 28(2) shall apply.

Article 36

Register of administrators and benchmarks

1 ESMA shall establish and maintain a public register that contains the following information:

- a the identities of the administrators authorised or registered pursuant to Article 34 and the competent authorities responsible for the supervision thereof;
- b the identities of administrators that comply with the conditions laid down in Article 30(1), the list of benchmarks referred to in point (c) of Article 30(1) and the third country competent authorities responsible for the supervision thereof;
- c the identities of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks referred to in Article 32(7) and, where applicable, the third country competent authorities responsible for the supervision thereof;
- d the benchmarks that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities of the endorsing administrators or endorsing supervised entities.

2 The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.