

Chapter



Preamble

THE EUROPEAN COMMISSION,
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Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and in particular the third subparagraph of Article 13(3) thereof,

01/01/2021

Whereas:

(1) Article 13(1) of Regulation (EU) 2016/1011 requires the administrator of a benchmark or, where applicable, family of benchmarks to publish or make available the key elements of the methodology used by it to determine the benchmark or, where applicable, benchmarks in a family of benchmarks, details of the internal review and approval of the methodology, and the procedures for consulting on and notifying users of material changes to the methodology. This Regulation specifies further the information to be provided by administrators in respect of their significant and critical benchmarks. It does not apply to administrators which only provide non-significant benchmarks. Where administrators provide non-significant as well as significant or critical benchmarks they should comply with this Regulation for their significant and critical benchmarks. ESMA may issue guidelines on the same subject for administrators of non-significant benchmarks.

(2) Benchmark methodologies differ hugely. The key elements specified by this Regulation should therefore have to be published or made available only insofar as they are relevant to the particular benchmark in question.

(3) Two key elements of the methodology that should be disclosed in order to ensure the reliability and accuracy of a critical or significant benchmark are the minimum quantity and the minimum quality of the input data required to apply the methodology and perform the calculation. In addition, the use of discretion in determining benchmarks increases their vulnerability to manipulation. Therefore, in order to minimise this risk of manipulation, the administrator should disclose, as part of the key elements of its methodology, the clear rules that it has identified about how and when discretion may be exercised.

(4) To help potential users to choose the most appropriate benchmark from amongst a range of potentially suitable benchmarks, they should be given information to allow them to understand what a benchmark aims to measure, what input data is used and how it is selected, what the constituents of the benchmark are, who is involved in the data collection and benchmark calculation, when and to what extent discretion may be used, and what the limitations of the methodology are and when and how the benchmark might be changed.

(5) In order for users and potential users to have sufficient information about the administrator's process for reviewing the methodology internally, the administrator should publish its policies and procedures relating to this process, together with details of the bodies involved and the relevant governance arrangements in place in accordance with Article 4 of Regulation (EU) 2016/1011.

(6) In order for users and potential users to understand how an administrator will consult on a proposed material change to a critical or significant benchmark and the rationale of such a change, the administrator should disclose certain information, including how it will assess the impact of the proposed change.

(7) In accordance with the principle of proportionality, this Regulation avoids putting an excessive burden on administrators of significant (as opposed to critical) benchmarks by allowing them to choose to reduce disclosure to a more limited set of elements, or to disclose fewer details of certain elements, with respect to their significant benchmarks.

(8) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(9) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

(10) In order to be consistent with the Delegated Regulation specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors it is appropriate to delay the application of this Delegated Regulation by two months,

HAS ADOPTED THIS REGULATION: