

Chapter

Article 3 Internal oversight and verification procedures of a contributor

(1) The internal oversight and verification procedures of a contributor that the administrator has to ensure are in place in compliance with Article 11(3)(b) of Regulation (EU) 2016/1011 shall include at least the following:

(a) establishment and maintenance of an internal function to serve as the first level of control for the contribution of input data and to be responsible for carrying out the following duties:

(i) undertaking an effective check of input data prior to its contribution, including ensuring compliance with any requirement for the validation of input data to which the contributor is subject pursuant to Article 15(2)(d)(iii) of Regulation (EU) 2016/1011, and reviewing input data prior to its contribution with respect to its integrity and accuracy;

(ii) checking that the submitter is authorised to contribute input data on behalf of the contributor in accordance with any requirement imposed under Article 15(2)(b) of Regulation (EU) 2016/1011;

(iii) ensuring that access to contributions of input data is restricted to persons involved in the contribution process, except where access is necessary for audit purposes, investigation purposes or purposes required by law;

(b) establishment and maintenance of an internal function to serve as the second level of control for the contribution of input data and to be responsible for carrying out the following duties:

(i) conducting a review of input data after its contribution, independent of the review carried out by the first level control function, in order to confirm the integrity and accuracy of the contribution;

(ii) establishing and maintaining a whistle-blowing procedure that includes appropriate safeguards for whistle-blowers;

(iii) establishing and maintaining procedures for the internal reporting of any attempted or actual manipulation of the input data, for any failure to comply with

the contributor's own benchmark-related policies and for the investigation of such events as soon as they become apparent;

(iv) establishing and maintaining internal reporting procedures for reporting any operational problems in the contribution process as soon as they arise;

(v) ensuring regular presence in person of a staff member from the second level control function in the office area where the front office function is based;

(vi) maintaining oversight of relevant communications between front office function staff directly involved in contributing input data and also of relevant communications between such staff and other internal functions or external bodies;

(vii) establishing, maintaining and operating a conflict of interest policy that ensures:

- the identification and disclosure to the administrator of actual or potential conflicts of interest concerning any of the contributor's front office function staff who are involved in the contribution process,
- the absence of any direct or indirect link between the remuneration of a submitter and the value of the benchmark, the value of specific submissions made or the performance of any activity carried on by the contributor that might give rise to a conflict of interest related to the contribution of input data to the benchmark,
- a clear segregation of duties between front office function staff involved in contributing input data and other front office function staff,
- a physical separation between front office function staff involved in contributing input data and other front office function staff,
- effective controls over the exchange of information between front office function staff and other staff of the contributor involved in activities that may create a risk of conflicts of interest, insofar as the information being exchanged is information that may affect the input data contributed,
- the existence of contingency provisions in case of temporary disruption of the controls regarding the exchange of information referred to in the fifth indent,
- the taking of measures to prevent any person from exercising inappropriate influence over the way in which front office function staff involved in contributing input data carry out their activities;

(c) establishment and maintenance of an internal function, independent from the first and second level control functions, to serve as the third level of control for the contribution of input data and to be responsible for performing checks, on a regular basis, on the controls exercised by the other two control functions;

(d) procedures governing:

(i) the means of cooperation and flow of information between the three control functions required by points (a), (b) and (c) of this paragraph;

(ii) regular reporting to the senior management of the contributor on the duties carried out by those three control functions;

(iii) communication to the administrator, upon request, of information requested by the administrator relating to the contributor's internal oversight and verification procedures.

(2) The administrator may choose to waive any of the requirements specified in point (b) (v) or in the third, fourth or sixth indents of point (b)(vii) of paragraph 1, having regard to the following matters:

(a) the nature, scale and complexity of the activities of the contributor;

(b) the likelihood of a conflict of interest arising between the contribution of input data to the benchmark and trading activity or other activities performed by the contributor;

(c) the level of discretion involved in the process of contribution.

(3) Having regard primarily to the small size of a contributor's organisation and also to the matters listed in points (a), (b) and (c) of paragraph 2, the administrator may permit the contributor to have in place a simpler organisational control structure than the one required by paragraph 1. The simpler control structure shall, however, ensure that all the duties listed in points (a), (b) and (c) of that paragraph 1 are performed, except for any duties in respect of which a waiver is granted under paragraph 2. Points (i) and (ii) of point (d) of paragraph 1 shall be applied in a manner reflecting the simpler control structure.

(4) An administrator of a significant benchmark may choose to apply the requirements specified in paragraph 1(b)(vii) in relation solely to actual or potential conflicts of interest that are or would be material conflicts of interest.