

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 fourth subparagraph of Article 15(6) thereof,

01/01/2021

Whereas:

(1) Article 15 of Regulation (EU) 2016/1011 requires the administrator of a benchmark that is based on input data from contributors to develop a code of conduct for that benchmark clearly specifying the contributors' responsibilities with respect to the contribution of input data. If an administrator provides a family of benchmarks consisting of more than one benchmark based on input data from contributors, a single code of conduct may be developed for the family of benchmarks. Paragraph 2 of Article 15 of that Regulation lists elements that must be included, as a minimum, in each code of conduct developed under that Article. No code of conduct is required if the benchmark is a regulated-data benchmark as defined in Article 3(1)(24) of that Regulation.

(2) In order to ensure that the benchmark is determined correctly, it is crucial that the input data provided by contributors has all the features required by the methodology and is complete. The code of conduct should therefore describe those features in sufficient detail and specify what data has to be taken into account by the contributor, what data the contributor may exclude and how the contributor is to transmit the input data to the administrator.

(3) A key factor in ensuring the integrity of a benchmark based on input data contributions is that the persons appointed by a contributor to submit the input data have the correct knowledge, skills, training and experience to perform the role. The code of conduct should therefore contain provision requiring each contributor to undertake a number of checks in respect of those who are to become submitters, prior to authorising them as submitters.

(4) The reliability of a benchmark depends to a large extent on the correctness of its input data. It is therefore crucial that contributors check data before and after submission for any

suspicious entries and also to confirm compliance with the requirements of the code of conduct. The code of conduct should therefore contain provisions requiring contributors to carry out pre- and post-contribution checks of the data.

(5) The risk of error or manipulation is arguably greatest in cases where contributors can exercise discretion in the contribution of input data. The code of conduct should therefore require contributors to establish policies that specify when, how and by whom discretion may be exercised.

(6) The code of conduct should contain provisions requiring contributors to keep records of the data that was considered for each contribution and any related exercise of discretion. Such records are an essential tool in establishing whether a contributor has adhered to the policies required by the code of conduct which seek to ensure that all the relevant input data is provided.

(7) The proper identification and management of conflicts of interest at the level of the contributors is a necessary step towards the integrity and accuracy of the benchmark. For this reason, the code of conduct should contain provisions requiring a contributor's systems and controls to include a register of conflicts of interest in which the contributor should record identified conflicts of interest and the measures taken to manage them.

(8) In accordance with the principle of proportionality, this Regulation avoids putting an excessive administrative burden on administrators and contributors with respect to significant and non-significant benchmarks by allowing administrators of significant or non-significant benchmarks to develop codes of conducts that are less detailed than those required for critical benchmarks.

(9) Administrators should be given sufficient time to prepare codes of conduct that comply with the requirements of this Regulation. This Regulation should therefore start to apply two months after it enters into force.

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

(11) 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,

HAS ADOPTED THIS REGULATION: