

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 27(3) thereof,

01/01/2021

Whereas:

- (1) Article 27(1) of Regulation (EU) 2016/1011 requires administrators to publish a benchmark statement for the benchmark or, where applicable, for a family of benchmarks if it may be used in the Union.
- (2) Benchmark statements should include comprehensive information regarding the market or economic reality that the benchmark or family of benchmarks is intended to measure, together with an explanation of when the measurement of that market or economic reality may become unreliable. This is because users and potential users rely on such information in order to understand fully the benchmark or family of benchmarks.
- (3) Benchmark statements should indicate the discretionary elements in the benchmark's methodology, as well as the process for any *ex post* evaluation of the use of such discretion. That information is key to ensuring that users and potential users have an understanding of the susceptibility of the benchmark or family of benchmarks to manipulation.
- (4) Different types of benchmark (namely, regulated-data benchmarks, interest rate benchmarks, commodity benchmarks, critical benchmarks, significant benchmarks and non-significant benchmarks) are subject to different requirements under Regulation (EU) 2016/1011. The benchmark statement should therefore identify clearly and unambiguously the type or types of benchmark to which the benchmark or family of benchmarks belongs.
- (5) In relation to critical benchmarks, the benchmark statement should include additional information explaining why the benchmark is recognised under Regulation (EU)

2016/1011 as critical, so that users and potential users have at their disposal the information needed to understand the basis upon which the benchmark has been recognised as critical.

(6) The use of regulated data releases administrators and their contributors from certain obligations under Regulation (EU) 2016/1011. For regulated-data benchmarks, administrators should therefore be required to indicate their data sources and what qualifies the benchmark as a regulated data benchmark.

(7) Due to their particular nature, interest rate benchmarks and commodity benchmarks have to comply with the provisions of specific annexes to Regulation (EU) 2016/1011 instead of or in addition to complying with Title II of that Regulation. Administrators of such benchmarks should indicate that fact in the benchmark statement so that users and potential users are aware of it.

(8) Administrators of critical benchmarks have to comply with an enhanced regulatory regime under Regulation (EU) 2016/1011. It is therefore important that users and potential users are appropriately informed of this fact.

(9) Where a benchmark exhibits the characteristics of different types of benchmark, the specific provisions in this Regulation in relation to those different types of benchmark should apply in parallel and in addition to the general disclosure requirements, so as to provide users and potential users with comprehensive information on all of the benchmark's characteristics.

(10) In accordance with the principle of proportionality, this Regulation avoids putting an excessive administrative burden on administrators of significant and non-significant benchmarks by requiring a more limited set of information to be included in the benchmark statement for significant and non-significant benchmarks.

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

(12) 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.

(13) 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: