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Commission Delegated Regulation (EU) 2018/1646 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/1646

of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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[(1)], and in particular Article 34(8) thereof,

Whereas:

(1) This Regulation sets out the information that the competent authority should receive with an application for authorisation or registration of an administrator of benchmarks, depending on the characteristics of the applicant or of the benchmarks provided and intended for use in the Union. That specification of the information to be provided in the application for authorisation and in the application for registration promotes a common and consistent process throughout the Union.

(2) It is important for the competent authority to receive the information laid down in this Regulation to be able to assess whether the arrangements established by the applicant for authorisation or registration meet the requirements laid down in the Regulation (EU) 2016/1011.

(3) In order for the competent authority to assess whether any conflicts of interest arising from the benchmark activity and business interests of applicant's owners might affect the independence of that applicant in the benchmark calculation and thus impair the accuracy and integrity of the benchmark, the applicant should be required to submit information regarding the activities of its owners and the ownership of its parent undertakings.

(4) The applicant should provide information on the composition, functioning and independence, in the benchmark calculation, of its governing bodies in order for the competent authority to be able to assess whether the corporate governance structure

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ensures the independence of the applicant in the benchmark calculation and the avoidance and management of conflicts of interest.

(5) The applicant should provide information on its policies and procedures regarding the identification, management, mitigation and disclosure of conflicts of interests in relation to its activity of provision of benchmarks or families of benchmarks. For critical benchmarks, given their greater systemic importance, an applicant should provide the competent authority with an up-to-date inventory of existing conflicts of interest, along with an explanation of how they are managed.

(6) For the purposes of allowing the competent authority to evaluate the pertinence and robustness of the internal control structure, oversight and accountability framework, the applicant should provide the policies and procedures for monitoring the activities of the provision of a benchmark or family of benchmarks. That information is necessary for the competent authority to assess whether those policies and procedures meet the requirements of the Regulation (EU) 2016/1011.

(7) Information should also be included in the application to demonstrate to the competent authority that the controls on the input data used to determine the benchmarks provided by the applicant are adequate to ensure the representativeness, accuracy and integrity of such data, and that the methodology applied for the calculation of the benchmarks have all the characteristics required by the Regulation (EU) 2016/1011.

(8) For the purposes of allowing the competent authority to assess the benchmark's representativeness of the economic reality that it intends to measure, the applicant should provide the competent authority with a description of the benchmark or family of benchmarks provided or intended to be provided and the type of benchmark to which they belong, in line with the provisions of Regulation (EU) 2016/1011. The type to which the benchmark belongs is to be assessed to the best of the knowledge of the applicant and should be provided along with an indication of the sources of data used, so as to allow the competent authority to understand the reliability and exhaustiveness of the underlying information.

(9) The contents of an application for authorisation or registration where the applicant is a natural person should be set out specifically as the organisational set-up of the administrator will very different from those of legal persons.

(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 Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)].

(12) Administrators should be given sufficient time to prepare applications and to ensure compliance with the requirements of this Regulation and the regulatory technical standards referred to in the Annex. This Regulation should therefore start to apply two months after it enters into force,

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HAS ADOPTED THIS REGULATION:

Article 1

General requirements

1 An application pursuant to Article 34 of Regulation (EU) 2016/1011 shall contain, as appropriate, information that includes the following:

a items listed in Annex I, when the applicant is a legal person applying for authorisation;

b items listed in Annex II, when the applicant is a legal person applying for registration;

c items listed in Annex I, when the applicant is a natural person applying for authorisation, with the exception of the information listed at points (c), (f), (h) and (i) of paragraph 1 of Annex I;

d items listed in Annex II, when the applicant is a natural person applying for registration, with the exception of the information listed at points (c), (f), (h) and (i) of paragraph 1 of Annex II.

2 The application may contain information at the level of a family of benchmarks only where none of the benchmarks within the family is included in the list of critical benchmarks established in accordance with Article 20(1) of Regulation (EU) 2016/1011.

3 Where the applicant has omitted to provide any of the required information the application shall include an explanation as to why that information has not been provided.

4 The applicant shall not be required to provide the information listed under points (f) to (j) of paragraph 1 of Annex I or Annex II, as applicable, to the extent that the applicant is already supervised in the Member State by the same competent authority for other activities than the provision of benchmarks.

Article 2

Information to be provided for types of benchmarks

1 An applicant may submit for any non-significant benchmark that it provides the information required by paragraph 6 of Annex I or, where applicable, paragraph 6 of Annex II in the form of a summary.

2 Non-supervised entities providing critical and significant benchmarks shall submit the information listed in Annex I.

3 Supervised entities providing only non-critical benchmarks shall submit the information listed in the first column of Annex II.

4 An applicant providing only non-significant benchmarks shall submit the information listed in the second column of Annex II.

5 Without prejudice to paragraphs 1 to 4, an applicant providing only regulated-data benchmarks shall not submit the information listed in points 5(c), 6(a)(iii) and 6(a)(iv) of Annex I and Annex II.

6 An applicant providing only interest rate benchmarks shall submit the information listed in the Annexes of this Regulation and shall specify how the specific requirements set out in Annex I of Regulation (EU) 2016/1011 are implemented where the provisions in Annex I of

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Regulation (EU) 2016/1011 apply in addition to, or as a substitute for, the requirements in Title II of Regulation (EU) 2016/1011, pursuant to Article 18 of that Regulation.

7 An applicant providing only commodity benchmarks shall provide the information listed in Annex I of this Regulation if it is a non-supervised entity or if it provides a critical benchmark. If it is a supervised entity and none of the benchmarks it provides is a critical benchmark, it shall provide the information listed in the first column of Annex II. The applicant shall specify how the requirements set out in Annex II of Regulation (EU) 2016/1011 are implemented for any commodity benchmark subject to Annex II instead of Title II of Regulation (EU) 2016/1011 pursuant to Article 19 of Regulation (EU) 2016/1011.

Article 3

Specific information concerning policies and procedures

1 Any policies and procedures provided in an application shall contain or be accompanied by:

a an indication of the identity of the person or persons responsible for the approval and maintenance of the policies and procedures;

b a description of how compliance with the policies and procedures is monitored and the identity of persons responsible for this monitoring;

c a description of the measures to be taken in the event of a breach of the policies and procedures.

2 An applicant that is part of a group may comply with paragraph 1 by submitting the policies and procedures of its group where they relate to the provision of benchmarks.

Article 4

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 25 January 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 July 2018.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX I

Information to be provided in an application for authorisation under Article 34 of Regulation (EU) 2016/1011

1. GENERAL INFORMATION

(a) Full name of the applicant and its Legal Entity Identifier (LEI).

(b) Address of the office within the European Union.

(c) Legal status.

(d) Website, if any.

(e) With respect to the contact person for the purpose of the application:

  (i) name;

  (ii) title;

  (iii) address;

  (iv) email address;

  (v) telephone number.

(f) Where the applicant is a supervised entity, information about its current authorisation status, including the activities for which it is authorised and its relevant competent authority in its home Member State.

(g) A description of the operations of the applicant in the European Union, whether or not subject to financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.

(h) Any deed of incorporation, articles of association or other constitutional documents.

(i) Where the applicant is part of a group, its group structure along with the ownership chart, showing the links between any parent undertaking and subsidiaries. The undertakings and subsidiaries shown in the chart shall be identified by their full name, legal status and address of the registered office and head office.

(j) A self-declaration of good repute including details, if applicable, of any:

  (i) proceedings of a disciplinary nature against it (unless dismissed);

  (ii) refusal of authorisation or registration by a financial authority;

  (iii) withdrawal of authorisation or registration by a financial authority.

(k) Number of benchmarks provided.

2. ORGANISATIONAL STRUCTURE AND GOVERNANCE

(a) Internal organisational structure with respect to the board of directors, senior management committees, oversight function and any other internal body exercising significant management functions involved in the provision of a benchmark, including their:

  (i) terms of reference or a summary thereof; and