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Commission Delegated Regulation (EU) 2018/1645 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 form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA) (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/1645

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 form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA)

(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 32(9) thereof,

Whereas:

(1) A benchmark administrator located in a third country can apply for recognition in the Union. In the application for recognition that administrator has to provide a comprehensive representation of the arrangements, policies and procedures it has established in order to fulfil the applicable requirements set out in Regulation (EU) 2016/1011. This Regulation aims to ensure that the competent authorities across the Union receive uniform and consistent information by benchmark administrators in non-EU countries that apply for recognition.

(2) The application for recognition should include information related to the choice of Member State of reference, pursuant to Article 32(4) of Regulation (EU) 2016/1011, and to the legal representative in the Member State of reference. That information should enable the competent authority of the Member State of reference to satisfy itself that the Member State of reference has been correctly identified and that a legal representative of the administrator in a non-EU country is established in that Member State and has the power to act as required by Regulation (EU) 2016/1011.

(3) In order for the competent authority to assess whether there are conflicts of interest arising from the business interests of the applicant's owners that might affect the independence of the applicant, and thus impair the accuracy and integrity of its

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benchmarks, the applicant should provide 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 degree of independence of its governing bodies, in order for the competent authority to assess whether the corporate governance structure ensures the independence of the administrator in the benchmark calculation and the avoidance of conflicts of interest.

(5) For the purposes of assessing how conflicts of interest are eliminated, or managed and disclosed, the applicant should provide the competent authority with an explanation as to how any resulting conflicts of interest are identified, recorded, managed, mitigated, prevented and remedied.

(6) For the purposes of enabling the competent authority to evaluate the pertinence and robustness of the internal control structure, oversight and accountability framework, the applicant provider should provide the competent authority with the policies and procedures for monitoring the activities of the provision of a benchmark or family of benchmarks.

(7) The application for recognition should include information demonstrating that the controls on the input data, on the basis of which the benchmarks provided by the applicant are calculated, are adequate to ensure the representativeness, accuracy and integrity of such data.

(8) For the purpose of enabling the competent authority to evaluate whether the benchmarks provided by the applicant are suitable for their continued or prospective use in the Union, with the final objective of their inclusion in the register of Article 36 of Regulation (EU) 2016/1011, a list of all benchmarks provided by the applicant which are already used in the Union or intended for future use in the Union and a description of them should be provided within the application for recognition.

(9) Information on the nature and characteristics of the benchmarks provided by the applicant is relevant in order to demonstrate to the competent authority whether the assessment of compliance with the applicable requirements of Regulation (EU) 2016/1011 is to be conducted with reference to any of the special regimes applicable, to regulated-data benchmarks and to commodity benchmarks not based on submissions by contributors the majority of which are supervised entities, as set out in Regulation (EU) 2016/1011.

(10) Where the applicant considers one or more of its benchmarks as significant or non-significant, it should include in the application for recognition information on the degree of use of such benchmark(s) in the Union, so that the competent authority could assess whether the categorisation as significant or non-significant is correct. Benchmarks provided by the applicant that are not yet used in the Union and that are included in the application for recognition for reason of their prospective use in the Union are in accordance with point (27) of Article 3(1) of Regulation (EU) 2016/1011 considered as non-significant benchmarks.

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

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(12) The ESMA 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)].

(13) 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,

HAS ADOPTED THIS REGULATION:

Article 1

General requirements

1 An administrator located in a third country shall when applying for recognition pursuant to Article 32 of Regulation (EU) 2016/1011 provide the information listed in the Annex.

2 Where the applicant has left out any of the required information, the application shall include an explanation as to why that information has not been provided.

Article 2

Format of the application

1 The application for recognition shall be submitted in the official language or one of the official languages of the Member State of reference, unless otherwise indicated in the Annex. The documents referred to in point 8 of the Annex shall be submitted in a language customary in the sphere of international finance or in the official language or one of the official languages of the Member State of reference.

2 The application for recognition shall be submitted by electronic means or, if accepted by the relevant competent authority, in paper form. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission. The applicant shall ensure that each submitted document clearly identifies to which specific requirement of this Regulation it refers.

Article 3

Specific information concerning policies and procedures

1 Any policies and procedures established to comply with requirements of Regulation (EU) 2016/1011 and described 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 the person or persons responsible for this monitoring;

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

2 Where an applicant is a company within a group, it 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

Information to be provided in the application for recognition under Article 32 of Regulation (EU) 2016/1011

SECTION A — INFORMATION ON THE PROVIDING PERSON AND ITS LEGAL REPRESENTATIVE IN THE UNION

1. GENERAL INFORMATION

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

(b) Address of the office in the country of location.

(c) Legal Status.

(d) Website, if any.

(e) Where the applicant is supervised in the non-EU country where it is located, information about its current authorisation status, including the activities for which it is authorised, the name and address of the competent authority of the non-EU country and the link to the register of such competent authority, where available; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided.

(f) A description of the operations of the applicant in the EU and in non-EU countries, whether or not subject to any EU or extra-EU financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.

(g) 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.

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

(i) past and pending 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.

2. LEGAL REPRESENTATIVE IN THE MEMBER STATE OF REFERENCE

(a) Documented evidence supporting the choice of the Member State of reference, by application of the criteria laid down in Article 32(4) of Regulation (EU) 2016/1011.

(b) With respect to the legal representative established in the Member State of reference as set out in Article 32(3) of Regulation (EU) 2016/1011, its:

(i) full name;

(ii) title, in case of a natural person, or legal status, in case of a legal person;