Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/1644. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2018 No. 1644 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2018/1644 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/1644

of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent

(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 the third subparagraph of Article 30(5) thereof,

Whereas:

(1) Article 30 of Regulation (EU) 2016/1011 sets out conditions for allowing benchmarks provided by an administrator located in a third country to be used in the Union. One of those conditions is that an equivalence decision has been adopted recognising the legal framework and supervisory practices of the third country as equivalent. Paragraph (4) of Article 30 requires ESMA to establish cooperation arrangements with the competent authority of any third country in respect of which an equivalence decision has been adopted.

(2) The cooperation arrangements should allow ESMA and the competent authority of the third country to exchange all information relevant to the fulfilment of their respective supervisory tasks. The Commission may adopt a number of equivalence decisions, and benchmarks provided by administrators located in each of the relevant countries may then be eligible for use by supervised entities in the Union. It is therefore important that each set of cooperation arrangements contains the same minimum requirements regarding the forms and procedures to be used for the exchange of information, including the same confidentiality provisions and the same terms governing the use of information obtained under the cooperation arrangements.

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(3) Competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent will have adequate knowledge of all relevant events and changes of circumstance likely to affect benchmark administrators in their jurisdiction. If supervised entities use benchmarks provided by administrators from those jurisdictions in the Union, it is appropriate that the competent authorities in those jurisdictions keep ESMA informed of such events and changes. Cooperation arrangements should therefore include provision for ESMA to be notified of all such events and changes.

(4) Similarly, competent authorities of third countries need to be kept informed of the activities of the administrators that they are supervising. Cooperation arrangements should therefore provide for ESMA to inform the competent authority of a third country if administrators supervised by that authority notify ESMA of their consent to their benchmarks being used by supervised entities in the Union.

(5) With the exception of its obligation under Article 31 of Regulation (EU) 2016/1011 to withdraw the registration of administrators located in third countries, ESMA has no direct supervisory powers over administrators located in third countries. It relies instead on supervision by, and cooperation with, the competent authority of the third country. Cooperation arrangements should therefore include provisions setting out the respective roles of the parties involved in supervisory cooperation, including on-site inspections.

(6) Point (a) of the third subparagraph of Article 32(5) of Regulation (EU) 2016/1011 requires cooperation arrangements between competent authorities of third countries and competent authorities of Member States of reference to have the same minimum content as cooperation arrangements between ESMA and competent authorities of third countries. It is therefore necessary to ensure that, in setting the minimum content for cooperation arrangements with ESMA, the content is also appropriate for cooperation arrangements required by Article 32(5).

(7) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.

(8) ESMA has not conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, nor has it analysed the potential related costs and benefits, as ESMA concluded that this would have been disproportionate in relation to the scope and impact of the draft regulatory technical standards, taking into account the fact that the regulatory technical standards would only be of direct concern to the competent authorities of third countries, the competent authorities of Member States and ESMA, and not to market participants.

(9) ESMA has 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[(2)].

(10) Administrators should be given sufficient time to ensure compliance with the requirements of this Regulation. This Regulation should therefore start to apply two months after it enters into force,

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HAS ADOPTED THIS REGULATION:

Article 1

Scope of the cooperation arrangements

The cooperation arrangements referred to in Article 30(4) of Regulation (EU) 2016/1011 ('cooperation arrangements') shall clearly set out their scope of application. That scope shall include cooperation by the parties on at least the following matters:

(a) the exchange of information and provision of notifications relevant to the fulfilment of their respective supervisory tasks;

(b) any issues that may be relevant to the operations, activities or services of administrators covered by the cooperation arrangements in question, including the provision to ESMA of information on the laws and regulations to which those administrators are subject in the third country and any material changes to those laws or regulations;

(c) any regulatory or supervisory actions taken, or approvals given, by the competent authority of the third country in relation to any administrator which has given its consent to the use of benchmarks in the Union, including changes to the obligations or requirements to which the administrator is subject that may have an impact on the administrator's continued compliance with applicable laws and regulations.

Article 2

Exchange of information and notifications

Cooperation arrangements shall contain at least the following provisions with respect to any information or notifications to be exchanged or provided under the arrangements:

(a) a provision requiring requests for information to contain at least the information sought by the authority requesting it and brief details describing the subject matter of the request, the purpose for which the information is sought and the relevant laws and regulations applicable to benchmarks activity;

(b) details of the mechanism or mechanisms by which information and notifications are to be exchanged or provided;

(c) a provision requiring information and notifications to be exchanged or provided in writing;

(d) a provision requiring measures to be taken to ensure that any exchange or provision of information takes place in a secure manner;

(e) a provision requiring information and notifications to be provided promptly and, where applicable, in accordance with the relevant time scale specified in the arrangements;