***Changes to legislation:*** *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/1643. 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. 1643 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) 2018/1643 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark (Text with EEA relevance)

## COMMISSION DELEGATED REGULATION (EU) 2018/1643

## of 13 July 2018

## supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark

## (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 fourth subparagraph of Article 27(3) thereof,

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

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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[(2)].

(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:

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*Article 1*

**General disclosure requirements**

1 The benchmark statement shall state:

a the date of publication of the statement and, where applicable, the date of its last update;

b where available, the international securities identification number (ISIN) of the benchmark or benchmarks; alternatively, for a family of benchmarks, the statement may provide details of where the ISINs are publicly accessible free of charge;

c whether the benchmark, or any benchmark in the family of benchmarks, is determined using contributions of input data;

d whether the benchmark or any benchmark in the family of benchmarks qualifies as one of the types of benchmarks listed under Title III of Regulation (EU) 2016/1011, including the specific provision by virtue of which the benchmark qualifies as that type.

2 In defining the market or economic reality, the benchmark statement shall include at least the following information:

a a general description of the market or economic reality;

b the geographical boundaries, if any, of the market or economic reality;

c any other information that the administrator reasonably considers to be relevant or useful to help users or potential users of the benchmark to understand the relevant features of the market or economic reality, including at least the following elements insofar as reliable data on these elements is available:

(i) information on actual or potential participants in the market;

(ii) an indication of the size of the market or economic reality.

3 In defining the potential limitations of the benchmark and the circumstances in which the measurement of the market or economic reality may become unreliable, the benchmark statement shall include at least:

a a description of the circumstances in which the administrator would lack sufficient input data to determine the benchmark in accordance with the methodology;

b where relevant, a description of instances when the accuracy and reliability of the methodology used for determining the benchmark can no longer be ensured, such as when the administrator deems the liquidity in the underlying market as insufficient;

c any other information that the administrator reasonably considers to be relevant or useful to help users and potential users to understand the circumstances in which the measurement of the market or economic reality may become unreliable, including a description of what might constitute an exceptional market event.

4 In specifying the controls and rules that govern any exercise of judgement or discretion by the administrator or any contributors in calculating the benchmark or benchmarks, the benchmark statement shall include an outline of each step of the process for any *ex post* evaluation of the use of discretion, together with a clear indication of the position of any person(s) responsible for carrying out the evaluations.

5 In specifying the procedures for review of the methodology, the benchmark statement shall at least outline the procedures for public consultation on any material changes to the methodology.

6 Point (c) of paragraph 3, and paragraph 5, shall not apply to the benchmark statement:

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a for a significant benchmark; or

b for a family of benchmarks that does not include any critical benchmarks and does not consist solely of non-significant benchmarks.

7 In the case of a benchmark statement for a non-significant benchmark or for a family of benchmarks that consists solely of non-significant benchmarks:

a the following provisions of this Article shall not apply:

(i) point (c) of paragraph 2;

(ii) points (b) and (c) of paragraph 3,

(iii) paragraphs 4 and 5; and

b the requirements of points (a) and (b) of paragraph 2 may be satisfied alternatively by including a clear reference in the benchmark statement to a published document that includes the same information and is accessible free of charge.

8 Administrators may include additional information at the end of their benchmark statements provided that, if this is done by referring to a published document containing the information, the document shall be one that is accessible free of charge.

*Article 2*

**Specific disclosure requirements for regulated-data benchmarks**

In addition to the information to be included pursuant to Article 1, for a regulated-data benchmark or, where applicable, family of regulated-data benchmarks, the benchmark statement shall state at least the following in its description of the input data:

(a) the sources of the input data used;

(b) for each source, the relevant type, as listed in Article 3(1)(24) of Regulation (EU) 2016/1011.

*Article 3*

**Specific disclosure requirements for interest rate benchmarks**

In addition to the information to be included pursuant to Article 1, for an interest rate benchmark or, where applicable, family of interest rate benchmarks, the benchmark statement shall include at least the following information:

(a) a reference alerting users to the additional regulatory regime applicable to interest rate benchmarks under Annex I to Regulation (EU) 2016/1011;

(b) a description of the arrangements that have been put in place to comply with that Annex.