Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/1641. 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. 1641 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) 2018/1641 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 information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/1641

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 information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology

(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 13(3) thereof,

Whereas:

(1) Article 13(1) of Regulation (EU) 2016/1011 requires the administrator of a benchmark or, where applicable, family of benchmarks to publish or make available the key elements of the methodology used by it to determine the benchmark or, where applicable, benchmarks in a family of benchmarks, details of the internal review and approval of the methodology, and the procedures for consulting on and notifying users of material changes to the methodology. This Regulation specifies further the information to be provided by administrators in respect of their significant and critical benchmarks. It does not apply to administrators which only provide non-significant benchmarks. Where administrators provide non-significant as well as significant or critical benchmarks they should comply with this Regulation for their significant and critical benchmarks. ESMA may issue guidelines on the same subject for administrators of non-significant benchmarks.

(2) Benchmark methodologies differ hugely. The key elements specified by this Regulation should therefore have to be published or made available only insofar as they are relevant to the particular benchmark in question.

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/1641. 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. 1641 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*

(3) Two key elements of the methodology that should be disclosed in order to ensure the reliability and accuracy of a critical or significant benchmark are the minimum quantity and the minimum quality of the input data required to apply the methodology and perform the calculation. In addition, the use of discretion in determining benchmarks increases their vulnerability to manipulation. Therefore, in order to minimise this risk of manipulation, the administrator should disclose, as part of the key elements of its methodology, the clear rules that it has identified about how and when discretion may be exercised.

(4) To help potential users to choose the most appropriate benchmark from amongst a range of potentially suitable benchmarks, they should be given information to allow them to understand what a benchmark aims to measure, what input data is used and how it is selected, what the constituents of the benchmark are, who is involved in the data collection and benchmark calculation, when and to what extent discretion may be used, and what the limitations of the methodology are and when and how the benchmark might be changed.

(5) In order for users and potential users to have sufficient information about the administrator's process for reviewing the methodology internally, the administrator should publish its policies and procedures relating to this process, together with details of the bodies involved and the relevant governance arrangements in place in accordance with Article 4 of Regulation (EU) 2016/1011.

(6) In order for users and potential users to understand how an administrator will consult on a proposed material change to a critical or significant benchmark and the rationale of such a change, the administrator should disclose certain information, including how it will assess the impact of the proposed change.

(7) In accordance with the principle of proportionality, this Regulation avoids putting an excessive burden on administrators of significant (as opposed to critical) benchmarks by allowing them to choose to reduce disclosure to a more limited set of elements, or to disclose fewer details of certain elements, with respect to their significant benchmarks.

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

(9) 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)].

(10) 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:

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/1641. 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. 1641 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*

Article 1

Scope

This Regulation does not cover or apply to administrators of non-significant benchmarks.

Article 2

Key elements of the methodology used to determine a critical or significant benchmark

1 The information to be provided by an administrator of a benchmark or, where applicable, family of benchmarks in compliance with the requirement laid down in Article 13(1)(a) of Regulation (EU) 2016/1011 shall include at least the following elements, insofar as they are relevant to that benchmark or family of benchmarks or to the input data used to determine it:

a a definition and description of the benchmark or family of benchmarks and of the market or economic reality that it is intended to measure;

b the currency or other unit of measurement of the benchmark or family of benchmarks;

c the criteria used by the administrator for selecting the sources of input data used to determine the benchmark or family of benchmarks;

d the types of input data used to determine the benchmark or family of benchmarks and the priority given to each type;

e the composition of any panel of contributors and the criteria used to determine eligibility for panel membership;

f a description of the constituents of the benchmark or family of benchmarks and the criteria used for selecting and weighting them;

g any minimum liquidity requirements for the constituents of the benchmark or family of benchmarks;

h any minimum requirements for the quantity of input data, and any minimum standards for the quality of input data, used to determine the benchmark or family of benchmarks;

i the clear rules identifying how and when discretion may be exercised in the determination of the benchmark or family of benchmarks;

j whether the benchmark or family of benchmarks takes into account any reinvestment of dividends or coupons paid by its constituents;

k if the methodology may be changed periodically to ensure the benchmark or family of benchmarks remains representative of the relevant market or economic reality:

(i) any criteria to be used to determine when such a change is necessary;

(ii) any criteria to be used to determine the frequency of such a change; and

(iii) any criteria to be used to rebalance the constituents of the benchmark or family of benchmarks as part of making such a change;

l the potential limitations of the methodology and details of any methodology to be used in exceptional circumstances, including in the case of an illiquid market or in periods of stress or where transaction data sources may be insufficient, inaccurate or unreliable;

m a description of the roles of any third parties involved in data collection for, or in calculation or dissemination of, the benchmark or family of benchmarks;

n the model or method used for the extrapolation and any interpolation of benchmark data.