Commission Delegated Regulation (EU) 2018/66 of 29 September 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council specifying how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/66

of 29 September 2017

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(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 20(6)(a) thereof,

Whereas:

(1) The total value of financial instruments, financial contracts or investment funds referencing a benchmark is a key criterion for the categorisation of that benchmark, in accordance with Regulation (EU) 2016/1011, as critical, significant or non-significant. It is therefore necessary that the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are calculated in the same manner across the Union, so that a consistent categorisation of benchmarks in the Member States and a uniform application of Regulation (EU) 2016/1011 is ensured.

(2) To ensure reliability of benchmarks, the nominal amount of financial instruments, the notional amount of derivatives and the net asset value of investment funds should therefore be calculated using regulatory data where available.

(3) The total value of financial instruments, financial contracts or investment funds should be calculated by taking into account both direct references to those financial instruments, financial contracts or investment funds and indirect references to a benchmark within a combination of benchmarks. Where a financial instrument, a financial contract or an investment fund references a number of benchmarks, it is appropriate to take this multiple referencing into account in the calculation of the total value of the financial instruments, financial contracts and investment funds referencing a benchmark as these financial products are not solely depending on that benchmark.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/66. 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) View outstanding changes

The calculation of the total value in the case of indirect references therefore needs to be specified in order to be directly applicable and measured consistently across the Union,

HAS ADOPTED THIS REGULATION:

Article 1

Nominal amount of financial instruments other than derivatives and units in collective investment undertakings

The nominal amount of financial instruments other than derivatives and units in collective investment undertakings shall be the total issued nominal amount in monetary value referred to in Table 3, Field 14, of the Annex to Commission Delegated Regulation (EU) 2017/585[(2)].

Article 2

Notional amount of derivatives

The notional amount of derivatives, referred to in Article 20(6)(a) of Regulation (EU) 2016/1011, shall be the notional value referred to in Table 2, Field 20, of the Annex to Commission Delegated Regulation (EU) 2017/104[(3)]. However, where that notional value is negative, the notional value shall be equal to the absolute value.

For credit derivative index transactions, an indexation factor derived from Table 2, Field 89 of the Annex to Delegated Regulation (EU) 2017/104 shall be applied to the notional value.

Article 3

Net asset value of collective investment undertakings

The net asset value of collective investment undertakings referred to in Article 20(6)(a) of Regulation (EU) 2016/1011, shall be either of the following:

(a) for collective investment undertakings subject to Directive 2009/65/EU of the European Parliament and of the Council[(4)]: the net asset value per unit reported in the most recent annual or half-yearly report referred to in Article 68(2) of that Directive, multiplied by the number of units;

(b) for collective investment undertakings subject to Directive 2011/61/EU of the European Parliament and of the Council[(5)]: the latest available net asset value referred to in Article 104(1)(c) of Commission Delegated Regulation (EU) No 231/2013[(6)].

Article 4

Use of alternative amounts and values

Where the amounts or values for the calculation of the total value of financial instruments, financial contracts, or investment funds referencing the benchmark referred to in Articles 1, 2 and 3, are not available or are incomplete, the total value referred to in Article 20(1)(a) of Regulation (EU) 2016/1011 and the total average value referred to

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in Article 24(1)(a) of that Regulation shall be calculated by using alternative amounts or values, including proxies and amounts or values reported by private providers of information or open interest data calculated and published by market operators, provided that those proxies and amounts or values are of sufficient repute and are sufficiently reliable.

An administrator using alternative amounts or data shall calculate the total amount on a best effort basis and to the best of its ability, based on the available data.

An administrator using alternative amounts or data shall provide the competent authority with a written specification of the data sources used when notifying that competent authority in accordance with Article 24(3) of Regulation (EU) 2016/1011.

Article 5

Currency

The amounts and values referred to in Articles 1, 2 and 3 shall be expressed in euros. Where necessary, the amounts or values shall be converted using the daily euro foreign exchange reference rate published by the European Central Bank.

Article 6

Indirect reference to a benchmark within a combination of benchmarks

Where a benchmark is used indirectly within a combination of benchmarks, the amounts or values for the purpose of the thresholds referred to in Article 20(1) and Article 24(1)(a) of Regulation (EU) 2016/1011 shall be either of the following:

(a) the benchmark's weight, in percentage terms, within the combination of benchmarks, multiplied by the total amount or value or average value, as applicable, of the financial instrument or investment fund in question, where that weight is clearly specified or can be approximated on the basis of other available information;

(b) the total amount or value or average value, as applicable, of the financial instrument or investment fund in question divided by the number of benchmarks within the combination of benchmarks, where the actual weight of the benchmark is not specified or cannot be approximated.

Article 7

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*.

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