# Commission Implementing Decision (EU) 2019/1275 of 29 July 2019 on the equivalence of the legal and supervisory framework applicable to benchmarks in Singapore in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council (Text with EEA relevance)

## COMMISSION IMPLEMENTING DECISION (EU) 2019/1275

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## on the equivalence of the legal and supervisory framework applicable to benchmarks in Singapore in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council

## (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 30 thereof,

Whereas:

(1) Regulation (EU) 2016/1011 introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union.

(2) That Regulation applies as of 1 January 2018 and non-Union administrators benefit from a transitional period allowing for the use of third-country benchmarks in the Union. Following the expiry of the transitional period, a benchmark or a combination of benchmarks provided by an administrator located in a third country may only be used in the Union where the benchmark and the administrator are included in the register maintained by the European Securities and Markets Authority ('ESMA') following the adoption of an equivalence decision by the Commission, or a recognition or endorsement by competent authorities.

(3) The Commission is empowered to adopt implementing decisions stating that the legal and supervisory framework of a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under Regulation (EU) 2016/1011. When assessing such equivalence, the Commission takes into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO Principles for Financial Benchmarks or, where applicable, with the IOSCO Principles for Oil Price Reporting Agencies ('PRAs'), and that such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.

(4) Benchmarks such as the Singapore Interbank Offered Rates (SIBOR) and the Singapore Dollar Swap Offer Rate (SOR) are administered in Singapore and used in the Union by a number of supervised entities. As a result, the Commission undertook an assessment of the benchmark regime in Singapore.

(5) The Securities and Futures Act ('SFA') and the Securities and Futures (Financial Benchmarks) Regulations 2018 ('SFA Benchmarks Regulations') set out the legal and supervisory framework in Singapore for administrators of designated benchmarks and contributors to those benchmarks. When developing requirements under the SFA and SFA Benchmarks Regulations, the Monetary Authority of Singapore ('MAS') considered the benchmark regimes in overseas regimes, including the Regulation (EU) 2016/1011.

(6) Part VIAA of the SFA introduces a regulatory regime whereby all benchmark administrators and contributors in relation to a designated benchmark must obtain authorisation from the MAS as an Authorised Benchmark Administrator ('ABA') or Authorised Benchmark Submitter ('ABS'). There are specific obligations for ABA and ABS, and requirements applicable to compelled administration of, and submission to, a designated benchmark. In addition, the SFA confers rule-making powers on MAS. The rules as implemented by MAS are legally binding.

(7) Section 2 of the SFA defines a financial benchmark as any price, rate, index or value that is (i) determined periodically by the application (whether direct or indirect) of a formula or any other method of calculation to information or expressions of opinion concerning transactions in, or the state of, the market in respect of one or more underlying things; (ii) made available to the public (whether free of charge or for payment); and (iii) used for reference to determine the interest payable or other sums due on deposits or credit facilities; to determine the price or value of any investment product; or to measure the performance of any product offered by a person prescribed by regulations.

(8) In accordance with section 123B of the SFA, MAS may designate, by Order in the Government Gazette, a financial benchmark as a designated benchmark. MAS may do so if it is satisfied that (i) the financial benchmark has systemic importance in the financial system of Singapore, (ii) a disruption in the determination of the financial benchmark could affect public confidence in the benchmark or financial system of Singapore, (iii) the determination of the financial benchmark could be susceptible to manipulation or (iv) it is otherwise in the interests of the public to do so.

(9) MAS has designated financial benchmarks by means of the Securities and Futures (Designated Benchmarks) Order 2018 issued pursuant to section 123B of the SFA. This decision is limited to the administrators of those benchmarks listed in the latest applicable version of the Securities and Futures (Designated Benchmarks) Order. This decision does not cover administrators of financial benchmarks that qualify for exemption from the scope of Regulation (EU) 2016/1011 in accordance with Article 2(2) of that regulation.

(10) Under the SFA (in particular sections 123D and 123ZC), both the administrators and submitters of designated benchmarks are required to be authorised, unless otherwise

exempted. MAS may consider the factors set out in sections 123F(5), 123F(6), 123F(8), 123J(1), 123J(6) of the SFA, and regulation 4(1) of the SFA Benchmarks Regulations when deciding whether to grant an authorisation or suspend or revoke an authorisation in relation to an ABA. MAS may also impose, vary or revoke conditions or restrictions on an ABA under sections 123F(2) and 123F(3) of the SFA. A person commits an offence if he administers or holds himself out as administering a designated benchmark without obtaining authorisation, unless he is exempted from such requirement.

(11) According to section 123O of the SFA, benchmark administrators must issue a code in respect of each designated benchmark, which sets out the standards to be maintained by every submitter to the designated benchmark. This also requires the establishment of an oversight committee under regulation 8 of the SFA Benchmarks Regulations, which shall conduct periodic reviews on the scope, design and methodology of the designated benchmark and arrangements to facilitate the administration of a designated benchmark.

(12) Sections 123J(4) and 123ZZB of the SFA allow MAS to compel an ABA to continue to administer a designated benchmark. Sections 123F(2) and 123F(3) of the SFA allow MAS to impose conditions on the ABA relating to the process for the determination of the designated benchmark. Sections 123ZI(1) and 123ZJ(1) of the SFA allow MAS to compel any person to be a submitter to a designated benchmark by designating the person as a designated benchmark submitter ('DBS'). MAS must consider the factors set out in sections 123ZI(2) and 123ZI(3) of the SFA when deciding whether to designate a person as a DBS or to withdraw such designation. A DBS is subject to the same ongoing obligations as an ABS.

(13) Part VIAA of the SFA and the SFA Benchmarks Regulations generally reflect the IOSCO Principles for Financial Benchmarks. An administrator is primarily responsible for all aspects of administering a designated benchmark, and subject to regulatory requirements under the SFA and SFA Benchmarks Regulations. Where an administrator outsources any functions to a third party, it is required to comply with the Guidelines on Outsourcing issued by MAS. All this reflects the IOSCO Principles on Overall Responsibility of the Administrator and Oversight of Third Parties.

(14) Section 123A of the SFA states the objectives of the regulatory regime are to promote fair and transparent determination of financial benchmarks and to reduce systemic risks. In line with this, Section 123P of the SFA requires the maintenance of governance arrangements that are adequate for the designated benchmark to be determined in a fair and efficient manner reflecting the general Principle on avoiding Conflicts of Interest for Administrators. Furthermore, it needs to be ensured that the systems and controls concerning performing the activity of administering a designated benchmark are adequate and appropriate for the scale and nature of its operations, reflecting the IOSCO Principle on Control Framework for Administrators.

(15) As the SFA also requires a code in respect of each designated benchmark, for which the administrator must obtain MAS's written approval, and the establishment of an oversight committee that must carry out periodic reviews of the scope and adequacy of the definitions, design and methodology of the designated benchmark, the Principles

on Transparency, Methodology, on Internal Oversight and on Periodic Review and on the Submitter Code of Conduct are thus also reflected.

(16) Considering the IOSCO Principle on Transition, Section 123J enables MAS to refuse to withdraw the authorisation of an ABA if this was not in the public interest. Section 123S of the SFA, together with Regulation 13 of the SFA Benchmarks Regulations and the Notice on Submission of Periodic Reports for Benchmark Administrators, correspond with IOSCO Principle on Audits. Section 123R of the SFA and Regulation 12 of the SFA Benchmarks Regulations in relation to benchmark administrators and section 123ZN(1) of the SFA and regulation 20 of the SFA Benchmarks Regulations in relation to benchmark submitters correspond with IOSCO Principle on Audit Trail. Sections 123V and 123ZR of the SFA correspond with IOSCO Principle on Cooperation with Regulatory Authorities.

(17) It can therefore be concluded that the binding requirements with respect to the administrators of financial benchmarks designated as 'designated benchmarks' under the Securities and Futures (Designated Benchmarks) Order are equivalent to the corresponding requirements under Regulation (EU) 2016/1011.

(18) Article 30 of Regulation (EU) 2016/1011 also requires the binding requirements to be subject to effective supervision and enforcement on an on-going basis in the third country.

(19) Regulated administrators and submitters are subject to ongoing supervision and oversight by MAS in Singapore. MAS is responsible for enforcing the regulated administrators and submitters' compliance with their obligations under SFA and the SFA Benchmarks Regulations, and in this respect, it conducts periodic assessments of compliance by the regulated administrators and submitters. In their assessment, MAS may take into account any information and reports that it considers appropriate. Sections 123O to 123V of the SFA outline the general obligations and sections 123F(4) and 123K(6) of the SFA provide that administrators must comply with any conditions attached to their authorisation or exemption. Sections 123ZZA and 123ZZB of the SFA allow MAS to make further regulations and directions with which administrators are required to comply.

(20) Sections 123Q(1) and 123S of the SFA and Regulations 11, 13(1) and 13(2) of the SFA Benchmarks Regulations require administrators to notify MAS of certain matters, including where the administrator has failed to comply with any of its regulatory obligations. MAS has information gathering powers to enable it to assess licensees' compliance with the SFA.

(21) Section 123ZZB of the SFA empowers MAS to issue directions to administrators, which may include directing the administrator to give MAS a report on any specified matter, including an audit statement on the report of those matters. Sections 150 and 150A of the SFA empower MAS to inspect an administrator and to share the report with foreign regulators, where appropriate.

(22) Should a benchmark administrator fail to comply with its regulatory obligations, MAS may issue directions under section 123ZZB of the SFA to undertake specified measures