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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1105

of 8 August 2018

laying down implementing technical standards with regard to procedures and forms for the provision of information by competent authorities to ESMA under Regulation (EU) 2016/1011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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 47(3) thereof,

Whereas:

- (1) Article 47(2) of Regulation (EU) 2016/1011 requires competent authorities to provide ESMA with all information necessary to carry out its duties. To ensure efficient and effective communication, competent authorities and ESMA should use defined channels of communication, including designated contact persons and standardised forms, for requesting information, acknowledging receipt of requests for information and responding to requests for information.
- (2) The information that competent authorities are required to provide pursuant to Article 47(2) of Regulation (EU) 2016/1011 includes the information needed to enable ESMA to establish and maintain the public register referred to in Article 36(1) of that Regulation, in particular the information listed in points (a), (c) and (d) of that Article and any subsequent changes to that information. Competent authorities and ESMA should be required to agree the technical specifications governing submission of that information to ESMA's website in order to ensure that the information is transmitted accurately and securely.
- (3) The information that competent authorities are required to provide to ESMA under Regulation (EU) 2016/1011 may contain personal data and other sensitive information that is not in the public domain. It is therefore important that the provision of information is governed by appropriate safeguards and confidentiality rules.
- (4) Competent authorities and ESMA should be given sufficient time to put in place procedures for the provision of information set out in this Regulation. This Regulation should therefore start to apply two months after it enters into force,
- (5) This Regulation is based on the draft implementing technical standards submitted by the ESMA to the Commission.
- (6) ESMA has not conducted open public consultations on the draft implementing 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 implementing technical standards, taking into account the fact that they would only directly concern the national competent authorities of the Member States, and not market participants.

⁽¹⁾ OJ L 171, 29.6.2016, p. 1.

- (7) 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 ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Notification to ESMA for the ESMA register

1. To enable ESMA to establish and maintain the public register referred to in Article 36(1) of Regulation (EU) 2016/1011, competent authorities shall notify ESMA of the information listed in points (a), (c) and (d) of that Article, and of any change to that information, within five working days of the relevant decision.

2. The relevant decision is whichever one of the following decisions by a competent authority gives rise to the obligation under Regulation (EU) 2016/1011 to notify ESMA of that particular information or change:

- (a) a decision to authorise or register an administrator pursuant to Article 34(6)(a) or (b) of Regulation (EU) 2016/1011;
- (b) a decision to withdraw or suspend the authorisation or registration of an administrator pursuant to Article 35(1) of that Regulation;
- (c) a decision to recognise an administrator located in a third country pursuant to Article 32(5) of that Regulation;
- (d) a decision to suspend or withdraw such recognition pursuant to Article 32(8) of that Regulation;
- (e) a decision to authorise the endorsement of a benchmark or family of benchmarks pursuant to Article 33(3) of that Regulation;
- (f) a decision to require the cessation of the endorsement of a benchmark or family of benchmarks pursuant to Article 33(6) of that Regulation.

Any information or change to that information referred to in paragraph 1 shall be transmitted to ESMA using the ESMA's channel of communication that ensures that completeness, integrity and confidentiality of the information are maintained during the transmission.

3. Competent authorities and ESMA shall agree on the information technology governing the submission of information to ESMA's website using the ESMA's channel of communication.

Article 2

Notifications to ESMA of benchmarks by recognised administrators

Any notification to be made to ESMA pursuant to Article 32(6) of Regulation (EU) 2016/1011 shall be made by an electronic means that is capable of ensuring the completeness, integrity and confidentiality of the data throughout the transmission process.

Article 3

Requests for information

1. Any request by ESMA for information to be provided by a competent authority pursuant to Article 47(2) of Regulation (EU) 2016/1011, other than information covered by Articles 1 and 2 of this Regulation, shall be made using the form set out in Annex I to this Regulation.

2. A competent authority from whom information is requested pursuant to Article 47(2) of Regulation (EU) 2016/1011 ('the requested authority') shall acknowledge receipt of the request within seven days of receipt of the request, using the form set out in Annex II to this Regulation.

⁽¹⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

*Article 4***Reply to a request for information**

1. The requested authority shall provide to ESMA the information requested, using the form set out in Annex III to this Regulation. The requested authority shall take all reasonable steps within its powers to obtain and provide the information requested. If the requested authority cannot provide the information by the estimated response date set out in its acknowledgement of receipt of the request for information, it shall notify ESMA without delay and provide a new estimated response date together with reasons why an extension is needed.
2. The requested authority shall consult ESMA, where necessary, on any clarifications regarding the type of information requested and on the frequency of any updates that are required.

*Article 5***Means of transmission**

All requests for information, acknowledgements of receipt and replies to requests for information referred to in Articles 3 and 4 shall comply with the following rules:

- (a) they shall be in writing;
- (b) they shall be sent by post or fax, or by an electronic means that is capable of ensuring the completeness, integrity and confidentiality of the information throughout the transmission process;
- (c) they shall be addressed:
 - (i) in the case of a request sent to a competent authority, to the contact person designated by the competent authority under Article 7;
 - (ii) in the case of an acknowledgement of receipt or a reply sent to ESMA, to the contact point specified by ESMA in its request for information.

*Article 6***Confidentiality**

1. Competent authorities shall keep confidential the fact that a request for information has been issued under Article 47(2) of Regulation (EU) 2016/1011, the content of that request and any matter arising in the course of executing the request, in particular any consultations between ESMA and the competent authority in relation to the request.
2. The competent authority may, however, disclose such facts or matters if either ESMA consents to the disclosure or disclosure is necessary for legal proceedings.

*Article 7***Contact persons**

Each competent authority shall designate a contact person for the purposes of this Regulation, and communicate the name and contact details of that contact person to ESMA, within 30 days of the date of entry into force of this Regulation. Any subsequent changes in the designation or contact details of a contact person shall be communicated to ESMA without delay.

*Article 8***Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 29 October 2018.

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

Done at Brussels, 8 August 2018.

For the Commission

The President

Jean-Claude JUNKER

ANNEX I

Form for a request for information

REQUEST FOR INFORMATION

Reference number:

Date:

General information

FROM:

Member State (if applicable):

Requesting Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of the Commission Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Requested Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

Dear *[insert name]*

In accordance with Article 3 of the Implementing Regulation (EU) 2018/1105 laying down implementing technical standards [to determine procedures and forms for exchange of information] information is sought in relation to the matter(s) set out in further detail below.

I would be grateful for the above information by *[Insert indicative date for the reply]* or, if that is not possible, for an indication as to when you anticipate being in a position to provide the information which is sought.

Reasons for the request for information

.....

[Insert provision(s) of Regulation (EU) 2016/1011 under which the requesting authority is competent to deal with the matter]

The request concerns information on

.....

[Insert description of the subject matter of the request, the area of benchmark supervision concerned and the purpose for which the information is sought]

Further to

[If applicable, insert details of the previous request in order to enable it to be identified]

The information included in this request shall be kept confidential in accordance with Article 5 of Implementing Regulation (EU) 2018/1105.

Yours sincerely,

[signature]

ANNEX II

Form for the acknowledgment of receipt of a request for information

ACKNOWLEDGMENT OF RECEIPT OF A REQUEST FOR INFORMATION

Reference number:

Date:

FROM:

Member State (if applicable):

Requested Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of the Commission Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Requesting Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

Dear *[Insert name]*

In accordance with Article 4 of Implementing Regulation (EU) 2018/1105 laying down implementing technical standards [to determine procedures and forms for exchange of information], we hereby acknowledge receipt of your request for information with reference number *[Insert request]*

Estimated date of response (if possible at that stage):

Yours sincerely,

[signature]

ANNEX III

Form for the reply to a request for information

REPLY TO A REQUEST FOR INFORMATION

Reference number:

Date:

General information

FROM:

Member State (if applicable):

Requested Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of the Commission Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Requesting Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

Dear *[Insert name]*

In accordance with Article 4 of Implementing Regulation (EU) 2018/1105 laying down implementing technical standards [to determine procedures and forms for exchange of information] your request for information dated *[dd.mm.yyyy]* with reference number *[insert request reference number]* has been processed by us.

Information requested

.....
.....

.....

The information provided is confidential and is disclosed to *[insert name of the Requesting Authority]* pursuant to the *[insert provision of the applicable sectoral legislation]* and on the basis that the information shall remain confidential in accordance with Article 5 of Implementing Regulation (EU) 2018/1105. *[Insert name of the Requesting Authority]* shall observe the requirements of Article 5 of Implementing Regulation (EU) 2018/1105 with respect to confidentiality restrictions and the permissible uses of information.

Yours sincerely,

[signature]

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1106**of 8 August 2018****laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to 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 the third subparagraph of Articles 25(8) and 26(5) thereof,

Whereas:

- (1) Article 25(7) of Regulation (EU) 2016/1011 obliges administrators of significant benchmarks who choose not to comply with one or more particular requirements of that Regulation to publish and maintain a compliance statement stating why it is not appropriate for them to comply with those requirements. Article 26(3) of that Regulation imposes a similar obligation on administrators of non-significant benchmarks, but in respect of a broader range of requirements.
- (2) The compliance statement should allow anyone reading it to identify clearly the provisions of Regulation (EU) 2016/1011 that the administrator of the benchmark has chosen not to apply and the reasons why the administrator considers it is appropriate for it not to comply with those provisions.
- (3) Articles 25(7) and 26(3) of Regulation (EU) 2016/1011 require the compliance statement to clearly state why the administrator considers it appropriate not to comply with the provisions in question. The template should therefore require a separate explanation for each of the provisions not applied by the administrator.
- (4) The optional exemptions for significant benchmarks in Article 25(1) of Regulation (EU) 2016/1011 are a subset of the potential exemptions for non-significant benchmarks in Article 26(1) of the same Regulation. In order to ensure consistency between the two implementing technical standards required by Article 25(8) and Article 26(5) for those exemptions and avoid potential unnecessary administrative burden for benchmark administrators, it is desirable to have these implementing technical standards in a single Regulation.
- (5) Administrators may choose to use a single compliance statement for a family of benchmarks, provided that it allows for a clear identification of the provisions that the administrator chose not to apply for each benchmark covered by the compliance statement. A single compliance statement should not cover significant and non-significant benchmarks. If a family of benchmarks comprises significant and non-significant benchmarks, at least two compliance statements should be prepared.
- (6) 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,
- (7) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority to the Commission.
- (8) The European Securities and Markets Authority has conducted open public consultations on the draft implementing 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⁾,

⁽¹⁾ OJ L 171, 29.6.2016, p. 1.

⁽²⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

Article 1

Templates for the compliance statement

1. The template for the compliance statement referred to in Article 25(7) of Regulation (EU) 2016/1011 is set out in Annex I to this Regulation.
2. The template for the compliance statement referred to in Article 26(3) of Regulation (EU) 2016/1011 is set out in Annex II to this Regulation.

Article 2

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*.

It shall apply from 29 October 2018.

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

Done at Brussels, 8 August 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Template for the compliance statement referred to in Article 25(7) of Regulation (EU) 2016/1011

Item	Text field
A. General Information	
1. Date of creation of this document and, where applicable, of the latest update to it	1. Created: [dd/mm/yy] Last updated: [dd/mm/yy]
2. Name of the administrator	2. [As it appears in the 'Register of administrators and benchmarks' published by ESMA]
3. Relevant National Competent Authority	3. [The competent authority which has authorised or registered the administrator pursuant to Article 34(1) of Regulation (EU) 2016/1011]

The following section:

- identifies the significant benchmark or significant benchmarks in respect of which provisions do not apply,
- identifies the provisions that the administrator has chosen not to apply, and
- explains why it is appropriate for the administrator not to comply with each such provision.

If this document relates to more than one significant benchmark provided by the administrator, a separate section must be completed for each set of benchmarks in respect of which:

- the provisions that the administrator chooses not to apply are the same for all those benchmarks, and
- for each provision, the explanation why it is appropriate for the administrator not to comply with the provision is the same for all those benchmarks.

B. [Insert name of the administrator as set out in item 2 of section A] chooses not to apply the following provisions of Regulation (EU) 2016/1011 with respect to the significant benchmark or significant benchmarks identified below

1. The benchmark or benchmarks in respect of which the provision(s) do not apply	1. [Insert name of the benchmark, or each of the benchmarks, including its international securities identification number (ISIN) or, where no ISIN is available, any other identifier available]
2. Indication of where the benchmark statement for the relevant benchmark or each of the relevant benchmarks is published	2. [e.g. webpage link]
3. (i) The provision or provisions of Regulation (EU) 2016/1011 that do not apply (ii) For each provision, the reasons why it is appropriate for the administrator not to comply with that provision	3(i) [For each provision, insert the Article number, paragraph and, where applicable, specific point of Regulation (EU) 2016/1011, and the full text of the provision] 3(ii) [For each provision, insert a specific, detailed and clear explanation of why it is appropriate for the administrator not to comply with the provision, taking into account the nature and impact of the benchmark or benchmarks and the size of the administrator.]

ANNEX II

Template for the compliance statement referred to in Article 26(3) of Regulation (EU) 2016/1011

Item	Text field
A. General Information	
1. Date of creation of this document and, where applicable, of the latest update to it	1. Created: [dd/mm/yy] Last updated: [dd/mm/yy]
2. Name of the administrator	2. [As it appears in the 'Register of administrators and benchmarks' published by ESMA]

The following section:

- identifies the non-significant benchmark or non-significant benchmarks in respect of which provisions do not apply,
- identifies the provisions that the administrator has chosen not to apply, and
- explains why it is appropriate for the administrator not to comply with each such provision.

If this document relates to a family of non-significant benchmarks provided by the administrator, a separate section must be completed for each set of benchmarks in respect of which:

- the provisions that the administrator chooses not to apply are the same for all those benchmarks, and
- for each provision, the explanation why it is appropriate for the administrator not to comply with the provision is the same for all those benchmarks.

B. [Insert name of the administrator as set out in item 2 of section A] chooses to not apply the following provisions of Regulation (EU) 2016/1011 in respect of the non-significant benchmark or non-significant benchmarks identified below

1. The benchmark or benchmarks in respect of which the provision(s) do not apply	1. [Insert name of the benchmark, or each of the benchmarks, including its international securities identification number (ISIN) or, where no ISIN is available, any other identifier available]
2. (i) The provision or provisions of Regulation (EU) 2016/1011 that do not apply	2(i) [For each provision, insert the Article number, paragraph and, where applicable, specific point of Regulation (EU) 2016/1011, and the full text of the provision]
(ii) For each provision, the reasons why it is appropriate for the administrator not to comply with that provision	2(ii) [For each provision, insert a specific, detailed and clear explanation of why it is appropriate for the administrator not to comply with the provision.]

