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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	13 July 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2018) 4426 final
Subject:	ANNEX to the COMMISSION DELEGATED REGULATION (EU) .../.. supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA)

Delegations will find attached document C(2018) 4426 final ANNEX 1.

Encl.: C(2018) 4426 final ANNEX 1.



Brussels, 13.7.2018
C(2018) 4426 final

ANNEX 1

ANNEX

to the

COMMISSION DELEGATED REGULATION (EU) .../..

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA)

ANNEX
Information to be provided in the application for recognition under Article 32 of
Regulation (EU) 2016/1011

SECTION A - INFORMATION ON THE PROVIDING PERSON AND ITS LEGAL REPRESENTATIVE IN THE UNION

1. GENERAL INFORMATION

- (a) Full name of the applicant and its Legal Entity Identifier (LEI).
- (b) Address of the office in the country of location.
- (c) Legal Status.
- (d) Website, if any.
- (e) Where the applicant is supervised in the non-EU country where it is located, information about its current authorisation status, including the activities for which it is authorised, the name and address of the competent authority of the non-EU country and the link to the register of such competent authority, where available; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided.
- (f) A description of the operations of the applicant in the EU and in non-EU countries, whether or not subject to any EU or extra-EU financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.
- (g) Where the applicant is part of a group, its group structure, along with the ownership chart, showing the links between any parent undertaking and subsidiaries. The undertakings and subsidiaries shown in the chart shall be identified by their full name, legal status and address of the registered office and head office.
- (h) A self-declaration of good repute including details, if applicable, of any:
 - (i) past and pending proceedings of a disciplinary nature against it (unless dismissed);
 - (ii) refusal of authorisation or registration by a financial authority;
 - (iii) withdrawal of authorisation or registration by a financial authority.

2. LEGAL REPRESENTATIVE IN THE MEMBER STATE OF REFERENCE

- (a) Documented evidence supporting the choice of the Member State of reference, by application of the criteria laid down in Article 32(4) of Regulation (EU) 2016/1011.
- (b) With respect to the legal representative established in the Member State of reference as set out in Article 32(3) of Regulation (EU) 2016/1011, its:
 - (i) full name;
 - (ii) title, in case of a natural person, or legal status, in case of a legal person;

- (iii) deed of incorporation, articles of association or other constitutional documents, in case of a legal person, and clarification of whether it is supervised by a supervisory authority;
- (iv) address;
- (v) e-mail address;
- (vi) telephone number;
- (vii) written confirmation of the authority of the legal representative to act on behalf of the applicant in accordance with Article 32(3) of Regulation (EU) 2016/1011;
- (viii) details of the performance of the oversight function by the legal representative relating to the provision of benchmarks that may be used in the Union;
- (ix) the name, title, address, e-mail address and telephone number of a contact person within the legal representative.

3. ORGANISATIONAL STRUCTURE AND GOVERNANCE

- (a) Internal organisational structure with respect to the board of directors, senior management committees, oversight function and any other internal body exercising significant management functions involved in the provision of a benchmark, including their:
 - (i) terms of reference or summary thereof; and
 - (ii) adherence to any governance codes or similar provisions.
- (b) Procedures ensuring that the employees of the administrator and any other natural persons whose services are placed at its disposal or under its control and who are directly involved in the provision of a benchmark have the necessary skills, knowledge and experience for the duties assigned to them and operate in respect of the provisions under Article 4(7) of Regulation (EU) 2016/1011.
- (c) The number of employees (temporary and permanent) involved in the provision of a benchmark.

4. CONFLICTS OF INTEREST

- (a) Policies and procedures that address:
 - (i) how current and potential conflicts of interest are or will be identified, recorded, managed, mitigated, prevented or remedied;
 - (ii) particular circumstances which apply to the applicant or to any particular benchmark provided by the applicant and which may be used in the Union, in relation to which conflicts of interest are most likely to arise, including where expert judgment or discretion is exercised in the benchmark's determination process, where the applicant is within the same group as a user of a benchmark and where the provider is a participant in the market or economic reality that the benchmark intends to measure.

- (b) For a benchmark or a family of benchmarks, a list of any material conflicts of interests identified, along with the respective mitigation measures.
- (c) The structure of the remuneration policy, specifying the criteria used to determine the remuneration of the persons involved directly or indirectly in the activity of provision of benchmarks.

5. INTERNAL CONTROL STRUCTURE, OVERSIGHT AND ACCOUNTABILITY FRAMEWORK

- (a) Policies and procedures for monitoring the activities of the provision of a benchmark or a family of benchmarks, including those relating to:
 - (i) the information technology systems;
 - (ii) the risk management, together with a mapping of risks which may arise and which may impact the accuracy, integrity and representativeness of the benchmarks provided or the continuity of the activity of provision, along with the respective mitigation measures;
 - (iii) the constitution, role and functioning of the oversight function, as described in Article 5 of Regulation (EU) 2016/1011 and further specified in the regulatory technical standards adopted under Article 5(5) of Regulation (EU) 2016/1011¹ or the corresponding principles on financial benchmarks agreed by the International Organization of Securities Commissions (IOSCO) on 17 July 2013 ("IOSCO principles for financial benchmarks"), or the Principles for Oil Price Reporting Agencies agreed by the IOSCO on 5 October 2012 ("IOSCO principles for PRAs"), as applicable, including procedures for the appointment, substitution or removal of individuals within the oversight function;
 - (iv) the constitution, role and functioning of the control framework, as described in Article 6 of Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable, including procedures for the appointment, substitution or removal of individuals who are responsible for this framework;
 - (v) the accountability framework as described in Article 7 of the Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable, including procedures for the appointment, substitution or removal of individuals who are responsible for this framework.
- (b) Contingency plans for determining and publishing a benchmark on a temporary basis.
- (c) Procedures for the internal reporting of infringements of Regulation (EU) 2016/1011 by managers, employees and any other natural persons whose services are placed at the provider's disposal or under the control of the provider.

¹ Commission Delegated Regulation (EU) Publication Office: Please insert the reference number to document C (2108)... supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function.

6. OUTSOURCING

Where any activity forming a part of the process for the provision of a benchmark or family of benchmarks is outsourced:

- (a) the outsourcing arrangements, including service-level agreements, which demonstrate compliance with Article 10 of the Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable;
- (b) details of the outsourced functions, unless this information is already included in the relevant contracts;
- (c) policies and procedures regarding the oversight of the outsourced activities unless this information is already included in the relevant contracts.

7. COMPLIANCE WITH IOSCO PRINCIPLES

- (a) Where available, an assessment by an independent external auditor of compliance with the Principles for financial benchmarks agreed by the International Organization of Securities Commissions (IOSCO) on 17 July 2013 or the Principles for Oil Price Reporting Agencies agreed by IOSCO on 5 October 2012, as applicable;
- (b) Where available, in cases where the applicant is subject to supervision, a certification provided by the competent authority of the non-EU country where the applicant is located, attesting compliance with the IOSCO principles referred to in letter (a).

8. OTHER INFORMATION

- (a) The applicant may provide any additional information relevant to its application that it considers appropriate.
- (b) The applicant shall provide this information in a manner and form stipulated by the competent authority.

SECTION B – INFORMATION ON THE BENCHMARKS

9. DESCRIPTION OF THE ACTUAL OR PROSPECTIVE BENCHMARKS OR FAMILIES OF BENCHMARKS THAT MAY BE USED IN THE UNION

- (a) A list including all the benchmarks provided by the applicant that are already used in the Union and, where available, their International Securities Identification Numbers (ISINs).
- (b) A description of the benchmark or family of benchmarks provided and that are already used in the Union, including a description of the underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.
- (c) A list including all the benchmarks that are intended to be marketed for their use in the Union and, where available, their ISINs.

- (d) A description of the benchmark or family of benchmarks that are intended to be marketed for its use in the Union, including a description of the underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.
- (e) Any documented evidence that a benchmark or family of benchmarks described under points b) and d) may be considered regulated-data benchmarks, in accordance with the definition set out in point (24) of Article 3(1) of Regulation (EU) 2016/1011, and is thus entitled to the exemptions listed by Article 17(1) of the same Regulation.
- (f) Any documented evidence that a benchmark or family of benchmarks described under points b) and d) may be considered commodity benchmarks, in accordance with the definition set out in point (23) of Article 3(1) of Regulation (EU) 2016/1011, and that it is not based on submissions by contributors the majority of which are supervised entities, along with any evidence of the implementation of the special regime requirements as set out by Article 19 and Annex II of the Regulation or the corresponding IOSCO Principles for PRAs.
- (g) Any documented evidence that a benchmark or family of benchmarks described under points b) and d) may be considered interest rate benchmarks, in accordance with the definition set out in point (22) of Article 3(1) of Regulation (EU) 2016/1011, along with any evidence of the implementation of the special regime requirements as set out by Article 18 and Annex I of the Regulation.
- (h) Any documented evidence that a benchmark or family of benchmarks described under point (b) has a degree of use within the Union territory which qualifies this benchmark or all the benchmarks included in that family of benchmarks either as significant benchmarks, as defined by point (26) Article 3(1) of Regulation (EU) 2016/1011, or as non-significant benchmarks, as defined by point (27) of Article 3(1) of Regulation (EU) 2016/1011. The information to be provided shall be determined, to the extent possible, on the basis of the provisions in Commission Delegated Regulation (EU) 2018/66² for the assessment of the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds that make reference to the non-EU-country benchmarks, within the Union, including in the event of an indirect reference to any such benchmark within a combination of benchmarks.
- (i) The rationale behind the administrator's application of any of the exemptions listed under Article 25(1), for significant benchmarks, and Article 26(1), for non-significant benchmarks, of Regulation (EU) 2016/1011 in respect of the benchmark; the information shall be presented, to the extent possible, on the

² 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 (OJ L 12, 17.1.2018, p. 11)

basis of the format established by the implementing technical standards adopted under Articles 25(8) and 26(5) of Regulation (EU) 2016/1011³.

- (j) Information on measures to deal with corrections to a benchmark determination or publication.
- (k) Information on the procedure to be undertaken by the provider in the event of changes to or the cessation of a benchmark, in compliance with Article 28(1) of the Regulation (EU) 2016/1011 or the corresponding IOSCO Principles for financial benchmarks or for PRAs, as applicable.

10. INPUT DATA AND METHODOLOGY

- (a) For each benchmark or family of benchmarks, policies and procedures with respect to input data, including those relating to:
 - (i) the type of input data used, their priority of use and any exercise of discretion or expert judgment;
 - (ii) any process for ensuring that input data is sufficient, appropriate and verifiable;
 - (iii) the criteria that determine who may contribute input data to the administrator and the selection process of the contributors;
 - (iv) the evaluation of the contributor's input data and the process of validating input data.
- (b) For each benchmark or family of benchmarks, with respect to the methodology:
 - (i) a description of the methodology, highlighting the key elements of the methodology in accordance with Article 13 of the Regulation (EU) 2016/1011, and further specified in the regulatory technical standards adopted under Article 13(3) of Regulation (EU) 2016/1011⁴;
 - (ii) Policies and procedures, including those relating to:
 - the measures taken to provide validation and review of the methodology, including any trials or back-testing performed;
 - the consultation process on any proposed material change in the methodology.

³ Commission Implementing Regulation (EU) [Publication Office: Please insert the reference number to document] C (2108)... 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.

⁴ Commission Delegated Regulation (EU) [Publication Office: Please insert the reference number to document] C (2108)... 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.