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Additional Information

Level 1 Regulation

Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic

Benchmarks Regulation

Subject Matter

Scope of application of the Commission Delegated Regulations adopted under the BMR (ESMA70-145-114 Q&A_4.6)

Question

Is the scope of application of the Commission Delegated Regulations adopted pursuant to the BMR identical to the scope of the related requirements in the BMR?

30-01-2019

Original language

Yes, the scope of application of the Commission Delegated Regulations adopted pursuant to the BMR (the “Delegated Regulations”) is identical to the scope of the corresponding requirement specified in the BMR, including the transitional provisions of Article 51 of the BMR (See ESMA_QA_745 or ESMA70-145-114 Q&A_6.1 on “Article 16 during transitional period”).

Title III of the BMR provides specific requirements for different types of benchmarks. In particular,

- Article 17 of the BMR provides the requirements for **regulated-data benchmarks** and specifies that some of the requirements on input data, and in particular Article 11(3) of the BMR, do not apply. Therefore, Article 3 of the Delegated Regulation on input data (Commission delegated regulation (EU) 2018/1638) does not apply to those benchmarks. Further, the governance and control requirements for supervised contributors (Article 16 of the BMR) and the requirements on the code of conduct (Article 15 of the BMR) are not applicable to regulated-data benchmarks. Therefore, the related Delegated Regulations on supervised contributors (Commission delegated regulation (EU) 2018/1640) and on code of conduct (Commission delegated regulation (EU) 2018/1639) also do not apply to regulated-data benchmarks;
- Article 18 of the BMR defines the requirements for **interest rate benchmarks**. It specifies that Annex I shall apply to the provision of, and contribution to, interest rate benchmarks in addition to, or as a substitute for, the requirements of Title II. Therefore, all of the Delegated Regulations adopted pursuant to the BMR apply to interest rate benchmarks, except for:
 - the Delegated Regulation on the oversight function (Commission Delegated Regulation (EU) 2018/1637), and
 - the Delegated Regulation on supervised contributors.

- Instead, paragraph 3 of Annex I on the oversight function and paragraphs 6 to 12 of Annex I on the contributor systems and controls apply.
- Article 19 of the BMR defines the requirements for **commodity benchmarks**. It specifies that Annex II shall apply instead of the requirements of Title II to the provision of, and contribution to, commodity benchmarks, unless the benchmark in question is a regulated-data benchmark or is based on submissions by contributors the majority of which are supervised entities. Moreover, for critical commodity benchmarks whose underlying asset is gold, silver or platinum, the requirements of Title II shall apply instead of Annex II. Accordingly, the Delegated Regulations related to the requirements of Title II shall apply only to commodity benchmarks subject to the corresponding requirements in Title II.
- Article 25 of the BMR defines the requirements that an administrator may choose not to apply for **significant benchmarks**. In particular, administrators of significant benchmarks may opt out from the requirements related to the contribution of input data from a front office function (Article 11(3) of the BMR) and the minimum elements of the code of conduct (Article 15(2) of the BMR). Therefore, the corresponding provisions in the Delegated Regulations may not apply to significant benchmarks. These provisions are:
 - Article 3 of the Delegated Regulation on input data;
 - the Delegated Regulation on the code of conduct, as it is a further specification of the elements listed in Article 15(2) of the BMR.
 - It must be noted, however, that, pursuant to Article 25(3) of the BMR, a competent authority may decide that the administrator of a significant benchmark has nevertheless to apply one of these requirements. In such case, the corresponding provisions in the Delegated Regulations also apply.
- Article 26 of the BMR sets out the requirements that the administrator may choose not to apply for **non-significant benchmarks**. In particular, such administrator may choose not to apply the required minimum elements of the code of conduct (Article 15(2) of the BMR). The Delegated Regulation on the code of conduct is a further specification of Article 15(2) of the BMR, it shall therefore not apply to non-significant benchmarks whose administrators have opted not to apply Article 15(2) of the BMR. In addition, Article 5(5), Article 11(5), Article 13(3) and Article 16(5) of the BMR specify that the corresponding Delegated Regulations shall not cover or apply to the provision of, or contribution to non-significant benchmarks. Instead, ESMA's guidelines on non-significant benchmarks apply.

