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Additional Information

Level 1 Regulation

Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic

Benchmarks Regulation

Subject Matter

Written plans under Article 28(2) (ESMA70-145-114_Q&A 8.3)

Question

How should users reflect written plans in the contractual relationship with clients?

ESMA Answer

26-09-2018

Original language

The contractual relationships with clients are governed by national contract law and, accordingly, the legally adequate reflection of the written plans may vary among Member States. However, ESMA considers that supervised entities should be able to demonstrate to the NCA that they have communicated their written plans to their clients and that the written plans are legally effective under applicable Member States law.

For example, prospectuses may be contractual documents under national law and supervised entities may then opt to update outstanding prospectuses approved prior to 1 January 2018 in order to guarantee that all new investors in an investment fund are subject to such terms. In other cases, supervised entities may opt to include a reference to their written plans in other contractual documents that they formalise with new investors.