ESMA_QA_859

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Additional Information

Level 1 Regulation
Benchmarks Regulation (BMR) - Regulation 2016/1011

Topic
Benchmarks Regulation

Subject Matter
Transitional provisions applicable to EU index providers that provides a benchmark that has been recognised as a critical benchmark in accordance with Article 20 of the BMR (ESMA70-145-114 QAs on BMR Q&A 9.4)

Question
For how long a critical benchmark can be used by supervised entities in the Union if the index provider has not been granted authorisation?

ESMA Answer

06-11-2020

Original language

Article 51(4a) of the BMR allows an EU index provider to continue to provide an existing benchmark that has been recognised as a critical benchmark by an implementing act adopted by the Commission in accordance with Article 20 of the BMR, until 31 December 2021 or unless and until the EU index provider's authorisation is refused.

Article 51(4b) of the BMR allows supervised entities to use critical benchmarks provided for the first time on or before 10 December 2019 by an EU index provider for existing and new financial instruments, financial contracts, or for measuring the performance of an investment fund until 31 December 2021 or until and unless the authorisation of the EU index provider is refused.

In line with Q&A 9.2, the term "existing benchmark" used in Article 51(4a) of the BMR should be understood as "existing on or before 10 December 2019", in light of the fact that Article 51(4a) of the BMR was applicable as of 10 December 2019[1].

A critical benchmark existing on or before 10 December 2019, including its updates and modifications, can be used by supervised entities (even if the critical benchmark is transferred to a new index provider after 10 December 2019) until 31 December 2021. In order for this benchmark to continue to be used after 31 December 2021, its index provider has to apply for an authorisation before 31 December 2021. If the authorisation however, is refused before the 31 December 2021, then the relevant critical benchmark can no longer be used.

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[1] Date of entry into application of Regulation (EU) 2019/2089 of the European Parliament and of the council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks