



European Securities and  
Markets Authority

# Methodological Framework

**Model Written Arrangements for Benchmark Colleges**





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## Background

Article 46 of the Regulation (EU) No 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 (Regulation) provides that the competent authority of an administrator of a critical benchmark that is referred to in points (a) and (c) of Article 20(1) of the Regulation shall establish a college.

ESMA will be a member of every college and according to Article 46(7) of the Regulation may give advice concerning the written arrangements. To promote the convergent operation of benchmark colleges, ESMA has developed model written arrangements that may be used by administrators of critical benchmarks according to Article 46(6) of the Regulation.

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## Written arrangements for the establishment and the functioning of the supervisory College of [a critical benchmark]

Having regard to .... and in particular Article 46 thereof,

### Whereas:

(1) In order to ensure the effective exchange of information among competent authorities members of the [name of the critical benchmark] College and the coordination of their activities and supervisory measures, it is necessary for the [chairing authority] to adopt Written Arrangements for the establishment and the functioning of the College.

(2) The College Members have been consulted on the Written Arrangements, in particular regarding the matters referred in Article 46(6) of the Regulation;

(3) The [chairing authority] has given due consideration to the advice provided by ESMA according to Article 46(7) of the Regulation;

The [chairing authority] has decided as follows

### 1. Introduction

1.1. In accordance with Article 46(6) of the Regulation, these Written Arrangements between the members of the College establish the practical arrangements for the functioning of the College in accordance with Art. 46(6) the Regulation.

1.2. Art. 46(6) of the Regulation states that: “The competent authority of an administrator shall establish written arrangements within the framework of the College regarding the following matters:

- a) the information to be exchanged between competent authorities;
- b) the decision-making process between the competent authorities and the timeframe within which each decision has to be taken;
- c) cases in which the competent authorities will consult each other;
- d) the cooperation to be provided under Article 23(7) and 23(8).”

1.3. These Written Arrangements do not create any additional legally binding obligations on the signatory authorities other than those specified in the Regulation or the RTS. Nor do these Written Arrangements create any directly or indirectly enforceable rights.

1.4. These Written Arrangements are intended to be consistent with the Regulation and the RTS. If, however, there is any conflict between a provision of the Regulation (or the RTS) and these Written Arrangements, the provisions of the Regulation (or the RTS) will take precedence.

1.5. These Written Arrangements do not affect any provisions under other bilateral or multilateral agreements between the signatory authorities.

### 2. Objectives

2.1. Recital (62) of the Regulation states:

“Critical benchmarks can involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that can significantly undermine its integrity could have an impact in more than

one Member State, meaning that the supervision of such a benchmark only by the competent authority of the Member State in which the administrator of the benchmark is located will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. In such a case, in order to ensure the effective exchange of supervisory information among competent authorities and coordination of their activities and supervisory measures, colleges, comprising competent authorities and ESMA, should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices.”

- 2.2. Therefore, the activities of the College should contribute to the effective exchange of information among competent authorities and coordination of their activities and supervisory measures, and the harmonised application of rules under the Regulation and to the convergence of supervisory practices.

### **3. Defined terms**

- 3.1. The Regulation: Regulation (EU) No 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.
- 3.2. The RTS: Regulatory Technical Standards on The Regulation.
- 3.3. The chairing authority or chair of the College: [name of the Authority].
- 3.4. The College: The College of competent authorities for the supervision of [name of the critical benchmark], established pursuant to Art. 46 of the Regulation.
- 3.5. The College Members: The competent authorities that are members of the College pursuant to Art. 46(2) or 46(3) of the Regulation, including the chairing authority. Pursuant to Art. 46(4) of the Regulation, ESMA is also considered a competent authority.
- 3.6. The Administrator: The administrator of [name of the critical benchmark].
- 3.7. Contact Details: the name, telephone number, e-mail address and any other relevant contact details for the members of staff at the College Member that will act as the representatives for that College Member at the College.
- 3.8. Code of Conduct: a code of conduct established pursuant to Art. 15 of the Regulation.
- 3.9. Written Arrangements: this document, as amended from time to time in accordance with its provisions.
- 3.10. Non-defined terms shall be interpreted so as to be consistent with the Regulation.

### **4. Formation of the College**

- 4.1. The [chairing authority] has been designated as the competent authority of the Administrator. Accordingly, the [chairing authority] is the Chair of the College.
- 4.2. In accordance with Article 46(1) of the Regulation, the [chairing authority] must establish a College within 30 working days from the inclusion of a benchmark referred to in Article 20(1) points (a) and (c) in the list of critical benchmarks.
- 4.3. In order to ensure that the deadline for establishment of the College is met, the steps that will be taken by the [chairing authority] in establishing the College, and the relevant timeframes, are as follows:

4.3.1. Within 5 working days of inclusion of the [name of the critical benchmark] in the list of critical benchmarks, the [chairing authority] will identify the competent authorities of supervised contributors on the basis of the list established by ESMA in accordance with Art. 40(3) of the Regulation.

4.3.2. The initial membership of the College shall comprise: (i) the [chairing authority]; (ii) ESMA; (iii) those competent authorities identified under point 4.3.1 above; and (iv) any other competent authorities who have requested membership in accordance with point 4.4 below and Art. 46(3) of the Regulation and who have been approved as such within 30 working days from the inclusion of the [critical benchmark] in the list of critical benchmarks.

4.3.3. The [chairing authority] will confirm to the College Members the fact that the College has been established and the Contact Details of all College Members at the latest 30 working days from the inclusion of a benchmark referred to in Article 20(1)(a) and (c) of the Regulation in the list of critical benchmarks. The College will be considered to be established at the moment of the communication by the [chairing authority] to the College members.

4.3.4. If, at the time of inclusion of the [name of critical benchmark] on the critical list, some Member States have not yet designated their competent authority in accordance with Art 40 of the Regulation, this shall not delay the establishment and functioning of the College. The relevant competent authorities shall become members of the College in due course once designated.

#### 4.4. Competent authorities requesting membership

Competent authorities other than those of the Administrator or the supervised contributors, including authorities that supervise contributors to the [name of the critical benchmark] under national or European law, may apply for membership of the College in accordance with Article 46(3) of the Regulation. Where such competent authority intends to become member of the College, it shall submit a request to the [chairing authority] containing evidence that the requirements of this provision are fulfilled and the [chairing authority] shall consider the request as set forth in Article 46(3) of the Regulation.

#### 4.5. Observers

4.5.1. Subject to the agreement of the College, additional authorities may be invited by the [chairing authority] to attend the meetings of the College as non-voting observers. Such an invited authority may be an EEA Authority or a non-EEA Authority if subject to confidentiality requirements that are equivalent to those of the College, as required by point 7.6.4 of these Written Arrangements.

4.5.2. If the [chairing authority] intends to invite authorities as observers, it will inform College Members in advance of this intention with sufficient time in order to assess this intention. The [chairing authority] may then send the invitation to the authority to become an observer of the College with a copy of these Written Arrangements. By accepting an invitation to become an observer, authorities shall be bound by the terms of these Written Arrangements as notified to them by the [chairing authority].

4.5.3. Observers do not have voting rights but can propose agenda items and engage in the discussions of the College.

## **5. Establishment within the framework of the College of the written arrangements**

- 5.1. As soon as the [chairing authority] has determined the list College Members in accordance with point 4.3.2 above, it will provide the College Members with a copy of the draft Written Arrangements in order to consult the College Members on the Written Arrangements within a period of [XX] days after the formation of the College.
- 5.2. The College Members shall do everything reasonable within their power to reach an agreement on the Written Arrangements within the consultation period under point 5.1 above.
- 5.3. Where, during the consultation period under point 5.1, the College Members have failed to reach an agreement on the matters set out in the Article 46(6), a College Member may refer to ESMA according to Article 46(9). Article 46(10) applies.
- 5.4. According to Article 46(7) the [chairing authority] shall transmit the final written arrangements to the College Members and ESMA.

## **6. Revision of membership**

- 6.1. If an authority becomes eligible to be a College Member in accordance with Art. 46(2) subsequent to the establishment of the College, it will be member of the College from the moment the entity it supervises becomes a contributor to the [critical benchmark]. If a college member according to Art. 46(2) no longer supervises a contributor to the [critical benchmark], its college membership ceases after 30 days.
- 6.2. Every year, at least 30 working days before the anniversary of the date of establishment of the College, the [chairing authority] will determine which authorities under Art. 46(3) can remain College Members. Competent authorities that are College Members pursuant Article 46(3) of this Regulation will demonstrate to the [chairing authority] within 25 working days before the anniversary of the date of establishment of the College why they still fulfil the provisions of Article 46(3). The [chairing authority] will inform College Members of their eligibility to continue to participate in the College at least 5 working days before the anniversary of the date of establishment of the College.
- 6.3. Each College Member will notify the [chairing authority] without delay of any changes in its statutory tasks that impact its eligibility to participate in the College. Following this notification, the [chairing authority] shall update the College composition within 30 working days from the date of receipt of the notification. If other information arises which may call into question the eligibility of a college member, the [chairing authority] will request clarification from the member within a period of [30] days and will take appropriate measures such as updating the College composition, after having heard the member involved.
- 6.4. Each College Member will notify the [chairing authority] promptly of any changes to its Contact Details. The [chairing authority] will circulate a copy of such changes to all College Members.
- 6.5. Any new College Members under points 4.3.4, 4.4, 6.1 or 10.4.6 shall be promptly provided with these Written Arrangements [, and shall [acknowledge that they have been received and understood]].



## 7. Procedure

### 7.1. Meetings of the College

- 7.1.1. The College will meet in person at least annually. College Members, including the [chairing authority] should endeavour to participate in person at any such meeting of the College, and may designate an alternate representative. Where it is not feasible for a College Member, including the [chairing authority], or its alternate to physically attend an in person meeting, they may participate by teleconference call with such participation counting towards the quorum of the meeting.
- 7.1.2. The representative attending a College meeting on behalf of a College Member, including the [chairing authority] should have sufficient delegated authority to vote on behalf of the College Member they represent on all items included in the draft agenda distributed according to point 7.1.7. of these Written Arrangements.
- 7.1.3. Additional meetings of the College may be held if the [chairing authority] considers it necessary.
- 7.1.4. College members may present the [chairing authority] with a request for an additional meeting of the College, outlining reasons for and topics to be discussed at this meeting. The [chairing authority] will respond to such requests within 15 working days and where the request is accepted will schedule a meeting to be held within 30 working days of its response to the request. Where the [chairing authority] does not consider that a meeting of the College is necessary, the [chairing authority] will respond to the requesting College Member with an explanation of the [chairing authority]'s reason for not considering that a meeting of the College is necessary, including an explanation of how the [chairing authority] proposes to address the concerns raised by the College Member that requested the additional meeting.
- 7.1.5. If a majority of College Members requests that a meeting is held, the [chairing authority] shall schedule a meeting to be held within 30 working days of receipt of such request.
- 7.1.6. Additional College meetings may be held in person or as a teleconference.
- 7.1.7. The [chairing authority] will distribute a draft agenda for each meeting of the College, other than for meetings to distribute the information in emergency situations as described in point 10 of these Written Arrangements, at least 5 working days before each meeting. College members may propose additional agenda items, which the [chairing authority] shall take into account and shall explain, if applicable, the reason for not incorporating them.
- 7.1.8. The following agenda points will be tabled for discussion by the College at least annually:
  - 7.1.8.1. Adoption of the minutes of the previous College meeting.
  - 7.1.8.2. The [chairing authority]'s supervisory activities with regard to the Administrator since the previous meeting of the College. The [chairing



authority]'s report will include a summary of any supervisory actions taken by the [chairing authority], a College Member or any third party towards the Administrator or a contributor as a result of the review or evaluation and any penalties imposed on the Administrator or on a contributor.

7.1.8.3. Reports by supervisors of contributors on relevant supervisory activities.

7.1.9. The [chairing authority] and the College Members will endeavour to distribute any written material to be considered at a meeting of the College not less than 7 working days before the meeting, except in case of duly motivated urgency.

7.1.10. Minutes of the meeting of the College will be distributed to College Members by the [chairing authority] no more than 15 working days following a meeting of the College. Such minutes will be subject to comments by College Members for a period of at least 7 working days but no more than 30 working days and will be tabled for adoption at a subsequent meeting of the College. The [chairing authority] will notify College Members when distributing the minutes of the duration of the period for comment. Alternatively, such minutes can be adopted by written procedure.

## 7.2. Voting

7.2.1. Voting serves the aim of substantiating the consultation of the members of the College required by Art. 46(8). Accordingly, polls of the College are consultative.

7.2.2. Subject to 7.2.3, each College Member excluding ESMA has one vote. The quorum for voting meetings of the College is two-thirds of the voting College Members.

7.2.3. College Members will inform the [chairing authority] which authority from their Member State will be eligible to cast a single vote per jurisdiction. The Member States shall remain flexible to designate their voting College Member from time to time. ESMA will only contribute to the College to promote and monitor its efficient, effective and consistent functioning.

7.2.4. Decisions are taken by a simple majority of voting College Members.

7.2.5. Where a decision is tabled for a vote by the College and the quorum requirement is not met (either where the [chairing authority] ascertains that this will be the case in advance of the meeting or at the time of the meeting), the [chairing authority] shall organise a subsequent meeting as soon as is practically possible and, in any case on such a timeframe as is necessary to meet the various deadlines provided in the Regulation. The [chairing authority] will give as much notice of the subsequent meeting as is practically possible. The meeting can be held by telephone conference and, if held in person, no quorum will apply.

7.2.6. Any vote taken at a meeting of the College will be held by an open show of hands or explicit expression of vote in case of a meeting held by teleconference. Once cast, a vote cannot be withdrawn or amended by a College Member or the [chairing authority]. The outcome of any vote (including records of individual votes) will be clearly recorded in the minutes of the meeting. Abstention from



voting is considered as not participating in the voting, but will still be taken into account regarding the quorum.

#### 7.2.7. Written procedure:

7.2.7.1. Where considered appropriate by the [chairing authority], a vote may be taken by written procedure

7.2.7.2. In such case, the [chairing authority] circulates a notice to the College containing the following information

a) the time and date by which votes must be cast;

b) a full justification of the use of written procedure as opposed to a vote taken at a meeting of the College; and

c) any other material considered necessary for making the decision that has not previously been provided to the College.

7.2.7.3. As from the time of receipt of the notice from the [chairing authority], College Members shall have at least 7 working days to express a vote. Where, for practical reasons, the time allowed to vote needs to be shorter than 10 calendar days, the [chairing authority] will justify this decision in its notice.

7.2.7.4. Votes shall be in written form, including by electronic means. A failure to vote within the specified time shall be considered as a vote for the proposal made by the [chairing authority] and no quorum shall apply.

7.2.7.5. The results of a written procedure shall be notified without delay to the College Members.

7.2.7.6. College Members may request that any aspect of an issue that has been the subject of a written procedure be discussed at the next meeting of the College. Such a request shall not affect the use of a written procedure or its outcome.

### 7.3. Entrustment of tasks

7.3.1. Any entrustment of tasks between College Members, including the [chairing authority], for instance via the establishment of dedicated task forces, will be entered into voluntarily by the College Members in question and should be structured in such a way as not to impact on the operation of these Written Arrangements or on the ability of other College Members to participate fully and effectively in the College. Entrustment of tasks shall not result in a change in the allocation of voting rights between College Members, including the [chairing authority]. Dedicated task forces, if any, shall not take any decisions but will report to the College. If a task force is unable to reach a consensus, the matter will be escalated to the College, where the matter will be solved by voting procedure if necessary.

### 7.4. Dispute resolution

7.4.1. Without prejudice to the procedures mentioned in Articles 46(9) and (10) of the Regulation, the College, including the [chairing authority] will endeavour to resolve any disputes in the operation of the College through informal discussion between the College Members. Such discussion may be bilateral or multilateral. The College Members shall always inform the [chairing authority] of any dispute.

7.4.2. The College Members involved in the dispute will, where necessary, appropriately escalate the issue internally within their organisations. The same procedure applies for the [chairing authority] if it is involved in a dispute.

7.4.3. Each College Member, including the [chairing authority], may raise any points of interest or concern they have with regard to the review or evaluation of the Administrator and of any contributor. Feedback should be provided within reasonable time.

### 7.5. Working language

7.5.1. The working language of the College is English. English shall also be used for any communications between College Members and the [chairing authority].

7.5.2. Where a College Member, including the [chairing authority] receives documents from a contributor or any other relevant party that have to be shared with other College Members in a language that is not English, this College Member will provide an English translation. Where a College Member communicates to the College an English translation received from a third party, this College Member, including the [chairing authority], bears no responsibility for the translation.

### 7.6. Confidentiality

7.6.1. Pursuant to the professional secrecy requirements provided for in Article 48 of the Regulation, and any other similar legal obligations, such as those resulting from other European or national laws, College Members, including the [chairing authority], and any EEA Authority observer pursuant to point 4.5 of these Written Arrangements, confirm that any information that is received by virtue of their participation in the College and that is not available to the public shall be treated

confidentially and used only for the performance of their respective duties under the Regulation.

- 7.6.2. Where further transmission of information received by virtue of participation in the College is required under law, the relevant College Member, including the [chairing authority], and any EEA Authority observer pursuant to point 4.5 of these Written Arrangements shall not, to the extent possible under law, disclose such information without first obtaining the prior consent of the College Member that provided the information concerned.
- 7.6.3. Where the law to which a College Member, including the [chairing authority] is subject prevents that College Member from obtaining prior consent for further disclosure in particular circumstances, it shall inform the College at the time of agreeing with these Written Arrangements, specifying those circumstances.
- 7.6.4. Before a non-EEA Authority can attend particular College meetings (or part of College meetings) as an observer pursuant to the provisions of point 4.5 of these Written Arrangements, that Non-EEA Authority will be required to demonstrate to the [chairing authority] that it is subject to equivalent professional secrecy obligations than those contained in Article 48 of the Regulation and provide such confirmation in writing.
- 7.6.5. College Members, including the [chairing authority], and observers pursuant to the provisions of point 4.5 of these Written Arrangements will comply with all applicable national and European data protection laws, including the Directive 95/46/EC, the Regulation (EU) 2016/679, and any subsequent legislation.

## **8. Supervisory Cooperation and Exchange of information**

- 8.1. College Members, including the [chairing authority] shall provide each other with the fullest mutual assistance in any matters relating to the supervision of the [critical benchmark] within their competence. In case where the requested authority refuses to act, it shall notify the requesting authority with a full reasoning of its decision within 10 working days, and will inform the other College Members.
- 8.2. The [chairing authority] and the competent authorities of the contributors shall consult each other on the merits of conducting joint investigations or joint on-site inspections in accordance with Article 39 of the Regulation and on the delegation of tasks in accordance with Article 37 of the Regulation.

College Members, including the [chairing authority] should have an overview of the activities carried out by all other College Members in fulfilling their tasks under the Regulation. Therefore, each College Member, including the [chairing authority] will disclose, upon request or unsolicited if deemed useful and appropriate, to the other College Members all information necessary for the performance of their tasks and responsibilities under the Regulation, including, where available, at least the following:

- a) The necessary information in order for College Members to be sufficiently consulted, pursuant to articles 23(6), 23(7), 23(9), 34, 35 and 42 of the Regulation;



- b) Relevant findings of on-site inspections conducted at the premises of the Administrator or of contributors;
- c) Significant or repeated infringements of the Regulation or the Code of Conduct of which they become aware;
- d) A summary of the results of any investigation against the Administrator or against any supervised entity if related to their task as a contributor to the [name of the critical benchmark].

The disclosure shall be coordinated by the [chairing authority].

8.3. The [chairing authority] may, at its discretion, request the assistance or the views of any College Member with regard to the information specified in section 8.2(a) of these Written Arrangements. College Members will endeavour to fulfil such requests.

8.4. The [chairing authority] shall provide the other College Members with a report on the supervisory actions undertaken with regard to the Administrator, as and when such information becomes available and at least on a yearly basis. This report includes the main findings or outcomes of such supervisory actions, as well as any risks identified.

8.5. The [chairing authority] will be responsible for handling any request for information made to the College from authorities other than College Members. The [chairing authority] may request the assistance of a College Member with regard to such requests.

8.6. The [chairing authority] acts as the primary point of contact towards the Administrator.

8.6.1. Should a College Member (the 'requesting College Member') require specific information or data with regard to the Administrator, it should address its request to the [chairing authority]. Subject to point 8.6.2 below, the chairing authority will forward the request for information to the Administrator within 5 working days unless the requesting College Member does not consent for the request to be forwarded in which case the [chairing authority] will obtain the requested information by issuing its own request to the administrator. The requesting College Member should copy the request to all College Members to ensure that the [chairing authority] does not receive more than one request for the same information or data. Such request should include an explanation of why such information is required for the purposes of enabling that College Member to carry out its duties in the context of the Regulation.

8.6.2. Without prejudice to any of his obligations under the Regulation, if the [chairing authority] with good reason does not want to forward a request from a College Member to the Administrator, the [chairing authority] will, within 10 working days, provide the requesting College Member with feedback on why it considers this to be the case. The [chairing authority] will copy such response to all College Members. Consultation will take place.

8.7. The College Members that are competent authorities for contributors shall provide the other College Members, including the [chairing authority] with a report on the relevant supervisory actions undertaken with regard to the contributors under their supervision,

at least on a yearly basis which could be relevant in respect to the specific activity of contributor to the benchmark. This report includes the main findings of such supervisory actions, as well as any risks identified. Such periodical reporting includes at least the following, where applicable:

- 8.7.1. Supervisory action taken to ensure that the governance and control requirements for supervised contributors as required under Art. 16 of the Regulation are adhered to;
  - 8.7.2. Report on whether the contributors respect the Code of Conduct;
  - 8.7.3. A description of input data provided by the contributors;
  - 8.7.4. Sanctions that have been taken or will be taken against a contributor;
  - 8.7.5. Any delegation of supervisory tasks between College Members.
- 8.8. The transmission of information between College Members, including the [chairing authority] will be done by email or another secure means of communication, as agreed from time to time by the College. College Members, including the [chairing authority] will be informed on an equal basis, wherever and as soon as practical. College Members may consult bilaterally and informally where appropriate.
- 8.9. On a proposal by a College Member or the [chairing authority], the Administrator or a contributor may be invited to attend the College meeting to present its position regarding the issue under consideration, and to answer questions. They cannot attend the deliberations.

## **9. Cases in which the College Members must be consulted**

- 9.1. Pursuant to Article 46(8) of the Regulation, before taking any measures referred to in Articles 23(6), 23(7), 23(9), 34, 35, and 42 of the Regulation, the [chairing authority] shall consult the other College Members.
- 9.2. Application for authorisation (Art. 34)
- 9.2.1. Where the Administrator submits to the [chairing authority] an application pursuant to Article 34 of the Regulation, the [chairing authority] will provide each of the other College Members with an electronic ('soft') copy of the complete application and any documentation provided by the Administrator in support of such application within 5 working days of the application having been determined by the [chairing authority] to be complete in accordance with Art. 34(5). This will not preclude pre-notifications of information by the [chairing authority] to other college members.
  - 9.2.2. A College meeting shall be scheduled to take place within 3 months after the [chairing authority] provides the electronic copy of the application to each of the other College members.
  - 9.2.3. College Members should strive to submit any comments or issues at least 1 month before the College meeting.



9.2.4. The [chairing authority] will endeavour to indicate to College Members in advance of the vote a proposal whether to approve the Administrator's application.

The [chairing authority] may grant the authorisation to the Administrator after a consultative vote in accordance with the procedure described in point 7.2. If no authorisation is granted, the procedure in Art. 51(4) of the Regulation applies.

### 9.3. Withdrawal or suspension of authorisation (Art. 35)

9.3.1. The [chairing authority] will consult the College Members before taking any measures to suspend or withdraw the authorisation of the Administrator.

9.3.2. A College meeting shall be scheduled to take place within 1 month after the [chairing authority] informs the College Members that it considers one of the circumstances set out in Article 35(1) of the Regulation may apply.

9.3.3. College Members should strive to submit any comments or issues at least 10 working days before the College meeting.

The [chairing authority] may suspend or withdraw the authorisation to the Administrator after a consultative vote in accordance with the procedure described in point 7.2. of these Written Arrangements.

### 9.4. Mandatory contribution (Art. 23)

9.4.1. In case the [chairing authority] considers that the representativeness of the [critical benchmark] is put at risk, the [chairing authority] may require supervised entities selected in accordance with Article 23(7) of the Regulation to contribute input data to the Administrator. The [chairing authority] will determine the appropriate period of time for mandatory contributions. The [chairing authority]'s decision may be referred to ESMA by the competent authorities according to Article 46(9) of the Regulation if no agreement can be reached and ESMA may act in accordance with its powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

9.4.2. In case the [chairing authority] has to make an assessment pursuant to article 23(4) of the Regulation, College Members that are the competent authorities of the contributors, will, upon request, provide the [chairing authority] with necessary information as soon as practicable, and within 5 working days'.

After concluding its assessment, the [chairing authority] will provide all College Members with the results without delay.

9.4.3. If the chairing authority, in accordance with Art. 23(6)(a), deems it necessary to require supervised entities (whether or not such supervised entities are already contributors to the [critical benchmark]) to contribute or to continue contributing, it shall submit this decision to a consultative vote in accordance with the procedure in point 7.2. of these Written Arrangements (adjusted, where necessary, to allow timely action in the event of an emergency situation in accordance with point 11

below) and shall cooperate closely with the competent authorities of those supervised entities.

9.4.4. If the [chairing authority], in accordance with Art. 23(6)(a), deems it necessary to require supervised entities to contribute or continue to contribute, it shall cooperate closely with the competent authorities of those supervised entities. Elements of cooperation include:

- a) The [chairing authority] and the College Members exchanging information on the size of supervised entities' actual and potential participation in the market that the benchmark seeks to measure in order to assist the chairing authority in making the assessment under Art. 23(7) of the Regulation.
- b) Enforcement of measures taken in accordance with points (a), (b) and (c) of Art. 23(6) of the Regulation

9.4.5. Competent authorities of supervised entities which are not yet contributors to the [critical benchmark] will be invited by the [chairing authority] to join the College and take part in the deliberations. If the chairing authority, after an unchallenged consultative vote, decides that their supervised entities are obliged to contribute, these competent authorities will immediately become Members of the College pursuant to Art. 46(2) of the Regulation.

9.4.6. Following a review as laid down in Article 23(9) of the Regulation, the [chairing authority] will inform the College within 5 working days of the outcome of the review and its proposal whether or not to extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months.

9.4.7. All measures taken on the basis of Art. 23(6), 23(7) and 23(9) of the Regulation will be subject to a vote in accordance with the procedure described in point 7.2. of these Written Arrangements.

## 9.5. Sanctions

9.5.1. If the [chairing authority] intends to impose sanctions or administrative measures against the Administrator, it shall provide a fully reasoned proposal to the College Members.

9.5.2. All measures taken by the [chairing authority] on the basis of Article 42 of the Regulation will be subject to a consultation in accordance with the procedure described in point 7.2. of these Written Arrangements.

## 10. Emergency situations

10.1. An emergency situation shall be any situation in which there is or threatens to be a major disruption to the functioning of the Administrator or a contributor, including when resulting from a serious infringement of the Regulation or of the code of conduct, or there is significant evidence to indicate that one or more contributors intend to stop providing input data. The chairing authority is responsible to declare emergency situations, in consultation with other College Members. Nothing in these Written



Arrangements should constrain the ability of the College Members or the [chairing authority] to take timely action during an emergency situation.

- 10.2. In the event of an emergency situation, the [chairing authority] or other College Members will share with the College the following information, where possible and without undue delay:
  - a. A description of the emergency situation;
  - b. Actions likely taken by the Administrator or a supervised contributor;
  - c. Actions that have been taken or are planned to be taken by the [chairing authority] or any of the College Members;
  - d. Details on the prospective implications or disruptions due to the emergency situation;
  - e. Any other available information that would be of particular relevance to other College Members or the [chairing authority].
- 10.3. Where information specified in point 10.2. of these Written Arrangements is distributed by email or by means of a conference call or in-person meeting, a subsequent written report shall be drafted by the submitting authority and sent to other College Members, including the [chairing authority].
- 10.4. The [chairing authority] will coordinate the emergency management activities of the College. The [chairing authority] will endeavour to take account of the views of other College Members with regard to the management of such emergency situations.
- 10.5. The [chairing authority] will establish an emergency contact list.

## **11. Amendments**

- 11.1. Any College Member, including the [chairing authority] is eligible to propose an amendment to these Written Arrangements.
- 11.2. Amendments shall be proposed in writing and shall be distributed by email to all College Members, including the [chairing authority]. The proposing College Member, including the [chairing authority] shall include a description of the rationale for the proposed change and the proposed new text of the Written Arrangements in its notification to the other College members
- 11.3. Acceptance of the proposed amendment will be subject to decision of the [chairing authority]. The [chairing authority] will consult the College Members on the proposed amendment following the process in Section 5 above.
- 11.4. The [chairing authority], within the framework of the College, will endeavour to review these Written Arrangements periodically in order to ensure it remains fit for



purpose given changes to the Administrator, the [critical benchmark], or the environment in which the Administrator operates.

## **12. Termination**

12.1. These Written Arrangements will remain in effect without an end date unless and until either:

12.1.1. The Administrator ceases to be authorised under the Regulation;

12.1.2. The [critical benchmark] is removed from the list of critical benchmarks.

12.2. When the Written Arrangements are terminated, the College will be terminated with immediate effect and the [chairing authority] will notify the College Members.

## **13. Publication**

13.1. The [chairing authority] publishes these Written Arrangements on its website.

13.2. In the event of crisis or non-compliance by the Administrator or a contributor, College Members, including the [chairing authority] will, to the maximum extent possible, coordinate public communications relating to the specific circumstances, and avoid making announcements to the public on their own. Public statements are issued after consulting the other College Members, including the [chairing authority]. Only in exceptional circumstances with an overriding and sudden public need, the College Members, including the [chairing authority] may issue separate statements. The College Members, including the [chairing authority] commit to share with each other before releasing any written statement to the public, subject to applicable legal and regulatory requirements.

This Decision shall take effect on the day of its adoption.