

PUBLIC STATEMENT

Actions to mitigate the impact of COVID-19 on the EU financial markets regarding the timeliness of fulfilling external audit requirements for interest rate benchmarks under the Benchmarks Regulation

The European Securities and Markets Authority (ESMA) is issuing this Public Statement to promote coordinated action by National Competent Authorities (NCAs) regarding the timeliness of fulfilling external audit requirements for interest rate benchmark administrators and contributors to interest rate benchmarks.

ESMA and NCAs are aware of the difficulties encountered by interest rate benchmark administrators and contributors to interest rate benchmarks in fulfilling the external audit requirements set out in Regulation (EU) 2016/1011¹ (Benchmarks Regulation).

In accordance with Article 31(2) of Regulation (EU) 1095/2010² (ESMA Regulation), ESMA is issuing this Public Statement to promote coordinated action by NCAs in response to these adverse events and provide clarity to administrators and contributors.

Background

Paragraph 4 of Annex 1 of the Benchmarks Regulation requires the review and report on the administrator's compliance with the benchmark methodology and the Benchmarks Regulation by an independent external auditor to be carried out for the first time six months after the introduction of the code of conduct, and subsequently every two years.

Paragraph 12 of Annex I of the Benchmarks Regulation requires the external audit of the input data of a contributor to an interest rate benchmark as well as the compliance by the contributor with the code of conduct and the provisions of the Benchmarks Regulation to be carried out for the first time six months after the introduction of the code of conduct, and subsequently every two years.

ESMA acknowledges that the COVID-19 outbreak brings significant challenges for interest rate benchmark administrators and contributors to interest rate benchmarks in relation to these external audit requirements as an increasing number of Member States impose unprecedented national measures to prevent contagion. In particular, ESMA appreciates that due to these measures, administrators and contributors are faced with constraints which may substantially impair their ability to ensure the timeliness of the fulfilment of these external audit requirements.

¹ Regulation (EU) 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 and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Timeliness of fulfilling the external audit requirements

Considering that interest rate benchmark administrators and contributors to interest rate benchmarks may be prevented from ensuring the timeliness of the fulfilment of the audit requirements in paragraphs 4 and 12 of Annex I of the Benchmarks Regulation due to COVID-19, while recognising the importance of timely external audits, ESMA is of the view that the burdens on interest rate benchmark administrators and contributors to interest rate benchmarks associated with the COVID-19 outbreak should be taken into account by NCAs in a coordinated way.

ESMA therefore, in coordination with NCAs, expects NCAs not to prioritise supervisory actions against administrators and supervised contributors relating to the timeliness of fulfilling those audit requirements where the audits are carried out by 30 September 2020.

Furthermore, ESMA encourages NCAs to generally apply a risk-based approach in the exercise of supervisory powers in their day-to-day enforcement of the Benchmarks Regulation in a proportionate manner concerning the timeliness of fulfilling those audit requirements.

Nevertheless, where administrators and supervised contributors reasonably anticipate that the fulfilment of those audit requirements will be delayed, they are expected to inform their NCA.

ESMA, together with NCAs, will continue to closely monitor the situation and will take or recommend any measures necessary to timely and appropriately mitigate the impact of COVID-19.