

FINANCIAL SUPERVISORY AUTHORITY

Norm no. 21/2019

regarding the application of ESMA Guide concerning the reference indicators not significant from the Regulation concerning reference indicators

On the grounds of art.1 paragraph (2), art.2 paragraph (1) letters a) and d), art.3 paragraph (1) letter b), art.6 paragraph (2) as well as of art.14 of the GEO no.93/2012 regarding the registration, organisation and functioning of the Financial Supervisory Authority, approved with modifications and supplements by Law no. 113/2013 with ulterior modifications and supplements.

In accordance with the provisions of art. 16 of Regulation (EU) no. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Supervisory Authority (European Securities and Markets Authority), amending Decision no. 716/2009 / EC and repealing Commission Decision 2009/77 / EC,

On the basis of the provisions of art. 5, art. 11, art. 13, art. 16 and art. 40 of Regulation (EU) no. 1011/2016 on the 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,

Taking into account the provisions of art. 234 lit. d) and of art. 269 of Law no. 126/2018 regarding the markets of financial instruments,

According to the deliberations of the Board of the Financial Supervisory Authority dated 30.07.2019, the Financial Supervisory Authority issues the following norm:

Art. 1. - The Financial Supervisory Authority applies the ESMA Guide on the non-significant benchmarks of the Regulation on benchmarks, provided in the annex which forms an integral part of this rule, in relation to supervised administrators and contributors, as defined in Regulation (EU) no. 1011/2016 on the 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, hereinafter also referred to in the annex, BMR, which is in its area of competence in accordance with the provisions of Government Emergency Ordinance no. 93/2012 regarding the establishment, organization and functioning of the Financial Supervisory Authority, approved with modifications and completions by Law no. 113/2013, with subsequent modifications and completions.

Art. 2. - The supervised administrators and contributors mentioned in Art. 1 have the obligation to observe the provisions of this norm.

Art. 3. - The non-observance of the provisions of this norm is sanctioned according to the provisions of art. 269 of Law no. 126/2018 regarding the markets of financial instruments.

Art. 4. - This norm is published in the Official Journal of Romania, Part I and enters into force on the date of its publication.

**For The President of the Financial Supervisory Authority,
Elena Doina Dascălu**

Bucharest, 31.07.2019

No. 21

ESMA Guide on Non-Significant Benchmarks in the Benchmark Regulation

I. Scope

To whom does it apply?

1. This Guide applies to the competent authorities designated under Article 40 of the Regulation on benchmarks (*Regulation (EU) No 1011/2016 on indexes used as benchmarks in financial instruments and financial contracts or to measure fund performance investments and amending Directives 2008/48 / EC and 2014/17 / EU and Regulation (EU) No 596/2014*), as defined in Article 3 (1) (6) of the same Regulation, and supervised contributors, as defined in Article 3 (1) (10) of the said Regulation.

What applies?

2. The Guide shall apply in relation to the provision of non-material benchmarks and the contribution to non-material benchmarks (Article 5, Article 11, Article 13, Article 16 of the BMR).

When does it apply?

3. The guide applies after two months from the publication of the guide on the ESMA website in all official EU languages.

II. Legislative references, abbreviations and definitions

Legislative references

ESMA Regulation - Regulation (EU) no. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Supervisory Authority (European Securities and Markets Authority), amending Decision no. 716/2009 / EC and repealing Commission Decision 2009/77 / EC.

BMR - 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.

Abbreviations

IRNs - Non-Significant Reference Indexes

Definitions

4. Unless otherwise stated, the terms used in the Reference Index Regulation have the same meaning in this guide. In addition, the following definitions apply:

Competent authority - An authority designated under Article 40 of the Benchmark Regulation.

III. Objective

5. The purpose of the guide is to ensure the common, uniform and consistent application, for IRNs, of the requirements regarding the supervisory function provided for in Article 5 of the BMR, of the provisions regarding the input data provided for in Article 11 of the BMR, of the transparency of the methodology in Article 13 of the BMR and of the governance and control requirements for the supervised contributors provided for in Article 16 of the BMR.

IV. Compliance and reporting obligations

Status of the guide

6. The guide contains guidelines issued pursuant to Article 16 of the ESMA Regulation. In accordance with Article 16 (3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with this guide.

7. The competent authorities to whom the guides are applied must comply with them by introducing them in their supervisory practices, including if certain guidelines in a document are mainly addressed to financial market participants.

Reporting requirements

8. Within two months of the publication of the guide on the website of the European Securities and Markets Authority in all official EU languages, the competent authorities to which this guide applies shall notify ESMA if (i) observes or (ii) does not observe, but intends to observe or (iii) does not observe and does not intend to observe the guide. In the event of non-compliance, the competent authorities must also notify ESMA within two months of the publication of the guide on the ESMA website in all official EU languages on the reasons for non-compliance with the guide.

9. In the absence of a response within this period, the competent authorities will be deemed not to comply. A notification template is available on the ESMA website. The notification form must be completed and sent to ESMA using the following e-mail address: bmr@esma.europa.eu.

10. IRN administrators and supervised contributors are not required to report whether or not they comply with the guide.

V. Guidance on the insignificant benchmarks

V.I. Guidelines on the procedures and characteristics of the supervisory function (Article 5 of the BMR)

Scope

11. Without prejudice to the provisions of Article 26 (4) of the BMR, points 20 and 21 shall not be applied to IRN administrators who chose not to apply Article 5 (2) of the BMR.

Composition of the oversight function

12. The oversight function must be composed of one or more members who, together, have the appropriate competencies and expertise to oversee the provision of a specific benchmark and the responsibilities that the oversight function must fulfil. The members of the supervisory function must have adequate knowledge regarding the market of the underlying asset or the economic reality that the benchmark aims to measure.

13. Managers of regulated indexes based on benchmarking shall consider the possibility of including, as members of the supervisory function, representatives of the entities listed in the definition of a benchmarked benchmark referred to in Article 3 (paragraph. 1) point 24 of the BMR.

14. If a benchmark is based on contributions, and the representatives of its contributors or supervised entities using the benchmark are members of the oversight function, the administrator must ensure that the number of members with conflicts of interest does not and does not reach exceeds the simple majority. Before appointing members, administrators must also identify and take into account conflicts arising from relationships between potential members and other external actors, in particular those resulting from a potential interest in the relevant benchmark levels.

15. Persons directly involved in providing the reference index who may be members of the supervisory function shall not have voting rights. The representatives of the management body must not be members or observers, but they may be invited to attend meetings through the supervisory function, but without the right to vote.

16. The members of the supervisory function should not include persons who have been subject to administrative or criminal sanctions regarding financial services, in particular the manipulation or attempted manipulation provided for in Regulation (EU) no. 596/2014.

Characteristics and positioning of the supervisory function

17. The supervisory function must be part of the organizational structure of the administrator or the parent company of the group to which it belongs, but must be separated from the management body and other governance functions of the index reference manager.

18. The supervisory function must evaluate and, where appropriate, challenge the decisions of the management body of the administrator regarding the fulfilment of the requirements of the BMR. Without prejudice to Article 5 (3) (i) of the BMR, the supervisory function must address to the management body all recommendations regarding the monitoring of benchmark indices. 19.

19. If the supervisory function finds that the management body has acted or intends to act contrary to a recommendation or decision of the supervisory function, it must clearly record this fact in the minutes of its next meeting or in the register of decisions its.

The procedures that regulate the supervisory function

20. A supervisory function of an IRN administrator must have procedures that cover at least the following areas:

- a. The selection criteria of its members;
- b. electing, appointing or dismissing and replacing its members;
- c. suspending the voting rights of external members for decisions that would have a direct impact on the organizations they represent;
- d. obliging members to disclose any significant conflict of interests before discussing an item on the agenda at the meetings of the oversight function;
- e. exclusion of members from specific discussions regarding which they are the subject of a conflict of interest;
- f. his access to the documentation necessary for the fulfilment of his tasks;
- g. the measures to be taken in case of violation of the code of conduct;
- h. notification to the competent authority of any suspected market abuse committed by contributors or administrators;
- i. preventing the improper disclosure of sensitive or sensitive information received, produced or discussed by the supervisory function;
- j. disclosure to the public of the statement regarding the major conflicts of interest of the members.

21. If the supervisory function is performed by a natural person, letters (c) and (e) of the preceding paragraph shall not apply and the administrator must appoint a suitable substitute body or other natural person to ensure that the tasks of the supervisory function can be performed consistently in the absence of the person responsible for the supervisory function.

Non-exhaustive list of governance mechanisms of the oversight function

22. The structure and composition of the oversight function should be established, as the case may be, according to one or more of the following non-exhaustive lists:

- a. Unless the complexity or vulnerability of the IRNs indicates otherwise, one or more natural persons who are part of the administrator's personnel or other natural persons whose services are made available to the administrator or under the control of the administrator and who are not directly involved in providing a relevant benchmark and are not in conflict with interests, in particular those arising from a potential interest in relation to the reference index level;
- b. An independent oversight committee consisting of a balanced representation of stakeholders, including supervised entities using the benchmark, benchmark contributors and other external stakeholders, such as market infrastructure operators and other data sources entry, as well as independent members and staff of the administrator who are not directly involved in providing relevant benchmarks or other related activities;
- c. If the administrator is not wholly owned or controlled by the contributors to the reference index or the supervised entities that use it and there are no other conflicts of interest at the supervisory function level, a supervisory committee made up of employees representing the parties of the organization of the

administrator who are not directly involved in providing relevant benchmarks or other related activities or, if these employees are not available, from independent members.

d. A supervisory function consisting of several committees, each responsible for:

i. the supervision of an IRN, a type of IRN or a family of IRNs;

or

ii. a subset of the responsibilities and tasks of supervision, provided that only one person or committee is designated as responsible for the general direction and coordination of the supervisory function and for the interaction with the management body of the benchmark administrator and the to the competent authority.

V.II. Guidelines on entry data (Article 11 of the BMR)

Scope

23. Without prejudice to the provisions of Article 26 (4) of the BMR, points (a) and (b) of point 25 do not apply to IRN administrators who chose not to apply Article 11 (1) (b) of the BMR.

24. Without prejudice to the provisions of Article 26 (4) of the BMR, paragraph 26 does not apply to IRN administrators who are benchmark indexes based on regulated data, nor to IRN administrators who have chosen not to apply Article 11 paragraph 3 of the BMR.

Providing adequate and verifiable entry data 25.

25. For the purposes of Article 11 (3) (a) and (b) of the BMR, the administrator of an IRN must ensure that he has all the necessary information that allows him to verify the following matters related any input data they use for the reference index, if any:

a. if the transmitter is authorized to contribute input data on behalf of the contributor in accordance with any authorization requirement referred to in Article 15 (2) (b) from the BMR;

b. if the input data is provided by the contributor or selected from a source specified by the administrator, within a time frame set by the administrator;

c. if the input data meet the requirements established in the reference index methodology.

Internal procedures for supervising and verifying a contributor to an IRN

26. Internal procedures for supervising and verifying a contributor that the administrator of an IRN must perform in accordance with Article 11 (3) (b) of the BMR must to include at least the following:

a. procedures governing:

i. communication of information to the administrator, at his request;

ii. periodically reporting to the top management of the contributor on the tasks performed by the three levels of the control functions;

iii. the means of cooperation and the flow of information between the three levels of the control functions.

b. establishing and maintaining an internal function that serves as the first level of control of input data input and is responsible for fulfilling the following tasks:

i. performing an effective verification of input data prior to their input;

ii. checking whether the transmitter is authorized to contribute input data on behalf of the contributor in accordance with any requirement of Article 15 (2) (b) of the BMR;

iii. ensuring that access to input data contributions is limited to persons involved in the contribution process, unless access is required for audit, investigative or law purposes.

c. establishing and maintaining an internal function to serve as the second level of control of input data input and to be responsible for fulfilling the following tasks:

i. establishing and maintaining an irregularity reporting procedure, including adequate safeguards for informers;

ii. establishing and maintaining internal reporting procedures for any actual manipulation or attempts to manipulate input data, for any failure to comply with the contributor's own policies related to benchmarks and for investigating such events as soon as they become evident;

iii. monitoring relevant communications between front office staff directly involved in input data input, and also relevant communications between these front office staff and other internal functions or external bodies when the controls performed by this second level function raise concerns;

iv. establishing, maintaining and managing a conflict of interest policy with respect to actual or potential major conflicts of interest, ensuring that:

1. the administrator identifies and discloses major or potential conflicts of interest with respect to any employee of the front office function of the contributor who is involved in the contribution process;
2. the absence of any direct or indirect link between the remuneration of a transmitter and the value of the reference index, the value of the specific data provided or the performance of any activity carried out by the contributor that could generate a conflict of interest related to the contribution with input data to the reference index;
3. a clear separation of tasks between front office staff involved in input data and other front office staff, as appropriate, taking into account: the discretionary power involved in the contribution process; the nature, extent and complexity of the contributor's activities; if conflicts of interest may arise between the input data input to the reference indicator and the trading or other activities of the contributor.
- d. establishing and maintaining an internal function, independent of the first and second level of the control functions, to serve as the third level of control of the input data input and to be responsible for periodically carrying out checks on the controls exercised by the other two control functions.

V.III. Guidelines on transparency of methodology (Article 13 of the BMR)

Key elements of the methodology used to establish an IRN

27. Information to be provided by an administrator of an IRN or a family of IRNs, in accordance with the requirement set out in Article 13 (1) (1) point (a) of the BMR, shall include, as appropriate, at least the following elements:
- a. A definition and description of the reference index or family of IRNs, as well as of the market or economic reality on to be measured;
 - b. the currency or other unit of measurement of the reference index or the IRN family;
 - c. the types of input data used to establish the reference index or family of IRNs and the priority given to each type;
 - d. a description of the constituent elements of the reference index or of the family of IRNs and of the criteria used for their selection and weighting;
 - e. any minimum requirements regarding the quantity of the input data and any minimum standards regarding the quality of the input data used;
 - f. clear rules for identifying how and when discretionary power can be exercised in establishing the reference index or family of IRNs;
 - g. the composition of any group of contributors and the criteria used to determine eligibility for membership of the group;
 - h. if the reference index or the family of IRNs takes into account any reinvestment of dividends or coupons paid by its constituents;
 - i. the potential limitations of the methodology and the indication of any methodology to be used in exceptional circumstances, including in the case of an illiquid market or in times of stress or where the sources of transaction data may be insufficient, inaccurate or uncertain;
 - j. whether the methodology can be modified periodically to ensure that the benchmark or family of IRNs remains representative for the relevant market or economic reality, for any criteria that must be used to determine when such a change is required.

Details of the internal evaluation and approval of the methodology

28. The information to be provided by an administrator of an IRN or a family of IRNs, in accordance with the requirement set out in Article 13 (1) (b) of the BMR, must include a description of the policies and procedures regarding the internal evaluation and approval of the methodology.

Substantial changes to the methodology

29. The information to be provided by an administrator of an IRN or an IRN family, in accordance with the requirement set out in Article 13 (1) (c) of the BMR, must include at least one a description of the information to be disclosed by the administrator at the beginning of each consultation exercise, including a requirement to disclose key elements of the methodology that, in his opinion, would be affected by the proposed substantial change.

V.IV. Guidance on governance and control requirements for supervised contributors (article 16 BMR)

Scope

30. Notwithstanding the provisions of article 26 (4) of the BMR, points 33, 34, 35 and 36 are not applicable to the IRN contribution for which administrators have opted not to apply Article 16 (2) of the BMR.

31. Notwithstanding the provisions of article 26 (4) of the BMR, paragraph 37 is not applicable to the IRN contribution for which administrators have opted not to apply Article 16 (3) of the BMR.

Control framework for IRN-supervised contributors

32. The control framework to be ordered by a supervised contributor contributing to the IRN in accordance with article 16 (1) of the BMR shall include the establishment and maintenance of at least the following controls:

- A. An effective supervisory mechanism for monitoring the contribution process with input data including a risk management system, the identification of top-level staff responsible for the contribution process with data and Involvement of any compliance and internal audit function within the contributor's organisation;
- B. A policy on whistleblowing, including appropriate safeguards for whistle-blowers;
- C. A procedure for detecting and managing BMR infringements. The procedure for the management of infringements shall include the examination of any infringement or errors detected and the registration of the actions taken accordingly.

Controls on transmitters of IRN-supervised contributors

33. The systems and controls to be provided by a supervised contributor contributing to the IRN in accordance with point (a) of article 16 (2) of the BMR shall include a documented and effective process for the contribution of data and include at least the following:

- A. A process of designation of Submitters and designation of substitutes;
- B. Data monitoring procedures and systems used for contributions and self-contributions, capable of producing alerts in accordance with predefined contributor parameters.

Management of conflicts of interest of contributors supervised by IRN

34. The measures for the management of conflicts of interest of which a supervised contributor contributing to an IRN must have in accordance with article 16 (2) (c) of the BMR must comprise at least the following measures:

- A. A register of major conflicts of interest to be updated and used to record any identified major conflicts of interest and the measures taken to manage them. The register must be accessible to internal or external auditors;
- B. Physical separation of transmitters from other employees of the contributor, where such separation is appropriate taking into account the discretionary power involved in the contribution process; The nature, scale and complexity of the contributor's activities; If conflicts of interest arise between the contribution of input data to the reference indicator and the trading or other activities carried out by the contributor. Alternatively, the rules governing the interaction of transmitters with front office staff.

35. The measures for the management of conflicts of interest must also include remuneration policies in relation to transmitters, ensuring that the remuneration of a transmitter of a supervised contributor contributing to the IRN has no Link to the following:

- A. Value of the benchmark;
- B. Specific values of the data provided; and
- C. Perform any specific activity by the supervised contributor who may generate a conflict of interest related to the contribution of input data to the IRN.

Record-keeping requirements for IRN-supervised contributors

36. The records to be retained in accordance with point (d) of article 16 (2) of the BMR of communications on the provision of input data by the supervised contributor contributing to the IRN shall include records of the Contributions made (i.e. the number sent to administrators) and the names of the transmitters.

Policies on opinions of experts from IRN-supervised contributors

37. The policies which a supervised contributor contributing to the IRN must establish in accordance with article 16 (3) of the BMR, where input data is based on expert opinions, shall include at least the following Items:

- A. A framework to ensure consistency between different transmitters and consistency over time, in relation to the use of decision-making power or discretionary power;
- B. Procedures for periodic examination of any use of decision-making power or discretionary power.