

07 February 2022

Amendments to Part VIII of the Financial Market Rules – Guidelines on Methodology, Oversight Function and Record Keeping Requirements under the Benchmarks Regulation

This circular is being addressed to market participants, particularly those falling within the scope of the Benchmarks Regulation ('BMR'), *inter alia* administrators of benchmarks, contributors of benchmarks and users of benchmarks.

This circular should be read in conjunction with the Authority's [circular](#) dated 15 December 2021 (the 'Circular'), which Circular brought to the attention of market participants the Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation (the 'Guidelines'), issued by ESMA on 07 December 2021.

1.0 Introduction

As stipulated in Section 4.9 of the Guidelines, within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply; (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines. Therefore, as part of the reporting requirement, and the MFSA's decision to comply with the Guidelines, some amendments have been introduced in the Financial Market Rules, specifically Part VIII therein.

2.0 Details of the Amendments

The MFSA presents the amendments passed in the Financial Market Rules, specifically in Part VIII.

Section 2: Non-Significant Benchmarks under the Benchmarks Regulation

The Authority has included a new Financial Market Rule legally binding administrators of non-significant benchmarks registered locally to comply with the guidelines on methodology, oversight function and record keeping under the BMR. Apart from introducing amendments to the Guidelines on non-significant benchmarks in Section 6, which administrators of non-significant benchmarks are already required to comply with, the Guidelines include various clarifications on methodology, oversight function and record keeping, of which some are applicable to administrators of non-significant benchmarks. One such clarification relates to the records which should be kept by an administrator of non-significant benchmarks, in case of any deviation from the standard methodology, pursuant to Article 8(1)(e) of the BMR.

QUOTE

R8-2.2 *In addition to ESMA Guidelines on Non-Significant Benchmarks, administrators of non-significant benchmarks shall also have due regard to and comply with the Guidelines issued by ESMA entitled "Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website."*

UNQUOTE

Section 3: Significant and Critical Benchmarks Under the Benchmarks Regulation

The Authority has introduced a new Financial Market rule legally binding administrators of critical and significant benchmarks to comply with the Guidelines on methodology, oversight function and record keeping requirements. The guidelines which administrators of critical and significant benchmarks are required to comply with, relate to:

- The details of any methodology to be used to determine a critical or significant benchmark in exceptional circumstances pursuant to Article 13(1)(a) of the BMR and Article 2(1)(l) of Commission Delegated Regulation (EU) 2018/1641 on methodology (the 'Methodology Delegated Regulation);
- Material changes to the methodology used to determine a critical or significant benchmark pursuant to Article 13(1)(c) and (2) of the BMR and Article 4(1)(c) of the Methodology Delegated Regulation;
- The oversight function for critical and significant benchmarks pursuant to Article 5 of the BMR and Article 1(3) of Commission Delegated Regulation (EU) 2018/1637 on the oversight function; and
- Record keeping requirements pursuant to Article 8(1)(e) of the BMR.

QUOTE

R8-3.1 *In addition to the Benchmarks Regulation and with respect to the provision of significant and critical benchmarks, administrators of benchmarks shall inter alia make reference to and comply with the Guidelines issued by ESMA entitled "Guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.*

UNQUOTE

3.0 Amended Financial Market Rules

The revised Financial Market Rules have been made public on the Authority's website and can be accessed through the following [link](#).

4.0 Effective Date

These amendments to the Financial Market Rules will become effective as from 31 May 2022.

Contacts

Should you have any queries relating to the above kindly contact the Authority on benchmarks@mfsa.mt.