

Application of the new Financial Benchmarks Regulation

20 March 2018

CNMV has been designated as the competent authority to apply the new¹ financial benchmarks regulation used as a reference in financial instruments and contracts and to measure the performance of investment funds envisaged in Regulation (EU) 2016/1011, directly applicable as of 1 January 2018. For this reason, CNMV has assumed new competences related to the authorisation and registration of benchmark administrators based in Spain and of the supervision of administrators, contributors and supervised entities regarding the use of benchmarks and of any persons that participate in their preparation.

The purpose of the aforementioned Regulation is to address the weaknesses detected in this field in recent years. Its key aspects include the following:

- It reinforces the *governance* of administrators, who must be equipped with an organisational structure and means to properly manage conflicts of interest. The *methodology* is also reinforced and *transparency* is required with respect to the data used.
- It regulates benchmark *contributors* of input data, who must also adhere to rules on governance, control and prevention of conflicts of interest, as well as comply with a code of conduct.
- It establishes a system of equivalence, recognition and validation of benchmarks administered in third countries for use by supervised entities within the territory of the European Union.
- Supervised entities that use benchmarks must produce a plan of measures that they would take if the benchmark changed significantly or stopped being prepared.
- The *prospectus* for the issue, offering and admission to trade of financial instruments², as well as those for investment funds,³ which use a financial benchmark must specify whether the benchmark is provided by an administrator registered in the public register for which ESMA is responsible.

The Regulation defines a regulatory and supervisory framework adapted to each type of benchmark, distinguishing between critical benchmarks, which are subject to stricter rules due to their potential impact on financial stability, significant benchmarks and non-

¹ In Spain, CNMV is the competent authority assigned the tasks established in the Regulation, with certain competences relating to the supervision of specific financial loan contracts also being delegated to Banco de España. CNMV is also the authority responsible for coordinating cooperation and the exchange of information with the European Commission, ESMA and the competent authorities of other Member States.

² Subject to Directive 2003/71/EC:

³ Subject to Directive 2009/65/EC:

significant benchmarks. Accordingly, the supervisory measures adopted by CNMV will be proportionate to the nature and risks inherent in each case.

The regulation must be completed with level 2 and 3 regulations which are still in the process of being approved. In light of the above and the fact that the Regulation grants a transitional period (until 2020) so that the financial benchmark administrators can apply for their authorisation and/or registration in the corresponding register, CNMV will take into account in the initial phase of its actions the best efforts made by entities to implement and comply with the Regulation.

In order to supplement the exercise of their new competences, CNMV intends to facilitate adaptation by supervised entities to the requirements established by the Regulation by taking the following steps:

- Access to all regulations and relevant information on financial benchmarks, including guidelines and recommendations, supervisory convergence instruments and interpretations published by ESMA.
- Information about the administrators and benchmarks registered in Spain, as well as those included in the ESMA Register.
- Preparation of question and answer documents to supplement those prepared by ESMA.
- Holding of a seminar/workshop for the purposes of publishing and implementing the new financial benchmark regulation by the supervised entities.