



2025/2197

31.10.2025

COMMISSION IMPLEMENTING DECISION (EU) 2025/2197

of 30 October 2025

on the equivalence of the legal and supervisory framework applicable to benchmarks in New Zealand in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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⁽¹⁾, and in particular Article 30(2) thereof,

Whereas:

- (1) Regulation (EU) 2016/1011 introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union
- (2) That Regulation applies since 1 January 2018 and non-Union administrators benefited from a transitional period allowing for the use of third-country benchmarks in the Union. That transitional period was extended several times, most recently by Commission Delegated Regulation (EU) 2023/2222⁽²⁾ until 31 December 2025.
- (3) Following the expiry of the transitional period, a benchmark that is in scope of Regulation (EU) 2016/1011 or a combination of such benchmarks provided by an administrator located in a third country may only be used in the Union where the benchmark and the administrator are included in the register maintained by the European Securities and Markets Authority ('ESMA') following the adoption of an equivalence decision by the Commission, following recognition of a third-country benchmark administrator by ESMA or following endorsement of a third-country benchmark by Union authorised or registered administrators.
- (4) An equivalence decision as referred to in Article 30(2) of Regulation (EU) 2016/1011 is to take the form of an implementing decision, in which the Commission states that the legal and supervisory framework of a third country with respect to all administrators authorised in that third country is equivalent to the requirements laid out in that Regulation. When assessing such equivalence, the Commission is to take into account whether the legal framework and supervisory practice of a third country ensures compliance with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks or, where applicable, with the IOSCO Principles for Oil Price Reporting Agencies ('PRAs'). Furthermore, the Commission is to assess whether such binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country.
- (5) Benchmarks such as the New Zealand Bank Bill Benchmark Rate ('BKBM') are administered in New Zealand and used in the Union by a number of supervised entities. The data submitted to the European Commission by the Financial Markets Authority ('FMA'), New Zealand's financial markets conduct regulator and competent authority, and by ESMA confirm that the usage of BKBM in the Union exceeds EUR 50 billion, thereby qualifying it as a significant benchmark in the Union. To ensure that benchmarks provided by an administrator that is authorised or registered in New Zealand such as BKBM can be used in the Union following the expiry of the transitional period on 31 December 2025, the Commission assessed the benchmarks regime in New Zealand.

⁽¹⁾ OJ L 171, 29.6.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/1011/oj>.

⁽²⁾ Commission Delegated Regulation (EU) 2023/2222 of 14 July 2023 extending the transitional period laid down for third-country benchmarks in Article 51(5) of Regulation (EU) 2016/1011 of the European Parliament and the Council (OJ L, 2023/2222, 23.10.2023, ELI: http://data.europa.eu/eli/reg_del/2023/2222/oj).

- (6) The legislative framework for establishing, supervising and administering benchmarks in New Zealand comprises an opt-in licensing scheme and confers powers on the FMA to supervise administrators of financial benchmarks ('benchmark administrators'). Benchmark administrators may apply for a market services licence from the FMA in accordance with Section 390 of the Financial Markets Conduct Act 2013 ('FMC Act') and are thereby subject to the rules for administrators and contributors as set out in that Act.
- (7) According to Article 30(2) of Regulation (EU) 2016/1011, requirements in the third-country legal system are to be equivalent to the requirements laid down in Regulation (EU) 2016/1011. Licensed benchmark administrators are subject to the conditions of the licence and a range of legislative requirements. Legally binding requirements for benchmark administrators are set out in the FMC Act, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the Financial Service Providers (Registration) Regulations 2020.
- (8) The FMA maintains a list on its website ⁽³⁾ of providers of licensed benchmark administrators, which specifies the financial benchmarks each administrator is licensed to provide.
- (9) The FMA may grant a market services licence to a benchmark administrator in respect of one or more financial benchmarks and the specific benchmark or benchmarks will be specified in their licence.
- (10) After receiving an application for a licence, the FMA is to grant a licence where it is satisfied of the matters set out in Section 396 of the FMC Act, including that the applicant meets the eligibility criteria set out in Part 2 of Schedule 28 of the FMC Regulations.
- (11) Part 3 of Schedule 28 of the FMC Regulations sets out specific licence conditions for licensed benchmark administrators and contributors, including governance and management conditions, outsourcing requirements, requirements with respect to managing conflicts of interest, independent oversight functions, benchmark design and methodology requirements, and input data requirements.
- (12) In addition to the licence conditions laid down in the FMC Regulations, licensed benchmark administrators must also comply with any further conditions imposed on their licence by the FMA under Section 403 of the FMC Act. The FMA may impose, vary, revoke, add to, or substitute conditions it imposes on a licence in accordance with Section 403 of the FMC Act, at any time after the licence has been issued.
- (13) Section 402 of the FMC Act outlines the general obligations for market services licensees, including licensed benchmark administrators, which includes that those licensees must only provide the market service to which their licence relates, such as a particular benchmark or class of benchmarks.
- (14) The FMA may suspend or cancel a licence under Sections 408 and 414 of the FMC Act where a licensee has materially contravened a market services licensee obligation, where a material change of circumstances has occurred, including no longer satisfying the eligibility criteria laid down in Part 2 of Schedule 28 of the FMC Regulations, where the information provided by a licensee in their licence application or application for variation of their licence is false or misleading in a material manner, or where the licensee no longer meets the requirements set out in Section 396 of the FMC Act.
- (15) According to Article 30(2) of Regulation (EU) 2016/1011, requirements in the third-country legal system are to be subject to effective supervision and enforcement on an on-going basis. Benchmark administrators licensed by the FMA are subject to ongoing supervision and oversight by the FMA. Section 9 of the Financial Markets Authority Act 2011 ('FMA Act') provides that the FMA is responsible for monitoring and enforcing compliance with the FMC Act and the FMC Regulations. The FMA conducts ongoing supervision and may specifically assess whether licensed benchmark administrators comply with their licensee obligations.

⁽³⁾ <https://www.fma.govt.nz/business/licensed>.

- (16) Clauses 26 and 27 of Schedule 28 of the FMC Regulations require a licensed benchmark administrator to create and maintain records that enable the licensee to demonstrate compliance with their licence obligations and to provide records to the FMA on receipt of a written notice from the FMA. Sections 25 to 28 of the FMA Act also provide the FMA with information gathering powers to enable it to assess licensees' compliance with the FMC Act. Those provisions allow the FMA to serve notices on benchmark administrators requiring them to supply, produce or reproduce any information specified in the notice, or appear before the FMA to give evidence.
- (17) Section 29 of the FMA Act also gives the FMA powers to enter and search any place, vehicle, or other thing for the purpose of ascertaining whether a benchmark administrator or contributor has engaged in or is engaging in conduct that constitutes or may constitute a contravention of any provision of financial markets legislation, which includes the FMC Act.
- (18) Section 30 of the FMA Act gives the FMA information-sharing powers to share with any law enforcement or regulatory agency or with an overseas regulator any information or copy of a document that the FMA holds that is related to the FMA's functions, powers, or duties. That information or copy of a document can be shared where the FMA considers it may assist the overseas regulator in the performance or exercise of the overseas regulator's functions, powers, or duties under foreign law, and where the FMA is satisfied that appropriate protections are, or will be, in place to maintain confidentiality of that information.
- (19) Section 412 of the FMC Act requires market services licensees, which includes licensed benchmark administrators, to have in place effective methods for monitoring their own compliance with their licensee obligations and for identifying material changes in circumstances. A licensee that believes that it has contravened, or is likely to contravene, a market service licensee obligation in a material way, or believes that there has been, may have been, or is likely to be a material change of circumstances with respect to its licence, shall send a report to the FMA about such contraventions or material changes as soon as practicable.
- (20) Section 406 of the FMC Act sets out the consequences of a licensed benchmark administrator contravening a condition of its licence. Where such contravention has occurred, the FMA may exercise a power under Part 6, Subpart 3, of the FMC Act, which sets out the FMA's general powers of monitoring and enforcement of licences. Under Section 414 of the FMC Act, those powers include: censuring the licensee; requiring the licensee to submit an action plan to the FMA of what they propose to do to remedy or to avoid contravening the licensee obligation, or to avoid further contravention of the licence condition; giving the licensee a direction to remedy or to avoid contravening the licensee obligation, or to avoid further contravention of the licence condition; and suspending or cancelling the licence.
- (21) Under Section 419 of the FMC Act, where a licensee fails to submit an action plan, or the action plan is rejected by the FMA, or the FMA learns that an action plan has not been complied with, the FMA may suspend or cancel the licensee's licence, or exercise its other powers under Section 414 of the FMC Act.
- (22) A person that fails to comply with a direction from the FMA without a reasonable excuse commits an offence under Section 421 of the FMC Act and is liable on conviction to a fine of up to NZD 300 000. The FMA may also censure the licensee or suspend or cancel the licensee's licence.
- (23) Where a person fails to comply with a direction, the FMA may apply to the Court for an injunction under Section 480 of the FMC Act restraining a licensee from engaging in conduct that constitutes or would constitute a contravention, or involvement in a contravention of a licensee obligation. The FMA may also apply to the Court for an order requiring a person to comply with a licensee obligation.

- (24) The FMA may make direction orders under Section 468 of the FMC Act where the FMA is satisfied that, by engaging in any conduct, a person has contravened, or is likely to contravene, a Part 6 services provision. Section 449 of the FMC Act sets out the provisions that are 'Part 6 services provisions'. Regulation 198 of the FMC Regulations sets out the provisions in those regulations that are Part 6 services provisions, and Regulation 198(2) sets out Part 6 services provisions that apply specifically to licensed benchmark administrators. Section 469 of the FMC Act states that those orders may require the person to comply with Part 6 services provisions, stipulate any reasonable steps the person is to take to comply with the provision concerned, or require the person to report to the FMA on how and when the direction order has been or will be implemented.
- (25) Part 2 of the FMC Act also sets out general 'fair dealing' obligations that apply to licensed benchmark administrators. Those obligations include prohibitions on misleading and deceptive conduct, false or misleading representations, and unsubstantiated representations. Those provisions allow the FMA to act against trade-based market manipulation of benchmarks (trades that have, or are likely to have, the effect of misleading the market) by market participants. Direction orders under Section 468 of the FMC Act are also available in respect of certain provisions of Part 2 of the FMC Act.
- (26) A contravention of various Part 6 services provisions specified in Section 449(3) of the FMC Act may give rise to civil liability, including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, three times the amount of the gain or the loss avoided, and NZD 1 million for an individual or NZD 5 million in any other case. Civil liability, including the pecuniary penalty, may also arise where it is untruthfully held out that a person holds a market services licence (including a benchmark administrator licence).
- (27) A contravention of various Part 6 services provisions specified under Section 449(4) of the FMC Act may give rise to civil liability, including a pecuniary penalty not exceeding NZD 200 000 for an individual or NZD 600 000 in any other case. That includes contravention of the following Part 6 services provisions (relevant to licensed benchmark administrators): Sections 448C, 448D and 448G of the FMC Act (directions to a contributor or an administrator of a financial benchmark); and conditions imposed on a licensed benchmark administrator that are specified in Regulation 198(2) of the FMC Regulations.
- (28) Part 8, Subpart 3, of the FMC Act sets out related powers of the Court to impose pecuniary penalties against a person upon application of the FMA, and to make compensatory orders, for the breach of the civil liability provisions (which include those provisions that are Part 6 services provisions) of the FMC Act. The FMA can also apply to the Court for 'banning orders' under Section 517 of the FMC Act. Those banning orders can ban a person from being a director or promoter of an entity, or in any way being involved in its management, including as a benchmark administrator.
- (29) Section 46 of the FMA Act allows the FMA to accept enforceable undertakings from licensed benchmark administrators who have failed to comply with their regulatory requirements. Under Section 47 of the FMA Act, where the FMA considers that a person who has given an undertaking under Section 46 has breached a term of that undertaking, the FMA may apply to the Court for an order, including for the undertaking to be enforced.
- (30) Section 448D of the FMC Act enables the FMA to direct a licensed benchmark administrator to continue to generate or operate a benchmark in a particular way where it considers it necessary or desirable to promote any of the purposes referred to in Section 448B of the FMC Act. Section 448C of the FMC Act enables the FMA to direct a contributor to provide information or data to a licensee, or another entity, where the provision of that information or data is necessary or desirable for the generation or operation of the financial benchmark specified in a licence.
- (31) The Commission therefore concludes that the binding requirements with respect to the administrators that have opted into the licensing scheme under the Financial Markets Conduct Act are subject to effective supervision and enforcement on an on-going basis. Based on the rules and supervisory procedures provided under the FMC Act and the FMA Act, the Commission has assessed the rules applicable to licensed benchmark administrators in New Zealand and concludes that the regime is equivalent to the regime in the Union.

- (32) Union benchmark administrators do not need to obtain a licence for their benchmarks to be used in New Zealand but can voluntarily seek to be licensed in New Zealand.
- (33) This Decision should be complemented by cooperation arrangements to ensure the effective exchange of information and coordination of supervisory activities between ESMA and the FMA.
- (34) This Decision is based on the assessment of the applicable legally binding requirements relating to benchmarks in New Zealand at the time of the adoption of this Decision. The Commission will continue to monitor, on a regular basis, the market developments, the evolution of the legal and supervisory framework of benchmarks and the effectiveness of supervisory cooperation in relation to the monitoring and enforcement of those requirements to ensure the on-going fulfilment of the requirements on the basis of which this Decision has been adopted.
- (35) This Decision is without prejudice to the Commission's power to undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess this Decision.
- (36) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 30(2) of Regulation (EU) 2016/1011, the legal and supervisory framework of New Zealand applicable to financial benchmarks whose administrator has been licensed by the Financial Markets Authority in New Zealand in accordance with the Financial Markets Conduct Act 2013 shall be considered to be equivalent to the requirements laid down in Regulation (EU) 2016/1011 and to be subject to effective supervision and enforcement on an ongoing basis.

Article 2

This Decision shall enter into force on the third day following day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 30 October 2025.

For the Commission
The President
Ursula VON DER LEYEN