

General guidance on Benchmark Submission and Administration

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Chapter 1

Handbook requirements in relation to benchmark contribution activity and benchmark administration activity

1.1 Application and purpose

Application

- 1.1.1 **G** This special guide is for *firms* which;
- (1) carry out the *regulated activity of administering a benchmark*;
 - (2) contribute input data to a *BMR benchmark administrator*; or
 - (3) use a *benchmark*.

Purpose

- 1.1.2 **G** The purpose of this special guide is to:
- (1) help *regulated benchmark administrators* by setting out which parts of the *Handbook* apply to them when they carry out the *regulated activity of administering a benchmark*;
 - (2) help *benchmark contributors* by setting out which parts of the *Handbook* apply to them when they *contribute input data* to a *BMR benchmark administrator*;
 - (3) remind all *firms* of their obligations under the *benchmarks regulation* when using a *benchmark*.

Benchmarks Regulation and transitional arrangements

- 1.1.3 **G**
- (1) The *benchmarks regulation* applies from 1 January 2018.
 - (2) Various changes were made to the *Regulated Activity Order* as a result of the *benchmarks regulation*. In particular:
 - (a) There is a new *regulated activity of: administering a benchmark* (article 63S of the *Regulated Activities Order*).
 - (b) The regulated activity of *administering a specified benchmark* will cease to apply (subject to the transitional provisions described in **■ SUP TP 10**).
 - (c) The *regulated activity of providing information in relation to a specified benchmark* will cease to apply (subject to the transitional provisions described in **■ SUP TP 10**). However, *benchmark contributors* which *contribute input data* to a *BMR benchmark administrator* are still subject to various requirements in the *Handbook* and are subject to the *benchmarks regulation* when doing so.

- (3) ■ SUP TP 10 contains *guidance* on the transitional arrangements governing the changes to the *regulated activities* above.
- (4) The following transitional provisions are also relevant to a *firm* which, immediately before 1 January 2018, was authorised to *administer a specified benchmark* or to *provide information in relation to a specified benchmark*:
 - (a) ■ SYSC TP 6;
 - (b) ■ FEES TP 17AR;
 - (c) ■ MAR TP 1; and
 - (d) ■ SUP TP 10.

Chapter 2

Parts of the Handbook
applicable to regulated
benchmark administrators
and benchmark contributors

2.1 Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors

2.1.1

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The parts of the *Handbook* applicable to *regulated benchmark administrators* when they carry out the *regulated activity* of *administering a benchmark* are listed in ■ BENCH 2.1.2G.

- (2) *Regulated benchmark administrators* should read the applicable parts of the *Handbook* to find out what the detailed *regulatory requirements* are for the *regulated activity* of *administering a benchmark*. *Firms* should note that in some cases, different *Handbook* provisions apply depending on whether or not the *regulated benchmark administrator* is an *Annex II benchmark administrator* (see ■ MAR 8.5.2R, ■ MAR 8.5.4R and ■ MAR 8.5.7R).
- (3) *Regulated benchmark administrators* which also carry on other *regulated activities* may be subject to other parts of the *Handbook* as well. The table in ■ BENCH 2.1.2G does not refer to those.
- (4) In some cases, the application of other parts of the *Handbook* is excluded in relation to a *firm's benchmark activities* (see the relevant *Handbook* provisions for the detailed application).
- (5) *Regulated benchmark administrators* are also reminded of their directly applicable obligations under the *benchmarks regulation* and legislation made under that regulation.

2.1.2

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Parts of the *Handbook* applicable to the the *regulated activity* of *administering a benchmark*.

	Part of the Handbook	Applicability to the <i>regulated activity</i> of <i>administering a benchmark</i>
High Level Standards	Principles for Businesses (<i>PRIN</i>) Senior Management Arrangements, Systems and Controls (<i>SYSC</i>)	This applies. The detailed application of this is set out in <i>SYSC 1 Annex 1</i> . However, in general, only the following parts of <i>SYSC</i> will be relevant to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity</i> of <i>administering a benchmark</i> :

Part of the Handbook		Applicability to the <i>regulated activity of administering a benchmark</i>
		(a) SYSC 1; (b) SYSC 18.3.9G; (c) SYSC 22.
	Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)	This applies to an <i>approved person</i> of a <i>firm</i> that is not an <i>SMCR firm</i>
	Code of Conduct sourcebook (<i>COCON</i>)	This applies to <i>conduct rules staff</i> of <i>SMCR firms</i> .
	The Fit and Proper test for Employees and Senior Personnel (<i>FIT</i>)	This applies.
	General Provisions (<i>GEN</i>)	This applies. However, the application of <i>GEN 4</i> is very limited in relation to <i>administering a benchmark</i> . <i>GEN 7</i> does not apply to the activity of <i>administering a benchmark</i> .
	Fees Manual (<i>FEES</i>)	This applies.
Business Standards	Market Conduct Sourcebook (<i>MAR</i>)	<i>MAR 1</i> (Market Abuse), <i>MAR 2</i> (Stabilisation) and <i>MAR 8</i> (Benchmarks) apply.
Regulatory processes	Supervision manual (<i>SUP</i>)	This applies, with the following qualifications: (a) In general only the following parts of <i>SUP</i> will be relevant to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity of administering a benchmark</i> : <i>SUP 1-2</i> , <i>SUP 5-8</i> , <i>SUP 9-10A</i> , <i>SUP 15-15B</i> , <i>SUP 16.1-16.3</i> and <i>SUP 16.10</i> . (b) <i>SUP 10A</i> only applies to a <i>regulated benchmark administrator</i> which is not an <i>SMCR firm</i> (but not all <i>controlled functions</i> apply to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity of administering a benchmark</i>). (c) <i>SUP 10C</i> only applies to a <i>regulated benchmark administrator</i> which is an <i>SMCR firm</i> .
	Decision Procedure and Penalties Manual (<i>DEPP</i>)	This applies.
Handbook Guides	General guidance on Benchmark Administration, Contribution and Use (<i>BENCH</i>)	This applies.

Part of the Handbook		Applicability to the <i>regulated activity of administering a benchmark</i>
Regulatory Guides	The Enforcement Guide (EG)	This applies.
	The Perimeter Guidance Manual (PERG)	This applies.
Glossary of definitions		This applies.

2.2 Parts of the Handbook applicable to benchmark contributors

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- (1) The *regulated activity of providing information in relation to a specified benchmark* no longer applies except in limited circumstances (see ■ SUP TP 10 for an explanation of those circumstances).
- (2) *Contributing input data to a BMR benchmark administrator* is not a *regulated activity*. However, *benchmark contributors* are still subject to various obligations under the *benchmarks regulation* and the *Handbook*.
- (3) *Benchmark contributors* are reminded of the following provisions in or made under the *benchmarks regulation*:
 - (a) article 15 (Code of conduct);
 - (b) article 16 (Governance and control requirements for supervised contributors); and
 - (c) article 23 (Mandatory contribution to a critical benchmark).
- (4) *Benchmark contributors, as authorised persons*, are subject to requirements under the *Handbook*. However, in some cases the application of the *Handbook* is excluded in relation to a *firm's* activities as a *benchmark contributor* (see the relevant *Handbook* provisions for their detailed application).
- (5) *Benchmark contributors* are also subject to the following *rules* which apply only to *benchmark contributors*:
 - (a) ■ MAR 8.4 (Third country benchmark contributors); and
 - (b) ■ MAR 8.6 (Responsibility for benchmark activities: benchmark contributors).
- (6) However, some provisions in *MAR* are disapplied where a *firm* is *contributing input data* in relation to a *commodity benchmark* the provision of which is governed by Annex II to the *benchmarks regulation* (see ■ MAR 8.4.1R and ■ MAR 8.6.1R).

2.3 Guidance for benchmark users: articles 28(2) and 29(1) of the benchmarks regulation

- 2.3.1** **G** All *supervised entities* are reminded of the requirements of articles 28(2) and 29(1) of the *benchmarks regulation*.
- 2.3.2** **G**
- (1) Article 28(2) imposes requirements on *supervised entities* in relation to the need to produce and maintain robust written plans setting out the actions that they would take in the event that a *benchmark* which they use materially changes or ceases to be provided.
 - (2) The effect of the prohibition in article 29(1) is that, subject to the exclusions in article 2 of the *benchmarks regulation*, a *firm* which is a *supervised entity* may only use a *benchmark* in cases where:
 - (a) if the benchmark administrator is *located* in the *EU*, the benchmark administrator is listed in the register maintained by *ESMA* under article 36 of the *benchmarks regulation*; or
 - (b) if the benchmark administrator is *located* outside the *EU*, the benchmark administrator and the *benchmark* itself are listed in the register maintained by *ESMA* under article 36 of the *benchmarks regulation*.
- 2.3.3** **G** In considering articles 28(2) and article 29(1), *firms* will need to consider the *benchmarks regulation* and legislation made under that regulation. *Firms* should also note the points below.
- (1) "Use of a benchmark" is defined in article 3.1(7) of the *benchmarks regulation*. *ESMA* has provided guidance on that definition in the form of "Q&As". That guidance is available on *ESMA's* website.
 - (2) Article 28(2) and article 29(1) of the *benchmarks regulation* may not apply to the use of a *benchmark* in cases which are excluded from the requirements of the *benchmarks regulation* (see article 2 of the regulation).
 - (3) The prohibition in article 29 of the *benchmarks regulation* is subject to the transitional provisions in article 51 of that regulation.
 - (14) *ESMA* has produced guidance (in the form of "Q&As") on various aspects of the *benchmarks regulation*. That guidance is available on *ESMA's* website.