

**BENCHMARKS REGULATION (AMENDMENT) INSTRUMENT 2018****Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in:
- (1) the Financial Services and Markets Act 2000 (the “Act”):
    - (a) section 55U (Applications under this Part);
    - (b) section 59 (Approval for particular arrangements);
    - (c) section 60 (Applications for approval);
    - (d) section 60A (Vetting candidates by relevant authorised persons);
    - (e) section 61 (Determination of applications);
    - (f) section 62A (Changes to responsibilities of senior managers);
    - (g) section 63E (Certification of employees by relevant authorised persons);
    - (h) section 63F (Issuing certificates);
    - (i) section 64A (Rules of conduct);
    - (j) section 137A (The FCA’s general rules);
    - (k) section 137T (General supplementary powers);
    - (l) section 138D (Action for damages);
    - (m) section 139A (Power of the FCA to give guidance);
    - (n) section 213 (The compensation scheme);
    - (o) section 214 (General);
    - (p) section 226 (Compulsory jurisdiction);
    - (q) section 395 (The FCA’s and PRA’s procedures); and
    - (r) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018:
    - (a) regulation 14 (Statements of policy);
    - (b) regulation 19 (Application of Part 11 of the Act (information gathering and investigations));
    - (c) regulation 23 (Application of Part 26 of the Act (notices)); and
    - (d) regulation 33 (Power to direct form of notifications).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 29 June 2018 except for Annex J, which comes into force on 1 July 2018.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Principles for Business (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Code of Conduct sourcebook (COCON)	Annex D
Threshold Conditions (COND)	Annex E
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex F
The Fit and Proper test for Approved Persons and specified significant harm functions (FIT)	Annex G
General Provisions (GEN)	Annex H
Fees manual (FEES)	Annex I
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex J
Market Conduct sourcebook (MAR)	Annex K
Supervision manual (SUP)	Annex L
The Decision Procedure and Penalties manual (DEPP)	Annex M
Dispute Resolution: Complaints (DISP)	Annex N
Credit Unions sourcebook (CREDS)	Annex O

#### Amendments to material outside the Handbook

- E. The material outside the Handbook listed in column (1) below is amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
General guidance on Benchmark Administration, Contribution and Use (BENCH)	Annex P
The Enforcement Guide (EG)	Annex Q
The Perimeter Guidance manual (PERG)	Annex R

- F. The General guidance on Benchmark Submission and Administration (BENCH) module of the FCA’s Handbook of rules and guidance is renamed the General guidance on Benchmark Administration, Contribution and Use.
- G. The Financial Conduct Authority confirms and remakes in the Glossary of definitions:
- (1) the defined expression “Regulated Activities Order”; and
  - (2) to the extent that they appear in the Glossary of definitions, the defined expressions relating to any other legislation amended by the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018.

**Notes**

- H. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- I. This instrument may be cited as the Benchmarks Regulation (Amendment) Instrument 2018.

By order of the Board  
28 June 2018

## Annex A

## Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>administering a benchmark</i>	the <i>regulated activity</i> specified in article 63S of the <i>Regulated Activities Order</i> , which, in summary, means acting as the administrator of a benchmark as defined in article 3.1(3) of the <i>benchmarks regulation</i> ;
<i>Annex II benchmark administrator</i>	a <i>regulated benchmark administrator</i> (P) which is subject to the requirements of Annex II to the <i>benchmarks regulation</i> in accordance with Article 19 of that regulation (but only to the extent that P is subject to those requirements).
<i>benchmark</i>	a benchmark as defined in article 3.1(3) of the <i>benchmarks regulation</i> .
<i>benchmark activities</i>	the following activities: <ul style="list-style-type: none"> <li>(1) the <i>regulated activity</i> of <i>administering a benchmark</i>; or</li> <li>(2) <i>contributing input data</i> to a <i>BMR benchmark administrator</i>. [Note: <i>contributing input data</i> to a <i>BMR benchmark administrator</i> is not a <i>regulated activity</i>.]</li> </ul>
<i>benchmark contributor</i>	<ul style="list-style-type: none"> <li>(1) a <i>third country benchmark contributor</i>; or</li> <li>(2) a <i>UK benchmark contributor</i>.</li> </ul> <p>[Note: neither acting as a <i>benchmark contributor</i> nor <i>contributing input data</i> to a <i>BMR benchmark administrator</i> is a <i>regulated activity</i>.]</p>
<i>benchmark endorser</i>	a <i>person</i> : <ul style="list-style-type: none"> <li>(1) whose endorsement of a <i>benchmark</i> or family of <i>benchmarks</i> has been authorised by the <i>FCA</i> in accordance with article 33(3) of the <i>benchmarks regulation</i>; and</li> <li>(2) who has not had that authorisation withdrawn by the <i>FCA</i>.</li> </ul>
<i>benchmarks regulation</i>	Regulation (EU) No. 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.

[Note: see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011>]

*BMR benchmark administrator*

a *person* who:

- (1) is an administrator as defined in article 3.1(6) of the *benchmarks regulation* (which in summary is a *person* who has control over the provision of a *benchmark*); and
- (2) has been authorised or registered (whether in the *UK* or elsewhere) in accordance with article 34 of the *benchmarks regulation*.

*commodity benchmark*

has the meaning in article 3.1(23) of the *benchmarks regulation*.

*contribution of input data*

the contribution of input data as defined in article 3.1(8) of the *benchmarks regulation*.

[Note: *contributing input data* is not a *regulated activity*.]

*critical benchmark*

has the meaning in article 3.1(25) of the *benchmarks regulation*.

*interest rate benchmark*

has the meaning in article 3.1(22) of the *benchmarks regulation*.

*located*

in relation to administrators (as defined in the *benchmarks regulation*), *benchmark contributors* and *supervised entities*, has the meaning in article 3.1(28) of the *benchmarks regulation* which is:

- (1) in relation to a legal person, the country where that person's registered address or other official address is situated; and
- (2) in relation to a natural person, the country where that person is resident for tax purposes.

*non-significant benchmark*

has the meaning in article 3.1(27) of the *benchmarks regulation*.

*regulated benchmark administrator*

a *person* who has a *Part 4A permission* to carry on the *regulated activity* of *administering a benchmark*.

*regulated-data benchmark*

has the meaning in article 3.1(24) of the *benchmarks regulation*.

*significant benchmark*

has the meaning in article 3.1(26) of the *benchmarks regulation*.

<i>supervised entity</i>	has the meaning in article 3.1(17) of the <i>benchmarks regulation</i> .
<i>third country benchmark contributor</i>	a <i>firm</i> which: <ul style="list-style-type: none"> <li>(1) <i>contributes input data</i> to a <i>BMR benchmark administrator</i>;</li> <li>(2) is <i>located</i> in a non-<i>EU</i> state; and</li> <li>(3) either <ul style="list-style-type: none"> <li>(a) is a <i>supervised entity</i>; or</li> <li>(b) would be a <i>supervised entity</i> if it were <i>located</i> in the <i>EU</i>.</li> </ul> </li> </ul>
<i>third country legal representative</i>	a <i>person</i> who acts as the legal representative of a benchmark administrator for the purposes of article 32(3) of the <i>benchmarks regulation</i> .
<i>UK benchmark contributor</i>	a <i>firm</i> which: <ul style="list-style-type: none"> <li>(1) <i>contributes input data</i> to a <i>BMR benchmark administrator</i>;</li> <li>(2) is <i>located</i> in the <i>UK</i>; and</li> <li>(3) is a <i>supervised entity</i>.</li> </ul>
<i>UK Benchmarks Regulations 2018</i>	the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (SI 2018/135).

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

<i>competent authority</i>	... <ul style="list-style-type: none"> <li>(11) <u>the authority designated by each <i>EU</i> (and where applicable, <i>EEA</i>) State</u> in accordance with article 40 of the <i>benchmarks regulation</i>.</li> </ul>
<i>energy market participant</i>	a <i>firm</i> : <ul style="list-style-type: none"> <li>(a) whose permission: <ul style="list-style-type: none"> <li>(i) includes a <del>requirement</del> <u>requirement</u> that the <i>firm</i> must not carry on any <i>designated investment business</i> other than <i>energy market activity</i>; and</li> </ul> </li> </ul>

- (ii) does not include a ~~requirement~~ requirement that it comply with *IPRU(INV) 5* (Investment management firms) or 13 (Personal investment firms); and
- (b) which is not an *authorised professional firm, bank, BIPRU firm*, (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an *exempt IFPRU commodities firm*), *building society, credit union, friendly society, ICVC, insurer, MiFID investment firm* (unless it is an *exempt BIPRU commodities firm* or *exempt IFPRU commodities firm*), *media firm, oil market participant, service company, insurance intermediary, home finance administrator, home finance provider, incoming EEA firm* (without a *top-up permission*), ~~or~~ *incoming Treaty firm* (without a *top-up permission*) or regulated benchmark administrator.

*oil market participant* a firm:

- (a) whose permission:
  - (i) includes a ~~requirement~~ requirement that the firm must not carry on any *designated investment business* other than ~~oil market activity~~ oil market activity; and
  - (ii) does not include a ~~requirement~~ requirement that it comply with *IPRU(INV) 5* (Investment management firms) or 13 (Personal investment firms); and
- (b) which is not an *authorised professional firm, bank, BIPRU firm*, (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an *exempt IFPRU commodities firm*), *building society, credit union, friendly society, ICVC, insurer, MiFID investment firm* (unless it is an *exempt BIPRU commodities firm* or *exempt IFPRU commodities firm*), *media firm, service company, insurance intermediary, home finance administrator, mortgage intermediary, home finance provider, incoming EEA firm* (without a *top-up permission*), ~~or~~ *incoming Treaty firm* (without a *top-up permission*) or regulated benchmark administrator.

*participant firm* a firm other than:

...

...

- (i) an operator of an electronic system in relation to lending in respect of operating the system; and

(j) a regulated benchmark administrator in relation to administering a benchmark;

...

*regulated activity*

(A) in the *PRA Handbook*:

...

(B) in the *FCA Handbook*: ...

...

(to) administering a benchmark (article 63S);

which is carried on by way of business and, except for (ta), ~~and~~ (tb) and (to), relates to a *specified investment* applicable to that activity; or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind; or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing.

...

...



## Annex B

### Amendments to the Principles for Businesses sourcebook (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Introduction

### 1.1 Application and purpose

Application

- 1.1.1 G The *Principles* (see *PRIN 2*) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *firms* conducting *MiFID business, incoming EEA firms, incoming Treaty firms, UCITS qualifiers and AIFM qualifiers, and Annex II benchmark administrators*. *PRIN 3* (Rules about application) specifies to whom, to what and where the *Principles* apply.

...

## 3 Rules about application

...

### 3.2 What?

...

- 3.2.3 R Subject to *PRIN 3.2.4R*, *Principles 3, 4* and (in so far as it relates to disclosing to the *FCA*) 11 (and this chapter) also:
- (1) apply with respect to the carrying on of *unregulated activities* (for *Principle 3* this is only in a *prudential context*); and
  - (2) take into account any activity of other members of a *group* of which the *firm* is a member.
- 3.2.4 R In relation to an *Annex II benchmark administrator* which:
- (1) administers only *benchmarks* which are subject to *Annex II* to the *benchmarks regulation*; and
  - (2) does not have *permission* to carry on any other *regulated activities* in relation to which *Principle 11* applies,
- Principle 11* (in so far as it relates to disclosing to the *FCA*) applies only to the *regulated activity of administering a benchmark*.

- 3.2.5     G     The FCA only expects an *Annex II benchmark administrator* subject to *PRIN 3.2.4R* to disclose information under *Principle 11* which is relevant to the *firm's* compliance with its obligations under the *benchmarks regulation*.

## Annex C

## Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

### 1 Application and purpose

...

#### 1 Annex Detailed application of SYSC 1

Part 1	Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society		
	Who?		
1.1	R	...	
		...	
		(6)	<u>Except as provided for in (7), SYSC 2 and SYSC 3 do not apply to a firm in relation to benchmark activities.</u>
		(7)	<u>SYSC 2 and SYSC 3 continue to apply to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.</u>
1.1A	G	(1)	<u>As a consequence of the benchmarks regulation, the regulated activity referred to in SYSC 1 Annex 1 1.1R(7) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).</u>
		(2)	<u>The effect of SYSC 1 Annex 1 1.1R(7) is that SYSC 2 and SYSC 3 continue to apply to firms which still have permission to carry on the regulated activity in SYSC 1 Annex 1 1.1R(7) when carrying on that activity.</u>
...			

Part 2	Application of the common platform requirements		
...			

<u>2.6G</u>	<u>R</u>	(1)	<u>Except as provided for in (2), the <i>common platform requirements</i> (other than SYSC 4.5 to SYSC 4.9 and SYSC 4 Annex 1) do not apply to a <i>firm</i> in relation to <i>benchmark activities</i>.</u>
		(2)	<u>The <i>common platform requirements</i> continue to apply to a <i>person</i> with <i>permission</i> to carry on the <i>regulated activity</i> of <i>administering a specified benchmark</i> acting as such.</u>
<u>2.6H</u>	<u>G</u>	(1)	<u>As a consequence of the <i>benchmarks regulation</i>, the <i>regulated activity</i> referred to in SYSC 1 Annex 1 2.6GR(2) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).</u>
		(2)	<u>The effect of SYSC 1 Annex 1 2.6GR(2) is that the <i>common platform requirements</i> continue to apply to <i>firms</i> which still have <i>permission</i> to carry on the <i>regulated activity</i> in SYSC 1 Annex 1 2.6GR(2) when carrying on that activity.</u>
...			

#### 4 General organisational requirements

...

#### 4 Annex The main business activities and functions of a relevant authorised person 1G

<b>Business areas and management functions</b>	<b>Explanation</b>
...	
<del>(26) Providing information in relation to a specified benchmark</del> <del>(26) Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)</del>	
<del>(27) Administering a specified benchmark</del> <del>(27) Administering a benchmark</del>	
...	

...

#### 5 Employees, agents and other relevant persons

...

**5.2 Certification regime**

...

5.2.30 R Table: FCA-specified significant-harm functions

Function	Where defined
...	...
<del>(2) Benchmark submission and administration</del>	<del>SYSC 5.2.33R</del>
...	...

...

~~Benchmark submission and administration function~~

5.2.33 R ~~Each of the following is an FCA-specified significant-harm function:~~  
~~[deleted]~~

- ~~(1) acting in the capacity of a person who is allocated the function in MAR 8.2.3R(1) (benchmark manager); and~~
- ~~(2) acting in the capacity of a person who is allocated the function in MAR 8.3.5R(1) (benchmark administration manager).~~

...

**14 Risk management and associated systems and controls for insurers**

**14.1 Application**

...

14.1.2A R This section does not apply to:

- ~~(1) an incoming ECA provider acting as such; or~~
- ~~(2) a firm in relation to benchmark activities.~~

...

**TP 6 Transitional Provision 6**

(1)	(2) Material provision to which	(3)	(4) Transitional provision	(5) Transitional provision:	(6) Handbook provisions:
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	transitional provision applies			dates in force	coming into force
...					
5	...				
<u>6</u>	<u>SYSC 5.2.30R</u> (row 2) and <u>SYSC 5.2.33R</u>	<u>R</u>	<u>The rule in column 2, as it was in force on 28 June 2018, continues to apply to a benchmark administrator, until that administrator becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering a specified benchmark.</u>	<u>From 29 June 2018</u>	<u>Already in force</u>
<u>7</u>	<u>SYSC 14.1.2AR</u>	<u>R</u>	<u>The rule in column 2, as it was in force on 28 June 2018, continues to apply to a benchmark administrator, until that administrator becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering a specified benchmark.</u>	<u>From 29 June 2018</u>	<u>Already in force</u>

...

## Annex D

### Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text.

#### 1.1 Application

...

- 1.1.12 R *A person will not be subject to COCON to the extent that it would be contrary to the UK's obligations under a Single Market Directive<sub>2</sub> ~~or~~ the auction regulation or the benchmarks regulation.*

...

## Annex E

### Amendments to the Threshold Conditions (COND)

In this Annex, underlining indicates new text.

#### 1 Introduction

##### 1.1A Application

...

To what extent does COND apply to regulated benchmark administrators?

- 1.1A.5B G (1) The *threshold conditions* do not apply to a *firm* in relation to the regulated activity of administering a benchmark.
- (2) COND does not apply to regulated benchmark administrators who are solely authorised to administer a benchmark as they are not subject to the *threshold conditions*.
- (3) For regulated benchmark administrators who are also authorised to carry on activities other than administering a benchmark, they will be subject to the *threshold conditions* in relation to their other regulated activities. COND will apply to those firms in relation to the regulated activities to which the *threshold conditions* apply.

...



**Annex F****Amendments to the Statements of Principle and Code of Practice for Approved Persons  
(APER)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**2.1A The Statements of Principle**

...

- 2.1A.2 R An *approved person* will not be subject to a *Statement of Principle* to the extent that it would be contrary to the ~~UK's~~ UK's obligations under a *Single Market Directive*, ~~or the auction regulation~~ or the benchmarks regulation.

...

## Annex G

### Amendments to the Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

In this Annex, striking through indicates deleted text.

#### 1           **General**

...

#### 1.2          **Introduction**

...

1.2.4A      G    (1)    ...

(2)   Where the function relates to:

- (a)   matters outside the scope of *MiFID*, ~~for example activities related to a *specified benchmark* (see the *benchmark submission function* (CF 40), the *benchmark administration function* (CF 50), and the *benchmark submission and administration FCA-specified significant harm functions* (see *SYSC 5.2.33R*); or~~

...

...

...

## Annex H

### Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 4 Statutory status disclosure

##### 4.1 Application

Who? What?

- 4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:
- (1) for an *incoming ECA provider*, this chapter does not apply when the *firm* is acting as such;
  - (2) for an *incoming EEA firm* which has *permission* only for *cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, this chapter does not apply;
  - (3) for an *incoming firm* not falling under (1) or (2), this chapter does not apply to the extent that the *firm* is subject to equivalent rules imposed by its *Home State*;
  - (4) for a *UCITS qualifier*, this chapter does not apply; ~~and~~
  - (5) only GEN 4.1 (Application) and GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) ~~applies~~ apply in relation to *MiFID or equivalent third country business* and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of *COBS 1 Annex 1*; ~~and~~
  - (6) only GEN 4.1 (Application) and GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply in relation to administering a benchmark.

...

#### 7 Charging consumers for telephone calls

##### 7.1 Application

...

Regulated benchmark administrators

7.1.9     R     This chapter does not apply to telephone lines provided in respect of contracts relating to a *firm's administration of a benchmark*.

## Annex I

## Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

### 3 Application, Notification and Vetting Fees

...

#### 3.2 Obligation to pay fees

...

- 3.2.2 G If an application for a *Part 4A permission* (or exercise of a *Treaty right*) falls within more than one category set out in *FEES 3 Annex 1*, other than where one of the applications is an application under the *benchmarks regulation*, only one fee is payable. That fee is the one for the category to which the highest fee tariff applies. Where applications are made under the *benchmarks regulation*, a separate fee will be payable for this application. The relevant fee is set out in *FEES 3.2.7R*.

...

- 3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
(a) Any applicant for <i>Part 4A permission</i> (including an <i>incoming firm</i> applying for <i>top-up permission</i> ) whose fee is not payable pursuant to sub-paragraph <del>(ga)</del> <u>(zza)</u> of this table	...	...
...		
(ga) <del>[deleted]</del>	<i>FEES 3 Annex 3, part 1</i>	<del>On or before the date the</del>

<p>Any applicant for:</p> <p>(i) a <i>Part 4A permission</i> to carry out the <i>regulated activity of administering a specified benchmark</i> for one or more <i>specified benchmarks</i> or;</p> <p>(ii) varying its <i>Part 4A permission</i> to carry out the <i>regulated activity of administering a specified benchmark</i> for one or more <i>specified benchmarks</i></p>		application is made
...		
<p>(p) A <i>firm</i> applying for a variation of its <i>Part 4A permission</i> whose fee is not payable pursuant to sub-paragraph <del>(ga)</del> <u>(zza)</u> of this table</p>	...	...
...		
<p><u>(zza) An application for authorisation as a <i>regulated benchmark administrator</i>.</u></p>	<p><u>The highest of the applicable tariffs set out in FEES 3 Annex 1R.</u></p> <p><u>Where an applicant intends to administer benchmarks falling into different complexity groupings, it will pay one fee</u></p>	<p><u>On the date the application is made.</u></p>

	<p><u>only, for the highest category applied for.</u></p> <p><u>If, once authorised, a <i>regulated benchmark administrator</i> notifies the <i>FCA</i> of its intention to administer other/additional benchmarks no further application fee is payable (even if the other/additional benchmark falls into a higher complexity category).</u></p>	
<p><u>(zzb) An application for recognition of an administrator in accordance with article 32 of the benchmarks regulation.</u></p>	<p><u>5,000</u></p>	<p><u>On the date the application is made.</u></p>
<p><u>(zzc) An application for endorsement of a benchmark or family of benchmarks in accordance with article 33 of the benchmarks regulation.</u></p>	<p><u>1,500</u></p>	<p><u>On the date the application is made.</u></p>

...

...

**3 Annex 1R Authorisation fees payable**

...

Part 2 – Complexity groupings not relating to *credit-regulated activities*

Straightforward cases

Straightforward cases

Activity grouping	Description
...	
A.21	...
<u>B.</u>	<u>Regulated benchmark administrators where the applicant intends to administer a non-significant benchmark</u>

Moderately complex cases

Moderately complex cases	
Activity grouping	Description
...	
B.	<i>Service companies</i>
<u>B.</u>	<u>Regulated benchmark administrators where the applicant intends to administer:</u> - <u>a significant benchmark; or</u> - <u>a commodity benchmark or an interest rate benchmark which has not been designated as a critical benchmark; or</u> - <u>a regulated-data benchmark other than one which is a non-significant benchmark.</u>

Complex cases  $\mathfrak{R}$

Complex cases	
Activity grouping	Description
...	
B.	<i>MTF operators and OTF operators</i>



<u>B.</u>	<u>Regulated benchmark administrators</u> where the applicant intends to administer a <i>critical benchmark</i>
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...

**3 Annex Application fees payable in connection with Recognised Investment Exchanges, and Recognised Auction Platforms, and Benchmark Administrators**

Description of applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
...		
Any applicant for: <del>(i) a Part 4A permission to carry out the regulated activity of administering a specified benchmark where the applicant intends to administer the arrangements for determining one or more specified benchmarks; or</del> <del>(ii) varying its Part 4A permission to carry out the regulated activity of administering a specified benchmark where the applicant intends to administer the arrangements for determining one or more specified benchmarks</del> [deleted]	£25,000	Date the application is made
Any applicant for: <del>(i) a Part 4A permission to carry out the regulated activity of administering a specified benchmark where the applicant does not intend to administer the arrangements for</del>	£5,000	Date the application is made

<p>determining a <i>specified benchmark</i>; or</p> <p>(ii) varying its <i>Part 4A permission</i> to carry out the <i>regulated activity</i> of <i>administering a specified benchmark</i> where the applicant does not intend to administer the arrangements for determining a <i>specified benchmark</i></p> <p>[deleted]</p>		
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...

...

<b>4</b>	<b>Periodic fees</b>
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...

<b>4.2</b>	<b>Obligation to pay periodic fees</b>
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...

4.2.7K	R	...
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Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

Fee-block	Tariff base	Calculation where trading data are not available
...		
B. Service companies	...	...
B. <del>Benchmark</del> <u>Regulated benchmark</u> administrators	Annual income for the financial year ended in the calendar year ending 31 December	Apply the formula (A÷B) x 12 to arrive at the annualised figure.
...	...	...

...

4.2.11	R	Table of periodic fees payable to the FCA
--------	---	---

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
[deleted]			
<u>A third country legal representative</u>	<u>The tariff specified in FEES 4 Annex 15R</u>	<u>Payable in accordance with FEES 4.3.6R</u>	<u>Not applicable</u>
<u>A benchmark endorser</u>	<u>The tariff specified in FEES 4 Annex 15R</u>	<u>Payable in accordance with FEES 4.3.6R</u>	<u>Not applicable</u>

...

...

**4 FCA activity groups, tariff bases and valuation dates**  
**Annex**  
**1AR**

Part 1  
 This table shows how the *FCA* links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if
...	
<b>B. Benchmark Regulated benchmark administrators</b>	<del>it administers one or more <i>specified benchmarks</i></del> <u>it has a <i>Part 4A permission to carry on the regulated activity of administering a benchmark.</i></u>
...	

...

Part 3	
...	
Activity group	Tariff base
...	
<b>B. <del>Benchmark</del> Regulated benchmark administrators</b>	Annual income as defined in <i>FEES</i> 4 Annex 11AR.
...	

...

Part 5

...

Activity group	Valuation date
...	
<b>B. <del>Benchmark</del> Regulated benchmark administrators</b>	Annual income for the financial year ended in the calendar year ending 31 December.
...	

**4 Annex FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2018 to 31 March 2019**

...

Activity group	Fee payable	
...		
B. Service Companies	...	...
<b>B. <del>Benchmark</del> Regulated benchmark administrators</b>	Band width	Fee (£)
	Annual income up to and including <del>£3,000,000</del> <u>100,000</u>	100,000 [tbc]

	<b>PLUS:</b>	
	Band width	Fee (£/£ thousand or part thousand of income)
	Annual income over <u>£3,000,000</u> <u>100,000</u>	<del>28.90</del> [tbc]
...		

...

**4 Annex 11AR Definition of annual income for the purposes of calculating fees in fee blocks A.13, A.14, A.18, A.19 and B. Service Companies, Recognised Investment Exchanges and Regulated Benchmark Administrators**

Annual income definition
<p>...</p> <p><b>Where the firm is a <u>Regulated</u> Benchmark Administrator</b></p> <p>“Annual income” for a <i>regulated benchmark administrator</i> is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the <i>firm’s</i> accounts during the reporting year in respect of, or in relation to activities that comprise a necessary part of its business as a <i>regulated benchmark administrator</i>.</p> <p>Where the sales and marketing of a benchmark are undertaken by a separate legal entity, the <i>regulated benchmark administrator</i> is responsible for identifying the relevant income and reporting it to us as its own income. To avoid double counting, the <i>regulated benchmark administrator</i> should report only the income from sales and exclude any amount paid to it from that income to pay for its expenses as a <i>regulated benchmark administrator</i>.</p> <p>...</p>

Insert the following new FEES 4 Annex 15R after FEES 4 Annex 14R (UKLA periodic fees for the period from 1 April 2017 to 31 March 2018). The text is not underlined.

**4 Annex 15R Fees relating to the recognition of benchmark administrators and the endorsement of benchmarks for the period 29 June 2018 to 31 March 2019**

Activity group	Fee payable
----------------	-------------

<i>A third country legal representative</i>	£[tbc]
<i>A benchmark endorser</i>	£[tbc]

...

Insert the following new FEES TP 17AR after FEES TP 17R (Transitional provisions relating to the Payment Services Regulations 2017 and Electronic Money Regulations 2011). The text is not underlined.

**TP 17AR Transitional provisions for fees relating to benchmark administrators**

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
17 A.1	<i>FEES 3.2.7R Part 1 (1) (zza) and FEES 3 Annex 1R</i>	R	<p>Where a <i>person</i>:</p> <p>(a) has authorisation to carry on the <i>regulated activity</i> of <i>administering a specified benchmark</i> (in accordance with article 63O(1)(b) of the <i>Regulated Activities Order</i>) on 29 June 2018;</p> <p>and</p> <p>(b) applies for authorisation to carry on the <i>regulated activity</i> of <i>administering a benchmark</i> specified in article 63S of the <i>Regulated Activities Order</i> on or after 29 June 2018,</p> <p>the application fee payable in respect of its application (b) above, as set out in</p>	From 29 June 2018	29 June 2018

			<p><i>FEES 3 Annex 1R</i>, will be discounted by the amount paid in respect of its initial application under (a).</p> <p>If the fee payable in respect of application (b) is lower than that which was paid for the application made in respect of (a), no refund is available.</p>		
17 A.2	<i>FEES 4 Annex 1AR, FEES 4 Annex 2AR and FEES 4 Annex 11AR</i>	R	<p>These rules as in force from 29 June 2018 apply to a <i>person</i> who has <i>authorisation</i> to carry on the <i>regulated activity</i> of <i>administering a specified benchmark</i> (a <i>benchmark administrator</i>) as if a reference in these <i>rules</i> to a <i>regulated benchmark administrator</i> were a reference to a <i>benchmark administrator</i> until that <i>person</i> becomes <i>authorised</i> under the <i>benchmarks regulation</i>, or ceases to be <i>authorised</i> as a <i>benchmark administrator</i>.</p>	From 29 June 2018	29 June 2018

## Annex J

**Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook  
(MCOB)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**This Annex comes into force on 1 July 2018**

**3B MCD general information**

**3B.1 Provision of general information**

...

3B.1.2 R ...

(5A) where contracts that reference a *benchmark* are available, the names of the benchmarks and of their administrators and the potential implications on the consumer;

...

(10A) a description of the conditions directly relating to early repayment;

...

...

3B.1.4 G (1) Article 2.2(f) of the *benchmarks regulation* provides that the regulation does not apply to a natural or legal person that grants or promises to grant credit in the course of that person's trade, business or profession. However, that exclusion only applies insofar as that person publishes or makes available to the public that person's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective clients.

(2) The *FCA* considers that a *firm* (F) is not required to include details about a *benchmark* (B) under *MCOB* 3B.1.2R(5A) insofar as the exclusion in article 2.2(f) of the *benchmarks regulation* applies to F in respect of B.



## Annex K

### Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 8 Benchmarks

### 8.1 Application and purpose

#### Application

- 8.1.1 R ~~This chapter applies to every firm which is a benchmark submitter or a benchmark administrator~~ MAR 8.4 to MAR 8.7 apply in accordance with the application provisions set out in those sections.

#### Purpose

- 8.1.2 G The purpose of this chapter is to set out the requirements ~~applying to firms who are benchmark submitters or benchmark administrators when carrying out the activities of providing information in relation to a specified benchmark or administering a specified benchmark.~~ that apply to firms involved in the provision of, or contribution to, benchmarks, as follows:
- (1) MAR 8.4 (Third country benchmark contributors) sets out the requirements that apply to third country benchmark contributors that are not supervised entities, but would be if they were located in the EU. These rules apply requirements mirroring those which apply to benchmark contributors that are in scope of the benchmarks regulation.
  - (2) MAR 8.5 (Regulated benchmark administrators) sets out some Handbook requirements that apply to regulated benchmark administrators (who have been authorised under the benchmarks regulation for the activity of administering a benchmark).
  - (3) MAR 8.6 (Responsibility for benchmark activities: benchmark contributors) sets out requirements in relation to responsibility for contributing input data to a BMR benchmark administrator.
  - (4) MAR 8.7 (Procedures for exercising powers in relation to critical benchmarks) sets out the procedure for imposing requirements under articles 21 and 23 of the benchmarks regulation in relation to critical benchmarks.

[**Note:** ~~articles 2(2) of the Market Abuse Regulation; and article 12 of the Market Abuse Regulation; and article 15 of the Market Abuse Regulation,~~ regarding the ongoing *market abuse* provisions applicable to firms carrying out the activities specified in *MAR 8.1.2G*, and the benchmarks regulation

setting out the requirements applicable to *firms* administering, contributing to and using a *benchmark*.]

Actions for damages

- 8.1.3 R A contravention of a ~~rule~~ *rule* in *MAR 8* does not give rise to a right of action by a private person under section 138D(2) of the *Act* (and each rule in *MAR 8* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

*MAR 8.2* (Requirements for benchmark submitters) is deleted in its entirety and the deleted text is not shown.

## 8.2 Requirements for benchmark submitters [deleted]

*MAR 8.3* (Requirements for benchmark administrators) is deleted in its entirety and the deleted text is not shown.

## 8.3 Requirements for benchmark administrators [deleted]

Insert the following new sections *MAR 8.4*, *8.5*, *8.6* and *8.7* after the deleted *MAR 8.3* (Requirements for benchmark administrators). The text is not underlined.

## 8.4 Third country benchmark contributors

Application

- 8.4.1 R (1) Subject to (2), this section applies to a *third country benchmark contributor* that:
- (a) is not a *supervised entity*; and
  - (b) would be a *supervised entity* if it were *located* in the *EU*.
- (2) This section does not apply to a *third country benchmark contributor* to the extent that it is *contributing input data* in relation to a *commodity benchmark*, the provision of which is governed by Annex

II of the *benchmarks regulation* (in accordance with article 19 of that regulation).

#### Application of the benchmarks regulation

- 8.4.2 R A *third country benchmark contributor* in MAR 8.4.1R must comply with the following requirements applicable to supervised contributors (as defined in the *benchmarks regulation*) as if they were *rules*:
- (1) article 16 of the *benchmarks regulation*, as amended or supplemented as relevant by article 26 and Annex 1 of the *benchmarks regulation*; and
  - (2) article 23(3) of the *benchmarks regulation*.

### 8.5 Regulated benchmark administrators

#### Application

- 8.5.1 R This section applies to a *regulated benchmark administrator*.

#### Responsibility for benchmark activities: regulated benchmark administrators

- 8.5.2 R (1) This *rule* applies to a *regulated benchmark administrator* other than:
- (a) an *Annex II benchmark administrator*;
  - (b) a *relevant authorised person*.
- (2) A *regulated benchmark administrator* must allocate the responsibility described in (3) to a *director* or *senior manager* who is performing:
- (a) an *FCA governing function* other than the *non-executive director function*; or
  - (b) the *significant management function* (where applicable).
- (3) The responsibility referred to in (2) is responsibility for the *firm's* implementation of the applicable requirements of the *regulatory system* (including the *benchmarks regulation*) in relation to its activities as a *regulated benchmark administrator*.
- (4) A *regulated benchmark administrator* must promptly notify the *FCA* of the identity of the person who is allocated the responsibility under (2).
- 8.5.3 G The rule in MAR 8.5.2R does not apply to a *regulated benchmark administrator* which is a *relevant authorised person*. That is because:
- (1) *UK relevant authorised persons* are already subject to the requirement to allocate overall responsibility for each of the activities, business

areas and management functions of the *firm* in SYSC 4.7.8R (the table in SYSC 4 Annex 1 (The main business activities and functions of a relevant authorised person) refers to *administering a benchmark*); and

- (2) *EEA relevant authorised persons* and *third country relevant authorised persons* do not require *authorisation* to carry out the activity of *administering a benchmark* unless they are *located* in the *UK*. That is because that *regulated activity* gives effect to article 34 of the *benchmarks regulation* and, for these purposes, the requirements of article 34 only apply to administrators which are *located* in the *UK*.
- 8.5.4 R (1) This *rule* applies to an *Annex II benchmark administrator*.
- (2) An *Annex II benchmark administrator* must promptly notify the *FCA* of the identity of the most senior manager(s) responsible for ensuring that the *firm* satisfactorily implements the requirements of the *benchmarks regulation* (in accordance with paragraph 14(a) of Annex II to that regulation).
- 8.5.5 G (1) Article 19 of the *benchmarks regulation* states that Annex II to that regulation applies to the provision of a *commodity benchmark* instead of Title II to the regulation (save where Annex II is disapplied by article 19).
- (2) Paragraph 14(a) of Annex II to the *benchmarks regulation* requires an *Annex II benchmark administrator* to ensure that it has in place segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator's most senior level management and its board to ensure:
- (a) that the administrator satisfactorily implements the requirements of the *benchmarks regulation*; and
- (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.
- 8.5.6 G An *Annex II benchmark administrator* which is a *relevant authorised person* may comply with the requirement in *MAR 8.5.4R(2)* to notify the *FCA* of the identity of the most senior manager(s) responsible for implementing the requirements of the *benchmarks regulation* by including that responsibility in that *person's statement of responsibilities*.

#### Notifications about suspected benchmark manipulation

- 8.5.7 G (1) The *guidance* in (2) and (3) applies to *regulated benchmark administrators* other than *Annex II benchmark administrators*.
- (2) Article 14(1) of the *benchmarks regulation* requires a *regulated benchmark administrator* to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to its *competent authority* any conduct that may

involve manipulation or attempted manipulation of a benchmark, under the *Market Abuse Regulation*.

- (3) For the avoidance of doubt, the *FCA* expects a *regulated benchmark administrator* to notify the *FCA* without delay of any notification it receives from a contributor about conduct that may involve manipulation or attempted manipulation of a benchmark under the *Market Abuse Regulation*.

#### Adequate financial resources for administrators of critical benchmarks

- 8.5.8 R Notwithstanding any other financial resource requirements that may apply, a *regulated benchmark administrator* that administers a *critical benchmark* must:
- (1) be able to meet its liabilities as they fall due; and
  - (2) maintain, at all times, sufficient financial resources to cover the operating costs of administering the *critical benchmark* for a period of at least six *months*.
- 8.5.9 G A *regulated benchmark administrator* that administers more than one *critical benchmark* may comply with its financial resources requirements under *MAR* 8.5.8R(2) by holding sufficient financial resources to cover the combined operating costs for all *critical benchmarks* it administers.
- 8.5.10 G (1) *MAR* 8.5.8R sets out the minimum amount of financial resources a *regulated benchmark administrator* must hold to carry out administering a benchmark in relation to a *critical benchmark*.
- (2) The *FCA* expects *regulated benchmark administrators* administering a *critical benchmark* to:
- (a) normally hold sufficient financial resources to cover the operating costs of administering the *critical benchmark(s)* for a period of nine *months*; and
  - (b) notify the *FCA* where a *regulated benchmark administrator's* financial resources fall below these levels (required by *MAR* 8.5.13R and *SUP* 15.3.11R).
- 8.5.11 G To meet the financial resources requirement in *MAR* 8.5.8R(2), the *FCA* expects a *regulated benchmark administrator* to hold both sufficient liquid financial assets and net capital to cover the operating costs of administering the *critical benchmark(s)*. In particular:
- (1) net capital can include common stock, retained earnings, disclosed reserves, or other instruments generally classified as common equity tier one capital or additional tier one capital, and may include interim earnings that have been independently verified by an auditor.

- (2) net capital should be calculated after deductions for:
  - (a) holdings of the *regulated benchmark administrator's* own securities or those of any undertakings in the *regulated benchmark administrator's group*;
  - (b) any amount owed to the *regulated benchmark administrator* by an undertaking in its *group* under any loan or credit arrangement; and
  - (c) any exposure arising under any guarantee, charge or contingent liability.
- (3) liquid financial assets can include cash or liquid financial instruments held on the balance sheet of the *regulated benchmark administrator* where the financial instruments:
  - (a) have minimal market and credit risk; and
  - (b) are capable of being liquidated with minimal adverse price effect.

8.5.12 G The *FCA* may use its powers under section 55L of the *Act* to impose on a *regulated benchmark administrator* subject to *MAR 8.5.8R* a requirement to hold additional financial resources to *MAR 8.5.8R* if the *FCA* considers that desirable to meet any of its *operational objectives*.

#### Notifications for breaches

8.5.13 R A *regulated benchmark administrator* subject to *MAR 8.5.8R* must notify the *FCA*, as soon as practicable, where it identifies a reasonable possibility of not being able to hold sufficient financial resources to cover the operating costs of administering the *critical benchmark(s)* for a period of nine *months*.

8.5.14 G *Regulated benchmark administrators* are reminded of their obligation under *SUP 15.3.11R* to notify the *FCA* of any significant breaches of *rules*.

## 8.6 Responsibility for benchmark activities: benchmark contributors

### Application

- 8.6.1 R
- (1) This section applies to *benchmark contributors* save as provided for in (2).
  - (2) This section does not apply to a *benchmark contributor* to the extent that it is *contributing input data* in relation to a *commodity benchmark* the provision of which is governed by Annex II to the *benchmarks regulation* (in accordance with article 19 of that regulation).

### Responsibility for contributing input data

- 8.6.2 R *A benchmark contributor must promptly notify the FCA of the senior personnel responsible for the process for contributing input data to a BMR benchmark administrator.*
- 8.6.3 G (1) *The FCA expects a benchmark contributor to ensure a member of its senior personnel is responsible for the process of contributing input data to a BMR benchmark administrator regardless of whether the contribution is provided from the UK or from elsewhere.*
- (2) *The requirement in MAR 8.6.2R applies regardless of whether the benchmark contributor contributes input data from the UK or from elsewhere.*
- 8.6.4 G *A UK benchmark contributor or third country benchmark contributor which is a relevant authorised person may comply with the requirement in MAR 8.6.2R to notify the FCA of the senior personnel responsible for the process for contributing input data to a BMR benchmark administrator by including that responsibility in that person's statement of responsibilities.*

## 8.7 Procedures for exercising powers in relation to critical benchmarks

### Application and purpose

- 8.7.1 G *This section applies to authorised persons and to unauthorised persons.*
- 8.7.2 G (1) *The purpose of this section is to set out the procedures which the FCA will follow when exercising its powers under articles 21 and 23 of the benchmarks regulation.*
- (2) *MAR 8.7.9G contains a table of definitions for the purpose of this section. Those defined terms are not shown in italics.*

### Compulsion powers under the benchmarks regulation

- 8.7.3 G (1) *The FCA has been designated as the UK competent authority for the purpose of the benchmarks regulation.*
- (2) *The benchmarks regulation confers various directly applicable powers on competent authorities in relation to critical benchmarks. In particular:*
- (a) *article 21(3) of the benchmarks regulation gives a competent authority the power to compel the administrator of a critical benchmark to continue publishing the critical benchmark for up to 24 months; and*

- (b) article 23(6) of the *benchmarks regulation* gives a *competent authority* the power to take various steps where it considers that the representativeness of a *critical benchmark* is put at risk. That includes the power to require *supervised entities* to *contribute input data* to the administrator of a *critical benchmark* for up to 24 months.
- (3) The two powers in (a) and (b) above are referred to in this section as the “compulsion powers”.

#### Exercise of compulsion powers: general

- 8.7.4 G (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which *competent authorities* may exercise the compulsion powers.
- (2) In some cases, the *competent authority* may only have a short period in which to decide whether to exercise a compulsion power.
  - (3) Where the *FCA* considers it necessary to exercise a compulsion power, it will make that decision on the basis of the information available to it at that time.
  - (4) The *benchmarks regulation* does not require a *competent authority* to consult on the use of compulsion powers (save that *competent authorities* must consult the college established under article 46 of the *benchmarks regulation* when exercising the compulsion power in article 23).
  - (5) Given that the compulsion powers may need to be exercised within short timescales, the *FCA* does not expect to consult on the use of its compulsion powers (other than consulting other *regulatory bodies* where required by the *Act* or the *benchmarks regulation*).
  - (6) In some cases, it may be necessary to exercise compulsion powers in relation to more than one *person*. In those circumstances, it may be necessary to address a written notice under this section to more than one *person*.
  - (7) The *FCA* will review a decision to exercise a compulsion power in the circumstances described in this section.

#### Decision to exercise a compulsion power

- 8.7.5 G If the *FCA* decides to exercise a compulsion power in respect of a *person* (P) (whether a *supervised entity* or an administrator), the *FCA* will give P a written notice which:
- (1) gives details of the decision (“the First Decision”);
  - (2) states the *FCA*’s reasons for the First Decision;



- (3) states the date on which the First Decision takes effect; and
- (4) states that P may make representations to the *FCA* in relation to the First Decision within a period specified in the written notice.

8.7.6 G In some cases, the decision in *MAR 8.7.5G* may take effect immediately. This means that in some cases:

- (1) P will be required to comply with the decision from the date of the written notice; and
- (2) the decision will continue to have effect pending consideration of any representations made by P.

#### Review of the First Decision

- 8.7.7 G
- (1) Where P makes written representations to the *FCA* in relation to the First Decision in accordance with *MAR 8.7.5G(4)*, the *FCA* will review that decision and will decide whether to maintain, vary or revoke it.
  - (2) In conducting the review in (1), the matters which the *FCA* may have regard to include:
    - (a) the written representations made by P in relation to the First Decision; and
    - (b) any additional information relevant to the exercise of the compulsion power (whether obtained before or after the First Decision).
  - (3) The review in (1) will be carried out by:
    - (a) a senior *FCA* staff member who did not participate in making the First Decision; or
    - (b) two or more senior *FCA* staff members including at least one person who did not participate in making the First Decision.
  - (4) When the *FCA* has completed the review in (1), the *FCA* will give P a written notice which:
    - (a) gives details of the decision in response to the review (“the Second Decision”);
    - (b) states the *FCA*’s reasons for the Second Decision; and
    - (c) states the date on which the Second Decision takes effect.

#### Own initiative review of the exercise of compulsion powers

- 8.7.8 G (1) The *FCA* may, on its own initiative, decide to vary or revoke a requirement imposed under a compulsion power (an Own Initiative Variation or Own Initiative Revocation).
- (2) For instance, the *FCA* may decide to vary or revoke a requirement imposed under a compulsion power:
- (a) where the *FCA* becomes aware of new information which is material to that requirement; or
- (b) to extend the duration of the requirement in accordance with article 21(3) or article 23(6)(b) of the *benchmarks regulation*; or
- (c) as result of a review under article 21(3) or article 23(9) of the *benchmarks regulation*.
- (3) The *FCA* will treat an Own Initiative Variation as a new First Decision and will follow the procedures in *MAR 8.7.5G* and *MAR 8.7.7G* for the purpose of that decision.

## Table of defined terms

- 8.7.9 G For the purpose of this section, the terms in the first column of the table below have the meanings in the second column of that table.

Table: glossary of bespoke terms used in this section

administrator	has the meaning in article 3.1(6) of the <i>benchmarks regulation</i> ;
compulsion powers	means the <i>competent authority's</i> powers under articles 21(3) and 23(6) of the <i>benchmarks regulation</i> ;
First Decision	the <i>FCA's</i> decision in <i>MAR 8.7.5G(1)</i> ;
Own Initiative Revocation	has the meaning in <i>MAR 8.7.8G(1)</i> ;
Own Initiative Variation	has the meaning in <i>MAR 8.7.8G(1)</i> ;
Second Decision	the <i>FCA's</i> decision in <i>MAR 8.7.7G(4)</i> .

Amend the following as shown.

**TP 1 Transitional Provisions**

...

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1.2

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
2	<u>MAR 6</u>	R	Expired		
<u>3</u>	<u>MAR 8.3</u>		<u>This section as it was in force on 28 June 2018 continues to apply to a <i>benchmark administrator in relation to a specified benchmark until that administrator becomes authorised or registered under the benchmark regulation, or ceases to be authorised for administering a specified benchmark.</i></u>	<u>From 29 June 2018</u>	<u>Already in force</u>
<u>4</u>	<u>MAR 8.4.2</u>	R	<u>This rule only applies to a <i>benchmark contributor</i> from the point at which the administrator of the <i>benchmark</i> to which it contributes becomes authorised or registered under the <i>benchmarks regulation.</i></u>	<u>From 29 June 2018</u>	<u>29 June 2018</u>
<u>6</u>	<u>MAR 8.6.2</u>	R	<u>This rule only applies to a <i>benchmark contributor</i> from the point at which the administrator of the <i>benchmark</i> to which it contributes</u>	<u>From 29 June 2018</u>	<u>29 June 2018</u>

			<u>becomes authorised or registered under the <i>benchmarks</i> regulation.</u>		
--	--	--	---	--	--

## Annex L

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 2 Information gathering by the FCA or PRA on its own initiative

...

### 2.3 Information gathering by the FCA on its own initiative: cooperation by firms

...

Suppliers under material outsourcing arrangements

2.3.7 R (1) *A firm must take reasonable steps to ensure that each of its suppliers under material outsourcing arrangements deals in an open and cooperative way with the FCA in the discharge of its functions under the Act in relation to the firm.*

(2) The requirement in (1) does not apply to a regulated benchmark administrator where the material outsourcing arrangements relate to the carrying on of the regulated activity of administering a benchmark.

...

2.3.10A G (1) SUP 2.3.7R(2) provides that the requirement in SUP 2.3.7R(1) does not apply to a regulated benchmark administrator where the material outsourcing arrangements relate to the carrying on of the regulated activity of administering a benchmark.

(2) That is because article 10(3)(f) of the benchmarks regulation imposes equivalent requirements on firms which outsource functions in relation to administering a benchmark.

...

## 3 Auditors

### 3.1 Application

3.1.1 R (1) ~~This~~ Except as provided for in (2), this chapter applies to:

- ~~(1)~~ every firm within a category listed in column (1) of the table
- (a) in SUP 3.1.2R; and

- (2) the external auditor of such a *firm* (if appointed under *SUP* 3.3 or appointed under or as a result of a statutory provision other than in the *Act*);

in accordance with column (2) or (3) of that table, except as described in the remainder of this section.

- (2) This chapter does not apply in relation to a *firm's benchmark activities*.

...

## 10A FCA Approved Persons

### 10A.1 Application

...

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

10A.1.7 R This chapter does not apply to:

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*; or
- (3) a *UCITS qualifier*,

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty*, the *UCITS Directive*, ~~or~~ the *auction regulation* or the benchmarks regulation, to an authority in a country or territory outside the *United Kingdom*.

...

#### Benchmark activities

10A.1.2 G (1) For a *firm* which only has a *permission for administering a benchmark*, the following *FCA controlled functions* do not apply:

1A

- (a) *the apportionment and oversight function*;
- (b) *the compliance oversight function*;
- (c) *the money laundering reporting function*; and
- (d) *the systems and controls function*.

(2) That is because:

- (a) the *FCA controlled functions* in (a) to (c) above do not apply because those functions are specified by incorporation of

- requirements in SYSC and the relevant parts of SYSC do not apply in relation to *benchmark activities* (which includes *administering a benchmark*);
- (b) the FCA controlled function in (d) above does not apply in relation to *benchmark activities* (see SUP 10A.8.2R).
- (3) The functions in (a) to (d) still apply to a firm which administers a benchmark as well as carrying on other regulated activities. However, they do not apply in respect of its activities as a regulated benchmark administrator.
- (4) Various other FCA controlled functions are only relevant to firms which carry on particular types of activity and will not be relevant to a firm (F) which does not carry on any regulated activities other than administering a benchmark. For instance:
- (a) the CASS operational oversight function will not be relevant to F because that function is only relevant to CASS medium firms CASS large firms and CASS large debt management firms; F will not hold client money and will therefore not be a CASS medium firm, a CASS large firm or a CASS large debt management firm;
- (b) the customer function involves performing various types of activity none of which would be performed by a firm which does not carry on any regulated activities other than administering a benchmark;
- (c) the small friendly society function will only be relevant to certain firms.
- (5) The functions in SUP 10A.1.21AG(1)(a) to (d) do not apply to a benchmark contributor in relation to its contribution of input data to a BMR benchmark administrator.
- (6) That is because:
- (a) the functions in SUP 10A.1.21AG(1)(a) to (c) are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to *benchmark activities* (which includes *contributing input data to a BMR benchmark administrator*); and
- (b) the FCA controlled function in SUP 10A.1.21AG(1)(d) above does not apply in relation to *benchmark activities* (see SUP 10A.8.2R).

Territorial scope of SUP 10A in relation to benchmark submission

10A.1.2 R Notwithstanding anything to the contrary in ~~SUP 10A.1.5R, SUP 10A.1.6R~~  
 2 and ~~SUP 10A.1.13R~~ the application of ~~SUP 10A~~ to the benchmark  
 submission function is as set out in ~~MAR 8.2.3R~~. ~~[deleted]~~

10A.1.2 G ~~MAR 8.2.3R~~ says that the obligation on a ~~benchmark submitter~~ to appoint a  
 3 ~~benchmark manager~~ applies if it maintains an establishment in the ~~United~~  
~~Kingdom~~. Therefore, ~~SUP 10A~~ applies to the ~~benchmark submission~~  
~~function~~ whether or not the activity of ~~providing information in relation to a~~  
~~specified benchmark~~ (or any other regulated activity) or the ~~benchmark~~  
~~submission function~~ are carried on from that establishment. ~~[deleted]~~

...

**10A.4 Specification of functions**

...

10A.4.4 R FCA controlled functions

Part 1 (FCA controlled functions for FCA-authorized persons and appointed representatives)		
Type	CF	Description of FCA controlled function
...	...	
	40	<del>Benchmark submission function</del>
	50	<del>Benchmark administration function</del>
...	...	
Part 2 (FCA controlled functions for PRA-authorized persons) (See Note 1)		
Type	CF	Description of FCA controlled function
...	...	
	40	<del>Benchmark submission function</del>
	50	<del>Benchmark administration function</del>
...	...	

...



**10A.7 FCA required functions**

...

~~Benchmark submission function (CF40)~~

- 10A.7.1 R ~~The *benchmark submission function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in MAR 8.2.3R(1) (Organisational and governance arrangements). [deleted]~~

~~Benchmark administration function (CF50)~~

- 10A.7.1 R ~~The *benchmark administration function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in MAR 8.3.5R(1) (Requirements for benchmark administrators). [deleted]~~

...

**10A.8 Systems and controls functions**

...

- 10A.8.2 R The *systems and controls function* does not apply in relation to:
- (1) *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(j); or
  - (2) *benchmark activities*.

...

Amend the forms in SUP 10A Annex 4D (Form A: Application to perform controlled functions under the approved person regime) as shown.

**10A Annex 4D Form A: Application to perform controlled functions under the approved persons regime**

The Long and Short Form As shown below are amended as shown. The two forms (Long Form A and Short Form A) should both be amended separately, as shown. Underlining indicates new text and striking through indicates deleted text.

The Long and Short Form A – UK and Overseas Firms (not incoming EEA)

...

**3.02** For applications from a single *firm*, please tick the boxes that correspond to the *controlled functions* to be performed. If the *controlled functions* are to be performed for more than one *firm*, please go to question **3.05**

<b>a</b>	<b>Significant influence functions</b>	CF 1 <i>Director function</i>	<input type="checkbox"/>		
		CF 2 <i>Non-executive director function</i>	<input type="checkbox"/>		
		CF 3 <i>Chief executive function</i>	<input type="checkbox"/>		
		CF 4 <i>Partner function</i>	<input type="checkbox"/>		
		CF 5 <i>Director of an unincorporated association function</i>	<input type="checkbox"/>		
		CF 6 <i>Small friendly society function</i>	<input type="checkbox"/>		
		<hr/>			
	<b>Significant influence functions</b>	CF 8 <i>Apportionment and oversight function</i> <i>(this function is not applicable to all firms please refer to Notes for Completing Form A)</i>	<input type="checkbox"/>		
		CF 10 <i>Compliance oversight function</i>	<input type="checkbox"/>		
		CF 10a <i>CASS operational oversight function</i>	<input type="checkbox"/>		
		CF 11 <i>Money laundering reporting function</i>	<input type="checkbox"/>		
		CF 12 <i>Actuarial function</i>	<input type="checkbox"/>		
		CF 12A <i>With-profits actuary function</i>	<input type="checkbox"/>		
		CF 12B <i>Lloyd's Actuary function</i>	<input type="checkbox"/>		
				<hr/>	
				CF 28 <i>System and controls function</i>	<input type="checkbox"/>
				<hr/>	
		CF 29 <i>Significant management function</i>	<input type="checkbox"/>		
		<hr/>			
		<del>CF 40 <i>Benchmark submission function</i></del>	<del><input type="checkbox"/></del>		
		<del>CF 50 <i>Benchmark administration function</i></del>	<del><input type="checkbox"/></del>		
		<hr/>			
<b>b</b>	<b>Customer function</b>	CF 30 <i>Customer function</i>	<input type="checkbox"/>		

**3.03** Effective date of *controlled functions* indicated above †

**3.04** Job title (mandatory for *controlled function* 28 & 29) †

Please refer to notes on the requirements for submitting a CV

**Insurance mediation**

Will the candidate be responsible for Insurance mediation at the firm?

YES  NO

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

**Mortgage Credit Directive**

Will the candidate be responsible for Mortgage Credit Directive Intermediation at the firm?

YES  NO

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

**Benchmark administration**

Will the candidate be responsible for the *firm's* activities as a *regulated benchmark administrator* (see *MAR 8.5.2R* and *MAR 8.5.4R*)?

YES  NO

(Note: For *firms* subject to *MAR 8.5.2R*, "Yes" can only be selected if the individual is applying for CF1, 3-6 or CF29).

**Contributing input data to a BMR benchmark administrator**

Will the candidate be responsible for the process of *contributing input data to a BMR benchmark administrator*?

YES  NO

(Note: this question only applies to *firms* which are subject to *MAR 8.6*.)



I have supplied further information related to this page in Section 6†

YES  NO

...

The Long Form A – UK and Overseas Firms (not incoming EEA) for MiFID authorisation applications

...

**3.02** For applications from a single *firm*, please tick the boxes that correspond to the *controlled functions* to be performed. If the *controlled functions* are to be performed for more than one *firm*, please go to question **3.05**

<b>a</b>	<b>Significant influence functions</b>	CF 1 <i>Director function</i>	<input type="checkbox"/>
		CF 2 <i>Non-executive director function</i>	<input type="checkbox"/>
		CF 3 <i>Chief executive function</i>	<input type="checkbox"/>
		CF 4 <i>Partner function</i>	<input type="checkbox"/>
		CF 5 <i>Director of an unincorporated association function</i>	<input type="checkbox"/>
		CF 6 <i>Small friendly society function</i>	<input type="checkbox"/>
	<b>Significant influence functions</b>	CF 8 <i>Apportionment and oversight function</i> <i>(this function is not applicable to all firms please refer to Notes for Completing Form A)</i>	<input type="checkbox"/>
		CF 10 <i>Compliance oversight function</i>	<input type="checkbox"/>
		CF 10a <i>CASS operational oversight function</i>	<input type="checkbox"/>
		CF 11 <i>Money laundering reporting function</i>	<input type="checkbox"/>
		CF 12 <i>Actuarial function</i>	<input type="checkbox"/>
		CF 12A <i>With-profits actuary function</i>	<input type="checkbox"/>
		CF 12B <i>Lloyd's Actuary function</i>	<input type="checkbox"/>
		CF 28 <i>System and controls function</i>	<input type="checkbox"/>
CF 29 <i>Significant management function</i>		<input type="checkbox"/>	
<del>CF 40 <i>Benchmark submission function</i></del>		<del><input type="checkbox"/></del>	
<del>CF 50 <i>Benchmark administration function</i></del>	<del><input type="checkbox"/></del>		
<b>b</b>	<b>Customer function</b>	CF 30 <i>Customer function</i>	<input type="checkbox"/>

**3.03** Effective date of *controlled functions* indicated above †

**3.04** Job title †  
Please refer to notes on the requirements for submitting a CV

**Insurance mediation**

Will the candidate be responsible for Insurance mediation at the firm? YES  NO

(Note: Yes can only be selected if the individual is applying for CF1, 3-8 or 29)

**Mortgage Credit Directive**

Will the candidate be responsible for Mortgage Credit Directive Intermediation at the firm?

YES  NO

(Note: Yes can only be selected if the individual is applying for CF1, 3-8 or 29)

**Benchmark administration**

Will the candidate be responsible for the firm's activities as a regulated benchmark administrator (see MAR 8.5.2R and MAR 8.5.4R)?

YES  NO

(Note: For firms subject to MAR 8.5.2R, "Yes" can only be selected if the individual is applying for CF1, 3-6 or CF29).

**Contributing input data to a BMR benchmark administrator**

Will the candidate be responsible for the process of contributing input data to a BMR benchmark administrator?

YES  NO

(Note: this question only applies to firms which are subject to MAR 8.6.)



I have supplied further information related to this page in Section 6<sup>†</sup>

YES  NO

...

The Long and Short Form A – Incoming EEA only. The two forms (Long Form A and Short Form A) should both be amended separately as shown.

...

**3.02** For applications from a single firm, please tick the boxes that correspond to the *controlled functions* to be performed.

If the *controlled functions* are to be performed for more than one firm, please go to question **3.05**

**a Significant influence functions**

CF 11 Money laundering reporting function	<input type="checkbox"/>
CF 29 Significant management function	<input type="checkbox"/>

<b>c</b>	<b>significant influence functions</b>	<del>CF 40 Benchmark submission function</del> <input type="checkbox"/>
		<del>CF 50 Benchmark administration function</del> <input type="checkbox"/>
<b>b</b>	<b>Customer function</b>	CF 30 Customer function <input type="checkbox"/>

➔ I have supplied further information related to this page in Section 6 YES  NO

...

Amend the form in SUP 10A Annex 8D (Form E: Internal transfer of an approved person) as shown.

**10A Form E: Internal transfer of an approved person Annex 8D**

The Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers (and are not Relevant Authorised Persons)

...

**4.02** For applications from a single *firm*, please tick the boxes that correspond to the *controlled functions* to be performed.

If the *controlled functions* are to be performed for more than one *firm*, please go to question 4.05

<b>a</b>	<b>Significant influence functions</b>	CF 1 Director function <input type="checkbox"/>
		CF 2 Non- executive director function <input type="checkbox"/>
		CF 3 Chief executive function <input type="checkbox"/>
		CF 4 Partner function <input type="checkbox"/>
		CF 5 Director of an unincorporated association function <input type="checkbox"/>
		CF 6 Small friendly society function <input type="checkbox"/>



I have supplied further information related to this page in Section 5

YES

NO

**Significant influence functions continued**

CF 8	Apportionment and oversight function (Non-MiFID business Only)	<input type="checkbox"/>
CF 9	EEA investment business oversight function (Non-MiFID business Only)	<input type="checkbox"/>
CF 10	Compliance oversight function (Non-MiFID business Only)	<input type="checkbox"/>
CF 10 A	CASS operational oversight function	<input type="checkbox"/>
CF 11	Money laundering reporting function	<input type="checkbox"/>
CF 12	Actuarial function	<input type="checkbox"/>
CF 12A	With-profits actuary function	<input type="checkbox"/>
CF 12B	Lloyd's Actuary function	<input type="checkbox"/>
CF 28	System and controls function	<input type="checkbox"/>
CF 29	Significant management function	<input type="checkbox"/>

**b significant influence functions continued**

<del>CF 40</del>	<del>Benchmark submission function</del>	<input type="checkbox"/>
<del>CF 50</del>	<del>Benchmark administration function</del>	<input type="checkbox"/>

**c Customer function**

CF 30	Customer function	<input type="checkbox"/>
-------	-------------------	--------------------------

**4.03** Effective date of controlled functions indicated above †

**4.04** Job title (mandatory for controlled function 28 & 29) †

**Insurance mediation**

YES  NO

Will the candidate be responsible for Insurance mediation at the firm?

(Note: Yes can only be selected if the individual is applying for (CF1,3-8 or 29)

**Mortgage Credit Directive Intermediation**

Will the candidate be responsible for Mortgage Credit Directive Intermediation at the firm?

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

YES  NO

**Benchmark administration**

Will the candidate be responsible for the *firm's* activities as a *regulated benchmark administrator* (see *MAR 8.5.2R* and *MAR 8.5.4R*)?

(Note: For *firms* subject to *MAR 8.5.2R*, "Yes" can only be selected if the individual is applying for CF1, 3-6 or CF29).

YES  NO

**Contributing input data to a BMR benchmark administrator**

Will the candidate be responsible for the process of contributing input data to a *BMR benchmark administrator*?

(Note: this question only applies to *firms* which are subject to *MAR 8.6*.)

YES  NO



I have supplied further information related to this page in Section 5

YES

NO

Amend the following as shown.



**10C FCA senior management regime for approved persons in relevant authorised persons**

**10C.1 Application**

...

EEA relevant authorised persons: general application

10C.1.4 R This chapter does not apply to an *EEA relevant authorised person* if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved to an authority in a country or territory outside the *United Kingdom* under:

- (1) the *Single Market Directives*;
- (2) the *Treaty*;
- (3) the *auction regulation*;
- (4) the *benchmarks regulation*.

...

Amend the forms in SUP 10C Annex 5D (Statement of responsibilities) as shown.

**10C Statement of responsibilities  
Annex  
5D**

UK RAPs Statement of Responsibilities form

...

ANNEX A

SYSC 4 Annex 1G	The main business activities and functions of a relevant authorised person
...	
	(26) <u>Providing information in relation to a specified benchmark Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)</u>

(27) <i>Administering a <del>specified</del> benchmark</i>	
...	

Third Country RAPs Statement of Responsibilities form

...

ANNEX A

SYSC 4 Annex 1G	The main business activities and functions of a relevant authorised person
...	
(26) <i>Providing information in relation to a <del>specified benchmark</del> <u>Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)</u></i>	
(27) <i>Administering a <del>specified</del> benchmark</i>	
...	

Amend the following as shown.

## 11        **Controllers and close links**

### 11.1      **Application**

Application to firms

11.1.1    R    This chapter applies to every *firm* except:

...

(7)      a *UCITS ISPV*;

(8)      a *firm which only has permission for administering a benchmark,*

as set out in the table in *SUP* 11.1.2R.

...

- 11.1.4 D *SUP 11.1, SUP 11.2.1G, SUP 11.3 and SUP 11.7 apply to a controller or a proposed controller of a UK domestic firm not listed in SUP 11.1.1R(1) to ~~SUP 11.1.1R(7)~~ SUP 11.1.1R(8).*

...

## 11.2 Purpose

- 11.2.1 G Part XII of the *Act* (Control Over Authorised Persons) places an obligation on the *controllers* and proposed *controllers* of those *UK domestic firms* not listed in *SUP 11.1.1R(1) to SUP 11.1.1R(~~6~~)(8)* to notify the *appropriate regulator* of changes in *control*, including acquiring, increasing or reducing *control* or ceasing to have *control* over a *firm*. Furthermore, those *persons* are required to obtain the *appropriate regulator's* approval before becoming a *controller* or increasing their *control* over a *firm*. *SUP 11.3* is intended to assist those *persons* in complying with their obligations under Part XII of the *Act*.

...

- 11.2.6 G Every *firm*, other than a *firm* listed in *SUP 11.1.1R(1) to SUP 11.1.1R(~~6~~)(8)* or a *firm* excluded from the operation of *SUP 16.4* or *SUP 16.5* by *SUP 16.1.3R*, is required to submit an annual report on its *controllers* and *close links* as set out in *SUP 16.4* and *SUP 16.5*.

...

## 15 Notifications to the FCA

...

### 15.3 General notification requirements

...

Breaches of rules and other requirements in or under the *Act* or the *CCA*

- 15.3.11 R (1) A *firm* must notify the *FCA* of:

...

(h) a breach of any directly applicable EU regulation made under *AIFMD*;

(ha) a breach of the *benchmarks regulation* (apart from *Annex II to that regulation*) or of any directly applicable regulations or requirements made or imposed under the *benchmarks regulation*; or

...

...

...

Insert the following new chapter SUP 15B after SUP 15A (Applications and notifications under EMIR). The text is not underlined.

**15B Applications and notifications under the benchmarks regulation and powers over Miscellaneous BM persons**

**15B.1 Application**

15B.1.1 G This chapter applies to:

- (1) every *firm*;
- (2) every *supervised entity* which applies to the *FCA* to endorse a *benchmark* in accordance with article 33 of the *benchmarks regulation*;
- (3) every *person* who applies to the *FCA* for recognition in accordance with article 32 of the *benchmarks regulation*.

**15B.2 Notifications under the benchmarks regulation**

15B.2.1 G (1) The *benchmarks regulation* imposes various directly applicable obligations for *regulated benchmark administrators* to provide notifications to the *FCA*.

- (2) Those notifications should be made:
  - (a) in accordance with the requirements of the *benchmarks regulation*; and
  - (b) in such manner as the *FCA* directs.

15B.2.2 D (1) A *firm* making a notification under the *benchmarks regulation* must do so using the system or form indicated on the *FCA*'s website for the relevant type of notification.

... (2) Where the *FCA* has not specified a method for making the relevant notification on its website, the notification should be made in accordance with *SUP 15.7.4R*.

**15B.3 Applications to endorse a third country benchmark**

- 15B.3.1 G (1) Article 33 of the *benchmarks regulation* provides that a *supervised entity* may apply to the *FCA* to endorse a benchmark or a family of benchmarks provided in a *third country* for their use in the *EU*.
- (2) The *FCA* has made the endorsement application form by direction. The form is available on the *FCA*'s website.
- (3) A *supervised entity* making an endorsement application will also need to pay any applicable fee set out in *FEES*.

**15B.4 Applications for recognition of third country administrators**

- 15B.4.1 G (1) Article 32 of the *benchmarks regulation* provides that a benchmark administrator *located* in a *third country* may apply to a *competent authority* for prior recognition.
- (2) The *FCA* has made the recognition application form by direction. The form is available on the *FCA*'s website.
- (3) A *person* applying for recognition will also need to pay any applicable fee set out in *FEES*.

**15B.5 Powers over Miscellaneous BM persons**

- 15B.5.1 G (1) Regulation 6 of the *UK Benchmarks Regulations 2018* enables the *FCA* to impose a requirement on a Miscellaneous BM person and to vary or cancel such a requirement.
- (2) Miscellaneous BM person is defined in regulation 5(2) of the *UK Benchmarks Regulations 2018* as a person who is not an authorised person and is:
- (a) involved in the provision of, or contribution of input data to, a benchmark;
- (b) a service provider to whom functions or any relevant services and activities in the provision of a benchmark have been outsourced;
- (c) a person who is not the service provider but who is or has been party to a contract in relation to the outsourcing of functions or any relevant services and activities in the provision of a benchmark;
- (d) a legal representative of a benchmark administrator *located* in a third country which has obtained or has applied for prior

recognition as referred to in article 32(1) and as provided for in article 32(3) of the *benchmarks regulation*;

- (e) a *person* who administers a benchmark relying on article 51(4) of the *benchmarks regulation*; or
- (f) a *supervised entity*.

- (3) A *person* cannot fall within the definition of Miscellaneous BM person if that *person* is an *authorised person*.

- 15B.5.2 G (1) Regulation 6(1) of the *UK Benchmarks Regulations 2018* provides that the power to impose, vary or cancel requirements in relation to Miscellaneous BM persons is exercisable if it appears to the *FCA* that:
- (a) the Miscellaneous BM person has contravened or is likely to contravene a relevant requirement;
  - (b) it is desirable for the *FCA* to exercise its powers in order to advance any of its operational objectives; or
  - (c) it is desirable for the *FCA* to exercise its powers to facilitate the performance of its functions under the *benchmarks regulation*.
- (2) Regulation 6(1)(b) of the *UK Benchmarks Regulations 2018* would enable the *FCA* to impose a requirement on a Miscellaneous BM person where it is desirable for the *FCA* to do so in order to advance any of the *FCA*'s operational objectives.
- 15B.5.3 G (1) The *FCA* anticipates that it would generally only need to rely on the ground in regulation 6(1)(b) of the *UK Benchmarks Regulations 2018* for the purpose of supervising a Miscellaneous BM person listed in regulation 5(2)(e) of those regulations i.e. a *person* who administers a benchmark relying on article 51(4) of the *benchmarks regulation*.
- (2) That is because the *persons* listed in regulation 5(2)(e) will not necessarily be subject to the requirements of the *benchmarks regulation* or the *Act* and may therefore fall outside the scope of the other two grounds in regulation 6(1) of the *UK Benchmarks Regulations 2018* and outside the scope of the *FCA*'s powers under the *Act*.
- (3) In view of (2), the *FCA* does not generally expect that it will need to rely on the ground in regulation 6(1)(b) of the *UK Benchmarks Regulations 2018* in relation to the other categories of Miscellaneous BM person (listed in regulation 5(2)(a)-(d) and (f) of the *UK Benchmarks Regulations 2018*). However, the *FCA* cannot entirely exclude the possibility that it might need to do so in other

circumstances and the *FCA* will consider any proposed use of the power on its merits on a case by case basis.

...

Amend the following as shown.

**16 Reporting requirements**

**16.1 Application**

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17) and SUP 16.22)

(1) Section(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
...			
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:		Entire sections
	...		
	(1)	<u>a firm with permission to carry on only the regulated activity of administering a benchmark;</u>	
...			

...

**16.5 Annual Close Links Reports**

Application

16.5.1 G This section applies to every *firm* listed in SUP 11.1.1R(1) to SUP 11.1.1R(6)(8), except those *firms* excluded from its operation by SUP 16.1.1R and SUP 16.1.3R or which have elected to report on a monthly basis in accordance with SUP 11.9.5R.

...

Insert the following new TP after SUP TP 9 (Transitional Provisions in relation to the MiFID Regulation). The text is not underlined.

**TP 10      Benchmarks Regulation Transitional Provisions**

10.1      Purpose and application

10.1.1    G    *SUP TP 10 contains transitional provisions relating to the changes to the Regulated Activities Order which have been made as a result of the benchmarks regulation.*

10.1.2    G    This TP applies to all *firms*.

10.2      Overview

- 10.2.1    G    (1)    *The benchmarks regulation applies from 1 January 2018.*
- (2)    *Article 34 of the benchmarks regulation requires the administrator of a benchmark to be authorised or registered. There is no corresponding requirement in relation to benchmark contributors.*
- (3)    *In the UK, the requirement for administrators to be authorised or registered has been given effect through the introduction of a new regulated activity (administering a benchmark) which replaces the regulated activity of administering a specified benchmark.*
- (4)    *The UK Benchmarks Regulations 2018 therefore make various changes as a result of the benchmarks regulation including the following:*
- (a)    *they introduce a new regulated activity: administering a benchmark (article 63S of the Regulated Activities Order);*
- (b)    *regulation 59 provides that a person who carries on the regulated activity of administering a specified benchmark (article 63O(1)(b) of the Regulated Activities Order) without permission to carry on that activity is not by virtue of section 20(1) of the Act to be taken to have contravened a requirement imposed by the FCA if that person has permission to carry on the new regulated activity of administering a benchmark (article 63S(1) of the Regulated Activities Order);*
- (c)    *regulation 60 provides that a person who carries on the regulated activity of providing information in relation to a specified benchmark (benchmark B) (article 63O(1)(a) of the Regulated Activities Order) without permission to carry on that activity:*
- (i)    *does not contravene the general prohibition; and*



- (ii) is not by virtue of section 20(1) or (1A) of the *Act* to be taken to have contravened a requirement imposed by the *FCA*,

if the administrator of benchmark B has *permission* to carry on the new *regulated activity* of *administering a benchmark* (article 63S(1) of the *Regulated Activities Order*); and

- (d) Part 7 of the *UK Benchmarks Regulations 2018* contains various transitional provisions to reflect those in article 51 of the *benchmarks regulation*.

- 10.2.2 G (1) The effect of the changes in *SUP TP 1.2.1G(4)(a) to (c)* is as follows.
- (2) A *firm* which, immediately before 1 January 2018, had a *Part 4A permission* in relation to *administering a specified benchmark* continues to require that *Part 4A permission* until the earlier of such time as:
- (a) it obtains a *Part 4A permission* in relation to the new *regulated activity* of *administering a benchmark*; or
  - (b) it stops *administering a specified benchmark*.
- (3) A *firm* which, immediately before 1 January 2018, had a *Part 4A permission* in relation to *providing information in relation to a specified benchmark* continues to require that *Part 4A permission* in respect of the relevant *specified benchmark* until the earlier of such time as:
- (a) the administrator of the relevant *specified benchmark* obtains a *Part 4A permission* in relation to the new *regulated activity* of *administering a benchmark*;
  - (b) the *firm* stops *providing information in relation to a specified benchmark*.
- (4) *Persons* who administer, *contribute input data* to or use a *benchmark* should also note the transitional provisions in Part 7 of the *UK Benchmarks Regulations 2018* and article 51 of the *benchmarks regulation*.

- 10.2.3 G The above means that:

- (1) (a) A *firm* (A) which, prior to 1 January 2018, had a *Part 4A permission* to *administer a specified benchmark* (a *benchmark administrator*) and which wishes to continue administering that *benchmark*, will need to apply for a *Part 4A permission* in relation to *administering a benchmark* (subject to the transitional provisions in Part 7 of the *UK Benchmarks Regulations 2018* and article 51 of the *benchmarks regulation*).

- (b) A's existing *Part 4A permission* for *administering a specified benchmark* will be removed when it obtains the new *Part 4A permission*.
- (c) Until that point, A will continue to be subject to the *rules* which applied to *benchmark administrators* immediately prior to 29 June 2018.
- (2) A *firm* which wishes to start *administering a benchmark* will need to apply for a *Part 4A permission* in relation to *administering a benchmark* (subject to the transitional provisions in Part 7 of the *UK Benchmarks Regulations 2018* and article 51 of the *benchmarks regulation*).

10.3 Transitional provision: the application of the previous version of the Supervision manual

- 10.3.1 G (1) As is explained in *SUP* TP 10.2, the *rules* which applied to *benchmark administrators* (in their capacity as such) before 29 June 2018 will continue to apply to those *firms* until their *Part 4A permission* in relation to *administering a specified benchmark* has been removed or (where applicable) they have been authorised to *administer a benchmark*.
- (2) That includes some *rules* in the Supervision manual which have been amended or deleted with effect from 29 June 2018. The table in *SUP* TP 10.3.2 specifies which of the amended or deleted *rules* in the Supervision manual continue to apply and how.

10.3.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>SUP</i> 3.1.1R	R	The <i>rule</i> in column 2, as it was on 28 June 2018, continues to apply to a <i>benchmark administrator</i> in relation to a <i>specified benchmark</i> until that administrator becomes authorised or registered under the <i>benchmark regulation</i> , or ceases to be authorised for <i>administering a specified benchmark</i> .	From 29 June 2018	Already in force

2	SUP 10A.4.4R and SUP 10A.7.1.13R	R	The <i>rules</i> in column 2, as they were on 28 June 2018, continue to apply to a <i>benchmark administrator</i> in relation to a <i>specified benchmark</i> until that administrator becomes authorised or registered under the <i>benchmark regulation</i> , or ceases to be authorised for <i>administering a specified benchmark</i> .	From 29 June 2018	Already in force
3	SUP 10A.8.2R	R	The <i>rule</i> in column 2, as it was on 28 June 2018 continues to apply to a <i>benchmark administrator</i> in relation to a <i>specified benchmark</i> until that administrator becomes authorised or registered under the <i>benchmark regulation</i> , or ceases to be authorised for <i>administering a specified benchmark</i> .	From 29 June 2018	Already in force

[*Editor's note*: the text in this annex was consulted on as part of CP18/5 'EU Benchmarks Regulation Implementation (DEPP and EG)'.]

## Annex M

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

#### 2 Statutory notices and the allocation of decision making

...

#### 2.5 Provision for certain categories of decision

...

2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

(5) The decision to give a written notice under section 55XA(1) of the *Act* will be taken by *FCA* staff under *executive procedures*. If the applicant decides to seek a review, by the *FCA*, of that decision, they can make representations to the *RDC*. If the *RDC* then decides under section 55XA(5) of the *Act* to confirm the first decision, or take a different decision of the type described by section 55XA(1) of the *Act*, it must give the applicant a written notice.

...

#### 2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

Packaged Retail and Insurance-based Investment Products Regulations 2017	Description	Handbook reference	Decision maker
...			

<b><u>UK Benchmarks Regulations 2018</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulation 6(5)</u>	<u>when the FCA is proposing or deciding to refuse an application for the imposition of a requirement under regulation 6 or for the variation or cancellation of a requirement imposed under regulation 6</u>		<u>Executive Procedures</u>
<u>Regulations 12(1)(a) and 13(1)(a)</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation 10</u>		<u>RDC</u>
<u>Regulations 12(1)(b) and 13(1)(b)</u>	<u>when the FCA is proposing or deciding to impose a financial penalty under regulation 11</u>		<u>RDC</u>
<u>Regulations 22(1), 22(2) and 22(7)</u>	<u>when the FCA is proposing or deciding to require restitution under regulation 22</u>		<u>RDC</u>

## 2 Annex 2G Supervisory notices

...

<b>Section of the Act</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
<u>55XA(1)(a) and 55XA(1)(b)</u>	<u>when the FCA is deciding to grant an application for a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> specified in article 63S of the <i>Regulated Activities Order</i> with a <u>limitation</u> or a <u>requirement which was not applied for</u>, or with a <u>narrower or wider description of <i>regulated activity</i> than that applied for</u></u>		<u>RDC or executive procedures</u> <u>See DEPP 2.5.18G(5)</u>
<u>55XA(1)(c) and 55XA(1)(d)</u>	<u>when the FCA is deciding to grant an application to vary a <i>firm's Part 4A permission</i> to carry on the <i>regulated activity</i></u>		<u>RDC or executive procedures</u>

	<u>specified in article 63S of the Regulated Activities Order but, other than as part of the application, to restrict the Part 4A permission either by imposing a limitation or requirement which was not applied for or by specifying a narrower or wider description of regulated activity than that applied for</u>		<u>See DEPP 2.5.18G(5)</u>
<u>55XA(1)(e)</u>	<u>when the FCA is deciding to refuse an application for a Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</u>		<u>RDC or executive procedures</u> <u>See DEPP 2.5.18G(5)</u>
<u>55XA(1)(f)</u>	<u>when the FCA is deciding to refuse an application to vary a firm's Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</u>		<u>RDC or executive procedures</u> <u>See DEPP 2.5.18G(5)</u>
...			
<b>Packaged Retail and Insurance-based Investment Products Regulations 2017</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>UK Benchmarks Regulations 2018</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulation 6(6)</u>	<u>when the FCA is exercising its power under regulation 6(2) to impose, vary or cancel a requirement on its own initiative</u>		<u>Executive procedures</u>

...

**Sch 3 Fees and other required payments**

...

3.2G

The <i>FCA's</i> power to impose financial penalties is contained in:
...
the <i>MiFI Regulations</i>
<u>the <i>UK Benchmarks Regulations 2018</i></u>
...

**Sch 4 Powers Exercised**

...

4.2G

The following additional powers and related provision have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
...
Paragraph 6 (Application of Part 26 of the Act) of Schedule 1 to the Packaged Retail and Insurance-based Investment Products Regulations
<u>Regulation 14 (Statements of Policy) of the <i>UK Benchmarks Regulations 2018</i></u>
<u>Regulation 19 (Application of Part 11 of the Act (information gathering and investigations)) of the <i>UK Benchmarks Regulations 2018</i></u>
<u>Regulation 23 (Application of Part 26 of the Act (notices)) of the <i>UK Benchmarks Regulations 2018</i></u>

## Annex N

## Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Treating complainants fairly

### 1.1 Purpose and application

...

1.1.5 R This chapter does not apply to:

...

- (3) an *authorised professional firm* in respect of expressions of dissatisfaction about its *non-mainstream regulated activities*;
- (4) *complaints* in respect of *auction regulation bidding*;
- (5) a *full-scope UK AIFM*, *small authorised UK AIFM* or an *incoming EEA AIFM*, for *complaints* concerning *AIFM management functions* carried on for an *AIF* that is a *body corporate* unless it is a *collective investment scheme*; ~~and~~
- (6) a *depository*, for *complaints* concerning activities carried on for an *AIF* that is:
  - (a) a *body corporate* unless it is a *collective investment scheme*; or
  - (b) another type of *AIF* unless it is:
    - (i) an *authorised AIF*; or
    - (ii) an *ELTIF*; or
    - (iii) a *charity AIF*; and
- (7) *complaints* in respect of *administering a benchmark*.

...



**1 Annex 2G Application of DISP 1 to type of respondent / complaint**

...

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	DISP 1.10B Complaints reporting directions
...								
<i>designated finance platform</i> in relation to <i>complaints</i> about providing <i>specified information</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply	
<u>complaints</u> relating to <u>administering a benchmark</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

...

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities* (other than *auction regulation bidding* and administering a benchmark);

...

...

## Annex O

### Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Senior management arrangements, systems and controls

### 2.1 Application and purpose

Application

2.1.1 R This chapter applies to all *credit unions*.

2.1.1A G With the exception of CREDS 2.2.14G to CREDS 2.2.17G and CREDS 2.2.65G to CREDS 2.2.70G, this chapter is not relevant to a credit union in relation to its benchmark activities.

Purpose

...

2.1.3 G (1) This chapter is also intended to remind *credit unions* that the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) also contains a number of high level *rules* and *guidance* relating to senior management arrangements, systems and controls designed to have general application to all *firms*, including *credit unions*. Subject to the exceptions in (2) and (3) below, SYSC 1, SYSC 4 to SYSC 10 and SYSC 21 apply to all credit unions in respect of the carrying on of their regulated activities and unregulated activities in a prudential context. SYSC 18 applies to all credit unions in respect of both their regulated activities and unregulated activities.

(2) SYSC 4 to SYSC 10 (other than SYSC 4.5 to SYSC 4.9 and SYSC 4 Annex 1) and SYSC 14 do not apply to a firm (including a credit union) in relation to its carrying on benchmark activities (see SYSC 1 Annex 1 for the detailed rules on the application of SYSC 4 to SYSC 10).

(3) SYSC 4 to SYSC 10 (other than SYSC 6.1.1R (which only applies to a limited extent) and SYSC 6.3) do not apply to a firm (including a credit union) in relation to its carrying on of auction regulation bidding (see SYSC 1 Annex 1 for the detailed rules on the application of SYSC 4 to SYSC 10).

...

## 10 Application of other parts of the Handbook to ~~Credit~~ credit unions

### 10.1 Application and purpose

...

## Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

10.1.3

G

Module	Relevance to Credit Unions
...	
Compensation ( <i>COMP</i> )	<i>COMP</i> sets out <i>rules</i> relating to the scheme for compensating consumers when authorised <i>firms</i> are unable, or likely to be unable, to satisfy claims against them.
<u>General guidance on Benchmark Administration, Contribution and Use (<i>BENCH</i>)</u>	<u><i>BENCH</i> provides guidance about which parts of the Handbook are relevant to a firm when carrying out benchmark activities and when using a benchmark. It also provides guidance about the benchmarks regulation.</u>
...	

## Annex P

**Amendments to General guidance on Benchmark ~~Submission and~~ Administration,  
Contribution and Use (BENCH)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**1 Handbook requirements in relation to benchmark ~~submission~~ contribution activity and benchmark administration activity**

**1.1 Application and purpose**

1.1.1 G This special guide is for *firms* which:

- (1) carry out the *regulated activities* activity of ~~providing information in relation to a specified benchmark~~ and ~~administering a specified 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 ~~benchmark submitters and~~ regulated benchmark administrators by setting out which parts of the *Handbook* apply to them when they carry out the *regulated activities* activity of ~~providing information in relation to a specified benchmark~~ or ~~administering a specified 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.

~~Other parts of the Handbook will apply to benchmark submitters or to benchmark administrators in respect of other regulated activities they carry out.~~

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*.

## 2 **Parts of the Handbook applicable to ~~benchmark submission activity and benchmark administration activity~~ regulated benchmark administrators and benchmark contributors**

### 2.1 **Parts of the Handbook applicable to ~~benchmark submission activity and benchmark administration activity~~ regulated benchmark administrators**

- 2.1.1 G (1) The parts of the *Handbook* applicable to ~~*benchmark submitters* and to *benchmark administrators*~~ *regulated benchmark administrators* when they carry out the *regulated activities* *activity of providing information in relation to a specified benchmark* or *administering a specified benchmark* ~~*administering a benchmark*~~ are listed in *BENCH 2.1.2G*. ~~*Benchmark submitters* and *benchmark administrators*~~ should read applicable parts of the *Handbook* to find out what the detailed regulatory requirements are for the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark*.

- (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 G Parts of the Handbook applicable to the regulated activities activity of providing information in relation to a specified benchmark and administering a specified benchmark benchmark.

	Part of the Handbook	Applicability to the regulated activity of providing information in relation to a specified benchmark and of administering a specified benchmark
High Level Standards	Principles for Business (PRIN)	This applies.
	Senior management Management Arrangements, Systems and Controls (SYSC)	<del>This applies.</del> The detailed application of this is set out in SYSC 1 Annex 1. However, in general, only the following parts of SYSC will be relevant to a firm which only has permission to carry on the regulated activity of administering a benchmark: (a) SYSC 1; (b) SYSC 18.3.9G; (c) SYSC 22.
	Threshold Conditions (COND)	<del>This applies.</del>

	Statements of Principle and Code of Practice for Approved Persons (APER)	This applies to an <i>approved person</i> of a firm that is not a <i>relevant authorised person</i> <del>who performs a benchmark submission function or a benchmark administration function.</del>
	Code of Conduct sourcebook (COCON)	This applies to <i>conduct rules staff</i> of relevant <i>authorised persons</i> .
	The Fit and Proper test for Approved Persons <u>and specified significant-harm functions</u> (FIT)	This applies.
	General Provisions (GEN)	This applies. <u>However, the application of GEN 4 is very limited in relation to administering a benchmark. GEN 7 does not apply to the activity of administering a benchmark.</u>
	Fees Manual (FEES)	This applies.
Business Standards	Market Conduct Sourcebook (MAR)	MAR 1 (Market Abuse), MAR 2 (Stabilisation) and MAR 8 (Benchmarks) apply.
Regulatory Processes	Supervision Manual (SUP)	This applies subject to the following qualifications: <p>(a) In general only the following parts of SUP will be relevant to a firm which only has <u>permission to carry on the regulated activity of administering a benchmark: SUP 1-2, SUP 5-8, SUP 9-10A, SUP 15-15B, SUP 16.1-16.3 and SUP 16.10.</u></p> <p>(b) SUP 10A only applies to a <u>regulated benchmark administrator which is not a relevant authorised person (but not all controlled functions apply to a firm which</u></p>



		<p>only has <i>permission</i> to carry on the <i>regulated activity of administering a benchmark</i>).</p> <p><i>(c) SUP 10C only applies to a regulated benchmark administrator which is a relevant authorised person.</i></p> <p>with the following qualifications:</p> <p>(a) <i>SUP 4 (Actuaries), SUP 12 (Appointed representatives), SUP 13 (Exercise of passport rights by UK firms), SUP 13A (Qualifying for authorisation under the Act), SUP 14 (incoming EEA firms changing details and cancelling qualification for authorisation), SUP 17 (Transaction Reporting), SUP 18 (Transfer of business), SUP 21 (Waiver), SUP App 2 (Insurers: Regulatory Intervention points and run-off plans) and SUP App 3 (Guidance on passporting issues) will not be relevant to the regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark</i></p>
	Decision Procedure and Penalties Manual (DEPP)	This applies.
Redress	Dispute Resolution: the Complaints sourcebook (DISP)	<p>All firms are subject to the <i>Compulsory Jurisdiction of the Financial Ombudsman Service</i>.</p> <p>However, a <i>firm</i> which does not, and notifies the <i>FCA</i> under <i>DISP 1.1.12R</i> that it does not, conduct business with <i>eligible complainants</i> (persons eligible to have a <i>complaint</i> considered by the <i>Financial Ombudsman Service</i>, as defined in <i>DISP 2.7</i>) will be exempt from the <i>rules</i> on treating complaints fairly (<i>DISP 1.2</i> to <i>DISP 1.11</i>) and from the <i>Financial Ombudsman Funding rules (FEES 5.1</i> to <i>FEES 5.7)</i>.</p> <p>The definition of the <i>regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark</i> mean that <i>benchmark submitters and benchmark administrators</i> will qualify for these exemptions if it applies for them.</p>

Handbook Guides	<del>Special Guide for benchmark administrators</del> <u>General guidance on Benchmark Administration, Contribution and Use (BENCH)</u>	This applies.
Regulatory Guides	The Enforcement Guide (EG)	This applies.
	The Perimeter Guidance Manual (PERG)	This applies.
Glossary of definitions		This applies.

Insert the following new sections BENCH 2.2 and 2.3 after BENCH 2.1 (Parts of the Handbook applicable to regulated benchmark administrators). The text is not underlined.

## 2.2 Parts of the Handbook applicable to benchmark contributors

- 2.2.1 G (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 and 29 of the benchmarks regulation

- 2.3.1 G All *supervised entities* are reminded of the requirements of articles 28(2) and 29 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 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, *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 of the *benchmarks regulation* do 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.
- (4) *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.

[*Editor's note*: the text in this annex was consulted on as part of CP18/5 'EU Benchmarks Regulation Implementation (DEPP and EG)' (February 2018).]

## Annex Q

### Amendments to the Enforcement Guide (EG)

Insert the following new section EG 19.37 after EG 19.36 (Packaged Retail and Insurance-Based Investment Products Regulations 2017). The text is not underlined.

#### 19 Non-FSMA powers

...

#### 19.37 UK Benchmarks Regulations 2018

19.37.1 The *UK Benchmarks Regulations 2018* in part implement the *benchmarks regulation*. The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *UK Benchmarks Regulations 2018* (including requirements imposed on *persons* subject to the *UK Benchmarks Regulations 2018* by the *benchmarks regulation* and any directly applicable EU regulation made under the *benchmarks regulation*). Our powers in relation to Miscellaneous BM persons are set in the *UK Benchmarks Regulations 2018*.

19.37.2 The *FCA's* approach to enforcing the *UK Benchmarks Regulations 2018* will mirror our general approach to enforcing the *Act*, as set out in *EG 2*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

19.37.3 The powers which the *UK Benchmarks Regulations 2018* provide to the *FCA* include:

- (1) the power to require information and appoint investigators;
- (2) powers of entry and inspection;
- (3) the power to publicly censure;
- (4) the power to impose financial penalties;
- (5) the power to apply for an injunction or restitution order;
- (6) the power to require restitution;
- (7) the power to impose and vary requirements; and

(8) the power to prosecute relevant offences.

19.37.4 The *UK Benchmarks Regulations 2018*, for the most part, mirror the *FCA's* investigative, sanctioning and regulatory powers under the *Act*. The *FCA* has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the *Act*. Key features of the *FCA's* approach are described below and in *SUP 15B.5*.

The conduct of investigations under the *UK Benchmarks Regulations 2018*

19.37.5 The *UK Benchmarks Regulations 2018* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *UK Benchmarks Regulations 2018*.

19.37.6 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *UK Benchmarks Regulations 2018* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA's* policy in non-criminal investigations under the *UK Benchmarks Regulations 2018* is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the *Act*.

Decision making under the *UK Benchmarks Regulations 2018*

19.37.7 The decision making procedures for those decisions under the *UK Benchmarks Regulations 2018* requiring the giving of a *warning notice*, *decision notice* or a *supervisory notice* are dealt with within *DEPP*.

19.37.8 The *UK Benchmarks Regulations 2018* do not require the *FCA* to have published procedures for commencing criminal prosecutions. However, in these situations the *FCA* expects that we will normally follow our decision making procedures for the equivalent decisions under the *Act*, as set out in *EG 12*.

19.37.9 The *UK Benchmarks Regulations 2018* do not require the *FCA* to have published procedures to apply to the court for an *injunction* or restitution order. However, the *FCA* will normally follow our decision making procedures for the equivalent decisions under the *Act*, as set out in *EG 10* and *EG 11*.

19.37.10 The *UK Benchmarks Regulations 2018* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act* as applied by the *UK Benchmarks Regulations 2018*.

19.37.11 Certain *FCA* decisions (for example an imposition of a requirement) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the *UK Benchmarks Regulations 2018*

19.37.12 When determining whether to take action to impose a penalty or to issue a *public censure* under the *UK Benchmarks Regulations 2018* the *FCA's* policy includes

having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5 to *DEPP* 6.5D.

- 19.37.13 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *UK Benchmarks Regulations 2018* to assist us to exercise our functions under the *UK Benchmarks Regulations 2018* in the most efficient and economic way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.
- 19.37.14 The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in light of Article 45 of the *benchmarks regulation*.

Statement of policy in section 169(7) (as applied by the *UK Benchmarks Regulations 2018*)

- 19.37.15 The *UK Benchmarks Regulations 2018* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from *overseas regulators*. For the purposes of the *UK Benchmarks Regulations 2018* the *FCA* will follow the procedures described in *DEPP* 7.

## Annex R

### Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Authorisation and regulated activities

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### 2.3 The business element

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2.3.4 G *A person carrying out the activity of administering a specified benchmark or providing information in relation to a specified benchmark will always be carrying out these activities by way of business.*

2.3.4A G *A person carrying out the activity of administering a benchmark will always be carrying out that activity by way of business.*

...

### 2.4 Link between activities and the United Kingdom

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2.4.8 G ~~*For the avoidance of doubt, a person who is based outside of the United Kingdom but who makes benchmark submissions to a benchmark administrator is carrying out regulated activities in the United Kingdom.*~~  
[deleted]

...

2.4.10 G (1) *The requirement to be authorised to carry on the regulated activity of administering a benchmark gives effect to the authorisation and registration regime under article 34 of the benchmarks regulation.*

(2) *Article 34 only requires a person to be authorised or registered in the UK (as opposed to elsewhere in the EU) if that person is located in the UK.*

(3) *Accordingly, the FCA considers that where a person (P) administers a benchmark in the UK but P is not located in the UK:*

(a) *P does not carry on the regulated activity of administering a benchmark from an establishment maintained by P in the UK for the purposes of section 418 of the Act; and*



(b) P would not otherwise be regarded as carrying on that regulated activity in the UK.

(4) Located is defined in the Glossary and has the same meaning as it does in the benchmarks regulation.

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## 2.5 Investments and activities: general

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2.5.1A G The regulated ~~activities~~ activity of ~~providing information in relation to a specified benchmark and administering a specified benchmark~~ do ~~do~~ not require the involvement of a *specified investment* in any way.

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## 2.7 Activities: a broad outline

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### Specified benchmarks activities

2.7.20D G ~~There are two regulated activities associated with specified benchmarks~~

(1) ~~providing information in relation to a specified benchmark; and~~

(2) ~~administering a specified benchmark~~ [deleted]

2.7.20E G ~~A person will be providing information in relation to a specified benchmark where information or an expression of opinion necessary to determine a specified benchmark is provided to, or for the purposes of passing to, a benchmark administrator for the purpose of administering a specified benchmark.~~ [deleted]

2.7.20E G It follows from ~~PERG 2.7.20EG~~ that a *person* who, in the context of an auction or otherwise, submits bids or offers solely for the purpose of transacting in a *commodity* or *financial instrument* or any other asset for their own, or their client's, behalf will not normally be ~~providing information in relation to a specified benchmark.~~ [deleted]

2.7.20F G ~~We expect that only firms which are members of a benchmark submission panel will carry out the activity of providing information in relation to a specified benchmark.~~ [deleted]

2.7.20G G ~~A person is not providing information in relation to a specified benchmark where the information he is providing:~~

(1) ~~consists solely of factual data obtained from a publicly available source; or~~

- (2) ~~is compiled by a subscription service for purposes other than in connection with the determination of a *specified benchmark* and is provided to a *benchmark administrator* only in the administrator's capacity as a subscriber to the service. [deleted]~~
- 2.7.20G G ~~A person in PERG 2.7.20EAG would also not normally be providing information in relation to a *specified benchmark* if:~~  
A
- (1) ~~the information is made available to the *benchmark administrator* by a third party; and~~
- (2) ~~the third party can rely on any exemption in PERG 2.7.20GG. [deleted]~~
- 2.7.20H G ~~The activity of *administering a specified benchmark* comprises:~~
- (1) ~~administering the arrangements for determining the benchmark;~~
- (2) ~~collecting, analysing or processing information or expressions of opinion provided for the purpose of determining a *specified benchmark*; or~~
- (3) ~~determining a *specified benchmark* through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose. [deleted]~~
- 2.7.20I G ~~For the avoidance of doubt, a *firm* who is a *benchmark submitter* is not expected to be carrying out the activities mentioned in PERG 2.7.20HG (2) if it collects, analyses or processes information or expressions of opinion for the purposes of making its own submissions. [deleted]~~
- 2.7.20J G ~~*Specified benchmarks* are listed in Schedule 5 to the *Regulated Activities Order*; since 1 April 2015 the following are *specified benchmarks*:~~
- (1) ~~the London Interbank Offered Rate (LIBOR);~~
- (2) ~~ICE SWAP RATE;~~
- (3) ~~Sterling Overnight Index Average (SONIA);~~
- (4) ~~Repurchase Overnight Index Average (RONIA);~~
- (5) ~~WM/Reuters London 4 p.m. Closing Spot Rate;~~
- (6) ~~LBMA Gold Price;~~
- (7) ~~LBMA Silver Price;~~
- (8) ~~ICE Brent Index. [deleted]~~

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