

Handbook changes to reflect the application of the EU Benchmarks Regulation

Consultation Paper

CP17/17**

June 2017



How to respond

We are asking for comments on this Consultation Paper by 22 August 2017.

You can send them to us using the form on our website at: www.fca.org.uk/cp17-17-response-form.

Or in writing to:

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returns you to the contents list



takes you to helpful abbreviations

Contents

1	Summary	3
2	The wider context	6
3	Legislative background	8
4	Handbook changes	11
5	Making an application	17
6	Fees	21
Annex 1	List of questions	27
Annex 2	Cost benefit analysis	28
Annex 3	Compatibility statement	31
Annex 4	Abbreviations used in this paper	34
Appendix 1	Draft Handbook text	36

1 Summary

Why we are consulting

- 1.1** These are our proposals for ensuring that our Handbook is consistent with the directly-applicable EU Benchmarks Regulation¹ (BMR), most of which will apply from 1 January 2018.

Who this applies to

1.2 Who needs to read this whole document?

- Benchmark administrators
- Firms that are already supervised and that contribute input data to benchmarks

1.3 Who only needs to read this summary?

- Firms that are already supervised and that use benchmarks in financial instruments or certain financial contracts or in relation to investment funds. Parts of the BMR directly apply to them, but the Handbook changes do not.

1.4 Who doesn't need to read this consultation, though it affects them?

- Retail consumers of financial instruments or contracts or investment funds that are based on benchmarks could be affected by the application of the BMR, but they do not need to read the detailed proposals about Handbook changes.

The wider context of this consultation

- 1.5** The BMR aims to prevent harm that could affect those who use financial instruments or contracts or investment funds that reference benchmarks. Its system of regulation will replace to some extent the existing UK regulation of certain specified benchmarks and will apply to a much wider range of indices. We must therefore remove some rules from the Handbook, and ensure other rules and guidance are made compatible with the BMR.

¹ 'Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016' (OJ L171, 29.06.16, p.1 <http://data.europa.eu/eli/reg/2016/1011/oj>)



What we want to change

- 1.6** We need to change various parts of our Handbook so that it is consistent with the BMR. Mostly this involves removing domestic rules that are superseded by the BMR, though they will continue to apply to the administrators of and submitters to those benchmarks we already regulate until their administrators become authorised or registered under the BMR. We propose to maintain some domestic rules on benchmark administrators in areas not covered by the BMR.

Approved Persons Regime (APR) and Senior Managers Regime (SMR)

- 1.7** We propose that the SMR should continue to apply to any benchmark firms that are already subject to it, but we propose not to apply the Certification Regime in relation to benchmark activities. We also propose that the APR should continue to apply to other firms though with some modifications. In applying the APR and SMR, we will require the identification of the senior person who has been given responsibility for benchmark activities (see paragraphs 4.4 to 4.11).

Prudential requirements

- 1.8** We propose to maintain the requirement for a minimum level of financial resources only for administrators of the most important benchmarks, ie ones that are designated as 'critical' by the European Commission.

Notification of suspected manipulation

- 1.9** We propose to clarify that we expect administrators to forward to us all reports they receive from their contributors about suspected manipulation of a benchmark. We are also considering requiring contributors that are already supervised to report suspicions of manipulation to us directly.

Right to make representations about a compulsion decision

- 1.10** Any contributors we compel under the BMR to provide input data for a critical benchmark and any administrator we compel under the BMR to continue publishing a critical benchmark will be given a right to make representations to us about the decision to compel them.

Third country contributors

- 1.11** The Handbook will apply the BMR provisions on supervised contributors to contributors we supervise that are branches in the UK of third-country firms.

Applications

- 1.12** We also explain the way we propose to receive and deal with applications for authorisation or registration under the BMR, based on the requirements of the draft EU technical standards and using our existing systems.

Unintended consequences of our intervention

- 1.13** We do not think our proposals will give rise to any unintended consequences.

Outcome we are seeking

- 1.14** We want our proposals to ensure that the application of the BMR from 1 January 2018 will enable firms to become authorised or registered in a straightforward and efficient manner; and to provide a framework that will enable us to supervise them transparently and effectively.

Measuring success

- 1.15** We expect to be able to assess the achievement of the aims of our proposals from our involvement in the authorisation and supervision process.

Next steps

Respond to the proposals for Handbook changes

- 1.16** We want to know what you think of our proposals. Please send us your comments on our proposed Handbook changes by 22 August. You can use the online response form on our website or write to us at the address on page 2.
- 1.17** We will consider your feedback and plan publish our rules in a Policy Statement in October.
- 1.18** **Give us feedback on the draft application forms**
As we explain in Chapter 5, we plan to make drafts of the application forms available on 6 July, and we would like your comments on them by 6 August.

More information

- 1.19** We encourage you to consult our BMR webpages² for up-to-date news, and to sign up for our BMR email updates.³

² www.fca.org.uk/markets/benchmarks/eu-regulation

³ www.fca.org.uk/markets/benchmarks/eu-regulation/email-updates



2 The wider context

The harm we are trying to address

- 2.1** This consultation is necessary because most of the BMR applies from 1 January 2018. The BMR is intended to address the harm that could be caused in terms of causing losses to consumers and investors and distorting the real economy, if failures in, or doubts about, the accuracy or integrity of benchmarks were to undermine market confidence.
- 2.2** At present under UK law, we supervise eight 'specified benchmarks', while the BMR applies much more widely, including all indices that are used in the EU as the basis for financial instruments or certain financial contracts, or that are referenced by an investment fund. This means that many firms that are not currently supervised by us will need to apply to us for authorisation or registration under the BMR.
- 2.3** The following chapter provides more information on the BMR and its application in the UK.

How it links to our objectives

Market integrity

- 2.4** Our proposals are intended to advance our strategic objective of making the relevant markets work well, as well as our operational objective of ensuring market integrity. The proposals are designed to make the Handbook consistent with the directly applicable BMR, which, as noted above, seeks to prevent the harm that could arise from problems with benchmarks undermining market confidence.

Consumer protection

- 2.5** Ensuring the accuracy and integrity of benchmarks is also intended to protect consumer interests, as there are many consumer products that use or make reference to benchmarks, including loan agreements and investment funds.

What we are doing

- 2.6** As explained in the Summary, we plan to publish a Policy Statement in October.
- 2.7** The remainder of the CP sets out:
- The legislative background, including the BMR and the UK legislation that will be required to give effect to aspects of it;
 - An explanation of the proposed changes to the Handbook
 - The way in which administrators will apply to use for authorisation or registration
 - Our proposals on fees

- The Annexes include a summary of the list of questions, our cost benefit analysis, a statement of how we have complied with our legal obligations.
- The Appendix presents the draft legal instrument that would amend the Handbook.

Equality and diversity considerations

- 2.8** We have considered the equality and diversity issues that may arise from our proposals.
- 2.9** Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 2.10** In the meantime we welcome any input to this consultation on such matters.



3 Legislative background

The EU Benchmarks Regulation (BMR)

- 3.1** Following a proposal from the European Commission ('the Commission') in 2013, the BMR was agreed in June 2016. Its main aim is to ensure the accuracy, robustness and integrity of benchmarks and of the way benchmarks are determined. It seeks to achieve this by setting out rules for benchmark administrators, including a requirement for them to be approved by their national competent authority through authorisation or registration.
- 3.2** Users in the EU that are supervised, whether under MiFID II, CRD IV, or one of several other pieces of specified EU legislation, are required to use benchmarks only from authorised or registered administrators. There are three routes by which third-country benchmarks can become able to be used by EU supervised users: equivalence, recognition and endorsement.
- 3.3** The BMR will apply to all indices that are used in financial instruments or in certain financial contracts (mortgages and consumer credit contracts), or that are used to measure the performance of investment funds.
- 3.4** In the interests of proportionality, the BMR separates benchmarks according to their importance into 'critical', 'significant', and 'non-significant'. Administrators of the second and third categories have some flexibility not to comply with certain requirements in the BMR. The BMR also to some extent tailors the requirements if a benchmark is based on interest rates, or on commodities, or on 'regulated data' – meaning it is determined from input data from trading venues regulated under MiFID II or from certain other EU-regulated sources, or from the net asset values of investment funds.
- 3.5** Unlike the current UK regulation, the BMR does not require any authorisation or regulation of those who contribute input data to a benchmark. But it does apply rules about governance and control to contributors that are already supervised for other reasons.
- 3.6** In a number of areas there will be supplementary Commission Regulations. The European Securities and Markets Authority (ESMA) provided Technical Advice on some of these issues in November 2016⁴, and draft Technical Standards on the remainder in March 2017.⁵ We are basing our preparation for the application of the BMR, including the proposals in this Consultation Paper, on the assumption that the Commission's Regulations will follow ESMA's advice and proposals closely. To the extent that there are any significant changes, we may need to change our approach.

4 'Final Report: Technical advice under the Benchmarks Regulation', ESMA, www.esma.europa.eu/sites/default/files/library/2016-1560_final_report_on_technical_advice_on_benchmarks_regulation.pdf

5 'Final Report: Draft technical standards under the Benchmarks Regulation', ESMA, www.esma.europa.eu/sites/default/files/library/esma70-145-48_-_final_report_ts_bmr.pdf

- 3.7** It is also possible that ESMA will provide further guidance, or questions and answers about the BMR, to clarify the ways in which we and other national competent authorities will expect to apply the BMR, and again this could have an impact on our approach.
- 3.8** With a few exceptions, the BMR applies from 1 January 2018, and benchmark administrators can apply for authorisation or registration from that date. There is a two-year transitional period by the end of which a benchmark administrator must apply. During that two-year period, users can continue to use existing benchmarks. As noted in the ESMA Final Report in March 2017, there is some uncertainty about the interpretation of the transitional provisions, and ESMA are considering issuing guidance on this. For the time being, we are working on the assumption that benchmarks in use before 1 January 2018 can continue to be used during the transitional period, but that from that date any new benchmarks can be used only if the administrator is authorised or registered.

Application in the UK

- 3.9** The UK is one of a small number of countries that already has a system of regulating benchmarks. It was introduced by amendments to the Financial Services and Markets Act 2000 (FSMA), originally applying only to LIBOR in 2013, and has since been extended to a further seven benchmarks. These eight specified benchmarks⁶ are issued by five administrators. In the UK we also regulate contributors to specified benchmarks. Not all benchmarks are based on contributions, and at present LIBOR is the only one of the eight for which we regulate contributors.
- 3.10** Being a regulation, the BMR is directly applicable, and it will substantially replace the UK regime that regulates benchmark administrators and contributors. We will therefore have to remove some of the provisions about benchmarks that are currently in the Handbook.
- 3.11** The UK Government will have to legislate to provide the FCA, as the competent authority, with supervisory, disciplinary and investigatory powers in relation to benchmark administrators and others, to introduce sanctions for breach of the BMR and to make any necessary changes to give effect to the authorisation, registration, endorsement and recognition regimes under the BMR.
- 3.12** We understand that the Treasury currently plans to do this by a Statutory Instrument (SI). We expect that this will amend the Regulated Activities Order (RAO) to remove the existing regulated activity in relation to administering the current eight regulated benchmarks and to introduce a new activity of administering a regulated benchmark, and that it will treat the authorisation or registration of administrators as a permission under Part 4A of FSMA, though with some necessary adjustments discussed below. We expect that the activity of contributing to the existing eight specified benchmarks will no longer be a regulated activity under the RAO. However, supervised entities which contribute to a benchmark will be subject to various directly applicable obligations and powers under the BMR itself. We are basing our preparation for the application of the BMR, including the proposals in this CP, on our current understanding of what the Treasury's SI will say. To the extent that the final SI differs from this, we may need to change our approach.

6 Listed on our website: www.fca.org.uk/markets/benchmarks/powers



- 3.13** A number of requirements and rules generally apply to regulated financial services firms, whatever the nature of their permission. Some elements of these will have to be disapplied where they address an area that is covered by the BMR. Some of these are discussed below as areas where we need to carve benchmark administrators out of the application of certain Handbook rules, and there are others where the required changes will be in the primary and secondary UK legislation applying to benchmark administrators. In particular, we expect the Treasury's SI to disapply the threshold conditions, the rules on change in control, and the appointed representative regime.
- 3.14** We understand that the SI will make us the sole competent authority for the BMR, so that all applications for authorisation or registration will come to us, even if an applicant is already regulated by another regulator. In particular, we expect that it will amend the FSMA process to give the FCA formal responsibility under the BMR for authorising and registering any applicant that is already regulated by the Prudential Regulatory Authority (PRA) or is jointly regulated, subject to a requirement to exercise that responsibility for such firms in consultation with the PRA. The PRA is reviewing whether it will need to make some consequential changes to its Rulebook as a result of the BMR, and we understand that it intends to consult on any changes required later this year.
- 3.15** Our Handbook rules and our forms will have to reflect the final versions of the EU and UK legislation once made. If we had waited until these were available before making our proposals and consulting on them, it is unlikely that we would have been able to make the Handbook changes before the BMR applies at the beginning of 2018. We are therefore consulting on the basis of our current understanding of what the final legislation is likely to be.

4 Handbook changes

- 4.1** The BMR is directly applicable and will supersede most of the Handbook rules that deal specifically with benchmark administration and contribution. In particular, much of the benchmarks section of the Market Conduct sourcebook (MAR 8) will be deleted or amended. These changes will take effect on 1 January 2018. However, the current version of MAR 8 will continue to apply in relation to benchmarks that are currently specified, and so will continue to apply to the administrators of, and contributors to, those benchmarks until the administrator of each is authorised or registered under the BMR.
- 4.2** Of the rules that generally apply to firms we regulate, we have identified a number that overlap significantly with the BMR. As explained below, many of the changes in our proposals are to exclude these rules from applying to benchmark administrators.
- 4.3** This chapter explains our proposals for maintaining some areas of the Handbook with amendments.

Senior Managers and Approved Persons

Administrators

- 4.4** The Senior Managers Regime (SMR) currently applies to banks, building societies, credit unions and investment firms, and we propose that the SMR should continue to apply to them if they become authorised or registered as benchmark administrators. Firms subject to the SMR are already required to allocate overall responsibility for each the firm's activities, business areas and management functions to a senior manager. That includes responsibility for benchmark activities. To ensure we are able to supervise benchmark administrators effectively, we propose to retain that requirement in relation to benchmark activities. This will not be defined as a 'prescribed responsibility' under the SMR.
- 4.5** We do not propose to apply the Certification Regime to any roles related specifically to benchmarks, as the BMR contains requirements on administrators to ensure employees are fit and proper which should achieve a similar outcome to the Certification Regime.
- 4.6** For administrators that are not subject to the SMR at the time they are authorised or registered, we propose that the Approved Persons Regime (APR) should apply to some extent. As with the SMR, we will need to be notified of the senior manager who has been given responsibility for the firm's benchmark activities, but we propose to disapply those controlled functions (CF) that overlap with the BMR.
- 4.7** Under our proposals, the CF50 function (benchmark administration function) would disappear entirely. And we would amend the Handbook so that the following functions would not apply to benchmark activities:
- CF8 – Apportionment and oversight function
 - CF10 – Compliance oversight function



- CF11 – Money laundering reporting function
- CF28 – Systems and controls function

4.8 Many of the other CFs will simply not be relevant to benchmark administration. For example, benchmark administration does not involve holding client assets, and so CF10A (Client assets (CASS) operational oversight function) will not apply. We estimate that for many benchmark administrators that carry out no other regulated activities, the only functions that will be relevant will be the 'governing functions', ie directors and similar top management functions. Of course, any firm that is required to have a function because it has other regulated activities will still be required to have it after it becomes a benchmark administrator.

4.9 Alongside the APR, we propose that the Handbook Statements of Principle and Code of Practice for Approved Persons (APER) will apply to approved persons; and we propose that in relation to firms subject to the BMR, the Code of Conduct for Staff (COCON) will apply to all staff other than ancillary staff.

Contributors

4.10 The BMR applies certain rules to supervised contributors to a benchmark, and the relevant draft Technical Standards will require a supervised contributor to identify the senior personnel responsible for its benchmark contributions. We propose, under the SMR or APR, to require contributors to notify us of that individual.

4.11 On the other hand, as with administrators, we do not propose to regulate functions involved in making contributions, as this would overlap with the BMR and Technical Standards. The CF40 function (benchmark submission function) would therefore disappear.

Extension of SMR

4.12 We will be consulting separately during the summer on extending the SMR to all FSMA-authorized firms and to insurers. We propose to include benchmark administrators in that extension, applying the SMR to all benchmark administrators and not just those that are already subject to it because of another authorisation. If in the light of the two consultations we decide to do so, we will consult later on the required Handbook changes.

Prudential regime

4.13 We apply a prudential regime to many of the firms we regulate, including the current five administrators of specified benchmarks, meaning that they are required to maintain a certain level of financial resources. The BMR does not address this aspect of regulation. We propose to maintain the prudential regime in MAR 8.3.13 to 8.3.16 only for those administrators that are responsible for benchmarks designated as 'critical' under Article 20 of the BMR. These are the benchmarks that are used in relation to more than €500 billion of financial instruments or financial contracts or investment funds, or that a national competent authority has assessed as being of particular importance – taking into account the impact that its disruption could have on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses. We do not propose to impose any prudential requirements on other administrators.

Compulsion of administrators of, or contributors to, critical benchmarks

- 4.14** In certain circumstances, the BMR enables a national competent authority to require an administrator to continue publishing, or a contributor to provide input data to a critical benchmark. This does not require any changes to the Handbook, except that we propose to include guidance on the opportunities we propose to give to anyone compelled under the BMR to make representations about a decision to compel them.
- 4.15** As the BMR does not include any explicit right of appeal, we propose that anyone who is compelled will have the right to make representations to us if they are dissatisfied with a decision to compel them, and that we will carry out an internal review. In accordance with general law, judicial review will in any case be available.

Notification of suspected manipulation

- 4.16** The BMR requires an administrator to report to its competent authority any conduct that may involve manipulation or attempted manipulation of a benchmark under the EU Market Abuse Regulation. We propose to provide guidance saying that we would expect a benchmark administrator to notify us without delay of any notification it received from a contributor about manipulation or attempted manipulation under the Market Abuse Regulation.
- 4.17** Given the importance of ensuring that we have the necessary tools to monitor suspected manipulation, we are also considering the option of making a rule to require any supervised benchmark contributor to notify us directly of any suspicion of manipulation or attempted manipulation of a benchmark under the Market Abuse Regulation. We propose to make a decision on whether to make a rule of this type in the light of this consultation.

UK branches of third-country firms

- 4.18** As we explain in Chapter 5, for third-country administrators, there are ways of seeking to make their benchmarks available to EU supervised users. They may also want to do this through a branch in the UK.
- 4.19** There is doubt about whether the BMR applies to contributors to a benchmark that are EU branches of third-country firms. Working on the cautious assumption that it does not apply, we propose to apply the rules that apply to contributors in Article 16 of the BMR to UK branches of third-country firms that contribute to a benchmark administered by a UK administrator. As those rules apply only to supervised contributors, we propose to apply them only to branches that are already regulated by us and that would be supervised contributors if their head office was based in the EU.
- 4.20** As noted in our earlier CP on LIBOR contributions,⁷ if it was necessary to compel a third-country branch contributor to provide input data to a critical benchmark, we would expect to do so under our domestic powers (in FSMA) rather than the BMR.

⁷ 'Powers in relation to LIBOR contributions', CP17-15, Financial Conduct Authority, 9 June, www.fca.org.uk/publications/consultation-papers/cp17-15-powers-relation-libor-contributions



Other changes to the Handbook

Senior Management Arrangements, Systems and Controls (SYSC)

- 4.21** As well as changes to give effect to the APR/SMR proposals above, we are excluding the application of the common platform requirements (SYSC 4 to 10) that overlap significantly with the BMR. These include the areas of systems and controls for risk, outsourcing, some record-keeping and conflicts of interest rules, all of which are dealt with in the BMR.

Fees manual (FEES)

- 4.22** Chapter 6 presents our proposals for one-off and periodic fees for becoming and operating as a benchmark administrator.

Supervision manual (SUP)

- 4.23** SUP provides the mechanisms we use to exercise our supervisory responsibilities in relation to all authorised firms, and much of it will apply to benchmark administrators. However, as well as changes necessary to give effect to the APR/SMR proposals above, we are proposing a number of changes to SUP:

- Excluding some parts from applying to benchmark activities where the area is covered by the BMR. This includes audit (SUP 3)
- Requiring administrators that already produce Annual Reports and Accounts for other purposes to send them to us (SUP 16)

Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG)

- 4.24** We will provide further guidance on decision-making, procedures and penalties, and enforcement matters for benchmark administrator applications when we consult on DEPP and EG later in the year.

Transitional provisions

- 4.25** As noted above, we expect that Treasury's SI will have the effect that the existing regulated activities in relation to benchmark administration will continue to apply to the administrators of the eight benchmarks which are currently regulated until those administrators are authorised or registered under the BMR. Similarly we expect that the existing regime will continue to apply to firms that act as submitters in relation to those benchmarks (in practice, only LIBOR) until the relevant administrator has been authorised or registered under the BMR. In view of that, in order to avoid any regulatory gap, we propose to continue to apply the current Handbook rules applicable to each of the administrators of the existing eight specified benchmarks until each one is authorised or registered under the BMR.

- 4.26** Similarly, we propose to continue to apply the current Handbook rules to LIBOR submitters until the LIBOR administrator has been authorised or registered under the BMR. This involves retaining parts of MAR 8.2-8.3 just for this purpose. It also involves adding a new Transitional Provisions annex (TP 9) to SUP, to ensure the existing rules continue to apply. We plan to remove MAR 8.2-8.3 from the Handbook after consultation, possibly in a Quarterly Consultation Paper, once all of those administrators are authorised or registered under the BMR.

- 4.27** The instrument refers to the new regulated activity of 'administering a regulated benchmark'. This relates to administering a benchmark for the purposes of the BMR and is distinct from the existing activity of 'administering a specified benchmark'.

We expect that the latter will not apply once the current administrators have been authorised or registered under the BMR. Similarly, we expect that the regulated activity of "providing information in relation to a specified benchmark" (performed by a "benchmark submitter") will not apply once the relevant benchmark administrator has been authorised or registered under the BMR. In reading the draft legal instrument in Appendix 1, bear in mind that any rules applying specifically to "administrators of specified benchmarks", or to "benchmark submitters" have effect only for transitional purposes and will not apply to new administrators or contributors under the BMR.

Consequential changes to the Handbook

- 4.28** Appendix 1 contains changes not described above to various parts of the Handbook including parts that are disapplied as overlapping with the BMR, parts that apply except to the extent that they overlap, and parts where there are technical amendments as a consequence of the BMR or of the changes described above.
- 4.29** The following parts are disapplied as overlapping with the BMR
- Threshold Conditions (COND)
 - Dispute Resolution: the Complaints sourcebook (DISP)
 - Sections 4.2, 4.3 and 4.4 and chapter 7 of General Provisions (GEN)
- 4.30** We propose to exclude benchmark administration from the compulsory jurisdiction of the Financial Ombudsman Service, though the Service could consider a complaint about benchmark administration if it was ancillary to an activity within their jurisdiction. We propose that benchmark administration will be outside the scope of the Financial Services Compensation Scheme.
- 4.31** The following parts will generally apply, except to the extent that their application would be contrary to the requirements of the BMR
- Code of Conduct for Staff handbook (COCON)
 - Statements of Principle and Code of Practice for Approved Persons (APER)
- 4.32** There are technical consequential changes to the following parts of the Handbook:
- Glossary of definitions
 - The Fit and Proper Test for Approved Persons and Specified significant harm functions (FIT)
 - Credit Unions sourcebook (CREDS)
 - The Perimeter Guidance manual (PERG)



- 4.33** Appendix 1 also contains a rewrite of the Guide for Benchmark Activities (BENCH), the part of the Handbook that summarises all the requirements on benchmark administrators. We propose to amend this to reflect the proposed changes to the Handbook. We also propose to include references and links to the BMR and to the EU legislation made under it.

Q1: Do you agree with our proposals to adapt the Handbook to be consistent with the BMR?

Mortgages

- 4.34** The BMR also contains an amendment to the Mortgage Credit Directive (MCD), which we need to implement. This amendment requires lenders and tied credit intermediaries who offer any mortgage linked to a benchmark rate to make available the name of the benchmark, who administers it, and the potential implications for consumers. This requirement comes into force on 1 July 2018 (as opposed to 1 January 2018 for the rest of the changes). It should be relatively inexpensive, as it can be satisfied by relevant firms adding this information to their websites. In preparing for this implementation, we also discovered that one clause in Article 13 of the MCD had not been transposed into our Handbook. This clause requires lenders and tied credit intermediaries to disclose a description of the conditions related to early repayment. We propose to take this opportunity to transpose this clause into the Handbook at the same time as implementing the amendment.

Q2: Do you agree with our approach to implementing the additional mortgage disclosure required by the Regulation and to correcting our transposition of the MCD?

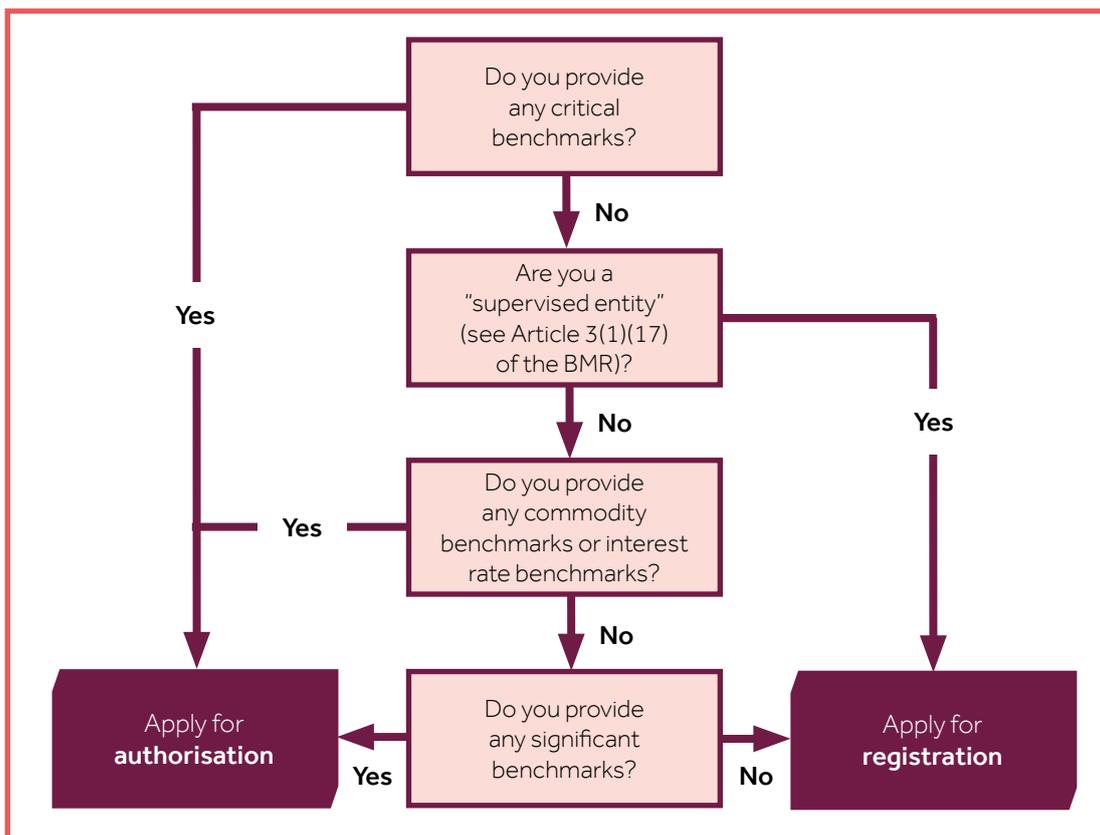
Changes to other EU legislation

- 4.35** As well as amending the MCD, the BMR makes changes to the Market Abuse Regulation and to the Consumer Credit Directive, and to the application of the Prospectus Directive. We do not think any Handbook changes are required as a result.

5 Making an application

- 5.1** The BMR provides two mechanisms through which a benchmark administrator located in the EU can gain permission to continue to issue benchmarks after the transitional period: authorisation and registration. Firms that are already subject to supervision, under MiFID II, CRD IV or one of various other pieces of EU legislation specified in Article 3(1)(17) of the BMR, will use the registration process, unless they produce a critical benchmark, in which case they need to be authorised. Firms that are not already supervised must apply for authorisation, unless they produce only non-significant benchmarks, in which case they should apply for registration. (See Figure 1.)

Figure 1: Authorisation v Registration for benchmark administrators



- 5.2** The BMR sets out three ways by which benchmarks issued by administrators outside the EU can be approved for use in the EU. For two of these, recognition and endorsement, we will be responsible for dealing with applications.
- 5.3** When we have approved any of the applications outlined above, we will inform ESMA of the administrator's identity and, in the case of third-country benchmarks, the benchmarks that are recognised or endorsed. The ESMA list determines which benchmarks are available to supervised users after the transitional period. For UK administrators, we will also display the permissions granted on our register.



UK benchmark administrators

- 5.4** The BMR allows us 4 months to process an application for authorisation, or 45 working days (around 2 months) to process an application for registration. As discussed in paragraph 3.8 above, we are working on the understanding that the transitional provisions do allow supervised users to use benchmarks after 1 January 2018 only if the benchmark was being used before then, or if the administrator has been authorised or registered. We understand that there are administrators and users that would want to be able to use new benchmarks continuously.
- 5.5** It will only be possible for firms to make formal applications to us under the BMR from 1 January 2018, but we are planning to make it possible for firms to submit draft applications from 1 October 2017. This will enable firms that wish to be able to issue new benchmarks to provide us with the information we need early, and for us to start considering that information before the start of formal applications in January 2018. We also plan to communicate to and engage with firms before October so they can be clear about what the requirements mean for them.
- 5.6** There is no grandfathering provision in the BMR, and so the administrators we currently regulate will need to apply for authorisation or registration.

Third-country benchmarks

- 5.7** The BMR sets out three ways by which benchmarks issued by administrators outside the EU can be approved for use in the EU:
- **Equivalence** – Article 30 provides a mechanism by which the Commission can adopt an equivalence decision in relation to a third country. This enables either all administrators approved under that country's benchmarks regime, or specified administrators or benchmarks in that country, to be included in the ESMA register so that the benchmarks can be used in the EU.
 - **Recognition** – Article 32 provides that a third-country administrator can apply to an EU national competent authority – there are rules to specify which one – for recognition, which can be based on application of IOSCO principles. The administrator has to have a legal representative in the Member State in which it applies. The legal representative has to perform an oversight function for the benchmark, and is accountable to the competent authority.
 - **Endorsement** – Article 33 enables an EU benchmark administrator or other supervised entity to apply to endorse a benchmark or family of benchmarks provided in a third country. The endorser has to verify that the provision of the benchmarks fulfils requirements at least as stringent as the BMR, and have processes for ongoing monitoring. It also needs to show that there is a reason for the benchmark to be provided outside the EU and used inside.
- 5.8** Equivalence does not involve national competent authorities, and so is not considered further in this CP.

- 5.9** It is for those with an interest in making third-country benchmarks available in the EU to decide which route is best for them. The requirements for applications for recognition are similar to those for authorisation or registration, as Article 32(2) requires a recognised administrator to comply with most of the requirements of the BMR, and we will have to be able to assess their ability to do so. Endorsement relies on the endorser to verify and monitor compliance, and so the applications will be a simpler process.

Application forms

- 5.10** We plan to enable firms to use our Connect system to apply to be a benchmark administrator. If a firm is not currently authorised by us, it will be able to register for access.
- 5.11** Within Connect, an applicant will be asked a number of questions about its status and its benchmarks, and will be taken to the appropriate form, for authorisation, registration, recognition or endorsement. The content of the authorisation, registration and recognition forms will be closely based on the draft Regulatory Technical Standards submitted by ESMA to the Commission in March 2017.
- 5.12** We plan to consult on draft application forms on 6 July. From that date, the following links will take you to them:
- Authorisation Form – www.fca.org.uk/publication/forms/benchmark-administrator-authorisation-form.docx
 - Registration Form – www.fca.org.uk/publication/forms/benchmark-administrator-registration-form.docx
 - Endorsement Form – www.fca.org.uk/publication/forms/benchmark-administrator-endorsement-form.docx
 - Recognition Form - www.fca.org.uk/publication/forms/benchmark-administrator-recognition-form.docx
- 5.13** If you are considering making an application, the draft forms should help you to prepare, but note that they are drafts and the final forms may be different.
- 5.14** We would like your views on the forms within one month of our publishing them, so please respond to the following question by 6 August.



Q3: Do you have any comments on the draft benchmarks application forms?

5.15 As a consequence of the changes we are proposing to make in relation to the APR, some of the forms for applying to perform controlled functions under the APR ('Form A' and 'Form E') would need to be amended in two ways (set out in the draft instrument in Appendix 1):

- Deletion of CF40 (benchmark submission function) and CF50 (benchmark administration function)
- Addition of a field for the senior manager who has been given responsibility for benchmark activities

Q4: Do you have any comments on the changes we propose to make to Form A and Form E?

6 Fees

- 6.1** In this chapter we set out our proposals for charging fees to benchmark administrators to recover our costs in supervising them.
- 6.2** We are funded entirely by the firms we regulate and receive no subsidies from other sources. Our fees are intended to distribute cost recovery between fee-payers as fairly and efficiently as possible. They are not intended to influence firms' behaviour. We have a standard cycle of fees consultation, which firms should monitor in case there are proposals which affect them. In October or November, we consult on fees policy proposals for the coming year and provide feedback through a Handbook notice or Policy Statement in February or March so that changes can take effect from 1 April. In March or April, we consult on fee rates for the coming year and confirm them through a Policy Statement in June so that invoices can be issued from July. Firms whose FCA fees were £50,000 or more in any year are charged an amount equivalent to half the previous year's fee in April, with the balance payable in September.
- 6.3** New firms and all applicants with critical benchmarks will apply for 'authorisation' as a benchmark administrator. But firms that are already regulated by us, or firms that only administer non-significant benchmarks, will apply for 'registration'. These terms are prescribed in the BMR. Firms applying for registration are only required to provide summary information, as it is assumed either that they have less important benchmarks, or that they are already regulated by us and, therefore, we already hold some information about them. We will have only 45 days to process applications for registration compared with four months for authorisation. Once administrators are through the gateway, they are required to meet the same systems and controls requirements, regardless of whether they were authorised or registered. Consequently, our fees proposals do not distinguish between 'authorised' and 'registered' benchmark administrators. They are focused on the administrator and take no account of the number of individual benchmarks it may administer.
- 6.4** The BMR will give us powers to agree to the use of benchmarks administered in third countries outside the EEA in two ways: (a) if a third-country administrator applies to us through a local representative in the UK for recognition as a benchmark administrator or (b) if a UK entity applies to us to endorse a specific third-country benchmark or benchmarks. We expect that most of the UK entities making applications for endorsement will already be FCA-authorised, but applications from other entities will be permitted under the BMR.
- 6.5** We are consulting on two sets of fees for benchmark administrators:
- one-off application fees
 - annual periodic fees



Application fees

6.6 When firms apply to be regulated by us, they pay a fee to contribute towards the cost of processing their applications. Application fees do not cover the full processing cost. This is because existing firms benefit from the confidence and credibility that our policing of the perimeter brings to the market. A proportion of the costs, currently around 60%, is therefore recovered from existing firms through periodic fees. We divide our existing application fees for most firms into three levels of complexity to reflect the resources we expect to put into them.

6.7 We propose to incorporate benchmark administration into our existing complexity groupings, based on the highest category of benchmark the firm is applying to administer:

- Complex application - £25,000
 - Administrators of critical benchmarks
- Moderately complex application - £5,000
 - Administrators of significant benchmarks, including all commodity and interest rate benchmarks which have not been designated as critical, and applications for recognition of third-country benchmark administrators
- Straightforward application - £1,500
 - Administrators of non-significant benchmarks and applications for endorsement of third-country benchmarks

6.8 Some points of clarification:

- **Opening the gateway:** The BMR will apply from 1 January 2018 but, as we explained in chapter 5, prospective benchmark administrators will be able to submit draft applications in advance so we can start to consider them. An application is not complete until the fee is paid. We will introduce the application fees from 1 January 2018 when we have the power under the BMR. Applicants will then be able to formalise their applications by paying the fee and notifying us that they have done so.
- **Applications covering more than one benchmark:** Where an applicant intends to administer more than one benchmark, it will pay just one fee, no matter how many benchmarks are included in the application. If they fall into different complexity groupings, it will pay the fee for the highest category.
- **Addition of new benchmarks after authorisation / registration / recognition:** The application fee will be a one-off charge. If, once authorised, registered or recognised, a benchmark administrator takes on new benchmarks, it will notify us without paying any additional fee, even if they fall into a higher category than its original application.
- **Variations of permission (VoPs):** When a firm already regulated by us applies to vary its permission to undertake a new activity, we usually offer a discount to reflect the fact that we already have considerable information about its business. We are not

proposing to allow VoP discounts for benchmark administrators. This is because the BMR will set specific criteria for approval of a benchmark administrator and so much of the information we collect from authorised firms will not be relevant. Accordingly:

- the full fee will be payable regardless of any other permissions a firm may hold from us when it applies to be a benchmark administrator
- if a firm whose only permission is to administer benchmarks applies for permission to undertake any other FCA-regulated activity, it will be treated as a new application and the firm will have to pay the full fee
- **Applications for other Part 4A permissions:** When a firm applies for several Part 4A permissions it usually pays only one fee – the highest. Because specific criteria will apply to benchmark administrators, this facility will not be available for applications to administer benchmarks. Firms will have to apply separately for permission to administer benchmarks and pay the full fee, in addition to any fees for other Part 4A permissions.
- **Applications for endorsement:** When a firm applies to endorse a third-country benchmark or group of benchmarks, we will be taking a view on the particular benchmark or benchmarks in the application. Consequently, any subsequent applications by the same firm to endorse new benchmarks will be charged the full fee. A lower VoP fee would not be appropriate because we will be evaluating the new benchmarks, not the firm. There will be no limit on the number of benchmarks a firm can include in any single application.
- **Existing benchmark administrators:** Several benchmark administrators are currently authorised to administer specified benchmarks. They will have to apply again for authorisation under the BMR. Since we have already assessed their capacity to administer benchmarks and are familiar with their performance as benchmark administrators, we will not charge them again. Instead, we will discount the application fee they paid previously from the fee payable under the BMR. This will result in most if not all of them paying no fee. In the unlikely event that any applies for a lower level of complexity, we will not charge it. However, we will not make a refund because the earlier fee contributed towards processing costs that we incurred at the time.

6.9 Some applicants may be regulated by the Prudential Regulation Authority (PRA) as well as the FCA. These 'dual-regulated' firms usually apply to the PRA in the first instance. They pay a fee both to the PRA and the FCA, but this does not affect the total paid. Since we both use the same charging structure, we each charge half the full fee. Our understanding is that the Treasury will designate us as the sole competent authority by Statutory Instrument, removing the need for dual-regulated firms to apply to the PRA as well as the FCA. If that is not the case, it will not affect the amount paid, but we will have to add benchmark administration to the definitions of the complexity levels for dual-regulated firms.



Periodic fees – proposals for consultation

6.10 We will be recovering two sets of costs through periodic fees:

- the annual running costs of the regime for regulating benchmark administrators
- the costs of setting up the new regime, including project work, development of policies, procedures and systems

6.11 To target recovery in the most effective way, we put fee-payers into 'fee blocks' which group together firms with similar permissions. We allocate our costs to the appropriate fee block and recover them through periodic fees (variable annual fees), based on a metric known as a 'tariff base', which is common to all firms in the fee block. Income is the most commonly used tariff base. The fee rate is calculated by dividing the total amount we need to recover from the fee block by the total value of the tariff data reported by all the firms in it. This allows us to distribute cost recovery within the fee block, based on the size of the firms. We set minimum fees for the smallest firms and firms only pay an additional variable fee if their data takes them above a certain threshold.

6.12 There is already a fee block for benchmark administration in the 'B' fee block and, following consultation in 2016, the rates are now based on income. We propose to put all benchmark administrators into this fee block. The tariff base would continue to be income as defined in FEES 4 Annex 11A with guidance in FEES 4 Annex 13 Table 1:

- The essence of the definition is 'the gross inflow of economic benefits ... in respect of, or in relation to activities that comprise a necessary part of its business as a benchmark administrator.' That is to say, the firm should only report income from benchmark administration and exclude income from the other activities it undertakes.
- In some cases, the sales and marketing of benchmarks are carried out by a separate company which merely pays a benchmark administrator's direct operating costs. If the benchmark administrator only reported these payments as income, it would understate the value and impact of the benchmarks it administers. It would pay less than its fair share of the fees, with the balance picked up by the other benchmark administrators who undertake their own marketing. We therefore require benchmark administrators operating under this business model to identify and report the relevant income of the marketing company, after deducting the amount paid for its operating expenses. For a more detailed discussion of the issues, please see our consultation on the introduction of an income measure for benchmark administrators in November 2016.⁸

6.13 We are not proposing any changes to the structure of the fee block or the income metric. The proposals we are consulting on are:

- **Definition of fee block:** The current fee block definition is: 'it administers one or more specified benchmarks.' The limitation to specified benchmarks will be removed under the BMR and so the definition will be revised to: 'it administers one or more regulated benchmarks.'

⁸ *Regulatory fees and levies: policy proposals for 2017/18* (CP16/33, November 2016), chapter 4.

- **Minimum fee:** When we consulted on the income measure last November, a number of respondents pointed out that the current minimum fee of £100,000 up to £3m of income for administrators of the current specified benchmarks would be too high for the prospective population under the BMR and we confirmed in our feedback that we recognised this.⁹ We have decided to align the minimum fee for benchmark administrators with the minimum fee paid by firms in the 'A' fee blocks. This was £1,084 in 2017/18 and we have consulted on a figure of £1,095 for 2018/19. We propose to set the threshold for minimum fees at £100,000 of income. Benchmark administrators with incomes above £100,000 would pay the minimum fee plus a variable rate.
- **Recognised benchmark administrators and endorsed benchmarks:** The UK entities that apply for recognition or endorsement of third-country BMAs or benchmarks will not be administering the benchmarks themselves, so will not derive any direct income from the activity. The income metric would therefore not be appropriate. Instead, we propose to charge them a fixed-rate fee. We do not yet know how many – if any – UK entities will make applications, how much work will be involved in overseeing them, or whether dealing with recognition and endorsement will make similar demands on our resources. We have decided to create separate fee bands for recognition and endorsement in case we need to set different rates in the future, but at present we expect to charge the same rate for both. As with authorised and registered benchmark administrators, we are not at this stage proposing that fees for recognition and endorsement should take account of the number of benchmarks involved.
- **Timing:** We propose not to charge periodic fees from firms that are authorised between January and March 2018 – the final quarter of the 2017/18 fee-year. We do not expect the number to be high and they would at most be liable for a pro-rated fee covering the remaining months of the fee-year. From October 2017, when the gateway opens, draft applications will give us more information on the range of incomes of benchmark administrators, enabling us to consult in March or April 2018 on definitive fee rates for 2018/19 as part of our standard annual cycle of fees consultation. We will confirm the rates in June. Invoices will be issued from July.

The existing benchmark administrators will pay their full 2017/18 fees as usual. Regardless of when they obtain authorisation under the BMR, they will be charged on the basis of the new structure from 1 April 2018.

Periodic fees – indicative ranges for information

6.14

Although we are not consulting on the variable rate payable on incomes over £100,000 or the fixed rate for recognition and endorsement, we appreciate that firms would welcome an indication of the rates they might be paying to help them with their business planning. The BMR will give firms until January 2020 to apply for benchmark administration permissions, so 2020/21 will be the first fee-year in which we have a full population of fee-payers. To keep our fees consistent throughout the interim period, our estimates are based on the number of benchmark administrators we expect to be regulating in 2020/21 and our current understanding of their incomes. We estimate that:

- the variable fee might be in the range of £10–£20 per £1,000 of income

⁹ FCA regulated fees and levies: rates proposals 2017/18 (CP17/12, April 2017), chapter 10.



- the fixed rate for recognised benchmarks and endorsed benchmarks might be in the range £5,000 - £15,000

6.15 We will consult on the actual rates in March or April 2018.

Q5: Do you have any comments on our proposals on fees?

Annex 1

List of questions

- Q1:** Do you agree with our proposals to adapt the Handbook to be consistent with the BMR?
- Q2:** Do you agree with our approach to implementing the additional mortgage disclosure required by the Regulation and to correcting our transposition of the MCD?
- Q3:** Do you have any comments on the draft benchmarks application forms?
- Q4:** Do you have any comments on the changes we propose to make to Form A and Form E?
- Q5:** Do you have any comments on our proposals on fees?
- Q6:** Do you agree with the cost benefit analysis for our policy proposals set out in Annex 2?



Annex 2

Cost benefit analysis

Introduction

1. Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to perform a cost benefit analysis of proposed rules, and to publish the results. This Annex describes the costs of the changes proposed in this Consultation Paper. It does not include the cost of the application of the BMR, as that will apply in any case with or without Handbook changes, nor of changes to the Handbook that are unavoidable consequences of the BMR.
2. This cost benefit analysis therefore deals with the costs and benefits of those proposed rules that are additional to the BMR, namely:
 - Senior Managers Regime (SMR) and Approved Persons Regime (APR)
 - prudential requirements for administrators of critical benchmarks
 - notification of suspicion of manipulation
 - right for a firm to make representations in the event of being compelled to provide a benchmark or to provide contributions to a benchmark
 - application of BMR rules for supervised contributors on FCA-supervised branches of third-country firms who contribute to a UK-administered benchmark.
3. The BMR has a much wider scope than the existing UK legislation on benchmark administration, and therefore most of the activities and firms to whom our rules will apply are not currently supervised by us. We therefore have limited information about the wider population of benchmark administrators to which our rules will apply. This limits our ability to estimate the scale of the costs and benefits.

SMR and APR

4. The proposal to apply the SMR to firms already subject to it will not in itself increase their costs. The requirement to inform us of which director or other senior manager is responsible for benchmark activities will impose a small cost of administration.
5. The proposal to apply the APR to benchmark administrators and the requirement to identify a director or other senior manager with responsibility for benchmark activities will mean those firms will have to supply us with information about their senior management. This will involve some administrative expense. For firms that are already regulated by us for other activities, the extra expense will be very small. For a pure benchmark administrator it will require some level of staff resource during the application process, and when there are changes in senior management.

6. As we have limited information about the wider population of benchmark administrators and supervised contributors, we have not been able to make specific estimates of the costs of complying. Looking at data relating to similar requirements on other firms, we would not expect the average set up cost or the average ongoing annual cost to be more than £10,000 per firm.
7. The benefit of applying the SMR and APR is that it will enable us to carry out our supervisory duties in relation to benchmark administrators and supervised contributors and, if necessary, to enforce the BMR – holding the appropriate people accountable.

Prudential requirements

8. The proposal is that administrators of critical benchmarks should be subject to the same prudential rules that currently apply to administrators of specified benchmarks in the Handbook.¹⁰ Each administrator would be required to have both sufficient liquid assets and net capital to be able to cover the operating costs of providing the critical benchmark for between 6 and 9 months.
9. At most, the capital requirements could require an administrator to hold extra capital corresponding to between 6 and 9 months of relevant operating costs. Operating costs will vary with the nature of the critical benchmark and the type of organisation the benchmark operator is. Based on our experience of the five administrators we currently supervise, nine months' operating costs can be up to around £5 million per benchmark. If an administrator had to increase his capital by that amount to meet our requirement, then assuming a cost of capital between 5% and 20%, it could cost between £250,000 and £1 million a year.
10. In practice, we would expect that administrators of critical benchmarks would have this level of capital already. There could be some opportunity cost if the liquid assets requirement made them increase the level of assets an administrator held in liquid form, but we would not expect that to be great.
11. The number of administrators of critical benchmarks will be determined by decisions yet to be taken under Article 20 of the BMR. We would not expect the number of UK critical benchmarks to be any greater than the 8 specified benchmarks we currently have.
12. The key benefit of the rule is that it should reduce the risk of disorderly discontinuation of a critical benchmark. Such a discontinuation would be very costly for markets and potentially for the wider economy. We will also have powers to compel the administrator of a critical benchmark to continue publishing it, and that will be effective only if it has the resources to continue.

Notification of suspicions of manipulation

13. We do not expect there to be any significant costs from the proposed guidance to administrators to forward to us all notifications they receive from contributors about suspected manipulation of a benchmark.

10 MAR 8.3.13R to 8.3.16



14. The proposal to require supervised contributors to notify us directly of suspicions of manipulation of a benchmark would complement a rule that should appear in the administrator's code of conduct for that benchmark requiring contributors to report suspicious input data to the administrator. The requirement for such a code of conduct rule is in the BMR and the draft Regulatory Technical Standards that ESMA submitted to the Commission in March 2017. If a contributor has processes for reporting suspicions to its administrator, we do not think there will be a significant cost from an additional requirement to report also to us.
15. The benefit of the proposals is that we would expect to receive more information about suspected manipulation more quickly. This would put us in a better position to detect and tackle manipulation of benchmarks, to the benefit of their users and of the market more widely.

Representations against compulsion

16. The guidance giving a firm the opportunity to make representations if it is compelled will not impose any costs.

Application of BMR rules to certain branches of third-country firms

17. We propose to apply Article 16 rules to FCA-supervised UK branches of third-country firms that contribute to benchmarks, so that they are subject to the same requirements as UK or other EU-based contributors. At present, LIBOR is the only benchmark that we regulate that is based on contributions, and the third country contributors to LIBOR already meet requirements that are more stringent than Article 16. Under the BMR, there may be further benchmarks with contributors, but we have no basis on which to estimate how many.
18. To the extent that any benchmark is already run to IOSCO standards, the contributors to it will already be applying a reasonable level of systems and controls to comply with the administrator's code of conduct. Under the BMR each administrator of a benchmark with contributors will be required to establish a code of conduct and to ensure that the contributors comply with it, and this applies to all contributors, not just EU ones. The content of the BMR code of conduct will include the same areas as Article 16, including governance arrangements to ensure that conflicts are managed and that input data is accurate. We would not therefore expect there to be significant incremental costs from applying the Article 16 rules to supervised UK branches of third-country contributors.
19. The benefit will be an improvement in the quality and integrity of a benchmark, which comes from the improvement in the quality and reliability of the input data.

Q6: Do you agree with the cost benefit analysis for our policy proposals set out in Annex 2?

Annex 3

Compatibility statement

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex includes our assessment of the equality and diversity implications of these proposals.
4. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

5. The proposals set out in this consultation meet our strategic objective of ensuring that relevant markets function well. This is because they are designed to make the Handbook consistent with the directly applicable BMR, which seeks to ensure the accuracy and integrity of indices used as benchmarks as to so avoid failures in, or doubts about, benchmarks undermining market confidence. They are also relevant for the FCA's consumer protection and integrity objectives.
6. The proposals set out in this consultation are, therefore, intended to advance our operational objective of ensuring market integrity, by protecting and enhancing the soundness, stability and resilience of the UK's financial system, and the orderly operation of the financial markets.
7. Many consumer products use or make reference to benchmarks, including loan agreements and investment funds. As the BMR and our rules are intended to ensure the accuracy and integrity of benchmarks, our proposals also advance our operational objective to secure an appropriate degree of protection for consumers.



8. We consider we are acting consistently with our duty under s.1B(4) of FSMA to, so far as compatible with the consumer protection objective or integrity objective, discharge our functions in a way which promotes effective competition in the interests of consumers.
9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA. We explain that briefly below.
 - a. **The need to use the resources of each regulator in the most efficient and economic way:**
10. Our proposals are intended to ensure that the rules and guidance around application and supervision enable firms and us to interact in the most efficient way possible under the BMR.
 - b. **The principle that a burden or restriction should be proportionate to the benefits:**
11. As explained throughout the CP, we have added extra rules only where we think that they do not overlap with the BMR and where we see a proportionate benefit that justifies the rules. The cost benefit analysis sets out our reasoning.
 - c. **the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term:**
12. We do not consider that the proposals are inconsistent with this principle.
 - d. (d) the general principle that consumers should take responsibility for their decisions:
13. We do not consider that the proposals are inconsistent with this principle.
 - e. **the responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements:**
14. Our proposals on SMR and APR are specifically designed to ensure that we can monitor and if necessary enforce the responsibilities of directors and other senior managers for compliance with the requirements that will apply to benchmark administrators and contributors.
 - f. **the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons (including different kinds of person such as mutual societies and other kinds of business organisation) subject to requirements imposed by or under FSMA:**
15. The proposed criteria are designed to take account of the differences between different types of firm.
 - g. **the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under FSMA, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives:**

16. Our proposals include our publishing the identity of benchmark administrators on our register, as well as submitting them to ESMA for inclusion on the register provided for in Article 36 of the BMR.

h. the principle that the regulators should exercise their functions as transparently as possible:

17. We do not consider that the proposals are inconsistent with this principle.

Expected effect on mutual societies

18. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

19. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.

Equality and diversity

20. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
21. The outcome of the assessment in this case is stated on page 7 of the CP.

Legislative and Regulatory Reform Act 2006 (LRRRA)

22. We have had regard to the principles in the LRRRA and the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance. In particular:
- by consulting we are developing the proposals in a way which is transparent and accountable
 - our proposals are intended be proportionate and to target action only where it is needed by removing or disapplying Handbook rules that would overlap with the BMR, and by maintaining rules to supplement the BMR only where it will improve our ability to deal with applications from benchmark administrators and to supervise them effectively.

Annex 4

Abbreviations used in this paper

APR	Approved Persons Regime
BAU	Business as usual
BMR	EU Benchmarks Regulation
CF	Controlled function
Commission	European Commission
CP	Consultation Paper
ESMA	European and Securities Markets Authority
FSMA	Financial Services and Markets Act 2000
LIBOR	London Interbank Offered Rate
MCD	Mortgage Credit Directive
PRA	Prudential Regulatory Authority
RAO	Regulated Activities Order
SI	Statutory Instrument
SMR	Senior Managers Regime
Short and long names of Handbook parts mentioned in this paper	
Glossary	Glossary of definitions
APER	Statements of Principle and Code of Practice for Approved Persons
BENCH	Guide for Benchmark Activities
CASS	Client Assets sourcebook
COCON	Code of Conduct for Staff sourcebook
COLL	Collective Investment Schemes sourcebook
COMP	Compensation sourcebook

COND	Threshold Conditions
CREDS	Credit Unions sourcebook
DISP	Dispute Resolution: the Complaints sourcebook
DTR	Disclosure Guidance and Transparency Rules sourcebook
FEES	Fees Manual
FIT	The Fit and Proper Test for Approved Persons and Specified significant harm functions
FUND	Investment Funds sourcebook
GEN	General Provisions
MAR	Market Conduct sourcebook
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
PERG	Perimeter Guidance manual
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS



Appendix 1

Draft Handbook text

BENCHMARKS REGULATION AMENDMENT INSTRUMENT 2017**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); and
 - (q) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority)
 - (2) [Article X of the Financial Services and Markets Act (2000) (Benchmarks) Regulations 2017].
- 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 1 January 2018 except:
- (1) FEES 4 which comes into force on 1 April 2018; and
 - (2) Part 2 of Annex I 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
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Code of Conduct sourcebook (COCON)	Annex C
Threshold Conditions (COND)	Annex D
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex E
The Fit and Proper test for Approved Persons and specified significant harm functions (FIT)	Annex F
General Provisions (GEN)	Annex G
Fees manual (FEES)	Annex H
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex I
Market Conduct sourcebook (MAR)	Annex J
Supervision manual (SUP)	Annex K
Dispute Resolution: Complaints (DISP)	Annex L
Credit Unions sourcebook (CREDS)	Annex M
General guidance on Benchmark Submission and Administration (BENCH)	Annex N
The Perimeter Guidance manual (PERG)	Annex O

- E. 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.

Notes

- F. 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

- G. This instrument may be cited as the Benchmarks Regulation Amendment Instrument 2017.

By order of the Board
[date]

[*Editor's note:* some of the proposed definitions in Glossary refer to the EEA. The benchmarks regulation is a text with EEA relevance but has not yet been annexed to the EEA Agreement. Subject to that, the FCA will consider whether the references to "EEA" in this instrument should be changed to "EU" when it considers its response to this consultation.]

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 regulated benchmark</i>	the <i>regulated activity</i> specified in article [63OX] 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>benchmark activities</i>	the following activities: <ol style="list-style-type: none"> (1) the <i>regulated activity</i> of <i>administering a regulated benchmark</i>; or (2) <i>contributing input data</i> to an <i>EEA administrator</i>.
<i>benchmark contributor</i>	means: <ol style="list-style-type: none"> (1) a <i>third country benchmark contributor</i>; or (2) a <i>UK benchmark contributor</i>. <p>Note: neither acting as a <i>benchmark contributor</i> nor <i>contributing input data</i> to an <i>EEA administrator</i> is a <i>regulated activity</i>.</p>
<i>benchmark contributors regulation</i>	Commission Delegated Regulation (EU)[.../. of XXX] supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards on the governance and control arrangements for supervised contributors to benchmarks.
<i>benchmark endorser</i>	a <i>person</i> : <ol style="list-style-type: none"> (1) whose endorsement of a <i>regulated benchmark</i> or family of <i>regulated benchmarks</i> has been authorised by the <i>FCA</i> in accordance with article 33(3) of the <i>benchmarks regulation</i>; and (2) who has not withdrawn its endorsement of that <i>regulated</i>

benchmark or family of *regulated benchmarks*.

<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. (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011)
<i>commodity benchmark</i>	has the meaning in article 3.1(23) of the <i>benchmarks regulation</i> .
<i>contribution of input data</i>	the contribution of input data as defined in article 3.1(8) of the <i>benchmarks regulation</i> . Note: <i>contributing input data</i> is not a <i>regulated activity</i> .
<i>critical benchmark</i>	has the meaning in article 3.1(25) of the <i>benchmarks regulation</i> .
<i>EEA administrator</i>	means a <i>person</i> who: <ol style="list-style-type: none"> (1) is an administrator as defined in article 3.1(6) of the <i>benchmarks regulation</i> (which in summary is a <i>person</i> who has control over the provision of a <i>regulated benchmark</i>); and (2) has been authorised or registered in accordance with article 34 of the <i>benchmarks regulation</i>.
<i>interest rate benchmark</i>	has the meaning in article 3.1(22) of the <i>benchmarks regulation</i> ;
<i>located</i>	in relation to benchmark administrators and <i>benchmark contributors</i> , means: <ol style="list-style-type: none"> (1) in relation to a legal <i>person</i>, the country where that <i>person</i> has its registered address or other official address; (2) in relation to a natural <i>person</i>, the country where that <i>person</i> is resident for tax purposes.
<i>non-significant benchmark</i>	has the meaning in article 3.1(27) of the <i>benchmarks regulation</i> .
<i>regulated benchmark</i>	a benchmark as defined in article 3.1(3) of the <i>benchmarks regulation</i> .
<i>regulated benchmark administrator</i>	a <i>person</i> who has a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>administering a regulated benchmark</i> .

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*.

supervised entity has the meaning in article 3.1(17) of the *benchmarks regulation*.

third country benchmark contributor a *firm* which:

- (1) *contributes input data* to an *EEA administrator*;
- (2) is *located* in a *third country*; and
- (3) would be a *supervised entity* if it was *located* in the *EEA*.

third country legal representative a *person* who, for the purposes of article 32(3) of the *benchmarks regulation*, acts as the legal representative of a benchmark administrator which is *located* in a *third country*;

UK benchmark contributor a *firm* which:

- (1) *contributes input data* to an *EEA administrator*;
- (2) is *located* in the *UK*; and
- (3) is a *supervised entity*.

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

competent authority ...

(11) the authority designated by each EEA State in accordance with article 40 of the *benchmarks regulation*.

...

energy market participant a *firm*:

- (a) whose permission:
 - (i) includes a requirement that the *firm* must not carry on any *designated investment business* other than *energy*

market activity; and

- (ii) does not include a *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 that the *firm* must not carry on any *designated investment business* other than *oil market activity; and*
 - (ii) does not include a 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

- (1) (except in *FEES 1* and *FEES 6*) a *firm* or a *member* other than:
 - ...
 - (1) an *operator of an electronic system in relation to lending* in respect of operating the system;

(m) *a regulated benchmark administrator in relation to administering a regulated benchmark.*

...

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook

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

1 Application and purpose

...

1 Annex Detailed application of SYSC 1

1

Part 1		Application of SYSC 2 and SYSC 3 to an insurer, 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:</u>
		(a)	<u>a person with permission to carry on the regulated activity of administering a specified benchmark acting as such; or</u>
		(b)	<u>a person with permission to carry on the regulated activity of providing information in relation to a specified benchmark acting as such.</u>
1.1A	G	(1)	<u>The regulated activities referred to in SYSC 1 Annex 1 1.1R(7) (a) and (b) ceased being regulated activities on 1 January 2018 save that they continue to apply in certain circumstances (see SUP TP 9 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 activities in SYSC 1 Annex 1 1.1R(7) (a) and (b) when carrying on those activities.</u>

Part 2		Application of the common platform requirements (SYSC 4 to 10)	
...			

2.6G	R	(1)	Except as provided for in (2), the <i>common platform requirements</i> (other than SYSC 4.5 to SYSC 4.9) do not apply to a <i>firm</i> in relation to <i>benchmark activities</i> .
		(2)	The <i>common platform requirements</i> continue to apply to:
		(a)	a <i>person with permission to carry on the regulated activity of administering a specified benchmark</i> acting as such; or
		(b)	a <i>person with permission to carry on the regulated activity of providing information in relation to a specified benchmark</i> acting as such.
2.6H	G	(1)	The <i>regulated activities</i> in referred to in SYSC 1 Annex 1 2.6GR(2) (a) and (b) ceased being <i>regulated activities</i> on 1 January 2018 save that they continue to apply in certain circumstances (see SUP TP 9 for an explanation of those circumstances).
		(2)	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 to carry on the regulated activities</i> in SYSC 1 Annex 1 2.6GR(2)(a) and (b) when carrying on those activities.
...			

4 General organisational requirements

...

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

Business areas and management functions	Explanation
...	
(26) Providing information in relation to a specified benchmark (26) contributing input data to an EEA administrator	
(27) Administering a specified benchmark (27) administering a regulated benchmark	
...	

...

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 transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
5	...				
<u>6</u>	<u>SYSC 4 Annex 1G rows 26</u>	<u>G</u>	<u>The guidance in column 2, as it was in force on 31 December 2017, continues to apply to a benchmark submitter in relation to LIBOR until the administrator of that benchmark becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering that specified benchmark.</u>	<u>From 1 January 2018</u>	
<u>7</u>	<u>SYSC 14.1.2AR</u>	<u>R</u>	(1) <u>The rule in column 2, as it was in force on 31 December 2017, continues to apply to a</u>	<u>From 1 January 2018</u>	

			<p><u>benchmark administrator, until that administrator becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering a specified benchmark.</u></p>	
		(2)	<p><u>The rule in column 2, as it was in force on 31 December 2017, continues to apply to a benchmark submitter in relation to LIBOR until the administrator of that benchmark becomes authorised or registered under the benchmarks regulation, or ceases to be authorised to administer that benchmark.</u></p>	

...

Annex C

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted 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*, ~~or~~ the *auction regulation* or the benchmarks regulation.

...

Annex D

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 regulated benchmark*.
- (2) COND does not apply to *regulated benchmark administrators* who are solely authorised to *administer a regulated 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 regulated 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 E**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 F

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

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

1 General

...

1.2 Introduction

...

1.2.4A G Under Article 5(1)(d) of the *MiFID Implementing Directive* and articles 31 and 32 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of:

- (1) a *person to perform a controlled function*; or
- (2) a *certification employee*;

solely in relation to the *MiFID business* of an *incoming EEA firm*, the *appropriate regulator* will not have regard to that *person's* competence and capability. Where the *controlled function* relates to matters outside the scope of *MiFID*, for example *money laundering* responsibilities (see CF11) ~~or activities related to a specified benchmark (see CF 40 and CF 50)~~, or to business outside the scope of the *MiFID business* of an *incoming EEA firm*, for example *insurance mediation activities* in relation to *life policies*, the *FCA* will have regard to a *candidate's* competence and capability as well as his honesty, integrity, reputation and financial soundness.

...

Annex G

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 regulated 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 regulated benchmark*.

...

Annex H

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

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 (ga) <u>(zw)</u> of this table
...		
(ga) Any applicant for: (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</i>	FEES 3 Annex 3, part 1	On or before the date the application is made

<p><i>benchmarks or;</i> (ii) <i>varying its Part 4A permission to carry out the regulated activity of administering a specified benchmark for one or more specified benchmarks</i></p>		
<p>...</p>		
<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 (ga) <u>(zw)</u> of this table</p>	<p>...</p>	<p>...</p>
<p>...</p>		
<p>(zv) ...</p>	<p>...</p>	<p>...</p>
<p><u>(zw) An application for authorisation as a regulated benchmark administrator.</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 regulated benchmarks falling into different complexity groupings, it will pay one fee only, for the highest category applied for.</u></p> <p><u>If, once authorised, a regulated benchmark administrator notifies us of its intention to administer other/additional regulated benchmarks no further application fee is payable (even if the other/additional benchmark fall into a higher complexity</u></p>	<p><u>On the date the application is made</u></p>

	<u>category).</u>	
<u>(zx) An application for recognition of an administrator located in a third country in accordance with article 32 of the benchmarks regulation.</u>	<u>5,000</u>	<u>On the date the application is made</u>
<u>(zy) An application for endorsement of a regulated benchmark or family of regulated benchmarks provided by an administrator located in a third country in accordance with article 33 of the benchmarks regulation.</u>	<u>1,500</u>	<u>On the date the application is made</u>

...

...

**3 Annex Authorisation fees payable
1R**

...

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 **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 <u>critical benchmark</u>
----------	---

...

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

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

<p>(ii) varying its 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 determining a <i>specified benchmark</i></p>		
<p>...</p>		

...

[Editor’s note: the following changes to FEES 4 come into force on 1 April 2018.]

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

4.2.7K R ...

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. Benchmark <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
...			
<p>Each of the following that makes <i>transaction reports</i> directly to the <i>FCA</i> under <i>SUP 17</i> (Transaction reporting):</p> <ul style="list-style-type: none"> (1) a <i>firm</i>; (2) a third party acting on a <i>firm's</i> behalf; (3) an <i>approved reporting mechanism</i>; (4) an operator of a <i>regulated market</i>; and (5) an operator of an <i>MTF</i>
<u>A recognised administrator</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. <u>Benchmark Regulated benchmark administrators</u>	it administers one or more specified benchmarks has a <i>Part 4A permission</i> to carry on the <i>regulated activity of administering a regulated benchmark</i> .
...	

...

Part 3

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

...

Part 5

...	
Activity group	Valuation date
...	

B. Benchmark <u>Regulated benchmark</u> administrators	Annual income for the financial year ended in the calendar year ending 31 December.
...	

[Editor's note: the text of FEES 4 Annex 2AR below takes into account the changes proposed in CP17/12 'FCA regulated fees and levies: Rates proposals 2017/18' (April 2017) as if they were made.]

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April ~~2017~~ 2018 to 31 March ~~2018~~ 2019

...

Activity group	Fee payable	
...		
B. Service Companies
B Benchmark <u>Regulated benchmark</u> administrators	Band width	Fee (£/£m or part £ thousand of income)
	Annual income up to and including £3,000,000 <u>100,000</u>	100,000 [tbc]
	Annual income over £3,000,000 <u>100,000</u>	[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
...
Where the firm is a <u>Regulated</u> Benchmark Administrator

“Annual income” for a *regulated benchmark administrator* is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the *firm’s* accounts during the reporting year in respect of, or in relation to activities that comprise a necessary part of its business as a *regulated benchmark administrator*.

Where the sales and marketing of a benchmark are undertaken by a separate legal entity, the *regulated benchmark administrator* is responsible for identifying the relevant income and reporting it to us as its own income. To avoid double counting, the *regulated benchmark administrator* should report only the income from sales and exclude any amount paid to it from that income to pay for its expenses as a *regulated benchmark administrator*.

...

...

4 Annex 15R Fees relating to the recognition of benchmark administrators located in a third country and the endorsement of benchmarks provided in a third country for the period 1 April 2018 to 31 March 2019

<u>Activity group</u>	<u>Fee payable</u>
<u>A third country legal representative</u>	£[tbc]
<u>A benchmark endorser</u>	£[tbc]

...

Insert the new FEES TP 16R after FEES TP 15R (Transitional provisions for the MiFID II Order). The text is not underlined.

TP 16R Transitional Provisions for fees relating to benchmark administrators

<u>(1)</u>	<u>(2) Material provision to which transitional provision applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provision: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
<u>16.1</u>	<u>FEES 3.2.7R Part 1 (1) (zw) and FEES 3 Annex 1R</u>	<u>R</u>	<u>Where a person:</u> <u>(a) has authorisation to carry on the regulated activity of</u>	<u>From 1 January 2018</u>	<u>1 January 2018</u>

			<p><u>administering a specified benchmark (in accordance with article 63O(1)(b) of the Regulated Activities Order) on 1 January 2018;</u></p> <p><u>and</u></p> <p><u>(b) applies for authorisation to carry on the regulated activity of administered a regulated benchmark specified in article [63OX] of the Regulated Activities Order on or after 1 January 2018,</u></p> <p><u>the application fee payable in respect of its application (b) above, as set out in FEES 3 Annex 1R, will be discounted by the amount paid in respect of its initial application under (a).</u></p> <p><u>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.</u></p>		
16. 2	<u>FEES 4 Annex 1AR, FEES 4 Annex 2AR and FEES 4 Annex 11AR</u>	R	<p>These rules as in force from 1 April 2018 apply to a <u>person who has authorisation to carry on the regulated activity of administering a specified benchmark (a benchmark</u></p>	From 1 April 2018	1 April 2018

		<p><u>administrator</u>) as if a reference in these rules to a <u>regulated benchmark administrator</u> were a reference to a <u>benchmark administrator</u> until that <u>person</u> becomes <u>authorised</u> under the <u>benchmarks regulation</u>, or ceases to be <u>authorised</u> as a <u>benchmark administrator</u>.</p>		
--	--	--	--	--

Annex I

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.

Part 1 Comes into force 1 January 2018

3B MCD general information

3B.1 Provision of general information

...

3B.1.2 R ...

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

...

...

Part 2 Comes into force 1 July 2018

3 MCD general information

3B.1 Provision of general information

...

3B.1.2 R ...

(5A) where contracts that reference a benchmark as defined in article 3.1(3) of the *benchmarks regulation* are available, the names of the benchmarks and of their administrators and the potential implications on the consumer;

...

...

[*Editor's note*: the FCA is currently consulting on a new MAR 8.4 in CP17/15 'Powers in relation to LIBOR contributions' (June 2017).]

Annex J

Amendments to the Market Conduct sourcebook (MAR)

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

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 8.8 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...]

[*Editor's note*: the FCA is consulting on the text of MAR 8.4 through CP17/15.]

- (2) MAR 8.5 (Third country benchmark contributors) sets out the requirements that apply to third country benchmark contributors.. These rules apply requirements mirroring those which apply to benchmark contributors that are in scope of the benchmarks regulation.

- (3) MAR 8.6 (Regulated benchmark administrators) sets out some requirements that apply to regulated benchmark administrators (who become authorised under the benchmarks regulation for the activity of administering a regulated benchmark on or after 1 January 2018) in addition to those set out in the benchmarks regulation.

- (4) MAR 8.7 (Responsibility for benchmark activities: benchmark contributors) sets out requirements in relation to responsibility for benchmark contributions.

- (5) MAR 8.8 (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) and 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 *regulated 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]

...

8.5 Third country benchmark contributors

Application

- 8.5.1 R This section applies to *third country benchmark contributors*.

Application of the benchmarks regulation

- 8.5.2 R A *third country benchmark contributor* 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*;

- (2) article 23(3) of the *benchmarks regulation*; and
- (3) the *benchmark contributor regulation*.

8.6 Regulated benchmark administrators

Application

8.6.1 R This section applies to *regulated benchmark administrators*.

Adequate financial resources

8.6.2 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*.

8.6.3 G A *regulated benchmark administrator* that administers more than one *critical benchmark* may comply with its financial resources requirements under MAR 8.6.2R (2) by holding sufficient financial resources to cover the combined operating costs for all *critical benchmarks* it administers.

8.6.4 G (1) MAR 8.6.2R sets out the minimum amount of financial resources a *regulated benchmark administrator* must hold to carry out administering a *regulated 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 8.6.7R and SUP 15.3.11R).

8.6.5 G To meet the financial resources requirement in MAR 8.6.2R (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, 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.

8.6.6 G The FCA may use its powers under section 55L of the Act to impose on a regulated benchmark administrator subject to MAR 8.6.2R a requirement to hold additional financial resources to MAR 8.6.2R if the FCA considers it desirable to meet any of its operational objectives.

Notifications for breaches

8.6.7 R A regulated benchmark administrator subject to MAR 8.6.2R 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.

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

Responsibility for benchmark activities: regulated benchmark administrators

8.6.9 R (1) A regulated benchmark administrator must allocate responsibility for the firm's activities as such 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).

(2) The rule in (1) does not apply to relevant authorised persons.

- 8.6.10 G (1) The rule in MAR 8.6.9R(1) does not apply to a regulated benchmark administrator which is a relevant authorised person. That is for the reasons below.
- (2) UK relevant authorised persons are 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.
- (3) SYSC 4 Annex 1 (the main business activities and functions of a relevant authorised person) refers to administering a regulated benchmark.
- (4) EEA relevant authorised persons and third country relevant authorised persons do not require authorisation to carry out the activity of administering a regulated benchmark. 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.

Notifications about suspected benchmark manipulation

- 8.6.11 G (1) 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 Market Abuse Regulation.
- (2) For the avoidance of doubt, the FCA would expect 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 Market Abuse Regulation.

8.7 **Responsibility for benchmark activities: benchmark contributors**

Application

- 8.7.1 R This chapter applies to benchmark contributors.

Responsibility for contributing input data

- 8.7.2 G (1) Article [X] of the benchmark contributors regulation requires a supervised contributor (as defined in article 3.1(10) of the benchmarks regulation) to have a control framework which identifies the senior personnel responsible for the process for contributing input data to an EEA administrator.

- (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 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 in this section as the “compulsion powers”.

Exercise of compulsion powers: general

- 8.8.4 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) The *FCA* will review a decision to exercise a compulsion power in the circumstances described in this section.

Decision to exercise a compulsion power

- 8.8.5 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.

8.8.6 G In some cases the decision in MAR 8.8.5G 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

- 8.8.7 G (1) Where P makes written representations to the FCA in relation to the First Decision in accordance with MAR 8.8.5G(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 who include 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

- 8.8.8 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 8.8.5G and MAR 8.8.7G for the purpose of that decision.

Table of defined terms

- 8.8.9 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.

- 8.8.8 G Table: glossary of bespoke terms used in this section

<u>administrator</u>	<u>has the meaning in article 3.1(6) of the benchmarks regulation;</u>
<u>compulsion powers</u>	<u>means the competent authority's powers under articles 21(3) and 23(6) of the benchmarks regulation;</u>
<u>First Decision</u>	<u>the FCA's decision in MAR 8.8.5G(1);</u>
<u>Own Initiative Revocation</u>	<u>has the meaning in MAR 8.8.8G(1);</u>
<u>Own Initiative Variation</u>	<u>has the meaning in MAR 8.8.8G(1);</u>
<u>Second Decision</u>	<u>the FCA's decision in MAR 8.8.7G(4).</u>

TP 1 Transitional Provisions

...

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	<i>MAR 6</i>	R	Expired		
<u>3</u>	<u><i>MAR 8.2</i></u>		<u>This section as it was in force on 31 December 2017 continues to apply to a <i>benchmark submitter</i> in relation to LIBOR until the administrator of that benchmark becomes authorised or registered under the <i>benchmarks regulation</i>, or ceases to be authorised to administer that benchmark.</u>	<u>From 1 January 2018</u>	
<u>4</u>	<u><i>MAR 8.3</i></u>		<u>This section as it was in force on 31 December 2017 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 administering a <i>specified benchmark</i>.</u>	<u>From 1 January 2018</u>	
<u>5</u>	<u><i>MAR 8.5.2</i></u>	R	<u>This rule only applies to a</u>	<u>From 1 January 2018</u>	<u>1 January 2018</u>

			<p><u>benchmark contributor</u> from the point at which the administrator of the <u>regulated benchmark</u> to which it <u>contributes becomes authorised or registered under the benchmarks regulation</u>, or ceases to be authorised for <u>administering a specified benchmark</u>.</p>		
--	--	--	---	--	--

Annex K

Amendments to the Supervision manual (SUP)

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

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

...

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 regulated 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 regulated 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 regulated benchmark*.

...

3 Auditors

3.1 Application

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

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

~~(2)~~ (b) 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 regulated 1A benchmark, the following FCA controlled functions do not apply:

- (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 regulated 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 regulated 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 regulated 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 and CASS large firms; F will not hold client money and will therefore not be a CASS medium firm or a CASS large 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 regulated benchmark.
- (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 an EEA 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 an EEA 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 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 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	<i>Benchmark submission function</i>
	50	<i>Benchmark administration function</i>
...	...	
Part 2 (FCA controlled functions for PRA-authorized persons) (See Note 1)		
Type	CF	Description of FCA controlled function
...	...	
	40	<i>Benchmark submission function</i>
	50	<i>Benchmark administration function</i>
...	...	

...

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~~

3 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)(i); or
- (2) *benchmark activities.*

...

Amend the forms in SUP 10A Annex 4D (Form A: Application to perform controlled functions under the approved persons 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. 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**

a Significant influence functions

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"/>

Significant influence functions

CF 8	Apportionment and oversight function <i>(this function is not applicable to all firms please refer to Notes for Completing Form A)</i>	<input type="checkbox"/>
CF 10	Compliance oversight function	<input type="checkbox"/>
CF 10a	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"/>
CF 40	Benchmark submission function	<input type="checkbox"/>
CF 50	Benchmark administration function	<input type="checkbox"/>
b	Customer function	
	CF 30 Customer function	<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)

Regulated benchmark administration

Will the candidate be responsible for the firm's activities as a regulated benchmark administrator?

~~YES NO~~

(Note: Yes can only be selected if the individual is applying for CF1, 3-6 or CF29).

Contributing input data to an EEA administrator

Will the candidate be responsible for the process of contributing input data to an EEA administrator?

YES NO



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**

a Significant influence functions

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"/>

Significant influence functions

CF 8	Apportionment and oversight function <i>(this function is not applicable to all firms please refer to Notes for Completing Form A)</i>	<input type="checkbox"/>
CF 10	Compliance oversight function	<input type="checkbox"/>
CF 10a	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"/>
	CF 40 Benchmark submission function	<input type="checkbox"/>
	CF 50 Benchmark administration function	<input type="checkbox"/>
b	Customer function	
	CF 30 Customer function	<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)

Regulated benchmark administration

Will the candidate be responsible for the firm's activities as a regulated benchmark administrator?

YES NO

(Note: Yes can only be selected if the individual is applying for CF1, 3-6 or CF29).

Contributing input data to an EEA administrator

Will the candidate be responsible for the process of contributing input data to an EEA administrator?

YES NO



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

YES NO

...

The Long and Short Form A –Incoming EEA only

...

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 <i>Money laundering reporting function</i>	<input type="checkbox"/>
		CF 29 <i>Significant management function</i>	<input type="checkbox"/>
c	significant influence functions	CF 40 <i>Benchmark submission function</i>	<input type="checkbox"/>
		CF 50 <i>Benchmark administration function</i>	<input type="checkbox"/>
b	Customer function	CF 30 <i>Customer function</i>	<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

a **Significant influence functions**

- CF 1 *Director function*
- CF 2 *Non- executive director function*
- CF 3 *Chief executive function*
- CF 4 *Partner function*
- CF 5 *Director of an unincorporated association function*
- CF 6 *Small friendly society function*



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)*
- CF 9 *EEA investment business oversight function (Non-MiFID business Only)*
- CF 10 *Compliance oversight function (Non-MiFID business Only)*
- CF 10 A *CASS operational oversight function*
- CF 11 *Money laundering reporting function*
- CF 12 *Actuarial function*
- CF 12A *With-profits actuary function*
- CF 12B *Lloyd's Actuary function*

CF 28 *System and controls function*

CF 29 *Significant management function*

b **significant influence functions continued**

~~CF 40 *Benchmark submission function*~~

~~CF 50 *Benchmark administration function*~~

c **Customer function**

CF 30 *Customer function*

...

10C FCA senior management regime for approved persons in relevant authorized

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*.

...

11 Controllers and close links**11.1 Application**

Application to firms

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

...

- (6) a *UCITS qualifier*;
- (7) a *firm* which only has *permission for administering a regulated 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(6)*~~ *SUP 11.1.1R (7)*.

...

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*; or

(i) a breach of the *benchmarks regulation* or of any directly applicable regulations or requirements made under the *benchmarks regulation*.

...

...

15B Applications and notifications under the benchmarks regulation

15B.1 Application

15B.1.1 R This chapter applies to every *firm*.

15B.2 Notifications under the benchmarks regulation

15B.2.1 G (1) The *benchmarks regulation* imposes various directly applicable obligations for *regulated benchmark administrators* and some *benchmark contributors* 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 directed the form in which endorsement applications should be made. The form is available on the FCA's website.

15B.3.2 D A firm which wishes to apply to the FCA to endorse a benchmark should do so using the form which is available on the FCA's website.

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 directed the form in which recognition applications should be made. The form is available on the FCA's website.

...

16 Reporting requirements

16.1 Application

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP.13, SUP 16.15, SUP 16.16, SUP 16.17 and SUP 16.22)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guides
...		
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:	Entire sections
	...	
	(k) a <i>firm</i> falling within a combination of (i), (ia), (j) and (ja).	
	(l) <u>a firm which has permission only for administering a regulated benchmark.</u>	

...

16.7A Annual report and accounts

...

Requirement to submit annual report and accounts

16.7A.3 R A *firm* in the *RAG* in column (1) and which is a type of *firm* in column (2) must submit its *annual report and accounts* to the *FCA* annually on a single entity basis.

(1)	(2)
RAG	Firm type
...	
8	All <i>firms</i> other than <i>firms</i> subject to <i>IPRU(INV)</i> Chapter 13 that are not <i>exempt CAD firms</i> .
13	<u>All <i>firms</i>.</u>
Note: see <i>SUP</i> 16.12.4R for the list of <i>RAGs</i> .	

...

16.7A.7 R (1) Firms (other than those in (2)) must submit the *annual report and accounts* to the *FCA* online through the appropriate systems accessible from the *FCA*'s website, using the form specified in *SUP* 16 Annex 1A.

(2) A *firm* which:

(a) is a regulated benchmark administrator; and

(b) does not fall within any of the *RAGs* listed in *SUP* 16.7A.3R other than *RAG* 13.

must submit the *annual report and accounts* to the *FCA* in the manner specified in *SUP* 15.7.4R.

...

16.12 Integrated Regulatory Reporting

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable	reporting frequency /	due date

		<i>data items</i>	period	
...				
RAG 12	...			
<u>RAG 13</u>	<u>administering a regulated benchmark</u>	<u>SUP 16.12.29DR</u>	<u>SUP 16.12.29DR</u>	<u>SUP 16.12.29DR</u>

...

16.12.2 G Regulated benchmark administrators have separate reporting requirements under the benchmarks regulation.
9D

[*Editor's note:* it is expected that the Treasury will make secondary legislation to amend the Act to give effect to the benchmarks regulation. The content of the TP below is based on the assumption that the legislation will contain transitional provisions which operate in the way described below.]

Insert the following new TP after SUP TP 8 (Financial Services (Banking Reform) Act 2013: Approved persons in small non-directive insurers). The text is not underlined.

TP 9 Benchmarks Regulation Transitional Provisions

9.1 Purpose and application

- 9.1.1 G (1) *SUP TP 9* contains transitional provisions relating to the changes to the *Regulated Activities Order* which have been made as a result of the *benchmarks regulation*.
- (2) It also deals with the mechanism for finalising authorisation and approval applications where they have been submitted in draft prior to 1 January 2018.

- 9.1.2 R (1) This TP applies to all *firms*.
- (2) The direction in *SUP TP 9.3* also applies to unauthorised *persons*.

- 9.1.3 G *SUP TP 9.5* contains definitions for the purposes of *SUP TP 9*.

9.2 Overview

- 9.2.1 G (1) The *benchmarks regulation* applies from 1 January 2018.
- (2) Article 34 of the *benchmarks regulation* requires the administrator of a *regulated 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 regulated benchmark*) which replaces the *regulated activity* of *administering a specified benchmark*.
- (4) The [Financial Services and Markets Act (2000) (Benchmarks) Regulations 2017] therefore made the following changes to the *Regulated Activities Order* as a result of the *benchmarks regulation*:
 - (a) *administering a specified benchmark* has been replaced with the new *regulated activity* of *administering a regulated benchmark* with effect from 1 January 2018; and
 - (b) *providing information in relation to a specified benchmark* ceased being a *regulated activity* with effect from 1 January 2018.

- 9.2.2 G
- (1) The removal of both of the existing *regulated activities* (pre-BMR activities) above is subject to a saving provision. The effect of that saving provision is as follows.
 - (2) A *firm* which, immediately before 1 January 2018, had a *Part 4A permission* in relation to *administering a specified benchmark* (a pre-BMR administrator) continues to have 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 regulated benchmark*; or
 - (b) its *Part 4A permission* in relation to *administering a specified benchmark* is removed.
 - (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* (a pre-BMR submitter) continues to have that *Part 4A permission* in respect of the relevant *specified benchmark* until the earlier of such time as:
 - (a) that *Part 4A permission* is removed; or
 - (b) the *benchmark administrator* of the relevant *specified benchmark*:
 - (i) obtains a *Part 4A permission* in relation to the new *regulated activity* of *administering a regulated benchmark*; or
 - (ii) otherwise ceases to be authorised in relation to

administering a specified benchmark.

- (4) The *rules* which applied to pre-BMR administrators and pre-BMR submitters prior to 1 January 2018 will continue to apply to those *firms* until their pre-BMR permissions have been removed or (in the case of a pre-BMR administrator) until they have been authorised to *administer a regulated benchmark*.

9.2.3 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* and which wishes to continue administering that benchmark, will need to apply for a *Part 4A permission* in relation to *administering a regulated benchmark* (subject to the transitional provision in article 51 of the *benchmarks regulation*).
- (b) A's existing *Part 4A permission* (for benchmark administration) 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 1 January 2018.
- (2) A *firm* which wishes to start *administering a regulated benchmark* on or after 1 January 2018 will need to apply for a *Part 4A permission* in relation to *administering a regulated benchmark* (subject to the transitional provision in article 51 of the *benchmarks regulation*).
- (3) (a) A *firm* (F) which has a *Part 4A permission to provide information in relation to a specified benchmark* will no longer require that *permission* when the administrator of that *specified benchmark* is authorised in relation to *administering a regulated benchmark* or ceases to be authorised for that purpose.
- (b) F's existing benchmark *Part 4A permission* will be removed when that administrator is authorised to *administer a regulated benchmark* or stops being authorised to administer that *specified benchmark*.
- (c) Until that point, F will continue to be subject to the *rules* which applied to *benchmark submitters* immediately prior to 1 January 2018.

9.3 Transitional provisions relating to application forms

9.3.1 D Where a *person* (P) has submitted a benchmark administration application form to the *FCA* in draft in advance of 1 January 2018, the *FCA* will treat that application form as a final application form if, on or after 1 January 2018, that *person*:

- (1) informs the *FCA* in writing that the draft application form should be treated as final;
- (2) provides the *FCA* with any information required by the final version of the form which was not provided as part of the draft application form; and
- (3) pays any applicable fee required by *FEES*.

- 9.3.2 G (1) A person who wishes to apply for a *Part 4A permission* in relation to *administering a regulated benchmark* may do so from 1 January 2018 and must submit various forms including:
- (a) the relevant authorisation application form in accordance with *Part 4A of the Act*; and/or
 - (b) the relevant Form A for any persons who will be performing controlled functions (see *SUP 10A* and *SUP 10C* in the *FCA Handbook* [and *XXX* in the *PRA Rulebook*])
- (2) The *FCA* has enabled applicants to submit the application forms in (a) and (b) in draft in advance of 1 January 2018.
- (3) *SUP TP 9.3.1D* means that a draft application form will be treated as a final application form where, on or after 1 January 2018, the applicant complies with *SUP TP 9.3.1D(1)* to (3).

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

- 9.4.1 G (1) As is explained in *SUP TP 9.2*, the existing *rules* applicable to pre-BMR administrators and pre-BMR submitters will continue to apply to those *firms* until their *Part 4A permission* in relation to *administering a specified benchmark* or *providing information in relation to a specified benchmark* has been removed or (in the case of a pre-BMR administrator), they have been authorised to *administer a regulated benchmark*.
- (2) That includes some *rules* in the Supervision manual which have been amended or deleted with effect from 1 January 2018. The table in *SUP TP 9.4.2* specifies which of the amended or deleted *rules* in the Supervision manual continue to apply and how.

(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
	<i>SUP 3.1.1R</i>	R	The <i>rule</i> in column 2, as	From 1	

			<p>it was on 31 December 2017, continues to apply to:</p> <p>(1) a <i>benchmark submitter</i> in relation to LIBOR until the administrator of that benchmark becomes authorised or registered under the <i>benchmarks regulation</i>, or ceases to be authorised to administer that <i>specified benchmark</i>; and</p> <p>(2) 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>.</p>	January 2018	
1	SUP 10A.1.22R	R	The <i>rule</i> in column 2, as it was on 31 December 2017, continues to apply to a <i>benchmark submitter</i> in relation to LIBOR until the administrator of that benchmark becomes authorised or registered under the <i>benchmarks regulation</i> , or ceases to be authorised to administer that <i>specified benchmark</i> .	From 1 January 2018	
3	SUP 10A.4.4R and SUP 10A.7.1.12R	R	The <i>rules</i> in column 2 as they were on 31 December 2017, continue to apply to a	From 1 January 2018	

			<i>benchmark submitter</i> in relation to LIBOR until the administrator of that benchmark becomes authorised or registered under the <i>benchmarks regulation</i> , or ceases to be authorised for administering that <i>specified benchmark</i> .		
4	SUP 10A.4.4R and SUP 10A.7.1.13R	R	The <i>rules</i> in column 2 as they were on 31 December 2017, 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 1 January 2018	
5	SUP 10A.8.2R	R	The <i>rule</i> in column 2 as it was on 31 December 2017, 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 1 January 2018	
6	SUP 10A.8.2R	R	The <i>rule</i> in column 2 as it was on 31 December 2017, continues to apply to a <i>benchmark submitter</i> in relation to LIBOR until the administrator of that benchmark becomes authorised or registered under the <i>benchmarks regulation</i> , or ceases to	From 1 January 2018	

			be authorised for administering that <i>specified benchmark</i> .		
--	--	--	---	--	--

9.5 Terms used in SUP TP 9

9.5.1 R The terms in the first column of the table in *SUP TP 9.5.2R* have the meaning in the corresponding row of column 2.

9.5.2 R Table: glossary of bespoke terms used in *SUP TP 9*.

benchmark administration application form	The following forms:	
	(a)	the authorisation and registration application forms which the <i>FCA</i> has directed must be used when applying for a <i>Part 4A permission</i> in relation to <i>administering a regulated benchmark</i> .
	(b)	any other form which the <i>FCA</i> has directed should be submitted when applying for a <i>Part 4A permission</i> in relation to <i>administering a regulated benchmark</i> .
pre-BMR benchmark administrator	A <i>firm</i> which, immediately before 1 January 2018, had a <i>Part 4A permission</i> in relation to <i>administering a specified benchmark</i> .	
pre-BMR benchmark submitter	A <i>firm</i> which immediately before 1 January 2018, had a <i>Part 4A permission</i> in relation to <i>providing information in relation to a specified benchmark</i> .	
pre-BMR benchmark permission	A <i>Part 4A permission</i> which was granted on or before 31 December 2017 in relation to:	
	(a)	<i>administering a specified benchmark</i> ; or
	(b)	<i>providing information in relation to a specified benchmark</i> .
LIBOR	The London Interbank Offered Rate, also known as LIBOR.	

Annex L

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 regulated benchmark*.

...

1 Annex Application of DISP 1 to type of respondent/complainant 2G

...

Type of respondent/complaint	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
...						
<i>designated finance platform in relation to complaints about providing specified information</i>	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><i>complaints relating to administering a regulated benchmark</i></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 regulated benchmark);

...

...

Annex M

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 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</u> (<i>BENCH</i>)	<i>BENCH</i> provides <i>guidance</i> about which parts of the <i>Handbook</i> are relevant to a <i>firm</i> when carrying out <i>benchmark activities</i> . It also provides guidance about the <i>benchmarks regulation</i> .
...	

Annex N

Amendments to General guidance on Benchmark 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 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 regulated benchmark.
- (2) contribute input data to an EEA administrator; or
- (3) use a regulated 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 regulated benchmark.
- (2) help benchmark contributors by setting out which parts of the Handbook apply to them when they provide input data to an EEA administrator.
- (3) remind all firms of their obligations under the benchmarks regulation when using a regulated benchmark.

Benchmarks Regulation and transitional arrangements

- 1.1.3 G
- (1) The benchmarks regulation applies from 1 January 2018.
 - (2) Various changes were made to the Regulated Activity Order as a result of the benchmarks regulation. In particular:
 - (a) the regulated activity which applied in relation to benchmark administration was replaced with a new activity: administering a regulated benchmark.

- (b) The regulated activity of providing information in relation to a specified benchmark was removed. However, firms which contribute input data to an EEA administrator are still subject to various requirements in the Handbook and under the benchmarks regulation when doing so.
- (3) SUP TP 9 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 16R;
 - (c) MAR TP 1; and
 - (d) SUP TP 9.

2 Parts of the Handbook applicable to regulated benchmark administrators and benchmark submitters

2.1 Parts of the Handbook applicable to 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 regulated 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 regulated benchmark.
- (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 administration 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.

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 regulated benchmark.

	Part of the <i>Handbook</i>	Applicability to the regulated activity of <i>administering a regulated benchmark</i>
High Level Standards	Principles for Business (<i>PRIN</i>)	This applies.
	Senior management arrangement, Systems and Controls (<i>SYSC</i>)	<p>This applies.</p> <p>The detailed application of this is set out in <u>SYSC 1 Annex 1</u>. However, in general, <u>SYSC</u> applies but with the following exceptions:</p> <ul style="list-style-type: none"> (a) <u>SYSC 2 to SYSC 3</u> do not apply; (b) <u>SYSC 4 to SYSC 10</u> do not apply (save <u>SYSC 4.5 to SYSC 4.9</u>); (c) <u>SYSC 12</u> applies where relevant; (d) <u>SYSC 13 to SYSC 14</u> do not apply; (e) <u>SYSC 18</u> applies; (f) <u>SYSC 19A to SYSC 19E</u> apply but will not generally be relevant to a <i>firm</i> which only has <u>permission to administer a regulated benchmark</u>; and (g) <u>SYSC 20 to SYSC 21</u> apply but they will not generally be relevant to a <i>firm</i> which only has <u>permission to administer a regulated benchmark</u>.
	Threshold Conditions (<i>COND</i>)	This applies.
	Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)	This applies to an <i>approved person</i> of a <i>firm</i> that is not a <i>relevant authorised person</i> who performs a benchmark submission function or a benchmark administration function .

	Code of Conduct sourcebook (COCON)	This applies to <i>conduct rules staff of relevant authorised persons</i> .
	The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)	This applies.
	General Provisions (GEN)	This applies. <u>However, the application of GEN 4 is very limited in relation to administering a regulated benchmark. GEN 7 does not apply to the activity of administering a regulated 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, with the following qualifications: <u>(a) SUP 10A applies to a regulated benchmark administrator which is not a relevant authorised person but not all controlled functions apply to a firm which only has permission to carry on the regulated activity of administering a regulated benchmark.</u> <u>(b) SUP 10C applies to a regulated benchmark administrator which is a relevant authorised person.</u> (a) <u>(c) 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</u>

		<p>(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 a firm which only has <u>permission to carry on the regulated activity of administering a regulated benchmark.</u></p> <p><u>SUP 3 (Auditors) and SUP 11 (Controllers and close links) do not apply to a firm which only has permission to carry on the regulated activity of administering a regulated benchmark.</u></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 firm which does not, and notifies the FCA under DISP 1.1.12R 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 DISP 2.7) will be exempt from the <i>rules on treating complaints fairly</i> (DISP 1.2 to DISP 1.11) and from the <i>Financial Ombudsman Funding rules</i> (FEES 5.1 to FEES 5.7).</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</i> and <i>benchmark administrators</i> will qualify for these exemptions if it applies for them.</p>
Handbook Guides	Special Guide for benchmark administrators <u>General Guidance on benchmark administration.</u>	This applies.

	<u>contribution and use (BENCH)</u>	
Regulatory Guides	The Enforcement Guide (EG)	This applies.
	The Perimeter Guidance Manual (PERG)	This applies.
Glossary of definitions		This applies.

2.2 **Parts of the Handbook applicable to benchmark contributors**

- 2.2.1 **G** (1) The regulated activity of providing information in relation to a specified benchmark stopped being a regulated activity with effect from 1 January 2018 (subject to transitional provisions which are explained in SUP TP 9).
- (2) 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);
- (c) article 23 (Mandatory contribution to a critical benchmark); and
- (d) the benchmark contributors regulation.
- (4) Benchmark contributors, as authorised persons, will also be subject 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 the detailed application).
- (5) Benchmark contributors are also subject to the following rules which are apply only to benchmark contributors:
- (a) MAR 8.5 (Third country benchmark contributors); and
- (b) MAR 8.7 (Responsibility for benchmark activities: benchmark

contributors);

2.3 **Guidance for benchmark users: article 29 of the benchmarks regulation**

- 2.3.1** **G** All firms are reminded of the prohibition in article 29 of the benchmarks regulation.
- G** (1) The effect of the prohibition in article 29 is that a firm which is a supervised entity for the purposes of article 3.1(17) of the benchmarks regulation may only use a benchmark in cases where:
- (a)** if the administrator is located in the [EU], the administrator is listed in the register maintained by ESMA under article 36 of the benchmarks regulation; or
 - (b)** if the administrator is located outside the [EU], the benchmark itself is listed in the register maintained by ESMA under article 36 of the benchmarks regulation.
- (2)** “Use of a benchmark” is defined in article 3.1(7) of the benchmarks regulation.

Annex O

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

...

2.3 The business element

...

- 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. [deleted]~~

...

2.4 Link between activities and the United Kingdom

...

- 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]~~

...

2.5 Investments and activities: general

...

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

...

2.7 Activities : a broad outline

...

~~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]
- A
- 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]~~

...

