Financial Conduct Authority

FCA FINANCIAL CONDUCT AUTHORITY

# Bringing additional benchmarks into the regulatory and supervisory regime

March 2015

Policy Statement

PS15/6

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# Abbreviations in this document

| | |
|---|---|
| **CP** | Consultation Paper |
| **EU** | European Union |
| **FSMA** | Financial Services and Markets Act 2000 |
| **INED** | Independent Non-Executive Director |
| **IOSCO** | International Organization of Securities Commissions |
| **LIBOR** | London Inter-bank Offered Rate |
| **MAR** | Market Conduct Sourcebook |
| **MiFID** | Markets in Financial Instruments Directive |
| **PERG** | The Perimeter Guidance Manual |
| **RAO** | Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 |
| **SYSC** | Senior Management Arrangements, Systems and Controls |
| **UK** | United Kingdom |

# 1. Overview

## Purpose

**1.1** This policy statement sets out our framework for regulating and supervising the additional seven benchmarks being brought into regulatory scope. It summarises the responses we received to our consultation paper (CP), '*Bringing additional benchmarks into the regulatory and supervisory regime*', CP14/32[1], published on 22 December 2014, and sets out our view on these responses. We consulted for six weeks and the consultation period ended on 30 January 2015.

**1.2** This policy statement also presents the amended Handbook text that applies to regulated benchmark administrators and submitters to benchmarks.

**1.3** We are grateful for the feedback received to our consultation. Overall, we received 15 responses from firms engaged in benchmark activities and index providers, trade associations, banks and market infrastructure providers among others.

**1.4** Most respondents were supportive of our proposals. However, some respondents sought clarification and additions to some of the proposals.

**1.5** We carefully considered the responses we received and have decided to proceed with our policy proposals as outlined in CP14/32. Based on the feedback we received, we will provide further clarity on who is or is not a benchmark submitter, in particular with regards to auction participants, and this is discussed further in this policy statement.

## Background

**1.6** In our consultation paper, we outlined our proposals for regulating and supervising the additional benchmarks coming into regulatory scope. This follows recommendations by the Fair and Effective Markets Review[2] and the Treasury's subsequent consultation on the recommendations.[3]

**1.7** The benchmarks being brought into scope are:

- Sterling Overnight Index Average (SONIA)
- Repurchase Overnight Index Average (RONIA)

1 www.fca.org.uk/static/documents/consultation-papers/cp14-32.pdf.

2 www.bankofengland.co.uk/markets/Documents/femraug2014.pdf.

3 www.gov.uk/government/consultations/fair-and-effective-market-reviews-benchmarks-to-bring-into-uk-regulatory-scope/implementation-of-the-fair-and-effective-market-reviews-recommendations-on-benchmarks-to-bring-into-uk-regulatory-scope.

- ISDAFIX (soon to be renamed the ICE Swap Rate)
- WM/Reuters (WMR) London 4pm Closing Spot Rate
- London Gold Fixing (soon to be replaced by the LBMA Gold Price)
- LBMA Silver Price
- ICE Brent Index

**1.8** Currently, the London Inter-bank Offered Rate (LIBOR) is the only benchmark within our regulatory perimeter.

**1.9** As our existing regulatory regime (Market Conduct Sourcebook, chapter 8 (MAR 8[4])) was designed for benchmarks that are determined through a submission process (for example, LIBOR), we need to adapt our rules to those benchmarks being brought into regulation, in particular benchmarks without submitters. We also proposed adding a record-keeping requirement for benchmark administrators and clarifying the existing financial resources requirement.

## Summary of proposals

**1.10** Under our current MAR 8 rules, those firms submitting certain types of information that is used to calculate a regulated benchmark must be authorised by the FCA. However, some of the seven benchmarks coming into regulatory scope are calculated without using information that is provided by an authorised person. Some benchmarks do not, therefore, have regulated submitters. This is a fundamental difference from, for example, LIBOR, and so the MAR 8 requirements and guidance need to be adapted to the new benchmarks.

**1.11** To adapt the MAR 8 rules to the selected benchmarks, we consulted on proposed amendments to the requirements for benchmarks administrators, MAR 8.3 – Requirements for benchmark administrators.[5]

**1.12** The modifications we proposed to the benchmark administrator requirements are to ensure that administrators put in place similar levels of data scrutiny for the benchmarks they administer, whether or not the benchmarks have submitters.

**1.13** To achieve this, we proposed:

- Modifying the definition of 'benchmark submission' to include publicly available data that the administrator uses to determine the benchmark.
- Modifying certain requirements to ensure that all benchmarks are still subject to governance and conflicts of interest requirements, and that due diligence is carried out on the information used to determine the respective benchmark, including monitoring and notifications to us.
- Ensuring the existing confidentiality requirement does not apply to benchmark administrators that use publicly available data.

4 fshandbook.info/FS/html/FCA/MAR/8.
5 fshandbook.info/FS/html/FCA/MAR/8/3.

**1.14** In addition, we proposed clarifying the financial resources requirement and making clear how the requirement applies to benchmark administrators that administer more than one benchmark. We also proposed to introduce a record-keeping requirement and a requirement to notify us in case a benchmark administrator falls below capital thresholds.

***MAR 8.2 – Requirements for benchmark submitters***

**1.15** We did not propose to make changes to MAR 8.2 as we consider that it should apply without modifications to the benchmarks that have submitters. These provisions contain practices and arrangements that we believe are sufficiently general, high level and universal to apply to the benchmark submitters coming into regulatory scope.

**1.16** However, we did propose to introduce perimeter guidance to identify circumstances where, in our view, persons are not carrying out the regulated activity of 'providing information in relation to a specified benchmark' (that is, acting as benchmark submitters).

## The Handbook: general provisions

**1.17** As stated in our CP, in common with other persons carrying on regulated activities, benchmark administrators and benchmark submitters will be subject to other Handbook provisions by virtue of being an authorised person. These include:

- Principles for Businesses (PRIN)
- General Provisions (GEN)
- Threshold Conditions (COND)
- Systems and Controls requirements in SYSC
- Statements of Principle and Code of Practice for Approved Persons (APER) – where relevant
- The Fit and Proper test for Approved Persons (FIT) sections – where relevant

**1.18** The General guidance on Benchmark Submission and Administration (BENCH) provides guidance on the wider Handbook provisions that apply to benchmark administrators and submitters.

### Structure of the policy statement

**1.19** In this policy statement, we set out:

- a brief summary of the proposals for which we asked particular questions
- a summary of the feedback we received to the questions
- our response to the feedback
- any changes made as a result of the feedback received (we have made one change as a result of the feedback we received), and
- the made rules

## Who should read this policy statement?

**1.20** The rules set out in the policy statement affect the administrators of the additional benchmarks and (where the benchmark has regulated submitters) firms that submit to them. They also affect the administrator of, and submitters to, LIBOR. These changes will be of interest to firms that use these benchmarks as part of their ongoing business, including electronic trading platforms and similar entities. These changes may interest other financial institutions with a significant profile in global markets referencing benchmarks. And they may also be of indirect interest to consumers.

## Next steps

**1.21** The Handbook provisions come into force on 1 April 2015.

# 2. Summary of feedback and responses

## Benchmark administrators

### Our proposals

**2.1** Benchmark administrators have general responsibility for the organisational and governance arrangements for any benchmarks they administer. This means that they are the focal point of the benchmark-setting process. It is important that the administrator maintains effective governance and oversight arrangements to promote the integrity of the benchmarks they administer. This is regardless of whether or not the benchmarks have submitters.

**2.2** In our CP, we set out the amendments we proposed to MAR 8.3. We stated that we recognised that while the requirements and guidance work well for the LIBOR administrator, modifications were needed to accommodate the differences in other benchmarks. We also recognised that some of the benchmarks being brought into scope do not have submitters.

**2.3** In this chapter, we summarise:

- our proposals for benchmark administrators and benchmark submitters as set out in our CP
- feedback we received to the questions we asked, and
- our response to the feedback

**2.4** In our consultation, we asked the following question:

> **Q1:** ***Do you agree with our proposals to modify MAR 8.3? If not, how could we modify the requirements?***

**2.5** Most respondents supported our proposals to modify MAR 8.3 and the intended outcome of the modifications. However, some respondents made a number of observations and suggestions on the modifications. Many of the comments concerned providing more clarity on certain of the proposed requirements, including requests to tailor the MAR 8 modifications to suit individual benchmarks. A general theme of the responses was respondents pointing out how the modifications would or would not work for their benchmark determination process, given that the rules were drafted for benchmarks with submitters.

**2.6** Comments received covered a number of areas discussed in our CP and we have grouped these under the headings below for ease of reference. Many respondents commented on several of the areas.

### Who is a benchmark submitter and definitions of a 'benchmark submitter' and 'benchmark submission'

**2.7** Many respondents commented that more clarity should be provided on who is and is not a 'benchmark submitter'. Several respondents used their specific benchmark determination process (auction, platform, transaction data) as an example as to why further clarity and distinction was required. In particular, respondents made the comments below.

**2.8** One respondent commented that the terms 'benchmark submission' and 'benchmark submitter' may now cause confusion because submissions may arise from a wider range of sources than active submitters. The respondent suggested that perhaps the term 'benchmark submission' could be replaced by a more general term such as 'benchmark input' and that there should be separate definitions of 'benchmark submitter' and 'alternative benchmark information source'. The respondent commented further that the separate terms will make it easier for market participants to understand which category they fall into and what their responsibilities are under the practice statements and codes of conduct to be drawn up by benchmark administrators.

**2.9** Another respondent commented that the definition of a 'submitter' should be clearly defined and differentiated between types of submission based on regulatory status, if any, of the submitter and the nature/genesis of the data, and that the definition of 'submitter' should take into account the robustness of the data source and its susceptibility to manipulation. The respondent disagreed with our assessment of which benchmarks have submitters and stated that certain of the benchmarks be reclassified as having a facilitation rather than a submission process.

**2.10** Other respondents also disagreed with the benchmarks we identified as having submitters, with one respondent stating that they did not believe that any of the any of the benchmarks had submitters in the way the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) intended. Another respondent stated that reference to persons 'who make benchmark submissions available' is inaccurate in the context of a participant in an auction process and this should be amended.

**2.11** Some respondents suggested that we amend our PERG guidance to take account of the specificities of their benchmarks and make specific exclusion for contributors to their benchmarks.

**2.12** Also, one respondent commented that International Organization of Securities Commissions (IOSCO) compliance cannot be achieved if the foreign exchange providers are defined as 'submitters'.

### Code of conduct and data quality code

**2.13** One respondent expressed concern about extending the code of conduct beyond 'benchmark submitters' to all those who make benchmark submissions available. The respondent suggested that it would be helpful for MAR 8 to do more to encourage benchmark administrators to act proportionately and also ensure questions of data security are addressed. Another respondent sought clarification regarding whether the proposed data quality code is intended to be binding on the data contributors other than benchmark submitters (non-submitters) or the administrator. The respondent expressed reservation about publishing confidential validation criteria as part of a code. Some respondents stated that they are not able to enforce the code of conduct. Another respondent stated that the data quality code is not applicable to the auction process of determining a benchmark.

### 'Adequate' submissions and 'publicly available data'

**2.14** Some respondents wanted clarification on what constituted 'adequate' benchmark submissions and wanted 'publicly available data' to be defined, with one of these respondents also querying the value of stating that 'publicly available' data is not confidential. One respondent also stated that there is uncertainty regarding how 'key sensitivities' should be defined.

**2.15** Further, one respondent stated that, without prescriptive guidance on, or a definition of what is deemed to be 'adequate', it will be difficult for administrators, users and other stakeholders to be certain as to whether adequate data is being used. Another respondent stated that, in relation to determining what an 'adequate' submission is, some markets are small and illiquid and there may be only one data source available on any given day. The respondent stated that it should be the benchmark administrator who determines what constitutes 'adequate' based on a reasoned documented decision. Another respondent asked for clarity where sufficient input data is unavailable to the administrator.

**2.16** Another respondent commented that references to 'representativeness' and 'reliability' should be further detailed for applications to benchmark that are based on auction platforms. The respondent gave the example that it may be the case that in an auction platform process, for any given day, there are no bids or offers or transactions, evidencing that the market is balanced. In this case, it would be difficult to satisfy the requirements for submissions to be 'representative' of the state of the market the benchmark references or to be made available by 'reliable' sources in this context. Although this may be done in relation to the starting price, it is not appropriate in the context of the auction process.

### Data scrutiny and monitoring arrangements

**2.17** Some respondents wanted more clarity on how the data scrutiny and monitoring arrangements should work for their various benchmark determination processes, for example, where a benchmark administrator obtains data from auctions and platforms. One of these respondents stated that we should clarify, in an auction context, that monitoring should be limited to the integrity of the auction platform and not the market participants more broadly. The respondent also stated that guidance on the practical requirements for the calculation agent would be helpful in this context, observing further that mandatory clearing would increase the level of monitoring and verification of benchmark submissions.

**2.18** Another respondent commented that due diligence on the data or information processed, including monitoring, scrutiny and notifications to us should be performed by the platforms and not the benchmark administrator, and that the scrutiny of data should be tailored to the quantity of data received by the benchmark. Another respondent commented that the systems and controls that the benchmark administrator puts in place for non-submitters, namely the criteria that must be met to participate, should provide appropriate controls to maintain the integrity of non-submission based benchmarks. This would include the contractual framework, for example the rulebook, participation agreement and code of conduct.

**2.19** On a separate point, one respondent commented that benchmark submitters do not have enough obligations to administrators and that an administrator cannot require a submitter to answer a query about a particular submission or about its submissions generally.

### Oversight committee

**2.20** Comments on the oversight committee were on the proportionality of the requirements in this area. One respondent disagreed that monitoring and scrutiny of data should be carried out through the oversight committee and that this should be done by the benchmark administrator. The respondent also wanted clarification on the rationale for the oversight committee comprising a minimum of two independent non-executive directors (INEDs) when that may neither

increase the expertise nor the independence of the committee. The respondent also wanted clarification regarding whether the independent members of an oversight committee should be non-executive directors of a third party company, or whether independent NEDs should be on the board of the benchmark administrator or other firms within the holding structure. Another respondent commented that it is not realistic to expect an oversight committee to monitor and scrutinise a large number of individual data inputs and that a review of summary data would be more appropriate.

### Other comments

**2.21** There were some other general comments on the MAR 8 changes.

**2.22** Some respondents commented that our modifications should be consistent with the IOSCO Principles for Financial Benchmarks and the objectives of the Financial Stability Board (FSB). Some respondents also commented that proportionality should be applied to the requirements. Some respondents commented on the implementation timeline, with one respondent stating that the three-month period within which to submit an application is incredibly tight. The respondent also suggested that we introduce a transition period. Another respondent commented that they would welcome clarity as to who will conduct, monitor and report back a gap analysis of any material changes between European Union (EU) and UK regimes. Some respondents also pointed out the costs of the regulated activities.

### Our response

We have carefully considered the responses to this question, and for consistency, we have set these out under the same headings that we grouped the responses.

As a general point, we have aimed through our proposals to make the MAR 8 rules as universally applicable as possible to all the benchmarks. It is neither practicable nor desirable to vary each rule to the specific needs of each of the seven additional benchmarks. Doing so would also mean that we might need to rewrite our rules should any further benchmarks be brought within our regulatory scope before the EU Benchmarks Regulation comes into force. We think it is better to have one set of rules that apply to all regulated benchmarks deemed critical, as will also be the case for the forthcoming EU Benchmarks Regulation.

**Who is a benchmark submitter and definitions of a 'benchmark submitter' and 'benchmark submission'**

From the responses we received, it is clear that respondents would like further clarity regarding who is a submitter and what constitutes a 'submission'. In respect of defining 'submissions', we considered the suggestion by one respondent to use the alternative definitions in the Handbook of 'benchmark input' and 'alternative benchmark information'. To achieve this, we would need to amend each rule to reflect one definition or the other, which could lead to even more confusion.

Regarding the definition of 'benchmark submitters', to avoid doubt, a benchmark submitter is a person who is 'providing information in relation to a specified benchmark', which is defined in the RAO Article 63O. Therefore, providing information required to determine a benchmark to a benchmark administrator would make that person a 'benchmark submitter' and the information a 'benchmark submission' in that context. This means that the

definition of ‘providing information in relation to a specified benchmark’ is important to determining who is and is not a benchmark submitter.

Due to the number of responses received on this issue, we think the best way to provide further clarity is to provide additional perimeter guidance where in our view a person would not be ‘providing information in relation to a specified benchmark’, and in particular in respect of auction participants. This additional guidance is set out in our final rules in this Policy Statement.

Also, the guidance in PERG2.7.20GG that reflects Article 63P of the RAO should be noted. It states that a person is not providing information in relation to a specified benchmark where the information the person is providing:

(i) consists solely of factual data obtained from a publicly available source, or

(ii) is compiled by a subscription service for purposes other than in connection with determining a specified benchmark and is provided to a benchmark administrator only in the administrator’s capacity as a subscriber to the service

Therefore, this exclusion may be relevant to persons that obtain data from published prices.

However, stakeholders are reminded of PERG 1.3.1G, which sets out the status of our perimeter guidance manual. It represents the FCA’s views and does not bind the courts. A person reading the guidance should refer to FSMA and to the relevant secondary legislation to find out the precise scope and effect of any particular provision referred to in the guidance. Any reader should consider seeking legal advice if doubt remains.

**Code of conduct and data quality code**

We proposed in our CP that the code of conduct should apply, where relevant, to persons who are not benchmark submitters but who make benchmark submissions (as defined in our Handbook) available. We appreciate respondents’ concern regarding extending the code beyond ‘benchmark submitters’. However, we consider that persons who are not submitters should follow a certain minimum set of standards as this will strengthen the data that is used in the benchmark determination process.

As we stated in the CP, we proposed that a benchmark administrator put in place a data quality code for non-submission based benchmarks. It is the responsibility of the administrator, through their oversight committee, to monitor and scrutinise data inputs and the representativeness of data sources. The code should prescribe how the benchmark administrator seeks to ensure data representativeness. It is for administrators, through their oversight committee, to decide what information to include in the data quality code and we would not ordinarily expect proprietary or similar information that could harm the integrity of the benchmark to be published. However, we expect adequate and relevant information to be provided in the code to give an accurate description of the data used in determining the benchmark and the criteria for determining the (type(s) of) data used.

To avoid doubt, each benchmark administrator will have to put in place published practice standards that will take the form of either a code of conduct or a

data quality code depending on the specific characteristics of the benchmark determination process. A code of conduct for benchmark submitters and, where relevant, to persons who are not benchmark submitters but who make benchmark submissions (as defined in our Handbook). A data quality code should apply to benchmarks that do not have benchmark submitters.

We note the point made that the code of conduct is not enforceable. However, we believe that it is in the interests of submitters to abide by the code. In CP12/36, we stated that a code of practice offers advantages over detailed and prescriptive rules because a code of conduct can be more adaptable to changing market developments. Our rules are designed to be outcome-focused and relatively high level so as also to withstand a changing market over time. Should it become the case that that the code of conduct is not performing the desired role because it is not being adhered to by submitters, we would have to review the situation and determine whether prescriptive rules would be required instead of a code of conduct. However, our experience with the LIBOR code of conduct suggests that the code is helpful to benchmark submitters and submitters have embraced the code and appreciate the guidance it contains.

**'Adequate' submissions and 'publicly available data'**

Some respondents requested clarification on what constitutes 'adequate' submissions. We proposed guidance on what we considered 'adequate' in the draft rules in the CP. We consider this guidance sufficient. As one respondent noted, it is for the benchmark administrator to determine whether submissions are 'adequate'. This should be considered within the guidance set out in our proposals, and this determination should be documented in the code. The same reasoning also applies for 'representativeness', 'reliability' and 'key sensitivities', which should also be determined within the context of the specific benchmark determination process and documented in the code.

In a case where an auction is not successful in determining a price, we will need to consider whether the alternative method of determining the price includes submitters and we will provide individual guidance if necessary. In these cases, firms will need to consider and manage any conflicts of interest that may arise or be present in the alternative price determination process.

To reiterate and summarise the points made in this section, we expect benchmark administrators to use data inputs that would make for a meaningful benchmark.

**Data scrutiny and monitoring arrangements**

With regards to data scrutiny and monitoring arrangements, the onus is on benchmark administrators to satisfy themselves of the integrity of the data used in their benchmark determination and therefore of the benchmark. For benchmark administrators that obtain their data from platforms and auctions for example, we expect the platform providers and the auction managers to provide the 'first line of defence' for data scrutiny and monitoring. This would therefore include monitoring of the activities on the platform and by extension, the participants on the platforms, as also noted by one respondent.

Despite the above, we expect benchmark administrators to work with platforms providers and auction providers to gain comfort from the data scrutiny and monitoring activities undertaken and to satisfy themselves as to the integrity

of data inputs. We also require the same level of due diligence by benchmarks administrators whose benchmarks are determined by benchmark submissions.

We acknowledge respondents' point regarding the quantity of data that may need to be scrutinised in some instances because of how the benchmark is determined. However, it is for the administrator to determine how best this scrutiny is undertaken. Our expectation remains that robust scrutiny arrangements should be put in place.

We expect benchmark submitters to cooperate with benchmark administrators regarding requests for information relating to a benchmark submission. We encourage benchmark administrators to notify us if this is not the case under MAR 8.3.6R(2).

**Oversight committee**

We agree that the ultimate responsibility for monitoring and scrutiny of data lies with the benchmark administrator. However, we consider that the oversight committee has a role in ensuring that such scrutiny and monitoring is carried out to the highest standards and we explained the role of the oversight committee in CP12/36. The committee could do this in various ways, including through periodic monitoring reports and providing challenge on the same, and considering wider data sources and the integrity of these sources. It could also include considering outlier data and receiving samples and summaries of relevant data interrogation reports. It is for the benchmark administrator to ensure the oversight committee is given the right amount, and the right kind, of information, in the right format to carry out its role.

Regarding the minimum number of independent non-executive directors (INEDs), this is not a new addition we proposed in our CP. We do not agree that they will neither increase the expertise which the committee holds nor its independence. We consider that independent non-executive directors bring challenge to the oversight committee. We consider that having a minimum of two INEDs is integral to the integrity of the benchmark. We expect the INEDs to be completely independent from the benchmark administrator and groups. Should an administrator consider that this rule should not apply to them, they would need to apply for a waiver setting out why.

Regarding the three-month period within which to apply for authorisation, this period is specified in the Treasury's statutory instrument.

We comment on respondents' comments on proportionality, IOSCO, the EU, and costs in our responses to the other questions we posed in the CP as respondents have also commented on these in relation to other questions.

## Adequate financial resources

**2.23** We did not propose to change the existing requirement for a benchmark administrator to hold sufficient financial resources to be able to continue to administer the benchmark for at least six months, with the expectation that sufficient resources are held for nine months. However, we used the opportunity of the CP to clarify the definition of financial resources in MAR 8.3 to

make it clearer and more straightforward to understand how the requirement can be complied with.

**2.24** In addition to clarifying the financial resources requirement, we proposed guidance to the effect that, where a benchmark administrator administers more than one benchmark, it can comply with the financial resources requirement without necessarily multiplying its capital base. We also proposed to introduce a requirement that administrators notify us when they reasonably expect financial resources to drop below the nine-month buffer. An administrator should be able to demonstrate the adequacy of its resources to us.

**2.25** In our consultation, we asked the following questions:

> **Q2:** ***Do you agree with our proposal to clarify the financial resources definition for a benchmark administrator?***
>
> **Q3:** ***Do you agree with our proposal to introduce guidance regarding the financial resources requirement when a benchmark administrator administers more than one benchmark?***
>
> **Q4:** ***Do you agree with our proposal to introduce a notification requirement when a benchmark administrator's financial resources fall below the buffer level?***

**2.26** Respondents were supportive of our proposals and appreciated the additional guidance, agreeing that it was sensible.

**2.27** However, one respondent stated that they would like further clarification on how the buffer will be determined / calculated and by whom. Another respondent noted that the proposal fails to encompass the common case whereby a benchmark administrator may also publish further benchmarks out of the scope of regulation. Another respondent stated that they would appreciate additional clarification concerning the use of retained earnings as part of capital. That is, does this include audited profits only or can it include current year interim profits? If the latter may be included, can they be unaudited figures.

### Our response

The aim of the financial resources calculation is to encourage regulated entities to retain sufficient capital to enable the orderly wind-down or transfer to another administrator of their activities should they cease to operate. To the extent that this winding down is affected by the cost of performing non-regulated activities, we would expect the costs to be adequately reflected in the wind-down calculation and hence the calculation of capital required.

Regarding the buffer, we expect this to be calculated by the benchmark administrator and agreed with their supervisor.

Regarding retained earnings, where the firm has a statutory auditor, we expect the retained reserves to be audited, and interim profits verified, if they are to be included in financial resources.

In our CP, we proposed clarifications to the definition of financial resources in MAR 8.3.15, which described the capital and liquid financial assets benchmark administrators have to hold to cover the operating costs of administering a benchmark. After further consideration, we have revised the guidance. The capital and liquid financial assets requirements remain, but the approach to the calculation of net capital has been adjusted so that it is proportionate to the prudential risks of the administrator.

## Record keeping

**2.28** In our consultation, we proposed to introduce a record keeping requirement for benchmark administrators. This will ensure that administrators exercise appropriate care and due diligence on all information used or considered for benchmark determinations. We proposed guidance for administrators that did not have regulated submitters that these records should include information on the person and, where applicable, the individual who made the benchmark submission available to the relevant benchmark administrator.

**2.29** In our consultation, we asked the following question:

> **Q5:** ***Do you agree with our proposal to introduce a record keeping rule and guidance for benchmark administrators?***

**2.30** Most respondents to this question agreed with our proposal to introduce a record keeping requirement for administrators. However, one respondent disagreed with our proposal for both the benchmark submitter and benchmark administrator to retain data for five years. This respondent also recommended that all individuals within an organisation that is involved in the benchmark process be named in a personnel register, with roles and responsibilities clearly defined. The respondent stated that, based on PERG 2.7.20GG, they did not interpret this as requiring the benchmark administrator to keep records of all individuals involved in generating the data and that in practice, there may be a number of individuals involved in the process of determining a price generated as part of trading activities. This respondent requested that we consider amending MAR 8.3.12B to make clear that, where information is made available to the benchmark administrator by a third party, for example a subscription service, the person generating the data is not treated as the 'person who made the benchmark submission available' for the purposes of MAR 8.3.12B.

**2.31** Also, some respondents had concerns about how the proposal might work in practice. And there were also requests from respondents for further clarification and guidance with regards to how the proposals might apply to their specific benchmarks, with one respondent stating that to record 'all information used or considered for benchmark determinations' is vague. One of the respondents commented further that recording all data that may be used in determining the benchmark is a huge expectation because a vast amount of data may inform a benchmark submission including potentially the totality of the current news stories and other 'market colour' and that it is impractical and disproportionate to archive this volume of data. Some respondents also pointed out that because of the way their benchmarks are constructed, they do not have information on the underlying clients.

**2.32** One of these respondents who wanted more clarity stated that, for submission-based benchmarks, benchmarks determination may include information such as a submitter's view

of their counterparty and that this may work as a disincentive for submitters. Also, certain benchmarks are calculated based on market sensitive information, for example bids and offers, which should be appropriately managed. Supplying this information to an administrator as envisaged in the CP would conflict with these agreements and participants may have concerns about this information being disclosed to a third party administrator.

**2.33** One of these respondents expressed concern that this requirement might be open to an overly strict interpretation, with administrators requiring market participants to provide the names of all their traders, on the basis that any of those traders could find that their trades have been used as submissions. They suggested that we amend the wording slightly to read 'where reasonably possible' and 'where specifically available'.

**2.34** Another respondent advocated a harmonisation to the existing FCA Handbook requirements and standards because these records may also be required under other provisions.

**Our response**

The aim of the proposed record keeping requirements is to ensure that, on request from us, a benchmark administrator can trace all inputs and key sensitivities that went into determining a benchmark on a particular date, and in particular, the firms involved in the benchmark determination process, and for benchmarks that do not have submitters, where this information is available. This information is important to us and should be important to benchmark administrators to ensure that, should manipulation be suspected, persons at firms involved in the benchmark determination process can be identified.

We note that some benchmark administrators may not have access to information on the underlying individuals or on the parties to transactions. Our expectation is that benchmark administrators will obtain and keep this information as required where it is reasonably possible.

Where a benchmark has more than one administrator, they would all have to keep records. An administrator would need to apply for a waiver of this rule if they wish to present a case that the other administrator is fulfilling the function.

Other information such as 'market colour' and news stories and the like can be retained at the benchmark administrators' discretion. Judgement is required by the administrator as to whether such information is relevant to determining the benchmark on a specific date.

We consider that our record-keeping requirements are in line with other similar requirements in the Handbook.

We address the comment on MAR 8.3.12B in our response to question eight.

## Benchmark submitters

### Our proposals

**2.35** In our CP, we stated that we had reviewed the MAR 8.2 provisions in view of the benchmarks that are coming into regulatory scope. We stated that we thought that MAR 8.2 should apply to the benchmarks that have submitters without modifications. We stated further that these provisions contain practices and arrangements that we consider are sufficiently general, high level and universal to apply to the benchmark submitters coming into regulatory scope.

**2.36** We therefore proposed not to make any modifications to MAR 8.2. Benchmark submitters would be required to comply with MAR 8.2.

**2.37** However, we did propose perimeter guidance to recognise that certain benchmarks do not have submitters. The perimeter guidance we proposed is aimed at clarifying how we consider the RAO applies in this regard.

**2.38** We also stated that, where a benchmark did not have submitters or where it is determined through information from both benchmark submitters and persons who are not benchmark submitters but who make benchmark submissions (as defined in our Handbook) available, we still expected the benchmark administrator to maintain proper oversight, monitoring and surveillance arrangements over all the data or information used or made available to determine the benchmark.

**2.39** In our consultation, we asked the following question:

> **Q6:** ***Do you agree that the MAR 8.2 provisions do not need modifications for the benchmarks being brought into regulatory scope?***

**2.40** Some respondents agreed that the MAR 8.2 provisions do not need modifications for the benchmarks being brought into regulatory scope. However, some respondents commented that these requirements were not sufficiently proportionate in respect of other benchmarks that may be brought into scope. One respondent requested greater clarification and guidance as to what 'submitters that will be regulated' means and its context in relation to MAR 8.2. The respondent also mentioned that certain MAR 8.2 requirements (MAR 8.2.4G) may be onerous in certain parts and may deter otherwise representative and high quality sources of submissions from submitting data to a benchmark. The respondent also wanted clarification that certain identified benchmarks and their participants will not be caught by MAR 8.2 in its entirety.

### Our response

It is our view, as stated in the CP, that the provisions and arrangements contained in MAR 8.2, are sufficiently general, high level and universal to apply to the benchmark submitters coming into regulatory scope.

The MAR 8.2 provisions require benchmark submissions to be properly overseen, including ensuring that there are appropriate systems and controls and conflicts of interest management. Records must be kept and periodic internal reviews undertaken.

These safeguards are in place to serve as a deterrent to manipulative behaviour. Following a careful review of the responses, we are not convinced that they need to be revised or adjusted to the specific benchmarks.

Regarding MAR 8.2.4G, we said in our CP (paragraph 3.15) that, where the submission activity takes place outside the UK, we accept it may be difficult for the CF40 (benchmark submission controlled function) to properly discharge their duties if they are based in a different country to the submitting activity. In those circumstances, we will take a pragmatic view.

Regarding who is a submitter, we have stated in our response to question one that we will amend our perimeter guidance to ensure that it is clearer who is or is not a submitter, and in particular regarding auction participants.

**2.41** We also asked the following question in our CP:

> **Q7:** ***Are there any other amendments you think we should make to the MAR 8 provisions?***

**2.42** Responses to this question covered a number of areas.

**2.43** One respondent thought it would be practical that we provide specific guidance at the outset, alongside the MAR 8 rules, setting out which rules we would typically expect third parties who perform delegated administration functions to dis-apply. The respondent suggested that it would be helpful to include a definition of a calculation agent, as is the case under the IOSCO Principles for Financial Benchmarks. The respondent also suggested the rules it believes should apply to them, including the fact that certain activities may be outsourced. The respondent thought that it should be clear that MAR 8 does not extend to the performance of any ancillary activities by benchmark administrators or calculation agents that are provided alongside the auction process. For example, services relating to the functionality of an auction platform.

**2.44** One respondent stated that they believe that the need for the appointment of at least two independent non-executive directors to an oversight committee in the draft MAR 8 rules is disproportionate as the main purpose of an oversight committee is to review, test and challenge the operating decisions, policies and procedures of the benchmark administrator. Respondents stated that non-executive directors would expect to be remunerated for their time and will attract additional cost in relation to indemnity insurance premiums. One of these respondents stated further that the provisions should clarify the requirement for independent non-executive directors on the oversight committee. This point was also raised by another respondent.

**2.45** One respondent did not think that having 'market infrastructure providers' on an oversight committee is relevant to some of the new benchmarks and suggested adding '(where applicable)' to the rules. The respondent recommended a more general statement in MAR 8.2.8R about having representation from both the supply and the demand side of the underlying interest that the benchmark is designed to represent.

### Our response

As we stated previously, because the benchmark determination process is not uniform across the seven benchmarks. We have tried to make the rules as

generic as possible and making specific rules for specific benchmarks would not be helpful in our view.

Where there is more than one administrator for a specific benchmark, the starting position is that the entire MAR 8.3 and other Handbook rules will apply to both administrators. However, where the relevant thresholds are met, we would be prepared to consider waivers and modifications as appropriate under section 138 of FSMA.

We do not think it is necessary to create a specific term of 'calculation agent'. That is because, under the RAO, a calculation agent would be 'administering' a specified benchmark (see Article 63)(2)(b)(iii) RAO). So for the purposes of the secondary legislation, a calculation agent is regarded as administering a specified benchmark.

Where a benchmark has more than one administrator, it is for the administrators of the benchmark to clearly set out the responsibilities of each administrator in relation to the benchmark. It is not for the regulator to determine this for them. It is open to 'calculation agents' to apply for waivers/ modifications if they can satisfy the relevant thresholds under FSMA.

For clarification, MAR 8 does not apply to ancillary services. However, we consider it is good practice to ensure that all the activities that are connected to and required for determining the benchmark are properly overseen to regulatory standard.

Regarding the outsourcing of benchmarks activities by benchmark administrators, it is important to note that SYSC8.1.6R states that a firm cannot contract out its regulatory obligations.

It also important to note that the RAO describes the activities that amount to 'administering a specified benchmark'. These are:

(i) administering the arrangements for determining a specified benchmark

(ii) collecting, analysing or processing information or expressions of opinion provided for the purpose of determining a specified benchmark

(iii) 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

Any firm whose activities fall within those outlined in the RAO as 'administering a benchmark' must seek authorisation as a benchmark administrator. If a benchmark has more than one administrator, we may, (subject to being satisfied that the applicable thresholds in section 138A of FSMA are met), waive or modify certain rules, should we deem this necessary.

The requirement to appoint at least two independent non-executive directors (INEDs) is not a new requirement. This requirement is already in our rules. We agree that the main purpose of an oversight committee is to review, test and challenge the operating decisions, policies and procedures of the benchmark administrator. However, as we stated previously in our response to question one,

independent non-executive directors bring an unbiased view and independent challenge to proceedings as they are not part of the business. We note the concerns regarding indemnity insurance and the costs regarding these directors. However we consider the benefits of having the independent non-executive directors on the oversight committee outweigh the costs. As previously stated, should an administrator consider that this rule should not apply to them, they would need to apply for a waiver setting out why.

We note the point made regarding market infrastructure providers. We consider it is important to ensure adequate representation from all sections of the market on the oversight committee. If an administrator believes that the composition of their oversight committee requires amendment to reflect the way their benchmark is determined, they can apply for the rule to be modified for them.

**2.46** We also asked the following question in our consultation:

**Q8:** ***Do you agree with our proposed perimeter guidance?***

**2.47** Some respondents agreed with our perimeter guidance. Other respondents to this question requested more clarity on who is and is not a submitter. Similarly, other respondents stated that they did not consider that certain benchmarks should be based on the definition of 'persons providing information in relation to a specified benchmark'. One respondent explained that they were intermediaries in the markets they operate in and that contributions are made up of transaction data. One respondent noted that we are considering giving equivalent status to non-concluded and unmatched bids and offers in illiquid products of long tenors or only notional settlement. This did not seem appropriate to the respondent.

**2.48** One respondent requested clarity on applying the data quality code and how waivers would apply to the authorisation regime as described in paragraph 2.27 of our CP. The respondent asked if there is an intention to use these waivers to allow the authorisation regime to harmonise more closely with the IOSCO Principles for Financial Benchmarks, and other international standards.

**Our response**

The definition of 'providing information in relation to a specified benchmark' is clearly set out in the RAO and it is not within our remit to determine the scope of the RAO. However, in response to the feedback we received from question one, we stated that we will publish additional perimeter guidance clarify further who in our view is or is not a submitter, and in particular, in respect of auction participants.

We fully endorse and support the IOSCO Principles for Financial Benchmarks and encourage firms to self-assess and comply with the Principles.

Regarding one respondent's comment on MAR 8.3.12B in their response to question five, we proposed perimeter guidance in our CP, further clarified in our final rules, regarding when information that is used to determine a benchmark is provided by a third party.

We have commented on the data quality code and waivers in our responses to previous questions.

**2.49** We also asked the following question in our CP:

> **Q9:** ***What other, if any, scrutiny measures should apply to benchmarks that do not have submitters?***

**2.50** Respondents to this question did not think there are any other scrutiny measures that should apply to benchmarks that did not have submitters and that the provisions were adequate. One respondent stated that they supported a strong control environment to mitigate conflicts of interest, in order to maintain credible and robust benchmark submissions. They stated further that they expected any scrutiny measures to be applied consistently by benchmark administrators.

**Our response**

Based on the responses received to this question, we consider that no further scrutiny measures are necessary.

### Cost benefit analysis

**2.51** We set out our cost benefit analysis in Annex 2 of our CP, which was based on adjustments to the LIBOR cost benefit analysis (CBA). In the Annex, we gave a range of detailed costs to us, benchmark administrators and benchmark submitters.

**2.52** In the Annex, we also set out what we assessed to be the benefits of the proposals as discussed in the CP.

**2.53** We asked the following question in our CP:

> **Q10:** ***Do you have any comments on the assessment of the costs and benefits of the proposed modifications to MAR 8?***

**2.54** Respondents commented on a number of aspects of our CBA. Some respondent also commented on our fees in response to this question.

**2.55** Some respondents queried our basis for using adjusted LIBOR figures; they thought that we could have requested information from the LIBOR administrator and the LIBOR submitters or the benchmarks coming into scope themselves. One respondent also noted the absence of insurance and audit costs. One respondent suggested that it may be useful to seek to assess the costs that would be incurred if the benchmarks ceased to exist or were found unfit for purpose. The respondent also commented that our estimated figures are too low for both benchmark administrators and submitters. The respondent also stated that the costs to us estimated in the CP did not seem to be defrayed by the fees to be charged to benchmark administrators; they want reassurance that we will not seek to redress this by very significant increases in fees in the future.

**2.56** Some respondents stated that the costs of becoming regulated for the benchmark activity is high and may cause them to reconsider whether to continue with this activity.

**2.57** One respondent commented on our proposed fees for benchmark administrators. The respondent thought that fees were disproportionate given the fees paid by other types of firms. The respondent did not consider the application for authorisation to be complex, given the activities to be carried on and they thought that fees for straightforward or moderately complex applications are more appropriate. The respondent also thought that where more than one administrator was administering the benchmark, the fees should be on a pro rata basis, taking into account the nature of the activities performed and the extent of any waiver or disapplication of the MAR 8 rules.

**2.58** One respondent mentioned that the CP seems to indicate the annual fee is per administrator not per benchmark. The respondent also asked whether, where more than one entity is authorised to administer a benchmark, all entities will be liable for the supervision fee. The respondent asked whether our CBA had considered any additional costs that may arise from the EU Benchmark Regulation when it is implemented.

**2.59** Some respondents also commented on the benefits we identified and one respondent did not think that the benefits were relevant to the new activities of many of the specified benchmarks. Also, it was not clear to one respondent how 'continuity of the benchmarks' could be perceived as a benefit because the additional costs are more likely to decrease rather than increase the likelihood of certain benchmarks continuing.

**2.60** Some responses raised the issue of benchmark pricing and costs being passed onto users of the benchmarks. One of these respondents commented that they are concerned that benchmark administrators are levying costs on all users of a benchmark and, given the interconnectivity of the market, these ongoing costs may be passed on to both users and the regulated submitters or persons who make benchmark submissions. The respondent is uncomfortable with a precedent being set if administrators may be able to levy additional ongoing costs on the market multiple times.

**Our response**

We note respondents' concerns regarding our CBA. We consider that we approached the CBA in an expedient manner. We think that the costs pointed out by respondents as not having been included in our CBA would not have a significant impact on the overall estimated costs.

As we stated in our CP, the current annual fee for administering a benchmark is £175,000 and we consult on fee rates each March. We will address the comments we have received when we present our proposed charges for 2015/16 in the CP on fee rates we are publishing at the end of March.

We have not considered the additional cost of EU regulation, firstly because it is still being negotiated and secondly, it is for the EU and individual firms to conduct their own impact analysis.

Regarding pricing and costs being passed onto users, we will consider whether additions to the MAR 8 rules in this regard are necessary. Should we propose to introduce such rules, we will consult in due course.

Overall, we consider that the manner in which we have proposed to amend the MAR 8 rules is proportionate and reasonable. We have endeavoured to take into account the peculiarities of the benchmarks coming into scope but without overly tailoring the rules to one type of benchmark determination over another. We do not think it practical to tailor every rule to every specific benchmark coming into scope. This is particularly so given the temporary nature of this regime.

### Other issues raised by respondents

**2.61** One respondent requested clarification on whether we expect the first auditor's report to cover the period before the CF40 must be appointed because we stated in the CP that there will be a transition period of six month for Approved Persons.

**2.62** One respondent stated that the principle gap in the rule modifications proposed is that they fail to extend a private right of action to parties injured by benchmark manipulation. Commenting further, the respondent stated that this right should be extended to any injured party, whether or not they come within the definition of a 'private person'. Such an extension would provide a significant deterrent to benchmark manipulation, because it would enlarge the population of potential rule enforcers to include any and all injured parties. The respondent thinks that the parties who actually suffer damage from benchmark manipulation should be entitled to pursue adequate compensation themselves.

#### Our response

We stated in our CP that the full transition time for Approved Person is two weeks and six months. However, the transitional provision applies in the following way: we would expect benchmark administrators and benchmark submitters to have the required Approved Person in place as soon as possible. The firm has until 15 April to apply for approval of the person carrying on the controlled function. The person whom the application relates to will be able to exercise the controlled function until the application is decided. This is reflected in our draft rules.

Regarding the private right of action, we considered this in CP12/36. We stated in the subsequent policy statement, PS13/6, that we agreed that the requirements applying to benchmark submitters and benchmark administrators related to their systems and controls framework, rather than to conduct of business. In general, we do not apply right of action to our general systems and control provisions. We stated further in the policy statement that we believe that allowing private persons to bring an action for breaches of the new benchmark regime against submitters and administrators could severely discourage existing or future participation in LIBOR (and now the additional seven benchmarks coming into regulatory scope). We therefore agreed that the private right of action should not apply to our Handbook rules for both benchmark administrators and submitters and we included a rule to achieve this.

We have not changed our thinking on this.

# Annex 1
# List of non-confidential respondents

Barclays Bank

CME Benchmark Europe Limited

Elborne Mitchell LLP (Dr Edward (Ned) Swan)

ICE Benchmark Administration Limited

Pipex

PricewaterhouseCoopers LLP

The London Bullion Market Association (LBMA)

The Royal Bank of Scotland

The WM Company

Thomson Reuters

Virgin Money Plc

Wholesale Markets Brokers Association (WMBA)

# Appendix 1
# Made rules (legal instrument)

# BENCHMARKS (AMENDMENT) INSTRUMENT 2015

## Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137F (Rules requiring participation in benchmark);
(3) section 137T (General supplementary powers); and
(4) section 139A(1) (Power of the FCA to give guidance).

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 April 2015.

## Amendments to the FCA 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 |
| Fees manual (FEES) | Annex B |
| Market Conduct sourcebook (MAR) | Annex C |
| Supervision manual (SUP) | Annex D |

## Amendments to material outside the Handbook

E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

## Citation

F. This instrument may be cited as the Benchmarks (Amendment) Instrument 2015.

By order of the Board of the Financial Conduct Authority
26 February 2015

## Annex A

## Amendments to the Glossary of definitions

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

| | | |
|---|---|---|
| *benchmark submission* | (a) | ~~The~~ the information or expression of opinion provided to a *benchmark administrator* for the purpose of determining a *specified benchmark* as defined in article 63O(2)(a) of the *Regulated Activities Order*; and |
| | (b) | any data or information made available by a person other than a *benchmark submitter* that is processed, considered or used by a *benchmark administrator* to determine the *specified benchmark* it administers. |

## Annex B

## Amendments to the Fees manual (FEES)

In this Annex, the text is all new and is not underlined.

After TP 10 insert the following new text.

### TP 11 Transitional Provisions for the Benchmarks Order 2015

### 11.1 Introduction

11.1.1 G (1) *FEES* TP 11 deals with transitional arrangements for *firms* that will *administer specified benchmarks* by operation of the "Benchmarks Order 2015".

(2) The "Benchmarks Order 2015" is the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (SI 2015/369)

11.1.2 R *FEES* TP 11 remains in force until all fees in *FEES* TP 11.2 have been paid in full.

### 11.2 Exceptional fee

11.2.1 R *FEES* TP 11.2 applies to a *firm* which:

(1) is treated as having its *permission* varied to include *administering a specified benchmark* under article 4 of the Benchmarks Order 2015; or

(2) meets the following criteria:

(a) its *permission*, before 1 April 2015, included *administering a specified benchmark*;

(b) on 1 April 2015, it is administering more than one *specified benchmark*; and

(c) it is not a *firm* in *FEES* TP 11.2.1R(1).

11.2.2 R A *firm* in *FEES* TP 11.2.1R is treated as if:

(1) it had applied to carry on "*administering a specified benchmark"* under *FEES* 3.2.7R(ga)(ii) on 1 April 2015; and

(2) its due date for the payment of the relevant fee is 30 days after 1 April 2015.

## Annex C

## Amendments to the Market Conduct sourcebook (MAR)

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

### 8.3 Requirements for benchmark administrators

…

8.3.4 G The arrangements described in *MAR* 8.3.3R should include measures designed to ensure the confidentiality of *benchmark submissions* and additional information received from *benchmark submitters* (to the extent that such submissions and information are not publicly available or have not been made public by mutual agreement between the *benchmark administrator* and *benchmark submitter*), for example, through confidentiality agreements for the *benchmark administrator's* employees and members of the oversight committee.

…

8.3.7A R A *benchmark administrator* must ensure that the *specified benchmark* it administers is determined using adequate *benchmark submissions*.

8.3.7B G To ensure it is using adequate *benchmark* submissions, a *benchmark administrator* of a *specified benchmark* that does not have *benchmark submitters* should use *benchmark submissions* that are:

(1) representative of the state of the market the *specified benchmark* references; or

(2) made available by reliable data sources.

Oversight committee

8.3.8 R A *benchmark administrator* must establish an oversight committee (which must be a committee of the *benchmark administrator*) which includes:

(1) (where applicable) representatives of *benchmark submitters*,;

(2) market infrastructure providers,;

(3) users of the *specified benchmark*; and

(4) at least two independent *non-executive directors* of the *benchmark administrator* approved to carry out the *non-executive director function*.

8.3.8A R A *benchmark administrator* of a *specified benchmark* that does not have *benchmark submitters* must consider including in the oversight committee

representatives of persons who make *benchmark submissions* available.

…

8.3.10 R The *benchmark administrator* through its oversight committee must:

(1) develop practice standards in a published code which, for the relevant *specified benchmark*, set out the responsibilities for:

(a) *benchmark submitters* and (where applicable) *persons* who make *benchmark submissions* available,;

(b) the *benchmark administrator*,; and

(c) its the oversight committee in relation to the relevant *specified benchmark*;

(2) undertake regular periodic reviews of:

…

(c) where applicable the composition of *benchmark submitter* panels of *benchmark submitters* or other persons who make *benchmark submissions* available; and

…

…

8.3.10A G For *specified benchmarks* that do not have *benchmark submitters*:

(1) the practice standards in *MAR* 8.3.10R(1) should specify data standards, including data quality and the representativeness of *benchmark submissions*; and

(2) the process of making relevant *benchmark submissions* in *MAR* 8.3.10R(2)(d) should include processing, considering or using the *benchmark submission* to determine the *specified benchmark* it administers.

Review of the benchmark and publication of statistics

8.3.11 R The *benchmark administrator* must be able to provide to the *FCA*, on a daily basis, all *benchmark submissions* it has received relating to used to determine the *specified benchmark* it administers.

…

Record keeping

8.3.12A R A *benchmark administrator* must keep records for at least five years of:

(1) all *benchmark submissions* used to determine the *specified benchmark* it administers; and

(2) the person and, where possible, the individual who made the relevant *benchmark submission*.

8.3.12B G For a *specified benchmark* that does not have *benchmark submitters*, the records in *MAR* 8.3.12AR(2) should include, where available, information sufficient to identify the person and the individual who made the *benchmark submission* available to the relevant *benchmark administrator*.

Adequate financial resources

…

8.3.13A G A *benchmark administrator* that administers more than one *specified benchmark* may comply with its financial resources requirements under *MAR* 8.3.13R(2) by holding sufficient financial resources to cover the combined operating costs for all *specified benchmarks* it administers.

8.3.14 G (1) *MAR* 8.3.13R sets out the minimum amount of financial resources a *benchmark administrator* must hold ~~in order~~ to carry out *administering a specified benchmark*.

(2) ~~However, the~~ The *FCA* expects *benchmark administrators* to:

(a) normally hold sufficient financial resources to cover the operating costs of administering the *specified benchmark* for a period of nine months; and

(b) notify the *FCA* where a *benchmark administrator's* financial resources fall below these levels (required by *MAR* 8.3.17R and *SUP* 15.3.11R).

8.3.15 G ~~The financial resources in respect of the requirement in *MAR* 8.3.13R(2):~~ To meet the financial resources requirement in *MAR* 8.3.13R(2), the *FCA* expects a *benchmark administrator* to hold both sufficient liquid financial assets and net capital to be able to cover the operating costs of administering the *specified benchmark*.

(1) net capital can include ~~liquid financial assets held on the balance sheet of the *benchmark administrator*, for example, cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect,~~ common stock, retained earnings, disclosed reserves, ~~and~~ 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 the *benchmark administrator's* auditor; and

(2) ~~should not include holdings of the *benchmark administrator's* own~~

~~securities or those of any undertaking in the *benchmark administrator's* group; any amount owed to the *benchmark administrator* by an undertaking in its group under any loan or credit arrangement, and any exposure arising under any guarantee, charge or contingent liability.~~ should be calculated after deductions for:

(a) holdings of the *firm's* own securities or those of any undertaking in the *firm's group*;

(b) any amount owed to the *firm* by an undertaking in its *group* under any loan or credit arrangement;

(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 *benchmark administrator* where:

(a) the financial instruments have minimal market and credit risk, and

(b) are capable of being liquidated with minimal adverse price effect.

…

Notifications for breaches

8.3.17 R A *benchmark administrator* 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 *specified benchmark* for a period of nine months.

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

…

**Sch 1 Record Keeping requirements**

Sch 1.1 G

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| … | | | | |
| *MAR* | *Benchmark* | Information | When | 5 years |

| | | | | |
|---|---|---|---|---|
| 8.2.10R | *submissions* | in *MAR* 8.2.10R and *MAR* 8.2.11G | making a *benchmark submission* | |
| *MAR* 8.3.12AR | *Benchmark submissions* | Information in *MAR* 8.3.12AR and *MAR* 8.3.12BG | When using a *benchmark submission* to determine a *specified benchmark* | 5 years |

**Sch 2 Notification requirements**

Sch 2.1 G ~~There are no notification requirements in *MAR*.~~ This schedule outlines the notification requirements detailed in *MAR* where notifications should be provided to the *FCA*.

Sch 2.2 G Notification requirements

| **Handbook Reference** | **Matter to be notified** | **Contents of Notification** | **Trigger event** | **Time allowed** |
|---|---|---|---|---|
| *MAR* 8.3.17R | Reasonable possibility of not being able to hold sufficient financial resources | Full details together with relevant financial information | Occurrence | As soon as practicable |

## Annex D

## Amendments to the Supervision manual (SUP)

In this Annex, the text is all new and is not underlined.

After TP 4 insert the following new text.

### TP 5 Transitional provisions for SUP 10A

### 5.1 Benchmark submitters or benchmark administrators: authorised firm

5.1.1 R *SUP* TP 5.1 applies to a *firm* whose *permission* is varied by article 4 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (SI 2015/369) (Transitional provisions).

5.1.2 R For the periods in *SUP* TP 5.1.3R:

(1) the *benchmark submission function* does not apply to a *benchmark submitter*; and

(2) the *benchmark administration function* does not apply to a *benchmark administrator*.

5.1.3 R *SUP* TP 5.1.2R applies from 1 April 2015:

(1) until 15 April 2015; or

(2) if the *firm* applies for the relevant *controlled function* in *SUP* TP 5.1.2R by 15 April 2015, until its application for approval has been finally decided.

5.1.4 R An application is finally decided for the purpose of *SUP* TP 5.1:

(1) when the application is withdrawn; or

(2) when the *appropriate regulator* grants the application for approval under section 62 of the *Act* (applications for approval: procedure and right to refer to the Tribunal); or

(3) where the *appropriate regulator* has refused an application and the matter is not referred to the *Tribunal*, when the time for referring the matter to the *Tribunal* has expired; or

(4) where the *appropriate regulator* has refused an application and the matter is referred to the *Tribunal*, when:

(a) if the reference is determined by the *Tribunal*, the time for bringing an appeal has expired; or

(b) on an appeal from a determination by the *Tribunal*, the court itself determines the application.

**5.2 Benchmark submitters or benchmark administrators: new firm**

5.2.1 R *SUP* TP 5.2 applies to a *firm* that is granted an "interim permission" under article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (SI 2015/369) (Interim permission).

5.2.2 R For the periods in *SUP* TP 5.2.3R, no *controlled function* applies.

5.2.3 R *SUP* TP 5.2.2R applies from 1 April 2015:

(1) until 15 April 2015; or

(2) if the *firm* applies for any *controlled function* in *SUP* TP 5.1.2R by 15 April 2015, in respect of that *controlled function*, until the application for approval has been finally decided.

5.2.4 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of *SUP* TP 5.2 in the circumstances described in *SUP* TP 5.1.4R.

## Annex E

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and strikethrough indicates deleted text.

### 2.7 Activities: a broad outline

…

Specified benchmarks activities

…

| | | |
|---|---|---|
| 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* ~~so he can *administer*~~ <u>for the purpose of *administering*</u> *a specified benchmark*. |
| <u>2.7.20EA</u> | <u>G</u> | <u>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*.</u> |

…

| | | |
|---|---|---|
| <u>2.7.20GA</u> | <u>G</u> | <u>A person in *PERG* 2.7.20EAG would also not normally be *providing information in relation to a specified benchmark* if:</u> |
| | | <u>(1)</u> <u>the information is made available to the *benchmark administrator* by a third party; and</u> |
| | | <u>(2)</u> <u>the third party can rely on any exemption in *PERG* 2.7.20GG.</u> |

…

| | | |
|---|---|---|
| 2.7.20J | G | *Specified benchmarks* are listed in Schedule 5 to the *Regulated Activities Order*; ~~currently the only *specified benchmark* is the London Interbank Offered Rate (LIBOR)~~ <u>since 1 April 2015 the following are *specified benchmarks*:</u> |
| | | <u>(1)</u> <u>the London Interbank Offered Rate (LIBOR);</u> |
| | | <u>(2)</u> <u>ICE SWAP RATE;</u> |
| | | <u>(3)</u> <u>Sterling Overnight Index Average (SONIA);</u> |
| | | <u>(4)</u> <u>Repurchase Overnight Index Average (RONIA);</u> |

(5) WM/Reuters London 4 p.m. Closing Spot Rate;

(6) LBMA Gold Price;

(7) LBMA Silver Price;

(8) ICE Brent Index.

Financial Conduct Authority

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