Financial Conduct Authority

Consultation Paper CP14/32**

Bringing additional benchmarks into the regulatory and supervisory regime

December 2014

Contents

We are asking for comments on this Consultation Paper by 30 January 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp14-32-response-form

Or in writing to:

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You can download this Consultation Paper from our website: www.fca.org.uk

Abbreviations used in this paper

EU	European Union
LBMA	London Bullion Market Association
LIBOR	London Inter-Bank Offered Rate
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
UK	United Kingdom

1. Overview

Introduction

1.1 We have an overall objective to ensure markets work well. Benchmarks are used in a wide range of markets for reference purposes – for example, to determine sums payable in relation to investments, the price at which investments may be bought or sold or to measure the performance of investments.

1.2 Historically, benchmarks have not been regulated. Following misconduct related to the London Inter-Bank Offered Rate (LIBOR) benchmark, we were given powers to regulate benchmarks specified by the Government in April 2013.

1.3 Currently, LIBOR is the only regulated benchmark. This consultation paper seeks views on how our generic approach to regulating benchmarks could be applied beyond LIBOR to other benchmark administrators (and benchmark submitters as appropriate).

The Fair and Effective Markets Review

1.4 On 12 June 2014, the Government announced the Fair and Effective Markets Review (the Review) to reinforce confidence in the fairness and effectiveness of wholesale financial market activity conducted in the UK and to influence the international debate on trading practices.[1] The Review is being led by the Bank of England, the Treasury and us, and will run for 12 months from June 2014. The final report will be published in June 2015.

1.5 Separately, the Review will consider the way broader reforms to the markets these benchmarks are based on interact, including the need for international coordination. The Review has invited views on individual responsibility, governance and incentive mechanisms for firms (including non-banks) active across these markets. We will ensure that the our regulatory regime for benchmarks and relevant individuals is coordinated with the wider work of the Review.

1.6 The Review has been tasked with investigating those wholesale markets, both regulated and unregulated, where most of the recent concerns about misconduct have arisen: fixed income, currency and commodity (FICC) markets and to make recommendations in line with its terms of reference. As part of this work, the Review recommended an additional seven benchmarks should be regulated by us:

- Sterling Overnight Index Average (SONIA)

1 The terms of reference for the Fair and Effective Markets Review: www.bankofengland.co.uk/publications/Documents/news/2014/tor120614.pdf

- Repurchase Overnight Index Average (RONIA)
- ISDAFIX
- 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

1.7 Annex 1 describes these benchmarks.

1.8 The Treasury consulted on the legislative measures to specify further benchmarks to be regulated by us on 25 September 2014. We will regulate these benchmarks from April 2015.

Our proposed approach to regulating benchmarks

1.9 Chapter 8 of the Market Conduct Sourcebook (MAR) contains provisions that apply to benchmark administrators and submitters. These provisions were originally implemented for LIBOR.

1.10 We recognise that the seven benchmarks coming into regulatory scope have different methodologies. Under our rules, those submitting certain types of information must be authorised by us. But – importantly – some of these seven benchmarks are not calculated on the basis of information provided in a way that would require the person who provided it to be authorised. As such, some benchmarks do not have 'benchmark submitters'.

1.11 This is a fundamental difference, and the MAR 8 requirements and guidance should be adapted to the new benchmarks. To this end, we are proposing to amend the existing rules so that benchmark administrators that:

- do not have submitters or
- in addition to submissions, rely on other information,

are required to treat as a 'submission' 'any data or information made available by any person other than a benchmark submitter that is processed, considered or used by a benchmark administrator for the purpose of determining the specified benchmark it administers'. The definition of a submission would include data or information made available to the administrator but that was not necessarily used. So, for example, bids and offers or counterparty names in an auction process and discarded data from an electronic platform would be considered part of a submission.

1.12 In summary, regardless of whether the benchmarks have submitters or not, benchmark administrators will be required to:

- implement credible governance and oversight measures, including an oversight committee and the establishment of practice standards to ensure robust arrangements are in place to administer the benchmark(s)

- monitor, scrutinise and keep records of benchmark submissions, to identify breaches of practice standards and/or potentially manipulative behaviour and ensure there is a proper audit trail of submissions
- maintain sufficient financial resources to ensure they can cover operating costs for six months, plus a buffer period of three months to ensure the viability and continuity of the benchmark(s)
- appoint an individual, approved by us, to oversee and ensure the firm's compliance with our requirements for benchmark administration

Proposed EU benchmarks Regulation

1.13 In September 2013 the European Commission proposed legislation that will regulate the provision of financial benchmarks at EU level. This legislation is currently being considered by the European Parliament and the Council of the European Union. While it is anticipated that this legislation will eventually replace the UK regulatory framework, it is not expected to be fully in place for some time. The Government has decided that given the importance of a number of significant benchmarks to the UK financial system, it is necessary to take action now under current UK powers whilst discussions on the development of EU legislation continue.

Equality and diversity considerations

1.14 We have assessed the likely equality and diversity impacts of the proposals in this consultation paper and do not think they give rise to any concerns in this area.

Criminal sanctions

1.15 As recommended by the Review, through changes to secondary legislation introduced by the Treasury, the criminal offence in section 91 of the Financial Services Act 2012 of manipulating a 'relevant benchmark' will apply to the seven benchmarks mentioned above.

Are you affected by these changes?

1.16 These changes will affect the administrators of and firms that submit to (where the benchmark has regulated submitters) any of the seven benchmarks. These changes will be of interest to firms that use these benchmarks as part of their ongoing business. They will also be of interest to electronic trading platforms in particular and similar entities more generally. These changes may be of interest to other financial institutions with a significant profile in global markets referencing benchmarks. And they may also be of indirect interest to consumers.

Next steps

1.17 Please send us your comments by 30 January 2015.

1.18 Please use the online response form on our website or write to us at the address on page two of this paper.

1.19 We will consider any responses before we finalise our provisions, with a view to publishing our Policy Statement and Handbook text in the first quarter of 2015.

1.20 We intend these Handbook provisions to be in force when the Treasury's secondary legislation takes effect. This proposal is consistent with the secondary legislation text, but if that text changes, we will amend our requirements accordingly.

2. Benchmark administrators

Current benchmark administrator rules and guidance

2.1 The current benchmark administrator rules and guidance are set out in MAR 8.3.[2] Our intention continues to be to ensure that benchmark administrators have robust arrangements in place to administer the benchmark(s) they are responsible for. These arrangements include:

- systems and controls
- conflicts of interest management
- governance and oversight arrangements
- monitoring arrangements
- adequate financial resources
- notifications to us

Proposed modifications to the benchmark administrator requirements

2.2 We recognise that while the MAR 8.3 requirements and guidance work well for the LIBOR administrator, modifications are needed to accommodate differences in other benchmarks. This is because some MAR 8.3 requirements and guidance were formulated for benchmarks determined from information or expressions of opinion provided by a benchmark submitter. However, some of the benchmarks being brought into regulatory scope do not have regulated submitters.

2.3 We want benchmarks that do not have regulated submitters (non-submitter-based benchmarks) to have similar governance and conflicts of interest requirements to those that have regulated submitters (submission-based benchmarks). This would include performing due diligence on the representativeness of data sources and scrutiny of data or information used to determine the respective benchmark, including monitoring and notifications to us. Such arrangements and practices will ensure that non-submitter-based benchmark administrators maintain similar standards in the benchmark determination process as submission-based benchmarks.

2.4 With this in mind, we have reviewed the MAR 8.3 provisions. We believe they are sufficiently flexible to be adapted to apply to a wider range of benchmarks, with some modifications.

2 For the original purpose and scope of these provisions please refer to CP12/36.

2.5 We therefore propose to modify the requirements to accommodate the benchmarks being brought into scope – in particular for non-submitter-based benchmarks – to ensure they:

- have similar governance and conflicts of interest requirements
- perform due diligence on the data or information processed, considered or used in benchmark determinations, including monitoring, scrutiny and notifications to us
- following due diligence, have the ability to select data sources and discard data

2.6 More specifically to achieve the above, we propose:

- Modifying the definition of 'benchmark submission' to include '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'. The aim of this modification is to ensure that due care and attention is given to assessing the data quality, data sources and the representativeness of submissions.
- Administrators will still have to appoint an oversight committee, which includes representatives of the market. Administrators of non-submitter-based benchmarks should consider whether to appoint to their oversight committee persons from whom benchmark submissions are collected.
- Administrators will continue to be required through their oversight committee to develop practice standards for benchmark submitters and include them in a published code of conduct. We propose to extend this requirement so that, where applicable, these practice standards also apply to persons who are not benchmark submitters but make benchmark submissions available. In addition, we propose that for non-submitter-based benchmarks, administrators are required to publish a data quality code which should specify data standards including data quality, the representativeness of data inputs and sources and the criteria regarding when specific data inputs have been considered but not used. As set out in our consultation CP12/36[3], we intend to recognise codes of practice as industry guidance.
- Administrators, through their oversight committees, will have to monitor and scrutinise data inputs and the representativeness of data sources for non-submitter-based benchmarks.
- Administrators will be able to choose data sources and filter unwanted data. So we propose to include a new requirement that a benchmark administrator uses adequate benchmark submissions to determine the benchmark. For non-submitter-based benchmarks, we propose to include guidance that a benchmark administrator should choose which data sources and benchmark submissions to use when determining the benchmark to ensure that it is robust.
- Administrators must keep appropriate records of all benchmark submissions to be able to identify the source of benchmark submissions. We propose to introduce this new requirement to ensure that all information used or considered for benchmark determinations is retrievable.
- Ensuring the benchmark submissions' and the benchmark submitters' confidentiality requirement does not apply to benchmark administrators that use publicly available data.

3 www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1236

- Modifying the requirement to provide us with all benchmark submissions a benchmark administrator receives in relation to the administered benchmark. This change recognises that providing us with daily benchmark public data inputs may not be appropriate for all benchmarks. So we propose that benchmark administrators are able to provide us with benchmark submissions used to determine the benchmark. We will request the information if and when required.

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

Adequate financial resources

2.7 We do not propose to change the existing requirement for a benchmark administrator to hold sufficient financial resources to be able to continue to administer their benchmark for at least six months, with an expectation that the benchmark administrator holds sufficient financial resources to administer the benchmark for nine months.

2.8 However, we are using this opportunity to clarify the definition of financial resources in MAR 8.3. We believe the proposed changes make the requirements clearer, more straightforward and easier to understand, without changing the underlying policy.

2.9 We also propose to include guidance to the effect that where a benchmark administrator administers more than one regulated benchmark, they may comply with the financial resources requirement without necessarily multiplying their capital base. Without affecting adversely the effectiveness of the administration of each benchmark, the administrator can recognise synergies where it would be cost effective to do so. We would expect an administrator to be able to demonstrate the adequacy of their financial resources to us.

2.10 It is important to note that we have the powers[4] to impose on a benchmark administrator a requirement to hold additional financial resources if we consider it desirable to meet any of our statutory objectives.

2.11 With seven additional benchmarks coming into regulatory scope, our view is that we need a further requirement to ensure we can effectively monitor the financial resources of a benchmark administrator. So we propose to introduce a requirement that an administrator must notify us when it reasonably expects its financial resources may drop below the buffer level. This will ensure that we have up-to-date information on the administrator's financial resources and can take appropriate regulatory action if needed.

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?

4 The FCA's approach to using own initiative requirement powers is set out in SUP 7 of the FCA Handbook: http://fshandbook.info/FS/html/handbook/SUP/7

Record keeping

2.12 Currently we rely on regulated benchmark submitters to keep records of submissions, information and key sensitivities. However, we propose that a similar requirement should also apply to benchmark administrators. For benchmarks that do not have regulated submitters, we propose guidance that these records should include information of the person and, where applicable, the individual who made the benchmark submission available to the relevant benchmark administrator.

2.13 Under our proposed requirements, benchmark administrators must keep appropriate records (audit trails) of all benchmark submissions. This will ensure that benchmark administrators exercise the appropriate care and due diligence on all information used or considered for benchmark determinations. Such records should be kept for a period of five years.

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

The Handbook: general provisions

2.14 In common with other persons carrying on regulated activities, a benchmark administrator will be subject to other Handbook provisions by virtue of being an authorised person, including:

- Principles for Business (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

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

Fees

2.16 We are funded only through fees paid by the organisations we regulate. To avoid cross-subsidy between firms engaged in unrelated activities, we levy an application fee when firms first join our regulatory perimeter and then allocate our ongoing costs to 'fee blocks' based on the regulatory activities that each firm has permission to conduct.

2.17 The application fee for authorisation to administer a benchmark is £25,000. As the Treasury has proposed interim authorisation (see paragraph 2.24), the fee will be payable in the normal way when an application for full authorisation is made.

2.18 We allocate the cost of supervising the benchmark administrators to fee block B. The current annual fee is £175,000. We review our fee rates annually and consult on any changes in a consultation paper issued in March or April.

2.19 Authorised firms that on the day the secondary legislation comes into force are administering one of the seven specified benchmarks but do not have the necessary permission, will be treated as if their permissions was varied to include the relevant activity.

2.20 We will incur the costs of evaluating the capacity of these firms to continue to meet the threshold conditions and comply with the requirements of MAR 8.3, but they will not make a formal application to us for a variation of permission. The charge for a new application or a variation of permission is £25,000. To enable us to recover our costs, we are proposing a transitional provision which treats these firms as if they had applied for a variation of permission on the date the secondary legislation comes into force when they will be deemed to have been authorised. The fee would be payable within 30 days.

2.21 That transitional provision will also apply to firms that do have 'administering a specified benchmark' in their permission but after the secondary legislation comes into force, in addition to any benchmarks they are currently administering, are administering one of the seven specified benchmarks.

2.22 Firms that were previously not authorised but on coming into force of the secondary legislation are administering a specified benchmark will get an interim permission for a period of no more than three months after which they will need to apply for full authorisation. The normal application fee of £25,000 will be charged at that point.

Transitional arrangements

2.23 It is important that the benchmark administrators that are not currently authorised, or where authorised, do not have the activity of administering a specified benchmark in their permission, are brought into the regulatory perimeter as smoothly as possible and without creating a discontinuity in the markets.

2.24 So the Treasury is proposing a transitional regime under which:

- any **firm that is already authorised** and, immediately before the secondary legislation comes into force, is administering one of the seven benchmarks, will be deemed to have the relevant activity on its permission.

- any **firm that is not previously authorised** and is, immediately before the secondary legislation comes into force, administering a benchmark, will receive an 'interim permission'

2.25 The Treasury has specified that a firm with interim permission must apply for full authorisation within three months of receiving interim permission.

Authorisation of benchmark administrators

2.26 Any benchmark administrator that will not be able to benefit from the transitional regime and is not currently authorised to carry on the activity of benchmark administration would need to apply for authorisation under the normal process. If they are already authorised for

another regulated activity, then they will need to apply to vary their permission to add the new regulated activity.

Benchmarks with more than one administrator

2.27 As we stated in CP12/36, we recognise that the functions of an administrator may be carried on by more than one entity. For example, one entity could be responsible for administering the arrangements for determining a regulated benchmark (the governance of the benchmark), while another could be collecting, analysing or processing submissions and performing the necessary calculations for its determinations. In such cases, all relevant entities would require authorisation. However, in these cases we may consider using our powers to waive certain rules (or vary the application of certain rules altogether) if those rules are not relevant to the activities carried out by the relevant entity.

Approved Persons Regime

2.28 As set out in CP12/36, the Approved Persons regime will apply to individuals performing the role of benchmark administrator, and approval would be required from us to perform this role. This 'controlled function' (CF50) was introduced following the Wheatley Review[5]. Other controlled functions may also be relevant to benchmarks administrators and these are also set out in our consultation, CP12/36.

2.29 The Approved Persons regime is changing. The relevant proposals affect deposit takers and investment firms that are regulated by the Prudential Regulation Authority (PRA) only[6]. This consultation closed on 31 October 2014.

2.30 We understand that currently no benchmark administrator would be affected by the consulted proposals because these firms are not deposit takers or investment firms regulated by the PRA. However, it is each person's own responsibility to assess their position in regards to the applicable regulatory framework. On that basis, we would encourage firms to read CP 14/13, and, in due course, the subsequent consultation on the transitional arrangements to the new regime, to determine if and how the changes may affect them.

2.31 We propose giving benchmark administrators a transitional period of six months from when the secondary legislation comes into force for individuals to be approved for the CF50 role. In order to benefit from the transitional, firms will be required to lodge an application for approval within two weeks of the secondary legalisation taking effect. The combined transitional period would amount to a maximum of six months and two weeks.

2.32 For benchmark administrators that are not yet authorised, we propose to consider individuals for the relevant controlled functions in parallel with our decision on the administrators' final application for authorisation.

5 www.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf
6 www.fca.org.uk/static/documents/consultation-papers/cp14-13.pdf

3. Benchmark submitters

Current benchmark submitter requirements and guidance

3.1 Following the Wheatley Review, the Treasury made providing information relating to a specified benchmark a regulated activity. In CP12/36, we outlined the purpose and scope of the submission requirements. The requirements and guidance for regulated benchmark submitters are set out in MAR 8.2.

3.2 The MAR 8.2 provisions were formulated to ensure that regulated benchmark submitters had specific systems and controls, including conflicts of interest management, for making submissions to a regulated benchmark. Of the seven benchmarks coming into scope, SONIA, RONIA, London Gold Fixing and ISDAFIX currently have submitters that will be regulated. We note that some of these benchmarks are changing their methodology and may not have submitters in the near future or after the secondary legislation comes into force.

Proposals for the benchmark submitters' requirements

3.3 We have reviewed the MAR 8.2 provisions in view of the benchmarks that are coming into regulatory scope. We think MAR 8.2 should apply to the benchmarks that have submitters without modifications. 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.

3.4 Therefore, we do not propose to make any modifications to MAR 8.2. Submitters to the four benchmarks will be required to comply with MAR 8.2. The other three benchmarks being brought into regulation do not have regulated submitters. So no person would be subject to requirements that apply to regulated benchmark submitters in the context of these benchmarks.

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

The Handbook: general provisions

3.5 In common with other persons who carry on regulated activities, a regulated benchmark submitter will be subject to other Handbook provisions by virtue of being an FCA authorised person, including the following:

- Principles for Business (PRIN)
- General Provisions (GEN)
- Threshold Conditions (COND)
- 'Common platform' elements of 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

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

Fees

3.7 The cost of supervising submitting firms will continue to be apportioned across all fee blocks in proportion to the resources each business area of the FCA allocates towards this. Many of the submitting firms are likely to be in fee block A1 (deposit acceptors- i.e., mainly banks and building societies), some are likely to be brokers in fee block 13 (advisors, arrangers, dealers or brokers), while others are likely to be in A10 (firms dealing in investments as principal).

Transitional arrangements

3.8 As with benchmark administrators, it is important that benchmark submitters that are not yet authorised, or that do not have the relevant permission, to perform the regulated activity of providing information in relation to a specified benchmark, are brought into the regulatory perimeter as smoothly as possible and without creating a discontinuity in the markets.

3.9 So the Treasury is proposing a transitional regime so that:

- any **firm that is already authorised** and, immediately before the secondary legislation comes into force, is submitting to one of the seven specified benchmarks, will be deemed to have the relevant activity on its permission
- any **firm that is not previously authorised**, and is, immediately before the secondary legislation comes into force, submitting to a benchmark, will receive an 'interim permission'

3.10 The Treasury has specified that a firm with interim permission must apply for full authorisation within three months of receiving interim permission.

Authorisation of benchmark submitters

3.11 A benchmark submitter that will not be able to benefit from the transitional regime and is not currently authorised to carry on the activity of benchmark submission would need to apply for authorisation under the normal process. However, if they are already authorised for another regulated activity, then they will need to apply to vary their permission to add the new regulated activity.

Approved Persons Regime

3.12 The Approved Persons regime is changing. The relevant changes consulted on affect deposit takers and PRA investment firms only. This consultation closed on 31 October 2014.

3.13 There are some benchmark submitters that will be affected by these changes. Firms should read CP14/13 and, in due course, the subsequent consultation on the transitional arrangements to the new regime, to determine if and how the changes may affect them.

3.14 Until any changes take effect, we envisage continuing to apply the current regime. We are therefore proposing to introduce a transitional provision based on the existing Approved Persons regime. We propose giving submitting firms a transitional period of six months from when the secondary legislation is in force to ensure individuals are approved for the CF40 role. In order to benefit from the transitional, firms would be required to lodge an application for approval within two weeks of the secondary legalisation taking effect. As with the CF50 function, the combined transitional period for the CF40 function would amount to a maximum of six months and two weeks.

3.15 We are aware that, for some firms, the submitting activity may take place outside the UK, both within and outside the EEA. We would expect the individual performing the CF40 to be based in the UK. However, where the submission activity takes place outside the UK, we accept it may be difficult for this individual to properly discharge their duties if they are based in a different country to the submitting activity. So we will take a pragmatic approach in such circumstances.

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

Benchmarks that do not have submitters

3.16 In most cases it is clear whether or not a benchmark has submitters. However, some of the benchmarks coming in scope are determined on the basis of information provided by a person in a way that is not 'providing information in relation to a specified benchmark' as described in Article 63O(2)(a) of the RAO[7].

3.17 These persons would therefore not be carrying out a regulated activity so would not need to be authorised or exempt for their involvement in the benchmark. This means such 'non-authorised submitters' (insofar as they do not carry on any other regulated activity) would not be subject to MAR 8 or any of our other rules.

7 Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

3.18 For the purposes of the regulatory framework, we would consider these benchmarks as not having submitters. The perimeter guidance we are proposing is aimed at clarifying how we apply the RAO in respect of this.

3.19 However, as mentioned in paragraph 2.5, where a benchmark does not have submitters or where it is determined through information from both authorised and non-authorised submitters, we expect 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.

Q8: Do you agree with our proposed perimeter guidance?

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

Annex 1
Description of the benchmarks

Benchmark	Administrator	Asset class	Input	Description
SONIA	WMBA	Overnight Interest Rate	Transactions-based (based on submissions from brokers)	Transaction-based measure of the cost of unsecured sterling overnight funding, calculated as a weighted average of actual market overnight funding rates brokered in London by WMBA member firms.
RONIA	WMBA	Overnight Interest Rate	Transactions-based (based on submissions from brokers)	Transaction-based measure of the cost of secured sterling overnight funding, calculated as a weighted average of actual market overnight funding rates brokered in London by WMBA member firms. The Depository Trust & Clearing Corporation (DTCC) estimates that the total notional value of SONIA and RONIA as of August 2014 was $13.4 trillion. In turn, OIS curves are used to value major sterling swap portfolios estimated at $52 trillion.
ISDAFIX	ICE Benchmark Administration	Fixed Income	Quote-based	Represents average mid-market rates for plain fixed-for-floating interest rate swaps in four major currencies at selected maturities on a daily basis. A panel of submitting banks is asked to provide their mid-market rate in the relevant maturity in respect to trading in a typical contract size and on a cleared basis. The fixing is then calculated as a trimmed average of these rates. Market participants use ISDAFIX as a settlement rate for the majority of cash-settled transactions in the interest rate swaption market (estimated at $32 trillion).
WM/Reuters 4pm London Closing Spot Rate	WM Company	Currency	Transactions-based (based mostly on submissions from trading platforms)	The WMR fixes are, for the most widely used currencies, based on actual trades, supported by transactable bids and offers extracted from electronic trading systems, taken over a one minute window from -/+ 30 seconds either side of the fix time. Non-trade currency rates are based on quoted rates with checks in place to validate that rates are indicative of the market. The Bank for International Settlements (BIS) estimates that the global average daily turnover across foreign exchange instruments was over $5 trillion in April 2013, with over 40% of that turnover taking place in the UK. Spot foreign exchange contracts are not qualifying investments under the existing market abuse regulation in the United Kingdom.

Benchmark	Administrator	Asset class	Input	Description
London Gold Fixing	London Gold Market Fixing Ltd	Commodities	Transaction-based (an auction involving a panel of fixing banks)	A measure of the price of gold in the London market in US dollars, sterling and euro. It is calculated twice daily through an auction process amongst participants. The BIS estimates that the gross outstanding notional amount of gold swaps, forwards and options was $341 billion as of December 2013 (although not all will use the London Fixing). The value of assets under management for European Exchange Traded Products referenced to the London GoldFix is $25.7bn.
LMBA Silver Price	Thomson Reuters	Commodities	Transaction-based (an auction run on an electronic platform)	A measure of the price of silver in the London market in US dollars, sterling and euro. It is calculated once a day through an electronic auction process amongst participants. The value of assets under management for European Exchange Traded Products referenced to the Silver Fix is $3.7bn.
ICE Brent Index	ICE Futures Europe	Commodities	Transaction-based (based on trades prices reported by the industry media)	The index is used to cash settle the ICE Brent Future contracts. The index represents the average price of trading in the 25-day BFOE (Brent, Forties, Oseberg and Ekofisk) market in the relevant delivery month as reported and confirmed by the industry media. In 2012, ICE Brent became the world's largest crude oil futures contract in terms of volume, and it is used by a wide range of financial market participants as well as producers and consumers of oil.

Annex 2
Cost benefit analysis

1. Sections 138I and 138L of the Financial Services and Markets Act 2000 (FSMA) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider that the proposals will not give rise to any costs or to an increase in costs of minimal significance. This annex:

   - summarises the proposals assessed in this CBA
   - briefly describes the baseline against which the costs and benefits of the proposals should be measured
   - estimates the costs and benefits of these proposals

2. The choice of benchmarks to be brought into our regulatory scope is for the Treasury and beyond the scope of the modifications to MAR 8 proposed in this consultation paper and is therefore not addressed in this CBA.

3. Whilst not legally required to, benchmarks administrators are expected to comply with the International Organization of Securities Commissions (IOSCO) principles for financial benchmarks. These principles are consistent with the aims of our proposed policy approach as set out in this consultation paper. Incremental benefits may arise from our proposals because they are enforceable rules rather than principles. To the extent that benchmarking providers are already complying with the IOSCO principles, then the costs and benefits of our requirements will be lower.

4. In the CBA of CP12/36, we noted the dominant market position of LIBOR as the most widely used benchmark, and the possible risk that the LIBOR administrator may be able to charge excessive prices. We consider that the same could be said of the seven benchmarks coming into scope. As mentioned in CP12/36, we are continuing to monitor the impact on competition of the new rules subsequent to our competition remit, and the work of international authorities, to assess the development and usage of alternative benchmarks.

5. In addition to our domestic agenda, at an EU wide level, the Markets in Financial Instruments Regulation (MiFIR), which will come into effect in 2017, will require benchmarks administrators in certain circumstances to provide non-discriminatory access to benchmarks and are required to licence the benchmark they administer.

Summary of proposals

6. Seven benchmarks are being brought into our regulatory scope. We need to adapt our existing regulatory regime (MAR 8), which was designed for LIBOR, to the particularities of the benchmarks being brought into regulation.

7. The only proposed modifications are to MAR 8.3 on the requirements for benchmarks administrators. The objective of the modifications to MAR 8.3 is to ensure benchmark administrators that do not have submitters for their benchmark determination process still have similar levels of data scrutiny.

Baseline

8. The CBA has to make an appropriate comparison between the overall position if the proposed regulatory changes are applied and the overall position if they are not (the baseline).

9. The seven benchmarks being brought into regulation are presently being administered and submitted to (where applicable), and therefore would already have some systems and controls in place.

10. Consequently, the base line for submitters and administrators is that they already complying with MAR 8 to some extent. The costs to the benchmark administrators and submitters will therefore vary depending on the current level of compliance.

11. The estimates we provide below can be considered an upper bound – the maximum cost of compliance. This is given that these benchmarks are already in existence and are already being administered, and where applicable, already have submitters.

Costs

12. We have used the LIBOR CBA methodology as a basis for estimating the costs (and benefits) of bringing the seven benchmarks into regulation. CP12/36 gives detailed estimates in all the areas where costs could arise.

13. We have used the LIBOR CBA because we consider that the requirements that will apply to the benchmarks coming into regulation are essentially the same, with minor modifications. However, we recognise that the characteristics and compositions of the benchmarks differ and this will affect the costs for individual benchmarks. Therefore, we have made the following adjustment to the LIBOR CBA:

- Downward adjustments to certain of the LIBOR estimates for each benchmark (typically between 30 per cent and 66.66 percent (two thirds), depending on the benchmark and its characteristics). This is to reflect that LIBOR is more complex because it is submission based and the underlying market is very thin so the use of expert judgement is much higher.

Direct costs to the FCA

14. We will need to supervise the conduct of the benchmark administrators and submitters. We are therefore likely to require additional specialised supervisory resource. As with LIBOR, we estimate that the incremental costs to us amount to one-off costs of £0.2m per benchmark and ongoing costs of between £0.385m and £0.925m per benchmark.

Costs to administrators

15. We have used the CBA analysis we conducted for LIBOR in CP12/36 to estimate the costs to administrators of administering the benchmarks.

16. As previously stated, for each of the benchmarks, we have made downward adjustments on the LIBOR costs to arrive at the estimated costs for administrators for reasons previously stated. This adjustment covers all the areas we analysed for LIBOR – system and controls, oversight committee, financial resources requirement, controlled functions, authorisation and the creation and maintenance of practice standards. In deciding the downward adjustment for the administration of each benchmark, we also considered the way in which each benchmark is determined.

17. We have proposed a requirement that benchmark administrators keep appropriate records of all benchmark submissions. We are of the opinion that to the extent that benchmarks administrators are complying with the IOSCO principles, which include record keeping requirements, the costs of complying with these proposals should be low and included in the systems and controls costs. Most firms already keep records. What we are proposing will formalise the requirement to do so.

18. We estimate that for the administrators of each of the seven benchmarks, the total one-off cost will be between £0.55m to £1.14m and ongoing costs will be between £0.30m and £1m.

Costs for a regulated submitter

19. We have used the same reasoning and analysis described above for the submitting firms. i.e., using the LIBOR CBA as a basis and making the downward adjustments for reasons previously stated. Again, we have also covered the same areas as the LIBOR CBA.

20. Consequently, we estimate that one-off costs per submitter will amount to between £0.93m and £1.44m and ongoing costs will amount to between £0.13m and £0.39m. These costs are based on the current benchmark determination processes.

21. Some benchmarks are changing their methodology and may not have submitters when our regulatory and supervisory regime commences.

Benefits

22. The main benefits derived from the proposals are to maintain market stability, market integrity and confidence in the seven benchmarks coming into regulation and to ensure their accuracy. Such benefits are difficult to quantify and accrue to the market as a whole.

23. We believe that for the individual benchmarks, the same benefits that we stated in the CBA in CP12/36 in relation to LIBOR apply:

- Continuity of the benchmarks
- Effective management of conflicts of interest

- Increased accountability and oversight of submitters for benchmarks that have submitters
- Regulatory oversight of administrators

24. In quantifying the benefits we have considered previous fines imposed for misconduct related to benchmarks. As an example, fines imposed by us and our predecessor the Financial Services Authority (FSA), for misconduct relating to LIBOR have exceeded £500 million.[8]

25. We believe even a small reduction in the likelihood of events that occurred in relation to LIBOR would result in the benefit of the proposed regulations far exceeding the costs.

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

8 www.fca.org.uk/firms/markets/benchmarks/our-enforcement.

Annex 3
Compatibility statement

Introduction

1. This Annex explains how we satisfy the requirements set out in section 138I of FSMA.

2. When consulting on new rules, we are required by FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the statutory principles in section 3B FMSA.

3. This Annex also sets out our view of how the proposed rules are compatible with the duty on us to carry out our general functions (which include rule making) in a way that promotes effective competition in the interests of consumers (section 1B(4)). This duty applies insofar as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

4. This Annex must be read in conjunction with the rest of the consultation paper and the cost benefit analysis (in Annex 2) in demonstrating that we meet our statutory duties and objectives.

Compatibility with our statutory objectives

5. In discharging our general functions, our duty is, as far as is reasonably possible, to act in a way that is compatible with our strategic objective, to ensure that the relevant markets function well, and to advance one or more of our operational objectives.

6. Our proposed modifications in this CP will help advance our strategic objective, and relates in particular to one of our operational objectives – market integrity. As noted in the Review recommendations, given the widespread use of benchmarks in financial contracts, it is vital that consumers and market participants are confident that benchmarks – particularly those that lie at the heart of systemically important markets – are credible, trustworthy and accurate. The integrity and reliability of benchmarks is therefore crucial to proper functioning of markets and the maintenance of market stability.

7. We believe that our proposals will also facilitate an improvement in market behaviour in respect of these benchmarks. The credibility of a benchmark can be undermined if the benchmark can be distorted, manipulated or if a dominant position in the compilation of a benchmark can be abused. Bringing these benchmarks into regulatory oversight will not guarantee that this will not happen. However, regulation, plus the risk of criminal sanctions, should help serve as a deterrent.

8. We must, so far as is compatible with acting in a way which advances our consumer protection objective or integrity objective, discharge our general functions in a way which promotes effective competition in the interests of consumers. The choice of benchmarks being brought into our regulatory scope has been made by the Treasury. By making changes to MAR 8 to accommodate these benchmarks, we are discharging our general functions and are doing so mainly to advance our integrity objective. As stated in the CBA section of this consultation paper, we are continuing to monitor the impact of competition in this sector.

Compatibility with the principles of good regulation

9. Section 1B (5) of FSMA requires that, in carrying out our general functions, we have regard to the principles of good regulation. In formulating these proposals, we have had regard to the following relevant principles set out in Section 3B of FSMA.

The need to use our resources in the most efficient and economic way

10. We believe the proposals outlined in this consultation paper bring the seven benchmarks into regulatory scope in the most efficient, pragmatic and least disruptive way, while ensuring the robustness and appropriateness of the regulatory regime. In considering the most appropriate approach, we have considered the timeframe within which the benchmarks are being brought into regulation and the interim nature of our regime given the forthcoming EU benchmarks Regulation.

The principle that a burden or restriction which is imposed should be proportionate to the benefits

11. In comparison to setting up the regulatory regime for LIBOR and its subsequent transitioning to a new administrator, we expect the costs to firms to be lower as reflected in our cost benefit analysis set out in Annex 2. We expect the benefits of bringing these benchmarks into regulation to accrue to the market as a whole through more reliable and robust benchmarks. Furthermore, bringing these benchmarks into regulation will lead to greater transparency and scrutiny of the benchmarks leading to increased market confidence. Market stability is also an important benefit accruing from bringing these benchmarks into regulation. We expect these benefits to more than compensate for the estimated costs.

The desirability of sustainable growth in the UK economy in the medium or long term

12. As stated in the Review, given the widespread use of benchmarks in financial contracts, it is vital that consumers and market participants are confident that benchmarks – particularly those that lie at the heart of systemically important markets – are credible, trustworthy and accurate. The integrity and reliability of benchmarks is therefore crucial to proper functioning of markets and market stability. This is particularly so given the volume and number of financial contracts linked to these benchmarks and these financial contracts in turn underpin the real economy. Therefore, robust benchmarks are essential to and do indirectly contribute to sustainable growth in the UK economy in the medium or long term.

The principle that we should exercise our functions as transparently as possible

13. The Treasury is adding the seven benchmarks to our regulatory scope. The modifications we are proposing are to ensure that our requirements will enable us to exercise the necessary oversight of the benchmarks.

14. We will continue to engage with stakeholders and welcome comments on these proposals during the consultation period, running until 30 January 2015. We will then publish a Policy Statement, including feedback on responses, and confirming final rules or any alternative approach if relevant.

Expected effect on mutual societies

15. Section 138K of FSMA requires us to state whether in our opinion our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons. We do not think that our proposed rule changes will impact on mutual societies differently.

Annex 4
List of questions

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

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?

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

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

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

Q8: Do you agree with our proposed perimeter guidance?

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

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

Appendix 1
Draft Handbook rules

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 [*date*].

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
[*date*]

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) (No. X) Order 2015 (SI 2015/XX)

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 *TP* 11.2 applies to a *firm* who:

(1) is treated as having its *permission* varied to include *administering a specified benchmark* under 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] is administering more than one *specified benchmark*; and

(c) 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 in relation to 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 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) 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):

(1) 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

(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 other assets apart from liquid financial assets such as cash and liquid financial instruments where:

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

(ii) are capable of being liquidated with minimal adverse price effect; and

(d) any exposure arising under any guarantee, charge or contingent liability.

…

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

		8.3.12BG	a *specified benchmark*	

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

TP 5.1 Transitional provisions for 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) (No. [X]) Order 2014 (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.

TP 5.2 Transitional provisions relating to 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) (No. [X]) Order 2014 (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.

2.7 Activities: a broad outline

…

Specified benchmarks activities

…

2.7.20GA	G	A *person* who generates factual information used to determine a *specified benchmark* exclusively as a result of its trading activities would normally not be *providing information in relation to a specified benchmark* if:
		(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.

…

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