Policy Statement

PS13/6

Financial Services Authority

The regulation and supervision of benchmarks

March 2013

Financial Services Authority

Contents

This Policy Statement reports on the main issues arising from Consultation Paper 12/36 (*The Regulation and Supervision of Benchmarks*) and publishes final rules.

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Abbreviations used in this paper

APER	The Statements of Principle and Code of Practice for Approved Persons
BBA	British Bankers Association
BENCH	New Handbook guide to provide guidance for firms who administer benchmarks
COND	The Threshold Conditions section of the FSA Handbook
CF	Controlled Function
CP	Consultation Paper
FCA	Financial Conduct Authority
FIT	The Fit and Proper Test for Approved Persons
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
GEN	General provisions of the FSA Handbook
LIBOR	London Inter-Bank Offered Rate
MAR	Market Conduct section of our Handbook
PERG	Perimeter Guidance Manual
PRA	Prudential Regulation Authority
PRIN	Principles for Businesses
PS	Policy Statement
RAO	Regulated Activities Order
SIF	Significant Influence Function
SYSC	Systems and controls sourcebook section of our Handbook

1 Overview

Purpose

1.1 In Consultation Paper 12/36 (CP), we outlined our proposals for the regulation and supervision of benchmark activities.

1.2 The Wheatley Review of LIBOR recommended to the Government that the administering of, and submission to, LIBOR should become regulated activities under the Financial Services and Markets Act 2000 (FSMA). Subsequently, the Treasury amended the Regulated Activities Order to make the administering of, and providing information to, *specified benchmarks* regulated activities.

1.3 This Policy Statement (PS) outlines our framework for the regulation and supervision of benchmark activities, following consultation. In particular, it summarises the responses we received to our CP and outlines our view of those responses. It also presents the Handbook text that applies to benchmark administrators and submitters to benchmarks.

Background

1.4 In July 2012, the Government asked Martin Wheatley to conduct an independent review of the LIBOR-setting framework. The Review outlined a number of issues and failings in the LIBOR process and made recommendations to both Government and market participants to rectify those failings. The final report was published in September 2012.[1]

1.5 In particular, the Wheatley Review of LIBOR outlined deficiencies in firms' systems and control procedures, weaknesses and conflicts of interest in governance frameworks, as well as a lack of credible external oversight by the administrator of LIBOR. As a consequence, the Review recommended to the Government that LIBOR activities should be brought within the scope of statutory regulation.

1 http://cdn.hm-treasury.gov.uk/wheatley_review_libor_finalreport_280912.pdf

1.6 The Government subsequently inserted provisions into the Financial Services Act 2012 to allow the regulation of activities in relation to benchmarks. The Treasury has amended the Regulated Activities Order (the RAO[2]) to make the administering of, and providing information to, *specified benchmarks* regulated activities under FSMA. The legislation will commence on 1 April 2013.

1.7 Initially, the only *specified benchmark* will be the London Inter-Bank Offered Rate (LIBOR).

1.8 CP12/36 presented our proposals for the regulation and supervision of benchmarks, such as LIBOR. We proposed the creation of a new chapter in the Code of Market Conduct of our Handbook (MAR 8) and the creation of two new SIF-Controlled Functions. We also proposed a new Handbook Guide for benchmark administrators and submitters: BENCH.

1.9 In summary, we proposed that benchmark administrators must:

- implement credible governance and oversight measures, including an oversight committee and the establishment of practice standards;
- monitor and survey benchmark submissions, to identify breaches of practice standards and/or potentially manipulative behaviour;
- maintain sufficient financial resources to ensure it can cover operating costs of six months, plus a buffer period of three months; and
- appoint an individual, who is FCA-approved, to oversee the firm's compliance with the FCA's requirements for benchmark administration.

1.10 We also proposed that benchmark submitters must:

- maintain effective internal governance and oversight procedures for providing information to benchmarks they submit to;
- put in place organisational arrangements for managing conflicts of interest within their firm;
- have an effective methodology, based on objective criteria, for determining their submissions to benchmarks;
- keep all relevant records for five years and appoint an external auditor on an annual basis to report to the FCA on the submitter's compliance with the submission requirements;
- notify the FCA of any suspicions in relation to manipulation, attempts to manipulate, or potential collusion to manipulate the benchmark; and
- appoint an individual, who is FCA-approved, to oversee the firm's compliance with the FCA's requirements for benchmark submission.

2 Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013

Responses to the consultation

1.11 Overall, we received 24 responses to our consultation. Responses were received from LIBOR panel banks, trade associations, other index and benchmark administrators, and market infrastructure providers. Generally, all respondents were supportive of the proposals.

1.12 However, some respondents sought clarification of our requirements and others suggested amendments and additions to our requirements. A number of respondents also doubted whether the rules could be as generically applied to all other benchmarks as we had intended.

1.13 We have considered these responses very carefully and this PS outlines the subsequent changes we have made to our requirements and presents the Handbook text.

Cost benefit analysis

1.14 We produced a cost benefit analysis (CBA) of our proposals, which was published alongside CP12/36. The CBA focused on the costs and benefits arising from the regulation of LIBOR activities only, as LIBOR will be the initial *specified benchmark*. We estimated the costs of regulating LIBOR activities – for LIBOR submitters, the LIBOR administrator and the FCA – and the wider benefits arising from such regulation, against a baseline scenario that LIBOR firms are not subject to these rules.

1.15 In summary, we have estimated ongoing running costs for the LIBOR administrator of up to £1 million per year, including: the cost of systems and controls, costs arising from the oversight committee, and our financial resources requirements. The administrator may have one-off setup costs of £1.6 million. We also estimated ongoing costs for LIBOR-submitting firms at up to £545,000 per year and one-off costs up to £2.5 million.

1.16 There is a large volume of existing financial contracts that reference LIBOR, estimated to be at least US$300 trillion. We compared the cost estimates above with the wider social benefits arising from the improved integrity and the ensured continuity of LIBOR for these contracts. We believe that the benefit arising from these rules outweighs costs associated with implementing them.

1.17 This PS outlines what changes we have made to our original proposals and the chapters below outline the specific amendments. Overall, we do not envisage that our amendments should lead to a general increase in costs for either the LIBOR administrator or the LIBOR-submitting banks. We have set out our reasoning for this view in the individual chapters below.

Structure of the PS

1.18 The next chapter outlines the changes we have made to our proposals for benchmark administrators. Chapter 3 presents the amendments to the proposed rules and guidance for submitters to benchmarks. Appendix 1 contains the final Handbook text.

Who should read this PS?

1.19 This PS will be of particular interest to the administrator of LIBOR and the LIBOR-contributing banks. The PS should also be reviewed by firms that administer or sponsor other benchmarks and firms that contribute information to benchmarks.

1.20 Any firms or persons who regularly use benchmarks may also benefit from reading this PS.

Next steps

1.21 The Handbook provisions will come into force on 2 April 2013, immediately after the cutover to the UK's new regulatory structure. We acknowledge that this only allows a short period for firms to implement the new rules and have included provisions to ensure a smooth transition for the individuals nominated to become controlled functions.

1.22 As noted in the CP, we intend to conduct a thematic review of the LIBOR-submitting firms' compliance with these regulations, within the first year after the regulations have come into force.

2

Benchmark administrators

Our proposals

2.1 Benchmark administrators have general responsibility for the organisational and governance arrangements for any benchmarks they administer. This means they are the focal point of the benchmark-setting process. It is vital that the administrator maintains effective governance and oversight arrangements, in order to promote the integrity of the benchmarks they administer.

2.2 In our CP, we proposed a number of specific requirements for administrators of *specified benchmarks*. We created a new chapter in the Market Conduct section of our Handbook (MAR 8), which outlined that benchmark administrators should:

- have regard to the integrity of the market and continuity of the benchmark;
- maintain effective arrangements that enable it to carry out the activity of administering a benchmark;
- maintain sufficient financial resources to ensure it can cover operating costs of six months, plus a buffer period of three months;
- implement effective governance and oversight structures (including an oversight committee);
- corroborate and monitor the submissions of individual submitters and to identify attempts to manipulate the benchmark;
- publish aggregate statistics detailing the market underlying the benchmark, in order to promote transparency;
- appoint an FCA-approved individual who has overall responsibility for the administrator's compliance with the applicable rules;
- through an oversight committee, create a code of practice/conduct; and

- through an oversight committee, undertake periodic reviews of the benchmark-setting process.

2.3 The requirements outlined in MAR 8 are in addition to the application of the FCA's general requirements for firms. As such, other areas of the Handbook will apply. In order to help firms navigate the full suite of requirements for benchmarks administrators – as well as benchmark submitters – we also proposed the creation of the Handbook Guide 'BENCH', which outlines all areas of the Handbook that will apply to firms when conducting the regulated activities of benchmark submission and benchmark administration.

2.4 In our consultation, we asked three questions in relation to our proposed requirements for benchmark administrators:

> ***Q1:*** *Do you agree that our suggested capital requirements for the benchmark administrator will give enough time for an orderly transition to a new administrator?*
>
> ***Q2:*** *Are there any other rules we should consider for the benchmark administrator?*
>
> ***Q3:*** *Do you agree with our proposals for charging fees to the benchmark administrator?*

2.5 We received a number of views on our proposals, which were generally supportive. Some respondents sought more detailed guidance on our financial resource requirements and others urged for the inclusion of a requirement to have effective procedures for managing conflicts of interest. A number of responses felt that our proposed fees were too high, relative to those paid by more complex firms.

2.6 We have considered these responses carefully and have subsequently made amendments to our draft Handbook text. The section below discusses the responses to each question we asked in turn, presents our consideration, and any subsequent changes to our regulatory framework.

Financial resource requirements

2.7 In our CP, we proposed a requirement that the administrator should retain sufficient capital to ensure business continuity and to allow for a transfer to a new administrator. Consequently, we proposed that the administrator should hold financial resources to cover operating costs for six months. In addition, we suggested that a buffer period of a further three months' operating costs should be retained.

2.8 Of the responses received, all were supportive of this proposal or did not wish to comment. One respondent suggested that six months' operating costs would be adequate to affect a transition to a new administrator, while another proposed a 12 month period.

2.9 A few respondents asked us to provide greater clarity on which assets and financial instruments we would consider as eligible financial resources for this purpose. Similarly, one response suggested that we confirm whether these financial resources should be kept segregated from the firm's other activities, particularly citing the case of a large group company that administers a *specified benchmark*.

2.10 One respondent suggested that the administrator of a benchmark should be able to operate independently of the submitting firms.

Our response:

Having reviewed all the responses, we consider the requirement to hold financial resources equivalent to six months' operating costs, with an extra buffer of three months, as appropriate. This time period should allow the administrator to affect a transition to a successor firm. We also agree that the assets should be segregated from any group entity and with the suggestion that we outline what we consider as eligible financial resources.

We have amended the rule to ensure that the requirement applies to any benchmark-administering firms, independent of any other financial resource requirements that firm may have.

We have also added guidance about the eligibility of the financial resources in the final Handbook text: we have clarified that assets held to meet the financial resource requirement should have minimal market and credit risk and be able to be liquidated with minimal adverse price effect. Our guidance also clarifies that the financial resources should be held on the balance sheet of the administrator firm, and should not include loan or credit arrangements between the administrator and any group entity.

Other rules

2.11 In our CP we asked whether there were any additional requirements that we should consider for the administrator. Most respondents noted that our proposed rules seemed appropriate, but some suggested additional requirements or asked for clarification on some of the proposed requirements.

Conflicts of interest

2.12 A number of responses suggested that the administrator should be required to have policies and procedures in place for managing any conflicts of interest. Specifically, one response stated that, given LIBOR would be the first *specified benchmark*, the administrator should have sufficient procedures in place to ensure any information provided to them remains confidential.

Our response:

A potential conflict of interest for benchmark administrators arises between the interests of the benchmark users and the administrator's commercial objectives and/or the interests of its membership. We believe our rule requiring the administrator to have regard to maintaining the integrity of the market and the continuity of the benchmark achieves this.

However, we agree that it is imperative for benchmark administrators to identify and manage conflicts of interest that may arise. Consequently, we have added a requirement to this effect.

In addition, we agree that the administrator should have sufficient policies to ensure confidentiality of sensitive information, such as proprietary trading information, but we believe that these should be established between the benchmark administrator and the benchmark submitters as well as the oversight committee. We have included a guidance provision outlining that we would expect to see suitable confidentiality agreements in place.

Oversight committee

2.13 In our CP, we proposed that the benchmark administrator should convene an oversight committee. This committee should have responsibility for matters such as the definition and scope of the benchmark, as well as exercising collective scrutiny of submissions, where any suspicions have been raised.

2.14 Some respondents to the CP sought clarification regarding the allocation of responsibilities between the administrator body and the oversight committee. Respondents voiced concern that the oversight committee might be able to direct the administrator or the submitting firms to engage in conduct that is contrary to our regulatory requirements.

2.15 One respondent asked for clarification regarding the management of conflicts of interest on the oversight committee. Another response queried how the independence of the committee could be ensured.

Our response:

The oversight committee will be a committee of the authorised administrator. We have also included a requirement for the administrator to have appropriate policies to manage conflicts of interest, as described above.

We have clarified that we will require that at least two of the members of the oversight committee are independent non-executive directors of the administrator. These independent non-executive directors must be FCA-approved persons, in the non-executive director function of the benchmark administrator.

Monitoring and surveillance

2.16 In our original proposals, we outlined that the benchmark administrator would be required to monitor, validate and survey all submissions it receives. We proposed that such monitoring should be used to identify breaches of the administrator's practice standards or behaviour that could manipulate the benchmark.

2.17 Respondents gave varying opinions on our requirement to monitor submissions and most requested further guidance on what we expected regarding the overall aim of this requirement as well as the extent and type of analysis required. In particular, one respondent noted that they felt it would be difficult for the benchmark administrator to effectively 'validate' submissions without a complete knowledge of submitters' proprietary information.

Our response:

Some benchmarks seek to represent markets that may have a low number of transactions. LIBOR has been a clear example of this on occasions. In these cases, we acknowledge that the ability for the administrator to validate every submission would be reduced.

We believe the administrator should take a leading role in identifying anomalies, inconsistencies and patterns in submissions. This should be achieved through the use of statistical analysis, among other tools. Any identification of anomalies should be first queried and then scrutinised by the administrator and escalated to the oversight committee and potentially the FCA, should the enquiry not lead to a satisfactory conclusion. We believe the costs are adequately captured in our estimate of ongoing costs for the LIBOR administrator.

However, we agree that use of the word 'validation' could have been interpreted as a requirement to ensure the accuracy or correctness of each submission. Given the daily volume of submissions and the use of transaction data and expert judgement, we agree that the administrator may not have sufficient resources

to validate all submissions. As this was not the intention of our rules, we have decided to delete the word 'validation' from our requirement.

In addition, we have included extra guidance outlining that we expect surveillance to involve conducting statistical analysis of submissions.

Outsourcing

2.18 A few responses to the CP questioned whether our proposals allowed benchmark administrators to outsource any of their activities. By way of example, some benchmark administrators ask specialist data firms to collect the relevant benchmark inputs as well as to calculate and publish the benchmark. Respondents queried our policy proposals where any activities, including regulated activities, are outsourced.

Our response:

All firms that carry on a regulated activity in relation to a *specified benchmark* must be authorised to do so. Therefore, where a benchmark administrator outsources any aspect of the administration of a benchmark (such as the collection of information or the calculation of a *specified benchmark*), the outsourced firm must also be authorised. However, our general systems and control requirements will also apply for firms that outsource activities: the benchmark administrator remains responsible for meeting its regulatory obligations for any activity it outsources.[3]

Reporting of suspicious or manipulative behaviour

2.19 In our CP, we proposed that the benchmark administrator – as well as all submitters to benchmarks – would be required to notify the FCA of any suspicions they have regarding manipulation, attempts to manipulate, or any collusive attempts to manipulate the *specified benchmark*.

2.20 Some respondents queried whether the requirement to report suspicions should extend to all firms, not just benchmark submitters and administrators, in line with our policy on Suspicious Transaction Reporting. One respondent also suggested that the benchmark administrator should have policies to encourage and facilitate 'whistle-blowers' who wish to report suspicious behaviour.

3 See Chapter 8 of the Systems and Controls sourcebook section of the FCA Handbook

Our response:

We agree that notification by third parties is a useful monitoring and surveillance tool for discovering attempts to manipulate benchmarks.

However, we feel that requiring all authorised firms to notify us of any suspicions would be overly burdensome on them, especially where they are not active in the underlying market for a particular benchmark. Nevertheless, we believe that under Principle 11 of the Principles for Businesses in PRIN 2 (Relations with Regulators), authorised firms should notify us where they have any suspicions of manipulation.

We agree that the benchmark administrator should have effective procedures for third parties to notify the administrator of any suspicions. As a result, we have added guidance that states that effective monitoring of submissions by the administrator should be augmented with procedures for whistle-blowing.

Private right of action

2.21 Unless the FCA provides otherwise in its rules, section 138D of FSMA allows private persons to seek damages from any authorised firm that contravenes an FCA rule. We did not originally propose to change this in our CP.

2.22 However, it was noted to us that our requirements focus on system and control frameworks within firms and do not relate to conduct of business. As a result, respondents stated that it appeared disproportionate for private right of action to apply to the MAR 8 requirements.

Our response:

We agree that the requirements applying to benchmark submitters and administrators relate to their systems and control frameworks, rather than conduct of business. In general, we do not apply the right of action to our general systems and control provisions.

Moreover, we also believe that allowing private persons to bring an action for breaches of the new benchmark regime against submitters or administrators could severely discourage existing or future participation in LIBOR, which is necessary for producing the benchmark.

Consequently, we agree that the private right of action should not apply to our Handbook rules for both benchmark administrators and submitters, outlined in MAR 8, and we have included a new rule in our Handbook to achieve this.

Fees

2.23 The CP outlined our proposals for charging fees to benchmark administrators. All firms that apply to become authorised must pay us a fee to cover the cost of processing their application. The application fee will be £25,000.

2.24 In addition, we charge annual fees to firms to cover the cost of supervision. We proposed that benchmark administrators should be part of fee block B, in common with other market infrastructure, and estimated an annual fee of £385,000 in the consultation.

2.25 A number of responses to the CP stated that our fee proposal appeared relatively high. In particular, some responses noted that other, more complex, market infrastructure firms were required to pay a similar amount and that the fee therefore did not look proportionate.

Our response:

We have continued to develop our intended supervisory approach for benchmark administrators since we published the CP. As a consequence, we believe that our initial estimate of the resource and cost of supervising a benchmark administrator was too high.

Having reviewed the likely long-term impact on our personnel resources over the regulatory period, we have concluded that our ongoing supervisory requirements will be lower after the first six months and so we will be able to spread the costs of the initial set-up phase over a longer period.

We have therefore reduced our proposed annual fee to £175,000. We will keep this under review and may revise the charge if our cost estimates develop in the light of experience.

Impact on costs for the LIBOR administrator

2.26 In CP12/36 we outlined our estimates of the likely costs arising to the LIBOR administrator, as administrator of the initial *specified benchmark*. We estimated ongoing running costs of up to £1 million per year, including: the cost of systems and controls, costs arising from the oversight committee, and our financial resources requirements. The administrator may also face one-off setup costs of £1.6 million. We do not consider the amendments outlined above will materially affect our prior cost estimates, for the following reasons.

2.27 Firstly, we do not believe there to be material additional costs from the additional rule requiring benchmark administrators to effectively manage conflicts of interests. Any related costs should fall within our original estimated range for systems and controls.

2.28 Secondly, we have also included a guidance provision related to the monitoring and surveillance of submissions by benchmark administrators. As this guidance simply clarifies our expectations, we believe these costs should already be captured by our original estimate for the ongoing costs of the administrator.

2.29 Finally, we have outlined our eligibility criteria for the financial resources required to be held by the LIBOR administrator. Our original estimate of the cost of capital was based on a wide range, including the costs of tier one capital. Therefore, we believe the maximum cost arising from this additional guidance is unchanged.

2.30 Overall, the impact of these amendments on the FCA's costs is neutral. This is because we have aligned the level of fees paid by the administrator with the estimated resource costs to the FCA. Where we have reviewed our likely internal resource costs of supervision, we have also reduced the fee to be paid by the LIBOR administrator.

3

Submitters to benchmarks

Our proposals

3.1 Benchmark submitters provide the information or expressions of opinion which are then used to determine the benchmark. In order to ensure the integrity of those submissions – whether it be transaction data, expressions of opinion, or other information – it is vital that submitters have effective methodologies and control frameworks in place when establishing the content of their submission.

3.2 In our CP we proposed a number of requirements for benchmark submitters, which would be placed alongside the requirements for benchmark administrators in MAR 8 of the Handbook. Specifically, we proposed that benchmark submitters must:

- maintain effective organisational and governance arrangements for the process of making submissions;
- appoint an FCA-approved individual with responsibility for the firm's compliance with our requirements for benchmarks;
- establish and implement an effective methodology for determining benchmark submissions;
- have effective arrangements in place to identify and manage any conflicts of interest, both from within and without the firm;
- notify the FCA immediately of any suspicions relating to the manipulation, attempted manipulation, or collusion to manipulate the benchmark;
- keep all relevant records relating to its benchmark submissions for a period of five years; and
- appoint an external auditor to report on its compliance with these requirements on an annual basis.

3.3 We asked the following questions in the CP relating to our proposals for benchmark submitters:

> ***Q1:*** *Do you think there are any other rules we should consider for benchmark submitters?*
>
> ***Q2:*** *For what period should submitters be mandated to keep records?*
>
> ***Q3:*** *How frequently do you think external audits should occur?*
>
> ***Q4:*** *Do you agree with our proposals to apply the new CF40 controlled function regardless of where the submitting activity takes place?*

3.4 We received a number of responses to these questions, all of which were supportive of our general approach. One notable area of concern among respondents was that our requirements did not appear to allow the use of qualitative factors such as expert judgement within the methodology for determining submissions. Almost all respondents agreed with our proposals for record-keeping and external audits. Of those that commented, all agreed with our proposals for 'extra-territoriality', but one cautioned over regulatory duplication.

3.5 We have carefully considered the responses received and have made two subsequent amendments to our requirements. The responses to each question, our considerations and any changes are detailed in the following section.

Other rules for benchmark submitters

The use of expert judgement in submission methodologies

3.6 In the CP, we outlined that when making benchmark submissions, firms must ensure that they use an effective methodology to choose, evaluate and input relevant information and that methodologies should be reviewed when market circumstances require.

3.7 A number of responses noted that their interpretation of our requirement to use 'objective criteria' could preclude the use of submitters' expert judgement. Most noted that this judgement was required throughout the submission process and should be explicitly provided for in the rules.

Our response:

We agree that including expert judgement within submission methodologies is crucial. This is particularly the case where there are low number of transaction volumes in the market underlying the benchmark.

Since respondents had interpreted otherwise, we have clarified our view by inserting a guidance provision. The provision expressly states that an effective methodology for determining benchmark submissions includes the use of qualitative criteria, such as the expert judgement of the benchmark submitter.

Perimeter guidance

3.8 Annex G of the CP outlined the amendments to the Perimeter Guidance Manual (PERG) which sets out our view regarding the extent of the regulatory perimeter. This guidance is intended to help firms understand whether the activities they carry out in respect of benchmarks are likely to be regulated activities and whether or not authorisation is required.

3.9 One stakeholder raised a concern regarding potential confusion between the regulated activities, as outlined in the amended RAO. Specifically, the regulated activity of 'administering' a *specified benchmark* includes: *Collecting, analysing, or processing information or expressions of opinion provided for the purpose of determining a specified benchmark*.

3.10 The concern raised is that this component of the activity could be confused with the activity that submitters carry out to determine their individual submissions to the benchmark. This could mean that firms that submit to a *specified benchmark* may be considered as administering that benchmark.

Our response:

We do not believe it is the intention of the new regulated activity of administering a *specified benchmark* to capture the processes benchmark submitters use to determine their submissions.

As a consequence, we have clarified through the Perimeter Guidance Manual that benchmark-submitting firms that collect, analyse and process information for determining their own submissions to a benchmark are not considered to be administering the benchmark.

Private right of action

3.11 Unless the FCA provides otherwise in its rules, section 138D of FSMA allows private persons to seek damages from any authorised firm that contravenes an FCA rule. Again, we did not originally propose to change this in our CP for benchmark submitters.

Our response:

The MAR 8 provisions for benchmark submitters relate to requirements for systems and control procedures within firms. As with our decision for benchmark administrators – and in line with our general approach – we have included a rule in the provisions stating that the private right of action under section 138D of FSMA does not apply to the MAR 8 provisions.

Requirements for record-keeping

3.12 The CP outlined our proposals for benchmark submitters to maintain and keep adequate records of their submission activities. These records should include submission methodologies, the information and other factors used to determine the submission, as well as reports of the sensitivity of firms' activity in relation to the benchmark. We asked how long we should require these records to be kept.

3.13 Of those that commented, all respondents agreed with our proposals. In relation to the time period that records should be kept for, most respondents recommended the time period used in other areas of regulation.

Our response:

We agree that we should keep our policies for record-keeping as consistent as possible. Therefore, we require records in relation to benchmark submission to be kept for a minimum of five years, in line with the requirements set out by the EU Markets in Financial Instruments Directive (MiFID).

Regular independent audit and assurance

3.14 In our proposals, we noted that firms should be subject to periodic reviews of their systems and control frameworks for benchmark submission and firms' compliance with the FCA's rules. We highlighted the use of internal and external audit functions to conduct these

reviews. Specifically, our draft rules contained a requirement to appoint an independent auditor on an annual basis.

3.15 Most respondents agreed with our proposals for the use of independent external audit and assurance. Notably however, a few respondents voiced their concern that an annual external audit would be costly and therefore disproportionate for firms that can demonstrate good internal control frameworks or for firms with small-scale engagement in a *specified benchmark*.

3.16 A number of responses noted that additional cost burden would adversely affect the incentives for firms to participate in the benchmark.

Our response:

We agree that firms may have different circumstances for their engagement with a *specified benchmark*. As a result, we have sought to create more flexibility in this requirement, by amending the rule so that firms must appoint an independent auditor on a 'regular' basis. In addition, we have clarified through a guidance provision that our normal expectation would be for a review on an annual basis, but that a longer period may be acceptable depending on the particular circumstances of the firm.

Such circumstances may include the nature and scale of the firm's engagement with the benchmark, or the strength of internal framework for monitoring compliance with applicable rules.

We have also indicated that where firms propose to appoint an auditor on a less frequent basis, they should notify the FCA, giving reasons why they consider a less frequent report would be acceptable.

Extra-territoriality of Controlled Functions

3.17 A key recommendation of the Wheatley Review was that the individual responsible for that firms' internal benchmark submission process should be an FCA-approved person. In our proposals in the CP, we created a new Significant Influence Function – Controlled Function (CF40). We also acknowledged that some firms may submit to benchmarks in the UK from establishments overseas.

3.18 As a consequence, we proposed that this controlled function should apply regardless of where the submitting activity takes place, and proposed to amend our rules accordingly.

3.19 Of those respondents that commented, all agreed with our proposals to extend the requirement for the new controlled function beyond the UK. However, one respondent cautioned against potential duplication of regulatory requirements across jurisdictions.

Our response:

We have not changed our proposals regarding the extension of the new controlled function.

Impact on costs for LIBOR submitters

3.20 In CP12/36, we outlined our estimates of the likely costs arising to LIBOR-submitting banks. In summary, we estimated ongoing costs for LIBOR-submitting firms at up to £545,000 per year and one-off costs of a maximum £2.5 million. We do not anticipate our amendments to the rules will increase these estimated costs.

3.21 In fact, in this PS we have outlined one material change to our original proposals: that the frequency of independent audits could be reduced, depending on the particular circumstances for the firm. Any reduction in the frequency of independent reviews can only reduce costs to LIBOR-submitting firms.

Annex 1

List of non-confidential correspondents

Argus Media

Baillie Gifford & Co

Barclays Bank

CFA Society of the UK

Ernst & Young

ICIS Heren

Institute of Chartered Accountants of England and Wales (ICAEW)

Investment Managers Association (IMA)

Lloyds Banking Group

London Stock Exchange Group

Markit

Norinchukin Bank

NYSE

Rate Validation Services (RVS)

Royal Bank of Canada

Royal Bank of Scotland

Thomson Reuters

Wholesale Markets Brokers Association (WMBA)

Appendix 1

Made rules (legal instrument)

BENCHMARKS INSTRUMENT 2013

WHEREAS:

A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of making rules, giving guidance and issuing codes.

B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.

C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.

D. Article 2(1)(c) of the Early Commencement Order commenced certain of the Financial Conduct Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.

Interpretation

1 In this Instrument (including the Recitals):

(1) "Designation Order" means the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161);

(2) "Early Commencement Order" means the Financial Services Act 2012 (Commencement No. 1) Order 2013 (SI 2013/113);

(3) "the 2000 Act" means the Financial Services and Markets Act 2000;

(4) "the 2012 Act" means the Financial Services Act 2012;

(5) "the Authority" means the Financial Services Authority; and

(6) "Financial Conduct Authority" means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act.

Rules etc. made, given or amended by the Financial Conduct Authority

2 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 3, the Financial Conduct Authority makes, amends, issues, gives, or imposes each provision in the Annexes to this Instrument as set out below:

(1) The modules of the 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
Fit and Proper test for Approved Persons (FIT)	Annex B
Fees manual (FEES)	Annex C
Market Conduct sourcebook (MAR)	Annex D

Supervision manual (SUP)	Annex E

(2) General guidance on the parts of the Handbook that apply to benchmark submitters and to benchmark administrators when they carry out the regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark is made in the form of Annex F to this instrument. This guidance is a Handbook Guide and does not form part of the Handbook.

(3) The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this Instrument. The general guidance in PERG does not form part of the Handbook.

3 The Financial Conduct Authority makes, amends, issues, gives or imposes the provisions in the Annexes to this Instrument in exercise of the following powers and related provisions of the 2000 Act, as amended by the 2012 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 (Power of the FCA to give guidance).

4 The rule-making powers in paragraph 3 are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

Commencement: Financial Conduct Authority

5 The Financial Conduct Authority directs that paragraph 2 of this Instrument comes into force on 2 April 2013.

Citation

6 This Instrument may be cited as the **Benchmarks Instrument 2013**.

By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body

19 March 2013

Annex A

Amendments to the Glossary of definitions

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

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

administering a specified benchmark	The *regulated activity*, specified in article 63O(1)(b) of the *Regulated Activities Order*, which means: (1) administering the arrangements for determining a *specified benchmark*, or (2) collecting, analysing or processing information or expressions of opinion for the purpose of determining a *specified benchmark*, or (3) determining a *specified benchmark* through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.
BENCH	Guide for Benchmark Activities (BENCH)
benchmark administrator	A person carrying out the *regulated activity* of *administering a specified benchmark.*
benchmark administration function	*FCA-controlled function* CF50 in the *table of FCA-controlled functions* which is the function of acting in the capacity of a *person* who is responsible for oversight of a *firm's* compliance with *MAR* 8.3 (requirements for *benchmark administrators*).
benchmark submitter	A person carrying out the *regulated activity* of *providing information in relation to a specified benchmark.*
benchmark submission	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*
benchmark submission function	*FCA-controlled function* CF40 in the *table of FCA-controlled functions* which is the function of acting in the capacity of a *person* who is responsible for oversight of a *firm's* compliance with *MAR* 8.2 (benchmark manager).
providing information in relation to a specified	The *regulated activity*, specified in article 63O(1)(a) of the *Regulated Activities Order*, which in summary means making *benchmark submissions.*

benchmark

specified benchmark	a benchmark as defined in section 22(1A)(b) of the *Act* and specified in Schedule 5 to the *Regulated Activities Order* pursuant to article 63R of the *Regulated Activities Order*

Amend the following definition as shown.

conflicts of interest policy	~~the policy established and maintained in accordance with *SYSC* 10.1.10 R.~~ (1) the policy established and maintained in accordance with *SYSC* 10.1.10R; and (2) (in *MAR* 8) the policy established and maintained in accordance with *MAR* 8.2.8G which identifies circumstances that constitute, or may give rise to, a conflict of interest arising from *benchmark submissions* and the process of gathering information in order to make *benchmark submissions*, and sets out the process to manage such conflicts.

Annex B

Amendments to the Fit and Proper test for Approved Persons (FIT)

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

1.2 Introduction

…

1.2.4A G Under Article 5(1)(d) of the *MiFID Implementing Directive* and Article 31 and 32 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of a *person* to perform a *controlled function* solely in relation to the *MiFID business* of an *incoming EEA firm*, the *appropriate regulator* will not have regard to that *person's* competence and capability. Where the *controlled function* relates to matters outside the scope of *MiFID*, for example *money laundering* responsibilities (see CF11) or activities related to a *specified benchmark* (see CF 40 and CF 50), or to business outside the scope of the *MiFID* business of an *incoming EEA firm*, for example *insurance mediation activities* in relation to *life policies*, the ~~*FSA*~~ *FCA* will have regard to a *candidate's* competence and capability as well as his honesty, integrity, reputation and financial soundness.

Annex C

Amendments to the Fees manual (FEES)

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

3.2 **Obligation to pay fees**

…

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

(1) Fee payer	(2) Fee payable	Due Date
(a) Any applicant for *Part IV permission* (including an *incoming firm* applying for *top-up permission*) whose fee is not payable pursuant to sub- paragraph (ga) of this table	…	…
…		
(g) Any applicant for recognition as a *UK recognised body*: (i) under section 287 of the *Act*; or (ii) under regulation 2(1) of the *RAP regulations*http://media.fsahandbook.info/Legislation/2011/2011_77.pdf	…	…
(ga) Any applicant for: (i) a *Part 4A permission* to carry out the *regulated activity* of *administering a specified benchmark*; or (ii) varying its *Part 4A permission* to carry out the *regulated activity* of *administering a specified benchmark*	*FEES* 3 Annex 3 R, part 1	On or before the date the application is made
…	…	…
(p) A *firm* applying for a variation of its *Part 4A permission* whose fee is not payable pursuant to sub-paragraph (ga) of this table	…	

…

3 Annex Application fees payable in connection with Recognised Investment Exchanges,

3 R ~~and~~ Recognised Auction Platforms and Benchmark Administrators

Description of Applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
…		
Applicant for recognition as an *RAP* (payable in addition to any other application fee due under this part)	…	…
Any applicant for: (i) a *Part 4A permission* to carry out the *regulated activity* of *administering a specified benchmark*; or (ii) varying its *Part 4A permission* to carry out the *regulated activity* of *administering a specified benchmark*	£25,000	Date the application is made
…		

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

Part 1

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

Activity Group	Fee payer falls in the activity group if
…	
B. *MTF* operators	…
B. Benchmark administrators	It is a *benchmark administrator*

Part 3

This table indicates the tariff base for each fee-block set out in Part 1.

Activity Group	Tariff-base

…	
B. *MTF* operators	…
B. Benchmark administrators	Not applicable

…

Part 5 This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.	
Activity Group	Valuation date
…	
B. *MTF* operators	…
B. *Benchmark administrators*	Not applicable

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2013 to 31 March 2014

Part 1 This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of *FEES* 4 Annex 1AR		
…		
Activity Group	Fee payable	
…		
B. Service companies	…	…
	…	…
B. *Benchmark administrators*	£175,000	
B. *MTF* operators	…	

…

Annex D

Amendments to the Market Conduct sourcebook (MAR)

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

8 Benchmarks

8.1 Application and purpose

Application

8.1.1 R This chapter applies to every *firm* which is a *benchmark submitter* or a *benchmark administrator*.

Purpose

8.1.2 G The purpose of this chapter is to set out the requirements applying to *firms* who are *benchmark submitters* or *benchmark administrators* when carrying out the activities of *providing information in relation to a specified benchmark* or *administering a specified benchmark*.

Actions for damages

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

8.2 Requirements for benchmark submitters

Organisational and governance arrangements

8.2.1 R A *benchmark submitter* must establish and maintain adequate and effective organisational and governance arrangements for the process of making *benchmark submissions*.

8.2.2 G These arrangements should include:

(1) appropriate oversight of the submission process by the *benchmark submitter's senior personnel*;

(2) appropriate oversight of the submission process by the compliance function of the *firm* to ensure compliance with the *benchmark submitter*'s obligations under this section; and

(3) periodic internal audit reviews.

8.2.3 R A *benchmark submitter* who maintains an establishment in the *United Kingdom* must:

(1) appoint a benchmark manager with responsibility for the oversight of its compliance with this chapter; and

(2) ensure that its benchmark manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.

8.2.4 G The requirements in *MAR* 8.2.3R apply, regardless of the place from which *benchmark submissions* are made. The *FCA* expects that a benchmark manager will be based in the *United Kingdom*.

8.2.5 R A *benchmark submitter* must:

(1) ensure that its *benchmark submissions* are determined using an effective methodology to establish the *benchmark submission* on the basis of objective criteria and relevant information; and

(2) review this methodology as and when market circumstances require, but at least every quarter, to ensure that its *benchmark submissions* are credible and robust.

8.2.6 G An effective methodology for determining *benchmark submissions* in addition to quantitative criteria may include the use of qualitative criteria, such as the expert judgment of the *benchmark submitter*.

Conflict management

8.2.7 R A *benchmark submitter* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of making *benchmark submissions*.

8.2.8 G In order to identify and manage conflicts of interest as set out in *MAR* 8.2.7R a *benchmark submitter* should:

(1) establish, implement and maintain a *conflicts of interest policy* which

(a) identifies the circumstances that constitute, or may give rise to, a conflict of interest arising from its *benchmark submissions* or the process of gathering information in order to make *benchmark submissions*; and

(b) sets out the approach to managing such conflicts*;*

(2) establish effective controls to manage conflicts of interest between the parts of the business responsible for the *benchmark submission* and those parts of the business who may use, or have an interest in, the benchmark rate; and

(3) establish effective measures to prevent or limit any person from exercising inappropriate influence over the *benchmark submission*.

Notification of suspicions of manipulation

8.2.9 R A *benchmark submitter* who suspects that any person:

(1) is manipulating, or has manipulated, a *specified benchmark*;

(2) is attempting, or has attempted, to manipulate a *specified benchmark*; or

(3) is colluding, or has colluded, in the manipulation or attempted manipulation of a *specified benchmark*;

must notify the *FCA* without delay.

Record keeping

8.2.10 R A *benchmark submitter* must:

(1) keep for at least five years:

(a) records of its *benchmark submissions*, as well as all information used to enable it to make a *benchmark submission*; and

(b) reports on the key sensitivities the *benchmark submitter* may have regarding the *specified benchmark* it is submitting to, including (but not limited to) the *benchmark submitter's* exposure to instruments which may be affected by changes in the *specified benchmark*;

(2) provide to the relevant *benchmark administrator* all information used to enable it to make a *benchmark submission* on a daily basis; and

(3) provide to the relevant *benchmark administrator*, on a quarterly basis, aggregate information which will allow the *benchmark administrator* to produce statistics relevant to the *specified benchmark* as required by *MAR* 8.3.12R.

8.2.11 G The information provided to the *benchmark administrator* in accordance with *MAR* 8.2.10R(2) should include:

(1) a description of the methodology used to establish the *benchmark submission*; and

(2) if applicable, an explanation of how any quantitative and qualitative criteria were used to establish the *benchmark submission*.

Auditor's report

8.2.12 R A *benchmark submitter* must appoint an independent auditor to report to the

FCA on the *benchmark submitter's* compliance with the requirements of this section on a regular basis.

8.2.13 G (1) The *FCA* expects the report required under *MAR* 8.2.12R to be issued annually, although the *FCA* may agree a longer period depending on the *benchmark submitter's* particular circumstances, including the nature and scale of its engagement in the *specified benchmark* and the internal framework for monitoring compliance with the requirements of this chapter.

(2) A *benchmark submitter* which proposes to appoint an auditor to report to the *FCA* under *MAR* 8.2.12R on a less frequent than annual basis should notify the *FCA* explaining why it believes it would be appropriate to do so.

8.3 Requirements for benchmark administrators

8.3.1 R A *benchmark administrator* must establish and maintain effective organisational and governance arrangements to enable it to carry out the activity of *administering a specified benchmark.*

8.3.2 R In discharging its duties, the *benchmark administrator* must have regard to the importance of maintaining integrity of the market and the continuity of the *specified benchmark* including the need for contractual certainty for contracts which reference the *specified benchmark.*

8.3.3 R A *benchmark administrator* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of administering a *specified benchmark.*

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 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.

8.3.5 R A *benchmark administrator* must:

(1) appoint a benchmark administration manager with responsibility for oversight of its compliance with this section; and

(2) ensure that its benchmark administration manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.

8.3.6 R A *benchmark administrator* must:

(1) have effective arrangements and procedures that allow the regular monitoring and surveillance of *benchmark submissions*:

(2) monitor the *benchmark submissions* in order to identify breaches of its practice standards (set out in *MAR* 8.3.10R(1)) and conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers and provide to the oversight committee of the *specified benchmark* timely updates of suspected breaches of practice standards and attempted manipulation; and

(3) notify the *FCA* and provide all relevant information where it suspects that, in relation to the *specified benchmark* it administers, there has been:

(a) a material breach of the *benchmark administrator's* practice standards (set out in *MAR* 8.3.10R(1));

(b) conduct that may involve manipulation or attempted manipulation of the *specified benchmark* it administers; or

(c) collusion to manipulate or to attempt to manipulate the *specified benchmark* it administers.

8.3.7 G The arrangements and procedures referred to in *MAR* 8.3.6R(1) should include (but not be limited to):

(1) carrying out statistical analysis of *benchmark submissions*, using other relevant market data in order to identify irregularities in *benchmark submissions*; and

(2) an effective whistle-blowing procedure which allows any person on an anonymous basis to alert the *benchmark administrator* of conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers.

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 representatives of *benchmark submitters*, market infrastructure providers, users of the *specified benchmark* and at least two independent *non-executive directors* of the *benchmark administrator* approved to carry out the *non-executive director function*.

8.3.9 G The oversight committee should be responsible for:

(1) considering matters of definition and scope of the *specified benchmark*;

(2) exercising collective scrutiny of *benchmark submissions* if and when required; and

(3) notifying the *FCA* of *benchmark submitters* that fail on a recurring basis to follow the practice standards (as set out in *MAR* 8.3.10R(1)) for the *specified benchmark*.

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

(1) develop practice standards in a published code which set out the responsibilities for *benchmark submitters*, the *benchmark administrator*, and its oversight committee in relation to the relevant *specified benchmark;*

(2) undertake regular periodic reviews of:

(a) the practice standards mentioned in *MAR* 8.3.10R(1);

(b) the setting and definition of the *specified benchmark* it administers;

(c) the composition of *benchmark submitter* panels; and

(d) the process of making relevant *benchmark submissions;* and

(3) before making any changes as a result of such review:

(a) notify the *FCA*;

(b) after doing so, publish a draft of the proposed changes and a notice that representations about the proposed changes may be made to the *benchmark administrator* within a specified time; and

(c) have regard to any such representations.

Review of the benchmark and publication of statistics

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

8.3.12 R A *benchmark administrator* must publish quarterly aggregate statistics outlining the activity in the underlying market relevant to the *specified benchmark*.

Adequate financial resources

8.3.13 R Notwithstanding any other financial resource requirements that may apply, a *firm* whose *permitted activities* include *administering a specified benchmark* must:

(1) be able to meet its liabilities as they fall due; and

(2) maintain, at all times, sufficient financial resources to be able to cover the operating costs of administering the *specified benchmark* for a period of at least six months.

8.3.14 G *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.* However, the *FCA* expects *benchmark administrators* to normally hold sufficient financial resources to cover the operating costs of administering the *specified benchmark* for a period of nine months.

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.

8.3.16 G The *FCA* may use its powers under section 55L of the *Act* to impose on a *benchmark administrator* a requirement to hold additional financial resources to *MAR* 8.3.13R if the *FCA* considers it desirable to meet any of its *statutory objectives*.

Annex E

Amendments to the Supervision manual (SUP)

In Part 1 of this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Amendments to the new Chapter 10A of the Supervision Manual

10A.1 Application

…

Overseas firms: UK establishments

…

Territorial scope of SUP 10A in relation to benchmark submission

10A.1.22 R Notwithstanding anything to the contrary in *SUP* 10A.1.5R, *SUP* 10A.1.6 R and *SUP* 10A.1.13 R the application of *SUP* 10A to the *benchmark submission function* is as set out in *MAR* 8.2.3R.

10A.1.23 G *MAR* 8.2.3R says that the obligation on a *benchmark submitter* to appoint a benchmark manager applies if it maintains an establishment in the *United Kingdom*. Therefore, *SUP* 10A applies to the *benchmark submission function* whether or not the activity of *providing information in relation to a specified benchmark* (or any other regulated activity) or the *benchmark submission function* are carried on from that establishment.

…

10A.4 Specification of functions

…

10A.4.5 R FCA-controlled functions

Part 1 (FCA-controlled functions for FCA-authorised persons and appointed representatives)		
Type	**CF**	**Description of FCA-controlled function**
…		

*FCA-required functions**		…
…		
	11	*Money laundering reporting function*
	40	*Benchmark submission function*
	50	*Benchmark administration function*
…		

Part 2 (FCA-controlled functions for PRA-authorised persons)		
Type	**CF**	**Description of FCA-controlled function**
…		
*FCA-required functions**		…
	11	*Money laundering reporting function*
	40	*Benchmark submission function*
	50	*Benchmark administration function*
…		

10A.7 FCA-required functions

…

Benchmark submission function (CF40)

10A.7.12 R The *benchmark submission function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in *MAR* 8.2.3R(1) (Organisational and governance arrangements).

Benchmark administration function (CF50)

10A.7.13 R The *benchmark administration function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in *MAR* 8.3.5R(1) (Requirements for benchmark administrators).

…

In Part 2 of this Annex, the entire text is new and is not underlined.

Part 2 Amendments to SUP TP (Transitional provisions)

TP 4 Transitional provisions relating to SUP 10A

TP 4.1 Transitional provisions relating to LIBOR submitters

4.1.1 R *SUP* TP 4.1 applies to a *firm* with a *permission* under article 7 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (*Part 4A permission* to carry on the activity of *providing information in relation to a specified benchmark*).

4.1.2 R The *benchmark submission function* does not apply during the first transitional period.

4.1.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of the *benchmark submission function* in relation to a *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person* and *firm*, when the application is approved.

4.1.4 R The *benchmark submission function* does not apply in relation to a particular *person* and particular *firm* during the second transitional period if:

(1) an application has been made to the *FCA* for the approval of the performance by that *person* of the *benchmark submission function* in relation to that *firm* during the first transitional period; and

(2) that application has not been finally decided before the end of the first transitional period.

4.1.5 R The second transitional period begins when the first transitional period ends.

4.1.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:

(1) the end of the six *month* period beginning on 2 April 2013; and

(2) the date on which the application referred to in *SUP* TP 4.1.4R is granted.

4.1.7 R An application is finally decided for the purpose of *SUP* TP 4.1:

(1) when the application is withdrawn;

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

(3) where the *FCA* 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;

(4) where the *FCA* 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 4.2 Transitional provisions relating to LIBOR administration: New firm

4.2.1 R *SUP* TP 4.2 applies to a *firm* that immediately before it was granted an interim *part 4A permission* under article 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (Interim *permission* in relation to *administering a specified benchmark*) did not hold a *part 4A permission*.

4.2.2 R No *controlled function* applies during the first transitional period.

4.2.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of a *controlled function* in relation to the *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person*, *firm* and *controlled function*, when the application is approved.

4.2.4 R A *controlled function* does not apply in relation to a particular *person* and *firm* during the second transitional period if:

(1) an application has been made to the *FCA* for the approval of the performance by that *person* of that *controlled function* in relation to the *firm* during the first transitional period; and

(2) that application has not been finally decided before the end of the first transitional period.

4.2.5 R The second transitional period begins when the first transitional period ends.

4.2.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:

(1) the end of the six-*month* period beginning on 2 April 2013;

(2) the date on which the application referred to in *SUP* TP 4.2.4R is finally decided; or

(3) the date on which the *firm's* interim permission lapses as set out in Article 8(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013

4.2.7 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of *SUP* TP 4.2 in the circumstances described in *SUP* TP 4.1.7R.

TP 4.3 Transitional provisions relating to LIBOR administration: Existing firm

4.3.1 R *SUP* TP 4.3 applies to a *firm* that was granted an interim *Part 4A permission* under article 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (Interim *permission* in relation to *administering a specified benchmark*) and already held a *Part 4A permission.*

4.3.2 R The *benchmark administration function* does not apply during the first transitional period.

4.3.3 R The first transitional period is the period of two weeks beginning on 2April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of the *benchmark administration function* in relation to the *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person* and *firm*, when the application is approved.

4.3.4 R The *benchmark administration function* does not apply in relation to a particular *person* and *firm* during the second transitional period if:

(1) an application has been made to the *FCA* for the approval of the performance by that *person* of the *benchmark administration function* in relation to the *firm* during the first transitional period; and

(2) that application has not been finally decided before the end of the first transitional period.

4.3.5 R The second transitional period begins when the first transitional period ends.

4.3.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:

(1) the end of the six-*month* period beginning on 2 April 2013;

(2) the date on which the application referred to in *SUP* TP 4.3.4R is finally decided; or

(3) the date on which the *firm's* interim permission lapses as set out in Article 8(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013

4.3.7 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of *SUP* TP 4.3 in the circumstances described in *SUP* TP 4.1.7R.

Annex F

General guidance on Benchmark Submission and Administration (BENCH)

In this Annex, the entire text is new and is not underlined. This guide should be inserted on the Handbook website after SERV.

1 Handbook requirements in relation to benchmark submission activity and benchmark administration activity

1.1 Application and purpose

Application

1.1.1 G This special guide is for *firms* which carry out the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark.*

Purpose

1.1.2 G The purpose of this special guide is to help *benchmark submitters* and *benchmark administrators* by setting out which parts of the *Handbook* apply to them when they carry out the *regulated activities* of *providing information in relation to a specified benchmark* or *administering a specified benchmark.*

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

2 Parts of the Handbook applicable to benchmark submission activity and benchmark administration activity

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

2.1.2 G Parts of the Handbook applicable to the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark.*

	Part of the Handbook	Applicability to the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark*
High Level Standards	Principles for Businesses (*PRIN*)	This applies.
	Senior management arrangements, Systems and Controls (*SYSC*)	This applies.
	Threshold Conditions (*COND*)	This applies.
	Statements of Principle and Code of Practice for Approved Persons (*APER*)	This applies to an *approved person* who performs a *benchmark submission function* or a *benchmark administration function*.
	The Fit and Proper test for Approved Persons (*FIT*)	This applies.
	General Provisions (*GEN*)	This applies.
	Fees Manual (*FEES*)	This applies.
Business Standards	Market Conduct Sourcebook (*MAR*)	*MAR* 1 (Code of Market Conduct), *MAR* 2 (Stabilisation) and *MAR* 8 (Benchmarks) apply.
Regulatory processes	Supervision manual (*SUP*)	This applies, with the following qualifications: (a) *SUP* 4 (Actuaries), *SUP* 12 (Appointed representatives), *SUP* 13 (Exercise of passport rights by UK firms), *SUP* 13A (Qualifying for authorisation under the Act), *SUP* 14 (incoming EEA firms changing details and cancelling qualification for authorisation), *SUP* 17 (Transaction Reporting), *SUP* 18 (Transfer of business), *SUP* 21 (Waiver), *SUP* App 2 (Insurers: Regulatory intervention points and run-off plans) and *SUP* App 3 (Guidance on passporting issues) will not be relevant to the *regulated activities* of *providing information in relation to a specified*

		benchmark and *administering a specified benchmark* .
	Decision Procedure and Penalties Manual (*DEPP*)	This applies.
Redress	Dispute Resolution: the Complaints sourcebook (*DISP*)	All firms are subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*. However, a *firm* which does not, and notifies the *FCA* under *DISP* 1.1.12R that it does not, conduct business with *eligible complainants* (persons eligible to have a *complaint* considered by the *Financial Ombudsman Service*, as defined in *DISP* 2.7) will be exempt from the rules on treating complaints fairly (*DISP* 1.2 to *DISP* 1.11) and from the Financial Ombudsman Funding *rules* (*FEES* 5.1 to *FEES* 5.7). The definition of the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark* mean that *benchmark submitters* and *benchmark administrators* will qualify for these exemptions if it applies for them.
Handbook Guides	Special Guide for benchmark administrators (*BENCH*)	This applies.
Regulatory Guides	The Enforcement Guide (*EG*)	This applies.
	The Perimeter Guidance Manual (*PERG*)	This applies.
Glossary of definitions		This applies.

Annex G

Amendments to the Perimeter Guidance Manual (PERG)

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

2.2.3 G Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG* 2 Annex 1G):

…

(3) …

(3a) Are my activities related to a *specified benchmark?*

(4) If ~~so~~ the answer is 'Yes' to (3) or (3a), will my activities be, or include, *regulated activities* (see *PERG* 2.7)?

…

…

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

…

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

…

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

…

Specified benchmarks activities

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

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

(2) *administering a specified benchmark*

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 a specified benchmark*.

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

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

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

(2) is compiled by a subscription service for purposes other than in connection with the determination of a *specified benchmark* and is provided to a *benchmark administrator* only in the administrator's capacity as a subscriber to the service.

2.7.20H G The activity of *administering a specified benchmark* comprises:

(1) administering the arrangements for determining the benchmark;

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

(3) determining a *specified benchmark* through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.

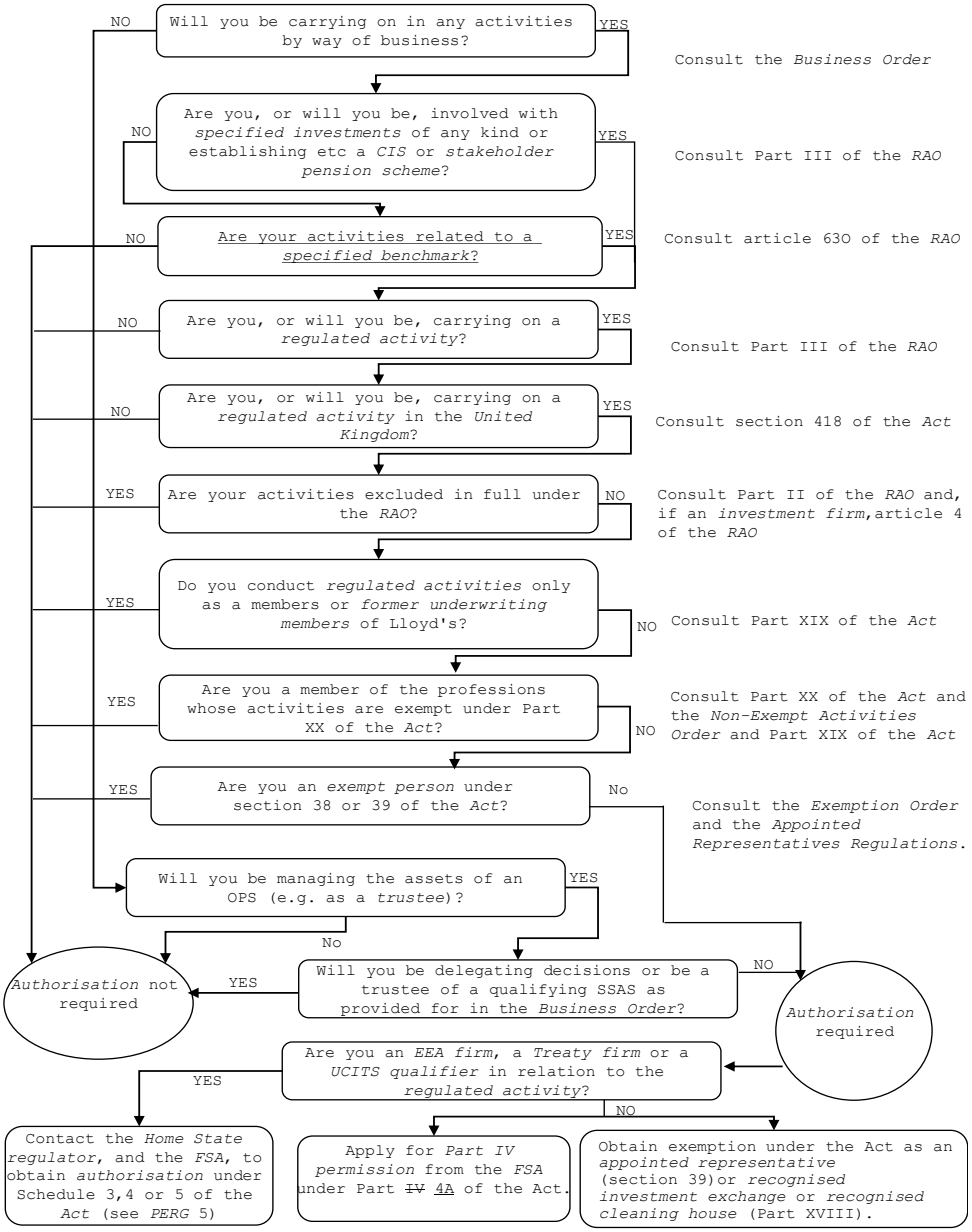
2.7.20I G For the avoidance of doubt, a *firm* who is a *benchmark submitter* is not expected to be carrying out the activities mentioned in *PERG* 2.7.20HG(2) if it collects, analyses or processes information or expressions of opinion for the purposes of making its own submissions.

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).

…

2Annex 1G Authorisation and regulated activities

1 G Do you need authorisation?


Will you be carrying on in any activities by way of business?
NO
YES
Consult the *Business Order*
Are you, or will you be, involved with *specified investments* of any kind or establishing etc a *CIS* or *stakeholder pension scheme*?
NO
YES
Consult Part III of the *RAO*
Are your activities related to a *specified benchmark*?
NO
YES
Consult article 63O of the *RAO*
Are you, or will you be, carrying on a *regulated activity*?
NO
YES
Consult Part III of the *RAO*
Are you, or will you be, carrying on a *regulated activity* in the *United Kingdom*?
NO
YES
Consult section 418 of the *Act*
Are your activities excluded in full under the *RAO*?
YES
NO
Consult Part II of the *RAO* and, if an *investment firm*,article 4 of the *RAO*
Do you conduct *regulated activities* only as a members or *former underwriting members* of Lloyd's?
YES
NO
Consult Part XIX of the *Act*
Are you a member of the professions whose activities are exempt under Part XX of the *Act*?
YES
NO
Consult Part XX of the *Act* and the *Non-Exempt Activities Order* and Part XIX of the *Act*
Are you an *exempt person* under section 38 or 39 of the *Act*?
YES
No
Consult the *Exemption Order* and the *Appointed Representatives Regulations*.
Will you be managing the assets of an OPS (e.g. as a *trustee*)?
YES
No
Will you be delegating decisions or be a trustee of a qualifying SSAS as provided for in the *Business Order*?
YES
NO
Authorisation not required
Authorisation required
Are you an *EEA firm*, a *Treaty firm* or a *UCITS qualifier* in relation to the *regulated activity*?
YES
NO
Contact the *Home State regulator*, and the *FSA*, to obtain *authorisation* under Schedule 3,4 or 5 of the *Act* (see *PERG* 5)
Apply for *Part IV permission* from the *FSA* under Part ~~IV~~ 4A of the Act.
Obtain exemption under the Act as an *appointed representative* (section 39)or *recognised investment exchange* or *recognised cleaning house* (Part XVIII).

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