

**Market Conduct**

# Chapter 8

# Benchmarks

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

### Application and purpose

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

### Compulsion powers under the benchmarks regulation

- 8.7.3 G
- (1) The *FCA* has been designated as the *UK competent authority* for the purpose of the *benchmarks regulation*.
  - (2) The *benchmarks regulation* confers various directly applicable powers on the *FCA* in relation to *critical benchmarks*. In particular:
    - (a) article 21(3) of the *benchmarks regulation* gives a the *FCA* the power to compel the administrator of a *critical benchmark* to continue publishing the critical benchmark for up to 24 months; and
    - (b) article 23(6) of the *benchmarks regulation* gives a the *FCA* the power to take various steps where it considers that the representativeness of a *critical benchmark* is put at risk. That includes the power to require *supervised entities* to contribute *input data* to the administrator of a *critical benchmark* for up to 24 months.
  - (3) The two powers in (a) and (b) above are referred to in this section as the “compulsion powers”.

### Exercise of compulsion powers: general

- 8.7.4 G
- (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which the *FCA* may exercise the compulsion powers.
  - (2) In some cases, the *FCA* may only have a short period in which to decide whether to exercise a compulsion power.

- (3) Where the *FCA* considers it necessary to exercise a compulsion power, it will make that decision on the basis of the information available to it at that time.
- (4) The *benchmarks regulation* does not require the *FCA* to consult on the use of compulsion powers .
- (5) Given that the compulsion powers may need to be exercised within short timescales, the *FCA* does not expect to consult on the use of its compulsion powers (other than consulting other *regulatory bodies* where required by the *Act* or the *benchmarks regulation*).
- (6) In some cases, it may be necessary to exercise compulsion powers in relation to more than one *person*. In those circumstances, it may be necessary to address a written notice under this section to more than one *person*.
- (7) The *FCA* will review a decision to exercise a compulsion power in the circumstances described in this section.

#### Decision to exercise a compulsion power

8.7.5

**G** If the *FCA* decides to exercise a compulsion power in respect of a *person* (P) (whether a *supervised entity* or an administrator), the *FCA* will give P a written notice which:

- (1) gives details of the decision (“the First Decision”);
- (2) states the *FCA*’s reasons for the First Decision;
- (3) states the date on which the First Decision takes effect; and
- (4) states that P may make representations to the *FCA* in relation to the First Decision within a period specified in the written notice.

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

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

#### Review of the First Decision

8.7.7

**G** (1) Where P makes written representations to the *FCA* in relation to the First Decision in accordance with **■ MAR 8.7.5G(4)**, the *FCA* will review that decision and will decide whether to maintain, vary or revoke it.

(2) In conducting the review in (1), the matters which the *FCA* may have regard to include:

- (a) the written representations made by P in relation to the First Decision; and

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- (b) any additional information relevant to the exercise of the compulsion power (whether obtained before or after the First Decision).
- (3) The review in (1) will be carried out by:
  - (a) a senior *FCA* staff member who did not participate in making the First Decision; or
  - (b) two or more senior *FCA* staff members including at least one person who did not participate in making the First Decision.
- (4) When the *FCA* has completed the review in (1), the *FCA* will give P a written notice which:
  - (a) gives details of the decision in response to the review (“the Second Decision”);
  - (b) states the *FCA*’s reasons for the Second Decision; and
  - (c) states the date on which the Second Decision takes effect.

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

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

**Table of defined terms**

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

Table: glossary of bespoke terms used in this section

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