

Market Conduct

Chapter 8

Benchmarks

8.1 Application and purpose

Application

- 8.1.1 **R** ■ MAR 8.4 to ■ MAR 8.7 apply in accordance with the application provisions set out in those sections.

Purpose

- 8.1.2 **G** The purpose of this chapter is to set out the requirements that apply to *firms* involved in the provision of, or contribution to, benchmarks, as follows:

- (1) ■ MAR 8.4 (Third country benchmark contributors) sets out the requirements that apply to *third country benchmark contributors* that are not *supervised entities*, but would be if they were *located* in the UK. These *rules* apply requirements mirroring those which apply to *benchmark contributors* that are in scope of the *benchmarks regulation*.
- (2) ■ MAR 8.5 (Regulated benchmark administrators) sets out some *Handbook* requirements that apply to *regulated benchmark administrators* (who have been authorised under the *benchmarks regulation* for the activity of *administering a benchmark*).
- (3) ■ MAR 8.6 (Responsibility for benchmark activities: benchmark contributors) sets out requirements in relation to responsibility for *contributing input data* to a *BMR benchmark administrator*.
- (4) ■ MAR 8.7 (Procedures for exercising powers in relation to critical benchmarks) sets out the procedure for imposing requirements under articles 21 and 23 of the *benchmarks regulation* in relation to *critical benchmarks*.

[Note: articles 2(2) and 12 of the *Market Abuse Regulation* and article 15 of the *Market Abuse Regulation*, regarding the ongoing *market abuse* provisions applicable to *firms* carrying out the activities specified in ■ MAR 8.1.2G, and the *benchmarks regulation* setting out the requirements applicable to *firms* administering, contributing to and using a *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 [deleted]**

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8.3

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8.3 Requirements for benchmark administrators [deleted]



8.4 Third country benchmark contributors

Application

8.4.1

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- (1) Subject to (2), this section applies to a *third country benchmark contributor* that:
- (a) is not a *supervised entity*; and
 - (b) would be a *supervised entity* if it were *located* in the UK.
- (2) This section does not apply to a *third country benchmark contributor* to the extent that it is *contributing input data* in relation to a *commodity benchmark*, the provision of which is governed by Annex II of the *benchmarks regulation* (in accordance with article 19 of that regulation).

Application of the benchmarks regulation

8.4.2

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A *third country benchmark contributor* in ■ MAR 8.4.1R must comply with the following requirements applicable to supervised contributors (as defined in the *benchmarks regulation*) as if they were *rules*:

- (1) article 16 of the *benchmarks regulation*, as amended or supplemented as relevant by article 26 and Annex 1 of the *benchmarks regulation*; and
- (2) article 23(3) of the *benchmarks regulation*.

8.5 Regulated benchmark administrators

Application

8.5.1 **R** This section applies to a *regulated benchmark administrator*.

Responsibility for benchmark activities: regulated benchmark administrators

- 8.5.2 **R**
- (1) This *rule* applies to a *regulated benchmark administrator* other than:
 - (a) an *Annex II benchmark administrator*;
 - (b) a *PRA-authorised person*.
 - (2) A *regulated benchmark administrator* must allocate the responsibility described in (3) to a *director or senior manager* other than a *non-executive director*.
 - (2A) In the case of a *limited scope SMCR benchmark firm*, the *director or senior manager* in (2) must be sufficiently senior for the function of performing that responsibility to meet the definition of a *senior management function*.
 - (3) The responsibility referred to in (2) is responsibility for the *firm's* implementation of the applicable requirements of the *regulatory system* (including the *benchmarks regulation*) in relation to its activities as a *regulated benchmark administrator*.
 - (4) A *regulated benchmark administrator* must promptly notify the *FCA* of the identity of the person who is allocated the responsibility under (2).
- 8.5.3 **G**
- (1) A *firm* may allocate the responsibility in **MAR 8.5.2R** to more than one person.
 - (2) If the *firm* does so, it should not divide the responsibility between them. Instead each person should be responsible for all aspects of the role.
 - (3) For example, the role could be allocated to more than one person:
 - (a) as part of a job share; or
 - (b) where departing and incoming senior managers work together temporarily as part of a handover.

- 8.5.3A** **G** The *FCA* expects that a person who has the responsibility in **■ MAR 8.5.2R** will:
- (a) be sufficiently senior and credible; and
 - (b) have sufficient resources and authority; to be able to exercise their management and oversight responsibilities effectively.
- One element of a manager's seniority is the degree to which they can and do make decisions without prior approval and exercise judgment and discretion.
- 8.5.4** **R**
- (1) This *rule* applies to an *Annex II benchmark administrator*.
 - (2) An *Annex II benchmark administrator* must promptly notify the *FCA* of the identity of the most senior manager(s) responsible for ensuring that the *firm* satisfactorily implements the requirements of the *benchmarks regulation* (in accordance with paragraph 14(a) of Annex II to that regulation).
- 8.5.5** **G**
- (1) Article 19 of the *benchmarks regulation* states that Annex II to that regulation applies to the provision of a *commodity benchmark* instead of Title II to the regulation (save where Annex II is disapplied by article 19).
 - (2) Paragraph 14(a) of Annex II to the *benchmarks regulation* requires an *Annex II benchmark administrator* to ensure that it has in place segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator's most senior level management and its board to ensure:
 - (a) that the administrator satisfactorily implements the requirements of the *benchmarks regulation*; and
 - (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.
- 8.5.6** **G** A *firm* may comply with the requirement in **■ MAR 8.5.2R(4)** or **■ MAR 8.5.4R(2)** to notify the *FCA* of the identity of the manager(s) concerned by including that responsibility in that *person's statement of responsibilities*.
- 8.5.7** **G** **Notifications about suspected benchmark manipulation**.....
- (1) The *guidance* in (2) and (3) applies to *regulated benchmark administrators* other than *Annex II benchmark administrators*.
 - (2) Article 14(1) of the *benchmarks regulation* requires a *regulated benchmark administrator* to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the *FCA* any conduct that may involve manipulation or attempted manipulation of a benchmark, under the *Market Abuse Regulation*.
 - (3) For the avoidance of doubt, the *FCA* expects a *regulated benchmark administrator* to notify the *FCA* without delay of any notification it

receives from a contributor about conduct that may involve manipulation or attempted manipulation of a benchmark under the *Market Abuse Regulation*.

Adequate financial resources for administrators of critical benchmarks

- 8.5.8** **R** Notwithstanding any other financial resource requirements that may apply, a *regulated benchmark administrator* that administers a *critical benchmark* must:
- (1) be able to meet its liabilities as they fall due; and
 - (2) maintain, at all times, sufficient financial resources to cover the operating costs of administering the *critical benchmark* for a period of at least six *months*.
- 8.5.9** **G** A *regulated benchmark administrator* that administers more than one *critical benchmark* may comply with its financial resources requirements under **■ MAR 8.5.8R(2)** by holding sufficient financial resources to cover the combined operating costs for all *critical benchmarks* it administers.
- 8.5.10** **G**
- (1) **■ MAR 8.5.8R** sets out the minimum amount of financial resources a *regulated benchmark administrator* must hold to carry out *administering a benchmark* in relation to a *critical benchmark*.
 - (2) The *FCA* expects *regulated benchmark administrators* administering a *critical benchmark* to:
 - (a) normally hold sufficient financial resources to cover the operating costs of administering the *critical benchmark(s)* for a period of nine *months*; and
 - (b) notify the *FCA* where a *regulated benchmark administrator's* financial resources fall below these levels (required by **■ MAR 8.5.13R** and **■ SUP 15.3.11R**).
- 8.5.11** **G** To meet the financial resources requirement in **■ MAR 8.5.8R(2)**, the *FCA* expects a *regulated benchmark administrator* to hold both sufficient liquid financial assets and net capital to cover the operating costs of administering the *critical benchmark(s)*. In particular:
- (1) net capital can include common stock, retained earnings, disclosed reserves, or other instruments generally classified as common equity tier one capital or additional tier one capital, and may include interim earnings that have been independently verified by an auditor.
 - (2) net capital should be calculated after deductions for:
 - (a) holdings of the *regulated benchmark administrator's* own securities or those of any undertakings in the *regulated benchmark administrator's group*;
 - (b) any amount owed to the *regulated benchmark administrator* by an undertaking in its *group* under any loan or credit arrangement; and
 - (c) any exposure arising under any guarantee, charge or contingent liability.

- (3) liquid financial assets can include cash or liquid financial instruments held on the balance sheet of the *regulated benchmark administrator* where the financial instruments:
- (a) have minimal market and credit risk; and
 - (b) are capable of being liquidated with minimal adverse price effect.

8.5.12 **R** The *FCA* may use its powers under section 55L of the *Act* to impose on a *regulated benchmark administrator* subject to **MAR 8.5.8R** a requirement to hold additional financial resources to **MAR 8.5.8R** if the *FCA* considers that desirable to meet any of its *operational objectives*.

Notifications for breaches

8.5.13 **R** A *regulated benchmark administrator* subject to **MAR 8.5.8R** must notify the *FCA*, as soon as practicable, where it identifies a reasonable possibility of not being able to hold sufficient financial resources to cover the operating costs of administering the *critical benchmark(s)* for a period of nine *months*.

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

8.6 Responsibility for benchmark activities: benchmark contributors

Application

- 8.6.1** **R** (1) This section applies to *benchmark contributors* save as provided for in (2).
- (2) This section does not apply to a *benchmark contributor* to the extent that it is *contributing input data* in relation to a *commodity benchmark* the provision of which is governed by Annex II to the *benchmarks regulation* (in accordance with article 19 of that regulation).

Responsibility for contributing input data

- 8.6.2** **R** A *benchmark contributor* must promptly notify the *FCA* of the *senior personnel* responsible for the process for *contributing input data* to a *BMR benchmark administrator*.
- 8.6.3** **G** (1) The *FCA* expects a *benchmark contributor* to ensure a member of its *senior personnel* is responsible for the process of *contributing input data* to a *BMR benchmark administrator* regardless of whether the contribution is provided from the *UK* or from elsewhere.
- (2) The requirement in **MAR 8.6.2R** applies regardless of whether the *benchmark contributor* contributes *input data* from the *UK* or from elsewhere.
- 8.6.4** **G** A *UK benchmark contributor* or *third country benchmark contributor* which is an *SMCR firm* may comply with the requirement in **MAR 8.6.2R** to notify the *FCA* of the *senior personnel* responsible for the process for *contributing input data* to a *BMR benchmark administrator* by including that responsibility in that *person's statement of responsibilities*.

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.

8.7.6

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

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- (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
 - (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

8.7.8

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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

8.7.9

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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 FCA’s decision in MAR 8.7.5G(1);
Own Initiative Revocation	has the meaning in MAR 8.7.8G(1);

Own Initiative Variation Second Decision	has the meaning in MAR 8.7.8G(1); the FCA's decision in MAR 8.7.7G(4).
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