

Chapter 8

Benchmarks



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	<p>The <i>FCA</i> expects that a person who has the responsibility in ■ MAR 8.5.2R will:</p> <ul style="list-style-type: none"> (a) be sufficiently senior and credible; and (b) have sufficient resources and authority; <p>to be able to exercise their management and oversight responsibilities effectively.</p> <p>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.</p>
8.5.4	R	<ul style="list-style-type: none"> (1) This <i>rule</i> applies to an <i>Annex II benchmark administrator</i>. (2) An <i>Annex II benchmark administrator</i> must promptly notify the <i>FCA</i> of the identity of the most senior manager(s) responsible for ensuring that the <i>firm</i> satisfactorily implements the requirements of the <i>benchmarks regulation</i> (in accordance with paragraph 14(a) of Annex II to that regulation).
8.5.5	G	<ul style="list-style-type: none"> (1) Article 19 of the <i>benchmarks regulation</i> states that Annex II to that regulation applies to the provision of a <i>commodity benchmark</i> 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 <i>benchmarks regulation</i> requires an <i>Annex II benchmark administrator</i> 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: <ul style="list-style-type: none"> (a) that the administrator satisfactorily implements the requirements of the <i>benchmarks regulation</i>; and (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.
8.5.6	G	<p>A <i>firm</i> may comply with the requirement in ■ MAR 8.5.2R(4) or ■ MAR 8.5.4R(2) to notify the <i>FCA</i> of the identity of the manager(s) concerned by including that responsibility in that <i>person's statement of responsibilities</i>.</p>
Notifications about suspected benchmark manipulation		
8.5.7	G	<ul style="list-style-type: none"> (1) The <i>guidance</i> in (2) and (3) applies to <i>regulated benchmark administrators</i> other than <i>Annex II benchmark administrators</i>. (2) Article 14(1) of the <i>benchmarks regulation</i> requires a <i>regulated benchmark administrator</i> 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 <i>FCA</i> any conduct that may involve manipulation or attempted manipulation of a benchmark, under the <i>Market Abuse Regulation</i>. (3) For the avoidance of doubt, the <i>FCA</i> expects a <i>regulated benchmark administrator</i> to notify the <i>FCA</i> 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

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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

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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

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(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

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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
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- (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*.

8.5.13 **R** **Notifications for breaches**
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*.