

Chapter 15B

Applications and notifications
under the benchmarks
regulation and powers over
Miscellaneous BM persons

15B.5 Powers over Miscellaneous BM persons

- 15B.5.1 G
- (1) Regulation 6 of the *UK Benchmarks Regulations 2018* enables the *FCA* to impose a requirement on a Miscellaneous BM person and to vary or cancel such a requirement.
 - (2) Miscellaneous BM person is defined in regulation 5(2) of the *UK Benchmarks Regulations 2018* as a person who is not an authorised person and is:
 - (a) involved in the provision of, or contribution of input data to, a benchmark;
 - (b) a service provider to whom functions or any relevant services and activities in the provision of a benchmark have been outsourced;
 - (c) a person who is not the service provider but who is or has been party to a contract in relation to the outsourcing of functions or any relevant services and activities in the provision of a benchmark;
 - (d) a legal representative of a benchmark administrator *located* in a third country which has obtained or has applied for prior recognition as referred to in article 32(1) and as provided for in article 32(3) of the *benchmarks regulation*;
 - (e) a person who administers a benchmark relying on article 51(4) of the *benchmarks regulation*; or
 - (f) a *supervised entity*.
 - (3) A *person* cannot fall within the definition of Miscellaneous BM person if that *person* is an *authorised person*.

- 15B.5.2 G
- Regulation 6(1) of the *UK Benchmarks Regulations 2018* provides that the power to impose, vary or cancel requirements in relation to Miscellaneous BM persons is exercisable if it appears to the *FCA* that:
- (a) the Miscellaneous BM person has contravened or is likely to contravene a relevant requirement;
 - (b) it is desirable for the *FCA* to exercise its powers in order to advance any of its operational objectives; or
 - (c) it is desirable for the *FCA* to exercise its powers to facilitate the performance of its functions under the *benchmarks regulation*.

Regulation 6(1)(b) of the *UK Benchmarks Regulations 2018* would enable the *FCA* to impose a requirement on a Miscellaneous BM

person where it is desirable for the *FCA* to do so in order to advance any of the *FCA*'s operational objectives.

15B.5.3 **G**

- (1) The *FCA* anticipates that it would generally only need to rely on the ground in regulation 6(1)(b) of the *UK Benchmarks Regulations 2018* for the purpose of supervising a Miscellaneous BM person listed in regulation 5(2)(e) of those regulations i.e. a *person who administers a benchmark* relying on article 51(4) of the *benchmarks regulation*.
- (2) That is because the *persons* listed in regulation 5(2)(e) will not necessarily be subject to the requirements of the *benchmarks regulation* or the *Act* and may therefore fall outside the scope of the other two grounds in regulation 6(1) of the *UK Benchmarks Regulations 2018* and outside the scope of the *FCA*'s powers under the *Act*.
- (3) In view of (2), the *FCA* does not generally expect that it will need to rely on the ground in regulation 6(1)(b) of the *UK Benchmarks Regulations 2018* in relation to the other categories of Miscellaneous BM person (listed in regulation 5(2)(a)-(d) and (f) of the *UK Benchmarks Regulations 2018*). However, the *FCA* cannot entirely exclude the possibility that it might need to do so in other circumstances and the *FCA* will consider any proposed use of the power on its merits on a case by case basis.