

**BENCHMARKS (AMENDMENT) INSTRUMENT 2015****Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the 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(1) (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 April 2015.

**Amendments to the FCA Handbook**

- D. The modules of the FCA’s 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
Fees manual (FEES)	Annex B
Market Conduct sourcebook (MAR)	Annex C
Supervision manual (SUP)	Annex D

**Amendments to material outside the Handbook**

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

**Citation**

- F. This instrument may be cited as the Benchmarks (Amendment) Instrument 2015.

By order of the Board of the Financial Conduct Authority  
26 February 2015

**Annex A****Amendments to the Glossary of definitions**

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

- benchmark submission*
- (a) ~~The~~ 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*; and
  - (b) any data or information made available by a person other than a *benchmark submitter* that is processed, considered or used by a *benchmark administrator* to determine the *specified benchmark* it administers.

## Annex B

### Amendments to the Fees manual (FEES)

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

After TP 10 insert the following new text.

#### **TP 11 Transitional Provisions for the Benchmarks Order 2015**

##### **11.1 Introduction**

- 11.1.1 G (1) *FEES* TP 11 deals with transitional arrangements for *firms* that will *administer specified benchmarks* by operation of the “Benchmarks Order 2015”.
- (2) The “Benchmarks Order 2015” is the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (SI 2015/369)
- 11.1.2 R *FEES* TP 11 remains in force until all fees in *FEES* TP 11.2 have been paid in full.

##### **11.2 Exceptional fee**

- 11.2.1 R *FEES* TP 11.2 applies to a *firm* which:
- (1) is treated as having its *permission* varied to include *administering a specified benchmark* under article 4 of the Benchmarks Order 2015; or
- (2) meets the following criteria:
- (a) its *permission*, before 1 April 2015, included *administering a specified benchmark*;
- (b) on 1 April 2015, it is administering more than one *specified benchmark*; and
- (c) it is not a *firm* in *FEES* TP 11.2.1R(1).
- 11.2.2 R A *firm* in *FEES* TP 11.2.1R is treated as if:
- (1) it had applied to carry on “*administering a specified benchmark*” under *FEES* 3.2.7R(ga)(ii) on 1 April 2015; and
- (2) its due date for the payment of the relevant fee is 30 days after 1 April 2015.

## Annex C

## Amendments to the Market Conduct sourcebook (MAR)

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

### 8.3 Requirements for benchmark administrators

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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 are not publicly available or 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.

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8.3.7A R A *benchmark administrator* must ensure that the *specified benchmark* it administers is determined using adequate *benchmark submissions*.

8.3.7B G To ensure it is using adequate *benchmark submissions*, a *benchmark administrator* of a *specified benchmark* that does not have *benchmark submitters* should use *benchmark submissions* that are:

- (1) *representative of the state of the market the *specified benchmark* references; or*
- (2) *made available by reliable data sources.*

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:

- (1) *(where applicable) representatives of *benchmark submitters*;*
- (2) *market infrastructure providers;*
- (3) *users of the *specified benchmark*;* and
- (4) *at least two independent *non-executive directors* of the *benchmark administrator* approved to carry out the *non-executive director function*.*

8.3.8A R A *benchmark administrator* of a *specified benchmark* that does not have *benchmark submitters* must consider including in the oversight committee

representatives of persons who make *benchmark submissions* available.

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

(1) develop practice standards in a published code which, for the relevant *specified benchmark*, set out the responsibilities for:

(a) *benchmark submitters* and (where applicable) *persons who make benchmark submissions* available;

(b) the *benchmark administrator*; and

(c) its the oversight committee ~~in relation to the relevant *specified benchmark*~~;

(2) undertake regular periodic reviews of:

...

(c) where applicable the composition of ~~*benchmark submitter*~~ panels of *benchmark submitters* or other *persons who make benchmark submissions* available; and

...

...

8.3.10A G For *specified benchmarks* that do not have *benchmark submitters*:

(1) the practice standards in *MAR 8.3.10R(1)* should specify data standards, including data quality and the representativeness of *benchmark submissions*; and

(2) the process of making relevant *benchmark submissions* in *MAR 8.3.10R(2)(d)* should include processing, considering or using the *benchmark submission* to determine the *specified benchmark* it administers.

Review of the benchmark and publication of statistics

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

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Record keeping

8.3.12A R A *benchmark administrator* must keep records for at least five years of:

- (1) all benchmark submissions used to determine the specified benchmark it administers; and
- (2) the person and, where possible, the individual who made the relevant benchmark submission.

8.3.12B G For a specified benchmark that does not have benchmark submitters, the records in MAR 8.3.12AR(2) should include, where available, information sufficient to identify the person and the individual who made the benchmark submission available to the relevant benchmark administrator.

Adequate financial resources

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8.3.13A G A benchmark administrator that administers more than one specified benchmark may comply with its financial resources requirements under MAR 8.3.13R(2) by holding sufficient financial resources to cover the combined operating costs for all specified benchmarks it administers.

- 8.3.14 G
- (1) 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.
  - (2) However, the The FCA expects benchmark administrators to:
    - (a) normally hold sufficient financial resources to cover the operating costs of administering the specified benchmark for a period of nine months; and
    - (b) notify the FCA where a benchmark administrator's financial resources fall below these levels (required by MAR 8.3.17R and SUP 15.3.11R).

8.3.15 G The financial resources in respect of the requirement in MAR 8.3.13R(2): To meet the financial resources requirement in MAR 8.3.13R(2), the FCA expects a benchmark administrator to hold both sufficient liquid financial assets and net capital to be able to cover the operating costs of administering the specified benchmark.

- (1) net capital 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 may include interim earnings that have been independently verified by the benchmark administrator's auditor; 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.~~ should be calculated after deductions for:

- (a) holdings of the firm's own securities or those of any undertaking in the firm's group;
  - (b) any amount owed to the firm by an undertaking in its group under any loan or credit arrangement;
  - (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 benchmark administrator where:
- (a) the financial instruments have minimal market and credit risk, and
  - (b) are capable of being liquidated with minimal adverse price effect.

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#### Notifications for breaches

8.3.17    R    A benchmark administrator 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 specified benchmark for a period of nine months.

8.3.18    G    Benchmark administrators are reminded of their obligation under SUP 15.3.11R to notify the FCA of any significant breaches of rules.

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### Sch 1 Record Keeping requirements

Sch 1.1    G

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
...				
<u>MAR</u>	<u>Benchmark</u>	<u>Information</u>	<u>When</u>	<u>5 years</u>

<u>8.2.10R</u>	<u>submissions</u>	in <u>MAR 8.2.10R</u> and <u>MAR 8.2.11G</u>	making a <u>benchmark submission</u>	
<u>MAR 8.3.12AR</u>	<u>Benchmark submissions</u>	Information in <u>MAR 8.3.12AR</u> and <u>MAR 8.3.12BG</u>	When using a <u>benchmark submission</u> to determine a <u>specified benchmark</u>	<u>5 years</u>

## Sch 2 Notification requirements

Sch 2.1 G ~~There are no notification requirements in MAR. This schedule outlines the notification requirements detailed in MAR where notifications should be provided to the FCA.~~

Sch 2.2 G Notification requirements

<u>Handbook Reference</u>	<u>Matter to be notified</u>	<u>Contents of Notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
<u>MAR 8.3.17R</u>	<u>Reasonable possibility of not being able to hold sufficient financial resources</u>	<u>Full details together with relevant financial information</u>	<u>Occurrence</u>	<u>As soon as practicable</u>



## Annex D

### Amendments to the Supervision manual (SUP)

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

After TP 4 insert the following new text.

#### **TP 5            Transitional provisions for SUP 10A**

##### **5.1            Benchmark submitters or benchmark administrators: authorised firm**

5.1.1        R    *SUP* TP 5.1 applies to a *firm* whose *permission* is varied by article 4 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (SI 2015/369) (Transitional provisions).

5.1.2        R    For the periods in *SUP* TP 5.1.3R:

- (1)    the *benchmark submission function* does not apply to a *benchmark submitter*; and
- (2)    the *benchmark administration function* does not apply to a *benchmark administrator*.

5.1.3        R    *SUP* TP 5.1.2R applies from 1 April 2015:

- (1)    until 15 April 2015; or
- (2)    if the *firm* applies for the relevant *controlled function* in *SUP* TP 5.1.2R by 15 April 2015, until its application for approval has been finally decided.

5.1.4        R    An application is finally decided for the purpose of *SUP* TP 5.1:

- (1)    when the application is withdrawn; or
- (2)    when the *appropriate regulator* grants the application for approval under section 62 of the *Act* (applications for approval: procedure and right to refer to the *Tribunal*); or
- (3)    where the *appropriate regulator* 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; or
- (4)    where the *appropriate regulator* 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.

**5.2 Benchmark submitters or benchmark administrators: new firm**

- 5.2.1 R *SUP* TP 5.2 applies to a *firm* that is granted an “interim permission” under article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (SI 2015/369) (Interim permission).
- 5.2.2 R For the periods in *SUP* TP 5.2.3R, no *controlled function* applies.
- 5.2.3 R *SUP* TP 5.2.2R applies from 1 April 2015:
  - (1) until 15 April 2015; or
  - (2) if the *firm* applies for any *controlled function* in *SUP* TP 5.1.2R by 15 April 2015, in respect of that *controlled function*, until the application for approval has been finally decided.
- 5.2.4 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of *SUP* TP 5.2 in the circumstances described in *SUP* TP 5.1.4R.

## Annex E

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and strikethrough indicates deleted text.

## 2.7 Activities: a broad outline

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Specified benchmarks activities

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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 for the purpose of administering a specified benchmark.*

2.7.20E G It follows from PERG 2.7.20EG that a person who, in the context of an  
A auction or otherwise, submits bids or offers solely for the purpose of  
transacting in a commodity or financial instrument or any other asset for  
their own, or their client's, behalf will not normally be providing  
information in relation to a specified benchmark.

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2.7.20G G A person in PERG 2.7.20EAG would also not normally be providing  
A information in relation to a specified benchmark if:

- (1) the information is made available to the benchmark administrator by a third party; and
- (2) the third party can rely on any exemption in PERG 2.7.20GG.

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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)~~ since 1 April 2015 the following are specified benchmarks:*

- (1) the London Interbank Offered Rate (LIBOR);
- (2) ICE SWAP RATE;
- (3) Sterling Overnight Index Average (SONIA);
- (4) Repurchase Overnight Index Average (RONIA);

- (5) WM/Reuters London 4 p.m. Closing Spot Rate;
- (6) LBMA Gold Price;
- (7) LBMA Silver Price;
- (8) ICE Brent Index.