

BENCHMARKS (AMENDMENT NO 2) INSTRUMENT 2016

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 2016.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Market Conduct sourcebook (MAR) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Benchmarks (Amendment No 2) Instrument 2016.

By order of the Board
5 February 2016

Annex A

Amendments to the Glossary of definitions

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

benchmark administrator ~~A~~ a person ~~carrying out~~ who has authorisation to carry on the regulated activity of administering a specified benchmark.

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text.

8.3 Requirements for benchmark administrators

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Fair, reasonable and non-discriminatory access to benchmarks

- 8.3.19 R (1) A benchmark administrator of a specified benchmark must ensure relevant users are granted non-discriminatory access to:
- (a) relevant price and data feeds and information on the composition, methodology and pricing of that specified benchmark; and
 - (b) licences or other arrangements to use that specified benchmark;
- for the purpose of clearing and trading by the relevant users.
- (2) In this section, “relevant user” means:
- (a) a central counterparty;
 - (b) an MTF; and
 - (c) a regulated market.
- 8.3.20 R A benchmark administrator must grant relevant users access for the purpose of clearing and trading to the specified benchmark it administers (including access to information):
- (1) on a fair, reasonable and non-discriminatory basis; and
 - (2) without undue delay, following a written request by the relevant user.
- 8.3.21 R (1) Where a benchmark administrator charges a relevant user a fee for access to the specified benchmark, it must grant the relevant user access at a reasonable commercial price taking into account the price at which access is granted or the intellectual property rights are licensed to other relevant users or any related persons for the purposes of clearing and trading.
- (2) Different fees can be charged to different relevant users or related persons only where this is objectively justified having regard to

reasonable commercial grounds such as the quantity, scope or field of use requested.

- 8.3.22 G In assessing whether the terms of access to a *specified benchmark* are fair, reasonable and non-discriminatory, the factors the *FCA* may consider include:
- (1) the degree of competition and potential competition in the market for the supply of the *specified benchmark*;
 - (2) whether the aggregate of the fees charged to users of the *specified benchmark* bears a reasonable relationship to the costs and risks of producing the *specified benchmark*, including a reasonable return on capital;
 - (3) (where “A”, the *benchmark administrator* or a member of its *group*, is active on a downstream market) whether the terms of access granted for the *specified benchmark* would prevent a competitor as efficient as A’s downstream business from competing effectively on that downstream market on a lasting basis; and
 - (4) whether a *benchmark administrator* applies dissimilar conditions to equivalent transactions with relevant users or different categories of relevant users, thereby placing them at a competitive disadvantage.
- 8.3.23 G For the purposes of *MAR* 8.3.20R(2), the *FCA* would expect access to be provided within three months of a written request.