Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in:

(1) the Financial Services and Markets Act 2000 (the “Act”):

(a) section 55U (Applications under this Part);
(b) section 59 (Approval for particular arrangements);
(c) section 60 (Applications for approval);
(d) section 60A (Vetting candidates by relevant authorised persons);
(e) section 61 (Determination of applications);
(f) section 62A (Changes to responsibilities of senior managers);
(g) section 63E (Certification of employees by relevant authorised persons);
(h) section 63F (Issuing certificates);
(i) section 64A (Rules of conduct);
(j) section 137A (The FCA’s general rules);
(k) section 137T (General supplementary powers);
(l) section 138D (Action for damages);
(m) section 139A (Power of the FCA to give guidance);
(n) section 213 (The compensation scheme);
(o) section 214 (General);
(p) section 226 (Compulsory jurisdiction);
(q) section 395 (The FCA’s and PRA’s procedures); and
(r) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).

(2) the powers of direction, guidance and related provisions in or under the following provisions of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018:

(a) regulation 14 (Statements of policy);
(b) regulation 19 (Application of Part 11 of the Act (information gathering and investigations));
(c) regulation 23 (Application of Part 26 of the Act (notices)); and
(d) regulation 33 (Power to direct form of notifications).

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 29 June 2018 except for Annex J, which comes into force on 1 July 2018.

Amendments to the 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).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
</tr>
<tr>
<td>Principles for Business (PRIN)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Senior Management Arrangements, Systems and Controls sourcebook (SYSC)</td>
<td>Annex C</td>
</tr>
<tr>
<td>Code of Conduct sourcebook (COCON)</td>
<td>Annex D</td>
</tr>
<tr>
<td>Threshold Conditions (COND)</td>
<td>Annex E</td>
</tr>
<tr>
<td>Statements of Principle and Code of Practice for Approved Persons (APER)</td>
<td>Annex F</td>
</tr>
<tr>
<td>The Fit and Proper test for Approved Persons and specified significant harm functions (FIT)</td>
<td>Annex G</td>
</tr>
<tr>
<td>General Provisions (GEN)</td>
<td>Annex H</td>
</tr>
<tr>
<td>Fees manual (FEES)</td>
<td>Annex I</td>
</tr>
<tr>
<td>Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)</td>
<td>Annex J</td>
</tr>
<tr>
<td>Market Conduct sourcebook (MAR)</td>
<td>Annex K</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex L</td>
</tr>
<tr>
<td>The Decision Procedure and Penalties manual (DEPP)</td>
<td>Annex M</td>
</tr>
<tr>
<td>Dispute Resolution: Complaints (DISP)</td>
<td>Annex N</td>
</tr>
<tr>
<td>Credit Unions sourcebook (CREDS)</td>
<td>Annex O</td>
</tr>
</tbody>
</table>

Amendments to material outside the Handbook

E. The material outside the Handbook listed in column (1) below is amended in accordance with the Annexes to this instrument listed in column (2).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General guidance on Benchmark Administration, Contribution and Use (BENCH)</td>
<td>Annex P</td>
</tr>
<tr>
<td>The Enforcement Guide (EG)</td>
<td>Annex Q</td>
</tr>
<tr>
<td>The Perimeter Guidance manual (PERG)</td>
<td>Annex R</td>
</tr>
</tbody>
</table>

F. The General guidance on Benchmark Submission and Administration (BENCH) module of the FCA’s Handbook of rules and guidance is renamed the General guidance on Benchmark Administration, Contribution and Use.

G. The Financial Conduct Authority confirms and remakes in the Glossary of definitions:
   (1) the defined expression “Regulated Activities Order”; and
   (2) to the extent that they appear in the Glossary of definitions, the defined expressions relating to any other legislation amended by the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018.
Notes

H. In the Annexes to this instrument, the “notes” (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

I. This instrument may be cited as the Benchmarks Regulation (Amendment) Instrument 2018.

By order of the Board
28 June 2018
**Annex A**

**Amendments to the Glossary of definitions**

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>administering a benchmark</td>
<td>the regulated activity specified in article 63S of the <em>Regulated Activities Order</em>, which, in summary, means acting as the administrator of a benchmark as defined in article 3.1(3) of the <em>benchmarks regulation</em>;</td>
</tr>
<tr>
<td>Annex II benchmark administrator</td>
<td>a regulated benchmark administrator (P) which is subject to the requirements of Annex II to the <em>benchmarks regulation</em> in accordance with Article 19 of that regulation (but only to the extent that P is subject to those requirements).</td>
</tr>
<tr>
<td>benchmark</td>
<td>a benchmark as defined in article 3.1(3) of the <em>benchmarks regulation</em>.</td>
</tr>
<tr>
<td>benchmark activities</td>
<td>the following activities:</td>
</tr>
<tr>
<td></td>
<td>(1) the regulated activity of administering a benchmark; or</td>
</tr>
<tr>
<td></td>
<td>(2) contributing input data to a BMR benchmark administrator. [Note: contributing input data to a BMR benchmark administrator is not a regulated activity.]</td>
</tr>
<tr>
<td>benchmark contributor</td>
<td>(1) a third country benchmark contributor; or</td>
</tr>
<tr>
<td></td>
<td>(2) a UK benchmark contributor. [Note: neither acting as a benchmark contributor nor contributing input data to a BMR benchmark administrator is a regulated activity.]</td>
</tr>
<tr>
<td>benchmark endorser</td>
<td>a person:</td>
</tr>
<tr>
<td></td>
<td>(1) whose endorsement of a benchmark or family of benchmarks has been authorised by the FCA in accordance with article 33(3) of the <em>benchmarks regulation</em>; and</td>
</tr>
<tr>
<td></td>
<td>(2) who has not had that authorisation withdrawn by the FCA.</td>
</tr>
<tr>
<td>benchmarks regulation</td>
<td>Regulation (EU) No. 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the</td>
</tr>
</tbody>
</table>

[Note: see http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011]

**BMR benchmark administrator**

A person who:

1. is an administrator as defined in article 3.1(6) of the benchmarks regulation (which in summary is a person who has control over the provision of a benchmark); and

2. has been authorised or registered (whether in the UK or elsewhere) in accordance with article 34 of the benchmarks regulation.

**Commodity benchmark**

Has the meaning in article 3.1(23) of the benchmarks regulation.

**Contribution of input data**

The contribution of input data as defined in article 3.1(8) of the benchmarks regulation.

[Note: contributing input data is not a regulated activity.]

**Critical benchmark**

Has the meaning in article 3.1(25) of the benchmarks regulation.

**Interest rate benchmark**

Has the meaning in article 3.1(22) of the benchmarks regulation.

**Located**

In relation to administrators (as defined in the benchmarks regulation), benchmark contributors and supervised entities, has the meaning in article 3.1(28) of the benchmarks regulation which is:

1. in relation to a legal person, the country where that person’s registered address or other official address is situated; and

2. in relation to a natural person, the country where that person is resident for tax purposes.

**Non-significant benchmark**

Has the meaning in article 3.1(27) of the benchmarks regulation.

**Regulated benchmark administrator**

A person who has a Part 4A permission to carry on the regulated activity of administering a benchmark.

**Regulated-data benchmark**

Has the meaning in article 3.1(24) of the benchmarks regulation.

**Significant benchmark**

Has the meaning in article 3.1(26) of the benchmarks regulation.
supervised entity has the meaning in article 3.1(17) of the benchmarks regulation.

third country benchmark contributor a firm which:

(1) contributes input data to a BMR benchmark administrator;

(2) is located in a non-EU state; and

(3) either

   (a) is a supervised entity; or

   (b) would be a supervised entity if it were located in the EU.

third country legal representative a person who acts as the legal representative of a benchmark administrator for the purposes of article 32(3) of the benchmarks regulation.

UK benchmark contributor a firm which:

(1) contributes input data to a BMR benchmark administrator;

(2) is located in the UK; and

(3) is a supervised entity.


Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

competent authority ...

(11) the authority designated by each EU (and where applicable, EEA) State in accordance with article 40 of the benchmarks regulation.

energy market participant a firm:

(a) whose permission:

   (i) includes a requirement that the firm must not carry on any designated investment business other than energy market activity; and
(ii) does not include a requirement that it comply with IPRU(INV) 5 (Investment management firms) or 13 (Personal investment firms); and

(b) which is not an authorised professional firm, bank, BIPRU firm, (unless it is an exempt BIPRU commodities firm), IFPRU investment firm (unless it is an exempt IFPRU commodities firm), building society, credit union, friendly society, ICVC, insurer, MiFID investment firm (unless it is an exempt BIPRU commodities firm or exempt IFPRU commodities firm), media firm, oil market participant, service company, insurance intermediary, home finance administrator, home finance provider, incoming EEA firm (without a top-up permission), or incoming Treaty firm (without a top-up permission) or regulated benchmark administrator.

*oil market participant* a firm:

(a) whose permission:

(i) includes a requirement that the firm must not carry on any designated investment business other than oil market activity; and

(ii) does not include a requirement that it comply with IPRU(INV) 5 (Investment management firms) or 13 (Personal investment firms); and

(b) which is not an authorised professional firm, bank, BIPRU firm, (unless it is an exempt BIPRU commodities firm), IFPRU investment firm (unless it is an exempt IFPRU commodities firm), building society, credit union, friendly society, ICVC, insurer, MiFID investment firm (unless it is an exempt BIPRU commodities firm or exempt IFPRU commodities firm), media firm, service company, insurance intermediary, home finance administrator, mortgage intermediary, home finance provider, incoming EEA firm (without a top-up permission), or incoming Treaty firm (without a top-up permission) or regulated benchmark administrator.

*participant firm* a firm other than:

...  

...  

(i) an operator of an electronic system in relation to lending in respect of operating the system; and
(j) a regulated benchmark administrator in relation to administering a benchmark;

... 

regulated activity (A) in the PRA Handbook: 

...

(B) in the FCA Handbook: ...

...

(to) administering a benchmark (article 63S):

which is carried on by way of business and, except for (ta), and (tb) and (to), relates to a specified investment applicable to that activity; or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind; or, in the case of (tm) and (tn), is carried on in relation to information about a person’s financial standing.

...

...
Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

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

1 Introduction

1.1 Application and purpose

Application

1.1.1 The Principles (see PRIN 2) apply in whole or in part to every firm. The application of the Principles is modified for firms conducting MiFID business, incoming EEA firms, incoming Treaty firms, UCITS qualifiers and AIFM qualifiers, and Annex II benchmark administrators. PRIN 3 (Rules about application) specifies to whom, to what and where the Principles apply.

3 Rules about application

3.2 What?

3.2.3 Subject to PRIN 3.2.4R, Principles 3, 4 and (in so far as it relates to disclosing to the FCA) 11 (and this chapter) also:

(1) apply with respect to the carrying on of unregulated activities (for Principle 3 this is only in a prudential context); and

(2) take into account any activity of other members of a group of which the firm is a member.

3.2.4 In relation to an Annex II benchmark administrator which:

(1) administers only benchmarks which are subject to Annex II to the benchmarks regulation; and

(2) does not have permission to carry on any other regulated activities in relation to which Principle 11 applies.

Principle 11 (in so far as it relates to disclosing to the FCA) applies only to the regulated activity of administering a benchmark.
The FCA only expects an *Annex II benchmark administrator* subject to *PRIN 3.2.4R* to disclose information under *Principle 11* which is relevant to the firm’s compliance with its obligations under the *benchmarks regulation*. 

---

**3.2.5**
Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

…

1 Annex Detailed application of SYSC

<table>
<thead>
<tr>
<th>Part 1</th>
<th>Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Who?</td>
</tr>
<tr>
<td>1.1</td>
<td>R …</td>
</tr>
</tbody>
</table>

…

(6) Except as provided for in (7), SYSC 2 and SYSC 3 do not apply to a firm in relation to benchmark activities.

(7) SYSC 2 and SYSC 3 continue to apply to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.

1.1A G (1) As a consequence of the benchmarks regulation, the regulated activity referred to in SYSC 1 Annex 1 1.1R(7) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).

(2) The effect of SYSC 1 Annex 1 1.1R(7) is that SYSC 2 and SYSC 3 continue to apply to firms which still have permission to carry on the regulated activity in SYSC 1 Annex 1 1.1R(7) when carrying on that activity.

…

Part 2 Application of the common platform requirements

…
2.6G R (1) Except as provided for in (2), the common platform requirements (other than SYSC 4.5 to SYSC 4.9 and SYSC 4 Annex 1) do not apply to a firm in relation to benchmark activities.

(2) The common platform requirements continue to apply to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.

2.6H G (1) As a consequence of the benchmarks regulation, the regulated activity referred to in SYSC 1 Annex 1 2.6GR(2) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).

(2) The effect of SYSC 1 Annex 1 2.6GR(2) is that the common platform requirements continue to apply to firms which still have permission to carry on the regulated activity in SYSC 1 Annex 1 2.6GR(2) when carrying on that activity.

4 General organisational requirements

…

4 Annex The main business activities and functions of a relevant authorised person

1G

<table>
<thead>
<tr>
<th>Business areas and management functions</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
</tbody>
</table>

(26) Providing information in relation to a specified benchmark

(26) Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)

(27) Administering a specified benchmark

(27) Administering a benchmark

…

5 Employees, agents and other relevant persons
5.2 Certification regime

5.2.30 R Table: FCA-specified significant-harm functions

<table>
<thead>
<tr>
<th>Function</th>
<th>Where defined</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>(2) Benchmark submission and administration</td>
<td>SYSC 5.2.33R</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

Benchmark submission and administration function

5.2.33 R Each of the following is an FCA-specified significant-harm function:

[deleted]

(1) acting in the capacity of a person who is allocated the function in MAR 8.2.3R(1) (benchmark manager); and

(2) acting in the capacity of a person who is allocated the function in MAR 8.3.5R(1) (benchmark administration manager).

14 Risk management and associated systems and controls for insurers

14.1 Application

14.1.2A R This section does not apply to:

(1) an incoming ECA provider acting as such; or

(2) a firm in relation to benchmark activities.

TP 6 Transitional Provision 6

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2) Material provision to which</th>
<th>(3)</th>
<th>(4) Transitional provision</th>
<th>(5) Transitional provision:</th>
<th>(6) Handbook provisions:</th>
</tr>
</thead>
</table>

Page 13 of 90
<table>
<thead>
<tr>
<th></th>
<th>transitional provision applies</th>
<th>dates in force</th>
<th>coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>SYSC 5.2.30R (row 2) and SYSC 5.2.33R</td>
<td>The rule in column 2, as it was in force on 28 June 2018, continues to apply to a benchmark administrator, until that administrator becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering a specified benchmark.</td>
<td>From 29 June 2018</td>
</tr>
<tr>
<td>7</td>
<td>SYSC 14.1.2AR</td>
<td>The rule in column 2, as it was in force on 28 June 2018, continues to apply to a benchmark administrator, until that administrator becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering a specified benchmark.</td>
<td>From 29 June 2018</td>
</tr>
</tbody>
</table>

…
Annex D

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text.

1.1 Application

... 

1.1.12 R A person will not be subject to COCON to the extent that it would be contrary to the UK’s obligations under a Single Market Directive, or the auction regulation or the benchmarks regulation.

...
Annex E

Amendments to the Threshold Conditions (COND)

In this Annex, underlining indicates new text.

1 Introduction

1.1A Application

…

To what extent does COND apply to regulated benchmark administrators?

1.1A.5B G (1) The threshold conditions do not apply to a firm in relation to the regulated activity of administering a benchmark.

(2) COND does not apply to regulated benchmark administrators who are solely authorised to administer a benchmark as they are not subject to the threshold conditions.

(3) For regulated benchmark administrators who are also authorised to carry on activities other than administering a benchmark, they will be subject to the threshold conditions in relation to their other regulated activities. COND will apply to those firms in relation to the regulated activities to which the threshold conditions apply.

…
Annex F

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

2.1A The Statements of Principle

…

2.1A.2 R An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK’s obligations under a Single Market Directive, or the auction regulation or the benchmarks regulation.

…
Annex G

Amendments to the Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

In this Annex, striking through indicates deleted text.

1 General

...

1.2 Introduction

...

1.2.4A G (1) ...

(2) Where the function relates to:

(a) matters outside the scope of MiFID, for example activities related to a specified benchmark (see the benchmark submission function (CF 40), the benchmark administration function (CF 50), and the benchmark submission and administration FCA-specified significant harm functions (see SYSC 5.2.33R); or

...

...

...
Annex H
Amendments to the General Provisions (GEN)

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

4 Statutory status disclosure

4.1 Application

Who? What?

4.1.1 R This chapter applies to every firm and with respect to every regulated activity, except that:

(1) for an incoming ECA provider, this chapter does not apply when the firm is acting as such;

(2) for an incoming EEA firm which has permission only for cross-border services and which does not carry on regulated activities in the United Kingdom, this chapter does not apply;

(3) for an incoming firm not falling under (1) or (2), this chapter does not apply to the extent that the firm is subject to equivalent rules imposed by its Home State;

(4) for a UCITS qualifier, this chapter does not apply; and

(5) only GEN 4.1 (Application) and GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply in relation to MiFID or equivalent third country business and only where that MiFID or equivalent third country business is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of COBS 1 Annex 1; and

(6) only GEN 4.1 (Application) and GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply in relation to administering a benchmark.

…

7 Charging consumers for telephone calls

7.1 Application

…

Regulated benchmark administrators
7.1.9 R This chapter does not apply to telephone lines provided in respect of contracts relating to a firm’s administration of a benchmark.
Annex I

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

...  

3.2 Obligation to pay fees

...

3.2.2 G If an application for a Part 4A permission (or exercise of a Treaty right) falls within more than one category set out in FEES 3 Annex 1, other than where one of the applications is an application under the benchmarks regulation, only one fee is payable. That fee is the one for the category to which the highest fee tariff applies. Where applications are made under the benchmarks regulation, a separate fee will be payable for this application. The relevant fee is set out in FEES 3.2.7R.

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

<table>
<thead>
<tr>
<th>Part I: Application, notification and vetting fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Fee payer</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>(a) Any applicant for Part 4A permission (including an incoming firm applying for top-up permission) whose fee is not payable pursuant to sub-paragraph (ga) (zza) of this table</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td>(ga) [deleted]</td>
</tr>
</tbody>
</table>
Any applicant for:

(i) a Part 4A permission to carry out the regulated activity of administering a specified benchmark for one or more specified benchmarks or;

(ii) varying its Part 4A permission to carry out the regulated activity of administering a specified benchmark for one or more specified benchmarks

... 

(p) A firm applying for a variation of its Part 4A permission whose fee is not payable pursuant to sub-paragraph (ga) (zza) of this table  

... 

... 

(zza) An application for authorisation as a regulated benchmark administrator.

The highest of the applicable tariffs set out in FEES 3 Annex 1R.

Where an applicant intends to administer benchmarks falling into different complexity groupings, it will pay one fee

On the date the application is made.
only, for the highest category applied for.
If, once authorised, a regulated benchmark administrator notifies the FCA of its intention to administer other/additional benchmarks no further application fee is payable (even if the other/additional benchmark falls into a higher complexity category).

<table>
<thead>
<tr>
<th>(zzb) An application for recognition of an administrator in accordance with article 32 of the benchmarks regulation.</th>
<th>5,000</th>
<th>On the date the application is made.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(zzc) An application for endorsement of a benchmark or family of benchmarks in accordance with article 33 of the benchmarks regulation.</td>
<td>1,500</td>
<td>On the date the application is made.</td>
</tr>
</tbody>
</table>

...
<table>
<thead>
<tr>
<th>Activity grouping</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>A.21</td>
<td>…</td>
</tr>
<tr>
<td>B.</td>
<td><em>Regulated benchmark administrators</em> where the applicant intends to administer a <em>non-significant benchmark</em></td>
</tr>
</tbody>
</table>

**Moderately complex cases**

<table>
<thead>
<tr>
<th>Activity grouping</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>B.</td>
<td><em>Service companies</em></td>
</tr>
</tbody>
</table>
| B.                | *Regulated benchmark administrators* where the applicant intends to administer:  
- a *significant benchmark*; or  
- a *commodity benchmark or an interest rate benchmark* which has not been designated as a *critical benchmark*; or  
- a *regulated-data benchmark* other than one which is a *non-significant benchmark* |

**Complex cases**

<table>
<thead>
<tr>
<th>Activity grouping</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>B.</td>
<td><em>MTF operators and OTF operators</em></td>
</tr>
</tbody>
</table>
### B. Regulated benchmark administrators where the applicant intends to administer a critical benchmark

...  

3 Annex Application fees payable in connection with Recognised Investment Exchanges, and Recognised Auction Platforms, and Benchmark Administrators

<table>
<thead>
<tr>
<th>Description of applicant</th>
<th>Amount payable</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1 (UK recognised bodies)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
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<td></td>
</tr>
<tr>
<td>Any applicant for:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) a Part 4A permission to carry out the regulated activity of administering a specified benchmark where the applicant intends to administer the arrangements for determining one or more specified benchmarks; or</td>
<td>£25,000</td>
<td>Date the application is made</td>
</tr>
<tr>
<td>(ii) varying its Part 4A permission to carry out the regulated activity of administering a specified benchmark where the applicant intends to administer the arrangements for determining one or more specified benchmarks</td>
<td></td>
<td></td>
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<tr>
<td>[deleted]</td>
<td></td>
<td></td>
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<tr>
<td>Any applicant for:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) a Part 4A permission to carry out the regulated activity of administering a specified benchmark where the applicant does not intend to administer the arrangements for</td>
<td>£5,000</td>
<td>Date the application is made</td>
</tr>
<tr>
<td>[deleted]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
determining a specified benchmark; or

(ii) varying its Part 4A permission to carry out the regulated activity of administering a specified benchmark where the applicant does not intend to administer the arrangements for determining a specified benchmark

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

<table>
<thead>
<tr>
<th>Fee-block</th>
<th>Tariff base</th>
<th>Calculation where trading data are not available</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
<td></td>
</tr>
<tr>
<td>B. Service companies</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>B. <strong>Benchmark Regulated benchmark</strong> administrators</td>
<td>Annual income for the financial year ended in the calendar year ending 31 December</td>
<td>Apply the formula $(A÷B) \times 12$ to arrive at the annualised figure.</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>
### FCA activity groups, tariff bases and valuation dates

**Annex 1AR**

**Part 1**

This table shows how the FCA links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Fee payer falls in the activity group if</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td><strong>B. Benchmark</strong></td>
<td><strong>Regulated benchmark administrators</strong></td>
</tr>
<tr>
<td></td>
<td>it administers one or more specified benchmarks; it has a Part 4A permission to carry on the regulated activity of administering a benchmark.</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>
### Part 3

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Tariff base</th>
</tr>
</thead>
</table>

... 

<table>
<thead>
<tr>
<th><strong>B. Benchmark</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regulated benchmark administrators</strong></td>
</tr>
</tbody>
</table>

Annual income as defined in *FEES 4 Annex 11AR.*

... 

### Part 5

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Valuation date</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

**B. Benchmark**

**Regulated benchmark administrators**

Annual income for the financial year ended in the calendar year ending 31 December.

... 

**4 Annex FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2018 to 31 March 2019**

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Fee payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

**B. Service Companies**

... 

**B. Benchmark Regulated benchmark administrators**

<table>
<thead>
<tr>
<th>Band width</th>
<th>Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual income up to and including £2,000,000</td>
<td>100,000 [tbc]</td>
</tr>
</tbody>
</table>
### PLUS:

<table>
<thead>
<tr>
<th>Band width</th>
<th>Fee (£/£ thousand or part thousand of income)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual income over £3,000,000 100,000</td>
<td>28.90 [tbc]</td>
</tr>
</tbody>
</table>

...  

---

### 4 Annex 11AR

**Definition of annual income for the purposes of calculating fees in fee blocks**

**A.13, A.14, A.18, A.19 and B. Service Companies, Recognised Investment Exchanges and Regulated Benchmark Administrators**

#### Annual income definition

...  

**Where the firm is a Regulated Benchmark Administrator**

“Annual income” for a *regulated benchmark administrator* is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the firm’s accounts during the reporting year in respect of, or in relation to activities that comprise a necessary part of its business as a *regulated benchmark administrator*.

Where the sales and marketing of a benchmark are undertaken by a separate legal entity, the *regulated benchmark administrator* is responsible for identifying the relevant income and reporting it to us as its own income. To avoid double counting, the *regulated benchmark administrator* should report only the income from sales and exclude any amount paid to it from that income to pay for its expenses as a *regulated benchmark administrator*.

...  

---

Insert the following new FEES 4 Annex 15R after FEES 4 Annex 14R (UKLA periodic fees for the period from 1 April 2017 to 31 March 2018). The text is not underlined.

### 4 Annex 15R

**Fees relating to the recognition of benchmark administrators and the endorsement of benchmarks for the period 29 June 2018 to 31 March 2019**

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Fee payable</th>
</tr>
</thead>
</table>

---
Insert the following new FEES TP 17AR after FEES TP 17R (Transitional provisions relating to the Payment Services Regulations 2017 and Electronic Money Regulations 2011). The text is not underlined.

**TP 17AR**

**Transitional provisions for fees relating to benchmark administrators**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>17A.1</td>
<td><em>FEES 3.2.7R</em> Part 1 (1) (zza) and <em>FEES 3</em> Annex 1R</td>
<td>R</td>
<td>Where a <em>person</em>: (a) has authorisation to carry on the <em>regulated activity of administering a specified benchmark</em> (in accordance with article 63O(1)(b) of the <em>Regulated Activities Order</em>) on 29 June 2018; and (b) applies for authorisation to carry on the <em>regulated activity of administering a benchmark</em> specified in article 63S of the <em>Regulated Activities Order</em> on or after 29 June 2018, the application fee payable in respect of its application (b) above, as set out in</td>
<td>From 29 June 2018</td>
<td>29 June 2018</td>
</tr>
</tbody>
</table>

...
| 17 A.2 | FEES 4 Annex 1AR, FEES 4 Annex 2AR and FEES 4 Annex 11AR | R | These rules as in force from 29 June 2018 apply to a person who has authorisation to carry on the regulated activity of administering a specified benchmark (a benchmark administrator) as if a reference in these rules to a regulated benchmark administrator were a reference to a benchmark administrator until that person becomes authorised under the benchmarks regulation, or ceases to be authorised as a benchmark administrator. | From 29 June 2018 | 29 June 2018 |
Annex J

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

This Annex comes into force on 1 July 2018

3B  MCD general information

3B.1  Provision of general information

…

3B.1.2  R  …

(5A)  where contracts that reference a benchmark are available, the names of the benchmarks and of their administrators and the potential implications on the consumer;

…

(10A)  a description of the conditions directly relating to early repayment;

…

3B.1.4  G  (1)  Article 2.2(f) of the benchmarks regulation provides that the regulation does not apply to a natural or legal person that grants or promises to grant credit in the course of that person’s trade, business or profession. However, that exclusion only applies insofar as that person publishes or makes available to the public that person’s own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective clients.

(2)  The FCA considers that a firm (F) is not required to include details about a benchmark (B) under MCOB 3B.1.2R(5A) insofar as the exclusion in article 2.2(f) of the benchmarks regulation applies to F in respect of B.
Annex K

Amendments to the Market Conduct sourcebook (MAR)

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

8 Benchmarks

8.1 Application and purpose

Application

8.1.1 This chapter applies to every firm which is a benchmark submitter or a benchmark administrator. MAR 8.4 to MAR 8.7 apply in accordance with the application provisions set out in those sections.

Purpose

8.1.2 The purpose of this chapter is to set out the requirements applying to firms who are benchmark submitters or benchmark administrators when carrying out the activities of providing information in relation to a specified benchmark or administering a specified benchmark, 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 EU. 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) of the Market Abuse Regulation; and article 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).

MAR 8.2 (Requirements for benchmark submitters) is deleted in its entirety and the deleted text is not shown.

8.2 Requirements for benchmark submitters [deleted]

MAR 8.3 (Requirements for benchmark administrators) is deleted in its entirety and the deleted text is not shown.

8.3 Requirements for benchmark administrators [deleted]

Insert the following new sections MAR 8.4, 8.5, 8.6 and 8.7 after the deleted MAR 8.3 (Requirements for benchmark administrators). The text is not underlined.

8.4 Third country benchmark contributors

Application

8.4.1 R (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 EU.

(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 R 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 relevant authorised person.

(2) A regulated benchmark administrator must allocate the responsibility described in (3) to a director or senior manager who is performing:

(a) an FCA governing function other than the non-executive director function; or

(b) the significant management function (where applicable).

(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 The rule in MAR 8.5.2R does not apply to a regulated benchmark administrator which is a relevant authorised person. That is because:

(1) UK relevant authorised persons are already subject to the requirement to allocate overall responsibility for each of the activities, business
areas and management functions of the firm in SYSC 4.7.8R (the table in SYSC 4 Annex 1 (The main business activities and functions of a relevant authorised person) refers to administering a benchmark); and

(2) EEA relevant authorised persons and third country relevant authorised persons do not require authorisation to carry out the activity of administering a benchmark unless they are located in the UK. That is because that regulated activity gives effect to article 34 of the benchmarks regulation and, for these purposes, the requirements of article 34 only apply to administrators which are located in the UK.

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 An Annex II benchmark administrator which is a relevant authorised person may comply with the requirement in MAR 8.5.4R(2) to notify the FCA of the identity of the most senior manager(s) responsible for implementing the requirements of the benchmarks regulation by including that responsibility in that person’s statement of responsibilities.

Notifications about suspected benchmark manipulation

8.5.7 G (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 its competent authority 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.
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.

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 G 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 a relevant authorised person 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.

(2) 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 competent authorities in relation to critical benchmarks. In particular:

(a) article 21(3) of the benchmarks regulation gives a competent authority 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 competent authority 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 competent authorities may exercise the compulsion powers.

(2) In some cases, the competent authority 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 a competent authority to consult on the use of compulsion powers (save that competent authorities must consult the college established under article 46 of the benchmarks regulation when exercising the compulsion power in article 23).

(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 

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 G (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 (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 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>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>administrator</td>
<td>has the meaning in article 3.1(6) of the benchmarks regulation;</td>
</tr>
<tr>
<td>compulsion powers</td>
<td>means the competent authority’s powers under articles 21(3) and 23(6) of the benchmarks regulation;</td>
</tr>
<tr>
<td>First Decision</td>
<td>the FCA’s decision in MAR 8.7.5G(1);</td>
</tr>
<tr>
<td>Own Initiative Revocation</td>
<td>has the meaning in MAR 8.7.8G(1);</td>
</tr>
<tr>
<td>Own Initiative Variation</td>
<td>has the meaning in MAR 8.7.8G(1);</td>
</tr>
<tr>
<td>Second Decision</td>
<td>the FCA’s decision in MAR 8.7.7G(4).</td>
</tr>
</tbody>
</table>

TP 1 Transitional Provisions

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1.2

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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>MAR 6</td>
<td>R</td>
<td>Expired</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>MAR 8.3</td>
<td>This section as it was in force on 28 June 2018 continues to apply to a benchmark administrator in relation to a specified benchmark until that administrator becomes authorised or registered under the benchmark regulation, or ceases to be authorised for administering a specified benchmark.</td>
<td>From 29 June 2018</td>
<td>Already in force</td>
</tr>
<tr>
<td>4</td>
<td>MAR 8.4.2</td>
<td>This rule only applies to a benchmark contributor from the point at which the administrator of the benchmark to which it contributes becomes authorised or registered under the benchmarks regulation.</td>
<td>From 29 June 2018</td>
<td>29 June 2018</td>
</tr>
<tr>
<td>6</td>
<td>MAR 8.6.2</td>
<td>This rule only applies to a benchmark contributor from the point at which the administrator of the benchmark to which it contributes</td>
<td>From 29 June 2018</td>
<td>29 June 2018</td>
</tr>
</tbody>
</table>
becomes authorised or registered under the *benchmarks regulation*. 
Annex L

Amendments to the Supervision manual (SUP)

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

2 Information gathering by the FCA or PRA on its own initiative

…

2.3 Information gathering by the FCA on its own initiative: cooperation by firms

…

Suppliers under material outsourcing arrangements

2.3.7 R (1) A firm must take reasonable steps to ensure that each of its suppliers under material outsourcing arrangements deals in an open and cooperative way with the FCA in the discharge of its functions under the Act in relation to the firm.

(2) The requirement in (1) does not apply to a regulated benchmark administrator where the material outsourcing arrangements relate to the carrying on of the regulated activity of administering a benchmark.

…

2.3.10A G (1) SUP 2.3.7R(2) provides that the requirement in SUP 2.3.7R(1) does not apply to a regulated benchmark administrator where the material outsourcing arrangements relate to the carrying on of the regulated activity of administering a benchmark.

(2) That is because article 10(3)(f) of the benchmarks regulation imposes equivalent requirements on firms which outsource functions in relation to administering a benchmark.

…

3 Auditors

3.1 Application

3.1.1 R (1) This Except as provided for in (2), this chapter applies to:

(1) every firm within a category listed in column (1) of the table in SUP 3.1.2R; and
(2) the external auditor of such a firm (if appointed under SUP 3.3 or appointed under or as a result of a statutory provision other than in the Act);

in accordance with column (2) or (3) of that table, except as described in the remainder of this section.

(2) This chapter does not apply in relation to a firm’s benchmark activities.

…

10A FCA Approved Persons

10A.1 Application

…

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

10A.1.7 R This chapter does not apply to:

(1) an incoming EEA firm; or

(2) an incoming Treaty firm; or

(3) a UCITS qualifier,

if and in so far as the question of whether a person is fit and proper to perform a particular function in relation to that firm is reserved, under any of the Single Market Directives, the Treaty, the UCITS Directive, or the auction regulation or the benchmarks regulation, to an authority in a country or territory outside the United Kingdom.

…

Benchmark activities

10A.1.2 G (1) For a firm which only has a permission for administering a benchmark, the following FCA controlled functions do not apply:

(a) the apportionment and oversight function;

(b) the compliance oversight function;

(c) the money laundering reporting function; and

(d) the systems and controls function.

(2) That is because:

(a) the FCA controlled functions in (a) to (c) above do not apply because those functions are specified by incorporation of
requirements in SYSC and the relevant parts of SYSC do not apply in relation to benchmark activities (which includes administering a benchmark);

(b) the FCA controlled function in (d) above does not apply in relation to benchmark activities (see SUP 10A.8.2R).

(3) The functions in (a) to (d) still apply to a firm which administers a benchmark as well as carrying on other regulated activities. However, they do not apply in respect of its activities as a regulated benchmark administrator.

(4) Various other FCA controlled functions are only relevant to firms which carry on particular types of activity and will not be relevant to a firm (F) which does not carry on any regulated activities other than administering a benchmark. For instance:

(a) the CASS operational oversight function will not be relevant to F because that function is only relevant to CASS medium firms, CASS large firms and CASS large debt management firms; F will not hold client money and will therefore not be a CASS medium firm, a CASS large firm or a CASS large debt management firm;

(b) the customer function involves performing various types of activity none of which would be performed by a firm which does not carry on any regulated activities other than administering a benchmark;

(c) the small friendly society function will only be relevant to certain firms.

(5) The functions in SUP 10A.1.21AG(1)(a) to (d) do not apply to a benchmark contributor in relation to its contribution of input data to a BMR benchmark administrator.

(6) That is because:

(a) the functions in SUP 10A.1.21AG(1)(a) to (c) are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to benchmark activities (which includes contributing input data to a BMR benchmark administrator); and

(b) the FCA controlled function in SUP 10A.1.21AG(1)(d) above does not apply in relation to benchmark activities (see SUP 10A.8.2R).
10A.1.2 R Notwithstanding anything to the contrary in SUP 10A.1.5R, SUP 10A.1.6R and SUP 10A.1.13R the application of SUP 10A to the benchmark submission function is as set out in MAR 8.2.3R. [deleted]

10A.1.2 G MAR 8.2.3R says that the obligation on a benchmark submitter to appoint a benchmark manager applies if it maintains an establishment in the United Kingdom. Therefore, SUP 10A applies to the benchmark submission function whether or not the activity of providing information in relation to a specified benchmark (or any other regulated activity) or the benchmark submission function are carried on from that establishment. [deleted]

10A.4 Specification of functions

... 

10A.4.4 R  FCA controlled functions

<table>
<thead>
<tr>
<th>Part 1 (FCA controlled functions for FCA-authorised persons and appointed representatives)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type</strong></td>
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<tr>
<td>40</td>
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<tr>
<td>50</td>
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<tr>
<td>...</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 2 (FCA controlled functions for PRA-authorised persons)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(See Note 1)</em></td>
</tr>
<tr>
<td><strong>Type</strong></td>
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<td>40</td>
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<tr>
<td>50</td>
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<tr>
<td>...</td>
</tr>
</tbody>
</table>

...
10A.7 FCA required functions

Benchmark submission function (CF40)

10A.7.1 R The benchmark submission function is the function of acting in the capacity of a person to whom is allocated the function set out in MAR 8.2.3R(1) (Organisational and governance arrangements). [deleted]

Benchmark administration function (CF50)

10A.7.1 R The benchmark administration function is the function of acting in the capacity of a person to whom is allocated the function set out in MAR 8.3.5R(1) (Requirements for benchmark administrators). [deleted]

10A.8 Systems and controls functions

10A.8.2 R The systems and controls function does not apply in relation to:

(1) bidding in emissions auctions carried on by a firm that is exempt from MiFID under article 2(1)(j); or

(2) benchmark activities.

Amend the forms in SUP 10A Annex 4D (Form A: Application to perform controlled functions under the approved person regime) as shown.

10A Form A: Application to perform controlled functions under the approved persons regime

Annex 4D

The Long and Short Form A – UK and Overseas Firms (not incoming EEA)
For applications from a single firm, please tick the boxes that correspond to the controlled functions to be performed. If the controlled functions are to be performed for more than one firm, please go to question 3.05.

### Significant influence functions

<table>
<thead>
<tr>
<th>Function Code</th>
<th>Function Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CF 1</td>
<td>Director function</td>
</tr>
<tr>
<td>CF 2</td>
<td>Non-executive director function</td>
</tr>
<tr>
<td>CF 3</td>
<td>Chief executive function</td>
</tr>
<tr>
<td>CF 4</td>
<td>Partner function</td>
</tr>
<tr>
<td>CF 5</td>
<td>Director of an unincorporated association function</td>
</tr>
<tr>
<td>CF 6</td>
<td>Small friendly society function</td>
</tr>
<tr>
<td>CF 8</td>
<td>Apportionment and oversight function</td>
</tr>
<tr>
<td></td>
<td>(This function is not applicable to all firms please refer to Notes for Completing Form A)</td>
</tr>
<tr>
<td>CF 10</td>
<td>Compliance oversight function</td>
</tr>
<tr>
<td>CF 10a</td>
<td>CASS operational oversight function</td>
</tr>
<tr>
<td>CF 11</td>
<td>Money laundering reporting function</td>
</tr>
<tr>
<td>CF 12</td>
<td>Actuarial function</td>
</tr>
<tr>
<td>CF 12A</td>
<td>With-profits actuary function</td>
</tr>
<tr>
<td>CF 12B</td>
<td>Lloyd’s Actuary function</td>
</tr>
<tr>
<td>CF 28</td>
<td>System and controls function</td>
</tr>
<tr>
<td>CF 29</td>
<td>Significant management function</td>
</tr>
<tr>
<td>CF 40</td>
<td>Benchmark submission function</td>
</tr>
<tr>
<td>CF 50</td>
<td>Benchmark administration function</td>
</tr>
<tr>
<td>CF 30</td>
<td>Customer function</td>
</tr>
</tbody>
</table>

### Customer function

<table>
<thead>
<tr>
<th>Function Code</th>
<th>Function Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CF 30</td>
<td>Customer function</td>
</tr>
</tbody>
</table>

3.03 Effective date of controlled functions indicated above

3.04 Job title (mandatory for controlled function 28 & 29)

Please refer to notes on the requirements for submitting a CV

Insurance mediation

Will the candidate be responsible for Insurance mediation at the firm?

YES  NO
Mortgage Credit Directive

Will the candidate be responsible for Mortgage Credit Directive Intermediation at the firm?

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

YES ☐ NO ☐

Benchmark administration

Will the candidate be responsible for the firm's activities as a regulated benchmark administrator (see MAR 8.5.2R and MAR 8.5.4R)?

(Note: For firms subject to MAR 8.5.2R, “Yes” can only be selected if the individual is applying for CF1, 3-6 or CF29).

YES ☐ NO ☐

Contributing input data to a BMR benchmark administrator

Will the candidate be responsible for the process of contributing input data to a BMR benchmark administrator?

(Note: this question only applies to firms which are subject to MAR 8.6.)

YES ☐ NO ☐

⇒ I have supplied further information related to this page in Section 6

YES ☐ NO ☐

The Long Form A – UK and Overseas Firms (not incoming EEA) for MiFID authorisation applications
3.02 For applications from a single firm, please tick the boxes that correspond to the controlled functions to be performed. If the controlled functions are to be performed for more than one firm, please go to question 3.05

<table>
<thead>
<tr>
<th>a</th>
<th>Significant influence functions</th>
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<tbody>
<tr>
<td>CF 1</td>
<td>Director function</td>
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<td>Partner function</td>
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<td>System and controls function</td>
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<tr>
<td>CF 29</td>
<td>Significant management function</td>
</tr>
<tr>
<td>CF 40</td>
<td>Benchmark submission function</td>
</tr>
<tr>
<td>CF 50</td>
<td>Benchmark administration function</td>
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</table>

<table>
<thead>
<tr>
<th>b</th>
<th>Customer function</th>
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</thead>
<tbody>
<tr>
<td>CF 30</td>
<td>Customer function</td>
</tr>
</tbody>
</table>

3.03 Effective date of controlled functions indicated above

3.04 Job title

Please refer to notes on the requirements for submitting a CV

**Insurance mediation**

Will the candidate be responsible for Insurance mediation at the firm?

(Note: Yes can only be selected if the individual is applying for CF1, 3-8 or 29)

YES [ ] NO [ ]
Mortgage Credit Directive

Will the candidate be responsible for Mortgage Credit Directive Intermediation at the firm?

(Note: Yes can only be selected if the individual is applying for CF1, 3-8 or 29)

YES ☐ NO ☐

Benchmark administration

Will the candidate be responsible for the firm’s activities as a regulated benchmark administrator (see MAR 8.5.2R and MAR 8.5.4R)?

(Note: For firms subject to MAR 8.5.2R, “Yes” can only be selected if the individual is applying for CF1, 3-6 or CF29).

YES ☐ NO ☐

Contributing input data to a BMR benchmark administrator

Will the candidate be responsible for the process of contributing input data to a BMR benchmark administrator?

(Note: this question only applies to firms which are subject to MAR 8.6.)

YES ☐ NO ☐

I have supplied further information related to this page in Section 6†

YES ☐ NO ☐

The Long and Short Form A – Incoming EEA only. The two forms (Long Form A and Short Form A) should both be amended separately as shown.

3.02

For applications from a single firm, please tick the boxes that correspond to the controlled functions to be performed.

If the controlled functions are to be performed for more than one firm, please go to question 3.05

<table>
<thead>
<tr>
<th>a Significant influence functions</th>
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</thead>
<tbody>
<tr>
<td>CF 11 Money laundering reporting function ☐</td>
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<tr>
<td>CF 29 Significant management function ☐</td>
</tr>
</tbody>
</table>
### Significant influence functions

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</thead>
<tbody>
<tr>
<td><strong>CF 40</strong></td>
<td>Benchmark submission function</td>
<td></td>
</tr>
<tr>
<td><strong>CF 50</strong></td>
<td>Benchmark administration function</td>
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</tbody>
</table>

### Customer function

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<tbody>
<tr>
<td><strong>CF 30</strong></td>
<td>Customer function</td>
<td></td>
</tr>
</tbody>
</table>

---

I have supplied further information related to this page in Section 6  

[YES] [NO]

---

Amend the form in SUP 10A Annex 8D (Form E: Internal transfer of an approved person) as shown.

### 10A Form E: Internal transfer of an approved person

#### Annex 8D

The Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers (and are not Relevant Authorised Persons)

---

4.02 For applications from a single firm, please tick the boxes that correspond to the controlled functions to be performed.

If the controlled functions are to be performed for more than one firm, please go to question 4.05

---

### Significant influence functions

<p>| | | |</p>
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<tr>
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<tbody>
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<td><strong>CF 1</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>CF 6</strong></td>
<td>Small friendly society function</td>
<td></td>
</tr>
</tbody>
</table>
### Significant influence functions continued

| CF 8 | Apportionment and oversight function (Non-MiFID business Only) |
| CF 9 | EEA investment business oversight function (Non-MiFID business Only) |
| CF 10 | Compliance oversight function (Non-MiFID business Only) |
| CF 10A | CASS operational oversight function |
| CF 11 | Money laundering reporting function |
| CF 12 | Actuarial function |
| CF 12A | With-profits actuary function |
| CF 12B | Lloyd’s Actuary function |
| CF 28 | System and controls function |
| CF 29 | Significant management function |
| CF 40 | Benchmark submission function |
| CF 50 | Benchmark administration function |
| CF 30 | Customer function |

---

### Important notes:

- **Effective date of controlled functions indicated above**:
  
  - **Job title**: (mandatory for controlled function 28 & 29)
  
  - **Insurance mediation**
    - Will the candidate be responsible for Insurance mediation at the firm?
    - (Note: Yes can only be selected if the individual is applying for (CF1,3-8 or 29)
| **Mortgage Credit Directive Intermediation** |  |  |
| Will the candidate be responsible for Mortgage Credit Directive Intermediation at the firm?  
(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29) | YES | NO |  |

| **Benchmark administration** |  |  |
| Will the candidate be responsible for the firm's activities as a regulated benchmark administrator (see MAR 8.5.2R and MAR 8.5.4R)?  
(Note: For firms subject to MAR 8.5.2R, “Yes” can only be selected if the individual is applying for CF1, 3-6 or CF29). | YES | NO |  |

| **Contributing input data to a BMR benchmark administrator** |  |  |
| Will the candidate be responsible for the process of contributing input data to a BMR benchmark administrator?  
(Note: this question only applies to firms which are subject to MAR 8.6.) | YES | NO |  |

> I have supplied further information related to this page in Section 5  
YES | NO |  

Amend the following as shown.
10C FCA senior management regime for approved persons in relevant authorised persons

10C.1 Application

…

EEA relevant authorised persons: general application

10C.1.4 R This chapter does not apply to an EEA relevant authorised person if and in so far as the question of whether a person is fit and proper to perform a particular function in relation to that firm is reserved to an authority in a country or territory outside the United Kingdom under:

(1) the Single Market Directives;
(2) the Treaty;
(3) the auction regulation;
(4) the benchmarks regulation.

…

Amend the forms in SUP 10C Annex 5D (Statement of responsibilities) as shown.

10C Statement of responsibilities
Annex 5D

UK RAPs Statement of Responsibilities form

…

ANNEX A

<table>
<thead>
<tr>
<th>SYSC 4 Annex 1G</th>
<th>The main business activities and functions of a relevant authorised person</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>(26) Providing information in relation to a specified benchmark Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)</td>
<td></td>
</tr>
</tbody>
</table>
(27) Administering a specified benchmark

Third Country RAPs Statement of Responsibilities form

ANNEX A

<table>
<thead>
<tr>
<th>SYSC 4 Annex 1G</th>
<th>The main business activities and functions of a relevant authorised person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(26) Providing information in relation to a specified benchmark. Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)</td>
<td></td>
</tr>
<tr>
<td>(27) Administering a specified benchmark</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

Amend the following as shown.

11 Controllers and close links

11.1 Application

Application to firms

11.1.1 R This chapter applies to every firm except:

...  

(7) a UCITS ISPV;  

(8) a firm which only has permission for administering a benchmark, as set out in the table in SUP 11.1.2R.

...
11.1.4 D  SUP 11.1, SUP 11.2.1G, SUP 11.3 and SUP 11.7 apply to a controller or a proposed controller of a UK domestic firm not listed in SUP 11.1.1R(1) to SUP 11.1.1R(7) SUP 11.1.1R(8).

...  

11.2 Purpose

11.2.1 G  Part XII of the Act (Control Over Authorised Persons) places an obligation on the controllers and proposed controllers of those UK domestic firms not listed in SUP 11.1.1R(1) to SUP 11.1.1R(8) to notify the appropriate regulator of changes in control, including acquiring, increasing or reducing control or ceasing to have control over a firm. Furthermore, those persons are required to obtain the appropriate regulator’s approval before becoming a controller or increasing their control over a firm. SUP 11.3 is intended to assist those persons in complying with their obligations under Part XII of the Act.

...  

11.2.6 G  Every firm, other than a firm listed in SUP 11.1.1R(1) to SUP 11.1.1R(6)(8) or a firm excluded from the operation of SUP 16.4 or SUP 16.5 by SUP 16.1.3R, is required to submit an annual report on its controllers and close links as set out in SUP 16.4 and SUP 16.5.

...  

15 Notifications to the FCA

...  

15.3 General notification requirements

...  

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1)  A firm must notify the FCA of:

...  

(h) a breach of any directly applicable EU regulation made under AIFMD;

(ha) a breach of the benchmarks regulation (apart from Annex II to that regulation) or of any directly applicable regulations or requirements made or imposed under the benchmarks regulation; or

...
Insert the following new chapter SUP 15B after SUP 15A (Applications and notifications under EMIR). The text is not underlined.

15B Applications and notifications under the benchmarks regulation and powers over Miscellaneous BM persons

15B.1 Application

15B.1.1 G This chapter applies to:

(1) every firm;

(2) every supervised entity which applies to the FCA to endorse a benchmark in accordance with article 33 of the benchmarks regulation;

(3) every person who applies to the FCA for recognition in accordance with article 32 of the benchmarks regulation.

15B.2 Notifications under the benchmarks regulation

15B.2.1 G (1) The benchmarks regulation imposes various directly applicable obligations for regulated benchmark administrators to provide notifications to the FCA.

(2) Those notifications should be made:

(a) in accordance with the requirements of the benchmarks regulation; and

(b) in such manner as the FCA directs.

15B.2.2 D (1) A firm making a notification under the benchmarks regulation must do so using the system or form indicated on the FCA’s website for the relevant type of notification.

(2) Where the FCA has not specified a method for making the relevant notification on its website, the notification should be made in accordance with SUP 15.7.4R.
15B.3 Applications to endorse a third country benchmark

15B.3.1 G (1) Article 33 of the benchmarks regulation provides that a supervised entity may apply to the FCA to endorse a benchmark or a family of benchmarks provided in a third country for their use in the EU.

(2) The FCA has made the endorsement application form by direction. The form is available on the FCA’s website.

(3) A supervised entity making an endorsement application will also need to pay any applicable fee set out in FEES.

15B.4 Applications for recognition of third country administrators

15B.4.1 G (1) Article 32 of the benchmarks regulation provides that a benchmark administrator located in a third country may apply to a competent authority for prior recognition.

(2) The FCA has made the recognition application form by direction. The form is available on the FCA’s website.

(3) A person applying for recognition will also need to pay any applicable fee set out in FEES.

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 (1) 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.

(2) 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.

Amend the following as shown.

16  Reporting requirements
16.1  Application

16.1.3 R  Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17) and SUP 16.22)

<table>
<thead>
<tr>
<th>(1) Section(s)</th>
<th>(2) Categories of firm to which section applies</th>
<th>(3) Applicable rules and guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>SUP 16.4 and SUP 16.5</td>
<td>All categories of firm except:</td>
<td>Entire sections</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
| (l)            | a firm with permission to carry on only the regulated activity of administering a benchmark; |...

16.5  Annual Close Links Reports
Application
16.5.1 G  This section applies to every firm listed in SUP 11.1.1R(1) to SUP 11.1.1R(6)(8), except those firms excluded from its operation by SUP 16.1.1R and SUP 16.1.3R or which have elected to report on a monthly basis in accordance with SUP 11.9.5R.
Insert the following new TP after SUP TP 9 (Transitional Provisions in relation to the MiFID Regulation). The text is not underlined.

TP 10  Benchmarks Regulation Transitional Provisions

10.1 Purpose and application

10.1.1 SUP TP 10 contains transitional provisions relating to the changes to the Regulated Activities Order which have been made as a result of the benchmarks regulation.

10.1.2 This TP applies to all firms.

10.2 Overview

10.2.1 (1) The benchmarks regulation applies from 1 January 2018.

(2) Article 34 of the benchmarks regulation requires the administrator of a benchmark to be authorised or registered. There is no corresponding requirement in relation to benchmark contributors.

(3) In the UK, the requirement for administrators to be authorised or registered has been given effect through the introduction of a new regulated activity (administering a benchmark) which replaces the regulated activity of administering a specified benchmark.

(4) The UK Benchmarks Regulations 2018 therefore make various changes as a result of the benchmarks regulation including the following:

(a) they introduce a new regulated activity: administering a benchmark (article 63S of the Regulated Activities Order);

(b) regulation 59 provides that a person who carries on the regulated activity of administering a specified benchmark (article 63O(1)(b) of the Regulated Activities Order) without permission to carry on that activity is not by virtue of section 20(1) of the Act to be taken to have contravened a requirement imposed by the FCA if that person has permission to carry on the new regulated activity of administering a benchmark (article 63S(1) of the Regulated Activities Order);

(c) regulation 60 provides that a person who carries on the regulated activity of providing information in relation to a specified benchmark (benchmark B) (article 63O(1)(a) of the Regulated Activities Order) without permission to carry on that activity:

(i) does not contravene the general prohibition; and
(ii) is not by virtue of section 20(1) or (1A) of the Act to be taken to have contravened a requirement imposed by the FCA,

if the administrator of benchmark B has permission to carry on the new regulated activity of administering a benchmark (article 63S(1) of the Regulated Activities Order); and

(d) Part 7 of the UK Benchmarks Regulations 2018 contains various transitional provisions to reflect those in article 51 of the benchmarks regulation.

10.2.2 G (1) The effect of the changes in SUP TP 1.2.1G(4)(a) to (c) is as follows.

(2) A firm which, immediately before 1 January 2018, had a Part 4A permission in relation to administering a specified benchmark continues to require that Part 4A permission until the earlier of such time as:

(a) it obtains a Part 4A permission in relation to the new regulated activity of administering a benchmark; or

(b) it stops administering a specified benchmark.

(3) A firm which, immediately before 1 January 2018, had a Part 4A permission in relation to providing information in relation to a specified benchmark continues to require that Part 4A permission in respect of the relevant specified benchmark until the earlier of such time as:

(a) the administrator of the relevant specified benchmark obtains a Part 4A permission in relation to the new regulated activity of administering a benchmark;

(b) the firm stops providing information in relation to a specified benchmark.

(4) Persons who administer, contribute input data to or use a benchmark should also note the transitional provisions in Part 7 of the UK Benchmarks Regulations 2018 and article 51 of the benchmarks regulation.

10.2.3 G The above means that:

(1) (a) A firm (A) which, prior to 1 January 2018, had a Part 4A permission to administer a specified benchmark (a benchmark administrator) and which wishes to continue administering that benchmark, will need to apply for a Part 4A permission in relation to administering a benchmark (subject to the transitional provisions in Part 7 of the UK Benchmarks Regulations 2018 and article 51 of the benchmarks regulation).
(b) A’s existing Part 4A permission for administering a specified benchmark will be removed when it obtains the new Part 4A permission.

(c) Until that point, A will continue to be subject to the rules which applied to benchmark administrators immediately prior to 29 June 2018.

(2) A firm which wishes to start administering a benchmark will need to apply for a Part 4A permission in relation to administering a benchmark (subject to the transitional provisions in Part 7 of the UK Benchmarks Regulations 2018 and article 51 of the benchmarks regulation).

10.3 Transitional provision: the application of the previous version of the Supervision manual

10.3.1 G (1) As is explained in SUP TP 10.2, the rules which applied to benchmark administrators (in their capacity as such) before 29 June 2018 will continue to apply to those firms until their Part 4A permission in relation to administering a specified benchmark has been removed or (where applicable) they have been authorised to administer a benchmark.

(2) That includes some rules in the Supervision manual which have been amended or deleted with effect from 29 June 2018. The table in SUP TP 10.3.2 specifies which of the amended or deleted rules in the Supervision manual continue to apply and how.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>SUP 3.1.1R</strong> R</td>
<td>R</td>
<td>The rule in column 2, as it was on 28 June 2018, continues to apply to a benchmark administrator in relation to a specified benchmark until that administrator becomes authorised or registered under the benchmark regulation, or ceases to be authorised for administering a specified benchmark.</td>
<td>From 29 June 2018</td>
<td>Already in force</td>
</tr>
<tr>
<td>2</td>
<td><strong>SUP 10A.4.4R</strong> and <strong>SUP 10A.7.1.13R</strong></td>
<td>R</td>
<td>The rules in column 2, as they were on 28 June 2018, continue to apply to a benchmark administrator in relation to a specified benchmark until that administrator becomes authorised or registered under the benchmark regulation, or ceases to be authorised for administering a specified benchmark.</td>
<td>From 29 June 2018</td>
<td>Already in force</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>3</td>
<td><strong>SUP 10A.8.2R</strong></td>
<td>R</td>
<td>The rule in column 2, as it was on 28 June 2018 continues to apply to a benchmark administrator in relation to a specified benchmark until that administrator becomes authorised or registered under the benchmark regulation, or ceases to be authorised for administering a specified benchmark.</td>
<td>From 29 June 2018</td>
<td>Already in force</td>
</tr>
</tbody>
</table>
Annex M

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

2.5 Provision for certain categories of decision

2.5.18 G Some of the distinguishing features of notices given under enactments other than the Act are as follows:

(5) The decision to give a written notice under section 55XA(1) of the Act will be taken by FCA staff under executive procedures. If the applicant decides to seek a review, by the FCA, of that decision, they can make representations to the RDC. If the RDC then decides under section 55XA(5) of the Act to confirm the first decision, or take a different decision of the type described by section 55XA(1) of the Act, it must give the applicant a written notice.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

<table>
<thead>
<tr>
<th>Packaged Retail and Insurance-based Investment Products Regulations 2017</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[Editor’s note: the text in this annex was consulted on as part of CP18/5 ‘EU Benchmarks Regulation Implementation (DEPP and EG)’.]
<table>
<thead>
<tr>
<th>UK Benchmarks Regulations 2018</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 6(5)</td>
<td>when the FCA is proposing or deciding to refuse an application for the imposition of a requirement under regulation 6 or for the variation or cancellation of a requirement imposed under regulation 6</td>
<td></td>
<td>Executive Procedures</td>
</tr>
<tr>
<td>Regulations 12(1)(a) and 13(1)(a)</td>
<td>when the FCA is proposing or deciding to publish a statement under regulation 10</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 12(1)(b) and 13(1)(b)</td>
<td>when the FCA is proposing or deciding to impose a financial penalty under regulation 11</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 22(1), 22(2) and 22(7)</td>
<td>when the FCA is proposing or deciding to require restitution under regulation 22</td>
<td></td>
<td>RDC</td>
</tr>
</tbody>
</table>

2 Annex 2G Supervisory notices

...
specified in article 63S of the *Regulated Activities Order* but, other than as part of the application, to restrict the *Part 4A permission* either by imposing a limitation or requirement which was not applied for or by specifying a narrower or wider description of *regulated activity* than that applied for

| 55XA(1)(e) | when the FCA is deciding to refuse an application for a *Part 4A permission* to carry on the *regulated activity* specified in article 63S of the *Regulated Activities Order* | RDC or executive procedures |
| 55XA(1)(f) | when the FCA is deciding to refuse an application to vary a *firm’s Part 4A permission* to carry on the *regulated activity* specified in article 63S of the *Regulated Activities Order* | RDC or executive procedures |

Packaged Retail and Insurance-based Investment Products Regulations 2017

UK Benchmarks Regulations 2018

Regulation 6(6) when the FCA is exercising its power under regulation 6(2) to impose, vary or cancel a requirement on its own initiative

Sch 3 Fees and other required payments
3.2G The FCA’s power to impose financial penalties is contained in:

- The MiFI Regulations
- The UK Benchmarks Regulations 2018

Sch 4 Powers Exercised

- Paragraph 6 (Application of Part 26 of the Act) of Schedule 1 to the Packaged Retail and Insurance-based Investment Products Regulations
- Regulation 14 (Statements of Policy) of the UK Benchmarks Regulations 2018
- Regulation 19 (Application of Part 11 of the Act (information gathering and investigations)) of the UK Benchmarks Regulations 2018
- Regulation 23 (Application of Part 26 of the Act (notices)) of the UK Benchmarks Regulations 2018
Annex N

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Treating complainants fairly

1.1 Purpose and application

…

1.1.5 R This chapter does not apply to:

…

(3) an authorised professional firm in respect of expressions of dissatisfaction about its non-mainstream regulated activities;

(4) complaints in respect of auction regulation bidding;

(5) a full-scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate unless it is a collective investment scheme; and

(6) a depositary, for complaints concerning activities carried on for an AIF that is:

(a) a body corporate unless it is a collective investment scheme; or

(b) another type of AIF unless it is:

(i) an authorised AIF; or

(ii) an ELTIF; or

(iii) a charity AIF; and

(7) complaints in respect of administering a benchmark.

…
## Application of DISP 1 to type of respondent / complaint

<table>
<thead>
<tr>
<th>Type of respondent/complaint</th>
<th>DISP 1.1A Requirements for MiFID investment firms</th>
<th>DISP 1.2 Consumer awareness rules</th>
<th>DISP 1.3 Complaints handling rules</th>
<th>DISP 1.4.1-1.8 Complaints resolution rules etc.</th>
<th>DISP 1.9 Complaints record rule</th>
<th>DISP 1.10 Complaints reporting rules</th>
<th>DISP 1.10A Complaints data publication rules</th>
<th>DISP 1.10B Complaints reporting directions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>designated finance platform in relation to complaints about providing specified information</strong></td>
<td>Does not apply</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td><strong>complaints relating to administering a benchmark</strong></td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
</tbody>
</table>
2 Jurisdiction of the Financial Ombudsman Service

...  

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:

(1) regulated activities (other than auction regulation bidding and administering a benchmark);

...
Annex O

Amendments to the Credit Unions sourcebook (CREDS)

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

2 Senior management arrangements, systems and controls

2.1 Application and purpose

Application

2.1.1 R This chapter applies to all credit unions.

2.1.1A G With the exception of CREDS 2.2.14G to CREDS 2.2.17G and CREDS 2.2.65G to CREDS 2.2.70G, this chapter is not relevant to a credit union in relation to its benchmark activities.

Purpose

... 

2.1.3 G (1) This chapter is also intended to remind credit unions that the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) also contains a number of high level rules and guidance relating to senior management arrangements, systems and controls designed to have general application to all firms, including credit unions. Subject to the exceptions in (2) and (3) below, SYSC 1, SYSC 4 to SYSC 10 and SYSC 21 apply to all credit unions in respect of the carrying on of their regulated activities and unregulated activities in a prudential context. SYSC 18 applies to all credit unions in respect of both their regulated activities and unregulated activities.

(2) SYSC 4 to SYSC 10 (other than SYSC 4.5 to SYSC 4.9 and SYSC 4 Annex 1) and SYSC 14 do not apply to a firm (including a credit union) in relation to its carrying on benchmark activities (see SYSC 1 Annex 1 for the detailed rules on the application of SYSC 4 to SYSC 10).

(3) SYSC 4 to SYSC 10 (other than SYSC 6.1.1R (which only applies to a limited extent) and SYSC 6.3) do not apply to a firm (including a credit union) in relation to its carrying on of auction regulation bidding (see SYSC 1 Annex 1 for the detailed rules on the application of SYSC 4 to SYSC 10).

... 

10 Application of other parts of the Handbook to Credit credit unions

10.1 Application and purpose
Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

<table>
<thead>
<tr>
<th>Module</th>
<th>Relevance to Credit Unions</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>Compensation <em>(COMP)</em></td>
<td><em>COMP</em> sets out <em>rules</em> relating to the scheme for compensating consumers when authorised <em>firms</em> are unable, or likely to be unable, to satisfy claims against them.</td>
</tr>
<tr>
<td>General guidance on Benchmark Administration, Contribution and Use <em>(BENCH)</em></td>
<td><em>BENCH</em> provides <em>guidance</em> about which parts of the <em>Handbook</em> are relevant to a <em>firm</em> when carrying out <em>benchmark activities</em> and when using a <em>benchmark</em>. It also provides guidance about the <em>benchmarks regulation</em>.</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>
Annex P

Amendments to General guidance on Benchmark Submission and Administration, Contribution and Use (BENCH)

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

1 Handbook requirements in relation to benchmark submission contribution activity and benchmark administration activity

1.1 Application and purpose

1.1.1 G This special guide is for firms which:

(1) carry out the regulated activities activity of providing information in relation to a specified benchmark and administering a specified benchmark;

(2) contribute input data to a BMR benchmark administrator; or

(3) use a benchmark.

Purpose

1.1.2 G The purpose of this special guide is to:

(1) help benchmark submitters and regulated benchmark administrators by setting out which parts of the Handbook apply to them when they carry out the regulated activities activity of providing information in relation to a specified benchmark or administering a specified benchmark;

(2) help benchmark contributors by setting out which parts of the Handbook apply to them when they contribute input data to a BMR benchmark administrator;

(3) remind all firms of their obligations under the benchmarks regulation when using a benchmark.

Other parts of the Handbook will apply to benchmark submitters or to benchmark administrators in respect of other regulated activities they carry out.

Benchmarks Regulation and transitional arrangements

1.1.3 G (1) The benchmarks regulation applies from 1 January 2018.

(2) Various changes were made to the Regulated Activity Order as a result of the benchmarks regulation. In particular:
(a) There is a new regulated activity of: administering a benchmark (article 63S of the Regulated Activities Order).

(b) The regulated activity of administering a specified benchmark will cease to apply (subject to the transitional provisions described in SUP TP 10).

(c) The regulated activity of providing information in relation to a specified benchmark will cease to apply (subject to the transitional provisions described in SUP TP 10). However, benchmark contributors which contribute input data to a BMR benchmark administrator are still subject to various requirements in the Handbook and are subject to the benchmarks regulation when doing so.

(3) SUP TP 10 contains guidance on the transitional arrangements governing the changes to the regulated activities above.

(4) The following transitional provisions are also relevant to a firm which, immediately before 1 January 2018, was authorised to administer a specified benchmark or to provide information in relation to a specified benchmark:

(a) SYSC TP 6;
(b) FEES TP 17AR;
(c) MAR TP 1; and
(d) SUP TP 10.

2 Parts of the Handbook applicable to benchmark submission activity and benchmark administration activity regulated benchmark administrators and benchmark contributors

2.1 Parts of the Handbook applicable to benchmark submission activity and benchmark administration activity regulated benchmark administrators

2.1.1 G (1) The parts of the Handbook applicable to benchmark submitters and to benchmark administrators regulated benchmark administrators when they carry out the regulated activities activity of providing information in relation to a specified benchmark or administering a specified benchmark administering a benchmark are listed in BENCH 2.1.2G. Benchmark submitters and benchmark administrators should read applicable parts of the Handbook to find out what the detailed regulatory requirements are for the regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark.
(2) **Regulated benchmark administrators** should read the applicable parts of the *Handbook* to find out what the detailed regulatory requirements are for the regulated activity of administering a benchmark. Firms should note that in some cases, different *Handbook* provisions apply depending on whether or not the regulated benchmark administrator is an Annex II benchmark administrator (see MAR 8.5.2R, MAR 8.5.4R and MAR 8.5.7R).

(3) **Regulated benchmark administrators** which also carry on other regulated activities may be subject to other parts of the *Handbook* as well. The table in *BENCH 2.1.2G* does not refer to those.

(4) In some cases, the application of other parts of the *Handbook* is excluded in relation to a firm’s benchmark activities (see the relevant *Handbook* provisions for the detailed application).

(5) **Regulated benchmark administrators** are also reminded of their directly applicable obligations under the *benchmarks regulation* and legislation made under that regulation.

### 2.1.2 G Parts of the Handbook applicable to the regulated activities activity of providing information in relation to a specified benchmark and administering a specified benchmark benchmark.

<table>
<thead>
<tr>
<th>Part of the Handbook</th>
<th>Applicability to the regulated activity of providing information in relation to a specified benchmark and of administering a specified benchmark</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Level Standards</td>
<td>This applies.</td>
</tr>
<tr>
<td>Principles for Business (PRIN)</td>
<td>This applies.</td>
</tr>
<tr>
<td>Senior management Management arrangements Arrangement s, Systems and Controls (SYSC)</td>
<td>This applies. The detailed application of this is set out in SYSC 1 Annex 1. However, in general, only the following parts of SYSC will be relevant to a firm which only has permission to carry on the regulated activity of administering a benchmark: (a) SYSC 1; (b) SYSC 18.3.9G; (c) SYSC 22.</td>
</tr>
<tr>
<td>Threshold Conditions (COND)</td>
<td>This applies.</td>
</tr>
<tr>
<td><strong>Statements of Principle and Code of Practice for Approved Persons (APER)</strong></td>
<td>This applies to an approved person of a firm that is not a relevant authorised person who performs a benchmark submission function or a benchmark administration function.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Code of Conduct sourcebook (COCON)</strong></td>
<td>This applies to conduct rules staff of relevant authorised persons.</td>
</tr>
<tr>
<td><strong>The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)</strong></td>
<td>This applies.</td>
</tr>
<tr>
<td><strong>General Provisions (GEN)</strong></td>
<td>This applies. However, the application of GEN 4 is very limited in relation to administering a benchmark. GEN 7 does not apply to the activity of administering a benchmark.</td>
</tr>
<tr>
<td><strong>Fees Manual (FEES)</strong></td>
<td>This applies.</td>
</tr>
<tr>
<td><strong>Business Standards Market Conduct Sourcebook (MAR)</strong></td>
<td>MAR 1 (Market Abuse), MAR 2 (Stabilisation) and MAR 8 (Benchmarks) apply.</td>
</tr>
</tbody>
</table>
| **Regulatory Processes Supervision Manual (SUP)** | This applies subject to the following qualifications:  
(a) In general only the following parts of SUP will be relevant to a firm which only has permission to carry on the regulated activity of administering a benchmark: SUP 1-2, SUP 5-8, SUP 9-10A, SUP 15-15B, SUP 16.1-16.3 and SUP 16.10.  
(b) SUP 10A only applies to a regulated benchmark administrator which is not a relevant authorised person (but not all controlled functions apply to a firm which
only has permission to carry on the regulated activity of administering a benchmark).

(c) **SUP 10C** only applies to a regulated benchmark administrator which is a relevant authorised person.

with the following qualifications:

(a) **SUP 4** (Actuaries), **SUP 12** (Appointed representatives), **SUP 13** (Exercise of passport rights by UK firms), **SUP 13A** (Qualifying for authorisation under the Act), **SUP 14** (incoming EEA firms changing details and cancelling qualification for authorisation), **SUP 17** (Transaction Reporting), **SUP 18** (Transfer of business), **SUP 21** (Waiver), **SUP App 2** (Insurers: Regulatory Intervention points and run-off plans) and **SUP App 3** (Guidance on passporting issues) will not be relevant to the regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark.

<table>
<thead>
<tr>
<th>Decision Procedure and Penalties Manual (DEPP)</th>
<th>This applies.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Redress</th>
<th>Dispute Resolution: the Complaints sourcebook (DISP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All firms are subject to the Compulsory Jurisdiction of the Financial Ombudsman Service.</td>
<td></td>
</tr>
<tr>
<td>However, a firm which does not, and notifies the FCA under DISP 1.1.12R that it does not, conduct business with eligible complainants (persons eligible to have a complaint considered by the Financial Ombudsman Service, as defined in DISP 2.7) will be exempt from the rules on treating complaints fairly (DISP 1.2 to DISP 1.11) and from the Financial Ombudsman Funding rules (FEES 5.1 to FEES 5.7).</td>
<td></td>
</tr>
<tr>
<td>The definition of the regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark mean that benchmark submitters and benchmark administrators will qualify for these exemptions if it applies for them.</td>
<td></td>
</tr>
</tbody>
</table>
2.2 Parts of the Handbook applicable to benchmark contributors

2.2.1 G (1) The regulated activity of providing information in relation to a specified benchmark no longer applies except in limited circumstances (see SUP TP 10 for an explanation of those circumstances).

(2) Contributing input data to a BMR benchmark administrator is not a regulated activity. However, benchmark contributors are still subject to various obligations under the benchmarks regulation and the Handbook.

(3) Benchmark contributors are reminded of the following provisions in or made under the benchmarks regulation:

(a) article 15 (Code of conduct);

(b) article 16 (Governance and control requirements for supervised contributors); and
(c) article 23 (Mandatory contribution to a critical benchmark).

(4) Benchmark contributors, as authorised persons, are subject to requirements under the Handbook. However, in some cases the application of the Handbook is excluded in relation to a firm’s activities as a benchmark contributor (see the relevant Handbook provisions for their detailed application).

(5) Benchmark contributors are also subject to the following rules which apply only to benchmark contributors:

(a) MAR 8.4 (Third country benchmark contributors); and

(b) MAR 8.6 (Responsibility for benchmark activities: benchmark contributors).

(6) However, some provisions in MAR are disapplied where a firm is contributing input data in relation to a commodity benchmark the provision of which is governed by Annex II to the benchmarks regulation (see MAR 8.4.1R and MAR 8.6.1R).

2.3 Guidance for benchmark users: articles 28 and 29 of the benchmarks regulation

2.3.1 All supervised entities are reminded of the requirements of articles 28(2) and 29 of the benchmarks regulation.

2.3.2 (1) Article 28(2) imposes requirements on supervised entities in relation to the need to produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark which they use materially changes or ceases to be provided.

(2) The effect of the prohibition in article 29 is that, subject to the exclusions in article 2 of the benchmarks regulation, a firm which is a supervised entity may only use a benchmark in cases where:

(a) if the benchmark administrator is located in the EU, the benchmark administrator is listed in the register maintained by ESMA under article 36 of the benchmarks regulation; or

(b) if the benchmark administrator is located outside the EU, the benchmark administrator and the benchmark itself are listed in the register maintained by ESMA under article 36 of the benchmarks regulation.

2.3.3 In considering articles 28(2) and article 29, firms will need to consider the benchmarks regulation and legislation made under that regulation. Firms should also note the points below.
(1) “Use of a benchmark” is defined in article 3.1(7) of the benchmarks regulation. ESMA has provided guidance on that definition in the form of “Q&As”. That guidance is available on ESMA’s website.

(2) Article 28(2) and article 29 of the benchmarks regulation do not apply to the use of a benchmark in cases which are excluded from the requirements of the benchmarks regulation (see article 2 of the regulation).

(3) The prohibition in article 29 of the benchmarks regulation is subject to the transitional provisions in article 51 of that regulation.

(4) ESMA has produced guidance (in the form of “Q&As”) on various aspects of the benchmarks regulation. That guidance is available on ESMA’s website.
Annex Q

Amendments to the Enforcement Guide (EG)

Insert the following new section EG 19.37 after EG 19.36 (Packaged Retail and Insurance-Based Investment Products Regulations 2017). The text is not underlined.

19 Non-FSMA powers

…

19.37 UK Benchmarks Regulations 2018

19.37.1 The UK Benchmarks Regulations 2018 in part implement the benchmarks regulation. The FCA has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the UK Benchmarks Regulations 2018 (including requirements imposed on persons subject to the UK Benchmarks Regulations 2018 by the benchmarks regulation and any directly applicable EU regulation made under the benchmarks regulation). Our powers in relation to Miscellaneous BM persons are set in the UK Benchmarks Regulations 2018.

19.37.2 The FCA’s approach to enforcing the UK Benchmarks Regulations 2018 will mirror our general approach to enforcing the Act, as set out in EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the person who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

19.37.3 The powers which the UK Benchmarks Regulations 2018 provide to the FCA include:

(1) the power to require information and appoint investigators;
(2) powers of entry and inspection;
(3) the power to publicly censure;
(4) the power to impose financial penalties;
(5) the power to apply for an injunction or restitution order;
(6) the power to require restitution;
(7) the power to impose and vary requirements; and
(8) the power to prosecute relevant offences.

19.37.4 The *UK Benchmarks Regulations 2018*, for the most part, mirror the FCA’s investigative, sanctioning and regulatory powers under the *Act*. The FCA has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the *Act*. Key features of the FCA’s approach are described below and in *SUP 15B.5*.

The conduct of investigations under the UK Benchmarks Regulations 2018

19.37.5 The *UK Benchmarks Regulations 2018* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *UK Benchmarks Regulations 2018*.

19.37.6 The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *UK Benchmarks Regulations 2018* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA’s policy in non-criminal investigations under the *UK Benchmarks Regulations 2018* is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the *Act*.

Decision making under the UK Benchmarks Regulations 2018

19.37.7 The decision making procedures for those decisions under the *UK Benchmarks Regulations 2018* requiring the giving of a warning notice, decision notice or a supervisory notice are dealt with within *DEPP*.

19.37.8 The *UK Benchmarks Regulations 2018* do not require the FCA to have published procedures for commencing criminal prosecutions. However, in these situations the FCA expects that we will normally follow our decision making procedures for the equivalent decisions under the *Act*, as set out in *EG 12*.

19.37.9 The *UK Benchmarks Regulations 2018* do not require the FCA to have published procedures to apply to the court for an injunction or restitution order. However, the FCA will normally follow our decision making procedures for the equivalent decisions under the *Act*, as set out in *EG 10* and *EG 11*.

19.37.10 The *UK Benchmarks Regulations 2018* require the FCA to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act* as applied by the *UK Benchmarks Regulations 2018*.

19.37.11 Certain FCA decisions (for example an imposition of a requirement) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the UK Benchmarks Regulations 2018

19.37.12 When determining whether to take action to impose a penalty or to issue a public censure under the *UK Benchmarks Regulations 2018* the FCA’s policy includes
having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. The *FCA’s* policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP 6.5* to *DEPP 6.5D*.

19.37.13 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *UK Benchmarks Regulations 2018* to assist us to exercise our functions under the *UK Benchmarks Regulations 2018* in the most efficient and economic way. See *DEPP 5*, *DEPP 6.7* and *EG 5* for further information on the settlement process and the settlement discount scheme.

19.37.14 The *FCA* will apply the approach to publicity that is outlined in *EG 6*, read in light of Article 45 of the *benchmarks regulation*.

Statement of policy in section 169(7) (as applied by the UK Benchmarks Regulations 2018)

19.37.15 The *UK Benchmarks Regulations 2018* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from *overseas regulators*. For the purposes of the *UK Benchmarks Regulations 2018* the *FCA* will follow the procedures described in *DEPP 7*. 
2 Authorisation and regulated activities

2.3 The business element

2.3.4 A person carrying out the activity of administering a specified benchmark or providing information in relation to a specified benchmark will always be carrying out these activities by way of business.

2.3.4A A person carrying out the activity of administering a benchmark will always be carrying out that activity by way of business.

2.4 Link between activities and the United Kingdom

2.4.8 For the avoidance of doubt, a person who is based outside of the United Kingdom but who makes benchmark submissions to a benchmark administrator is carrying out regulated activities in the United Kingdom.

2.4.10 (1) The requirement to be authorised to carry on the regulated activity of administering a benchmark gives effect to the authorisation and registration regime under article 34 of the benchmarks regulation.

(2) Article 34 only requires a person to be authorised or registered in the UK (as opposed to elsewhere in the EU) if that person is located in the UK.

(3) Accordingly, the FCA considers that where a person (P) administers a benchmark in the UK but P is not located in the UK:

(a) P does not carry on the regulated activity of administering a benchmark from an establishment maintained by P in the UK for the purposes of section 418 of the Act; and
(b) P would not otherwise be regarded as carrying on that regulated activity in the UK.

(4) Located is defined in the Glossary and has the same meaning as it does in the benchmarks regulation.

... 2.5 Investments and activities: general

... 2.5.1A G The regulated activity of providing information in relation to a specified benchmark and administering a specified benchmark do not require the involvement of a specified investment in any way.

... 2.7 Activities: a broad outline

... Specified benchmarks activities

2.7.20D G There are two regulated activities associated with specified benchmarks

(1) providing information in relation to a specified benchmark; and

(2) administering a specified benchmark [deleted]

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 for the purpose of administering a specified benchmark. [deleted]

2.7.20E G It follows from PERG 2.7.20EG that a person who, in the context of an 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. [deleted]

2.7.20F G We expect that only firms which are members of a benchmark submission panel will carry out the activity of providing information in relation to a specified benchmark. [deleted]

2.7.20G G A person is not providing information in relation to a specified benchmark where the information he is providing:

(1) consists solely of factual data obtained from a publicly available source; or
(2) is compiled by a subscription service for purposes other than in connection with the determination of a specified benchmark and is provided to a benchmark administrator only in the administrator's capacity as a subscriber to the service. [deleted]

2.7.20G A person in PERG 2.7.20EAG would also not normally be providing 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. [deleted]

2.7.20H The activity of administering a specified benchmark comprises:

(1) administering the arrangements for determining the benchmark;

(2) collecting, analysing or processing information or expressions of opinion provided for the purpose of determining a specified benchmark; or

(3) determining a specified benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose. [deleted]

2.7.20I For the avoidance of doubt, a firm who is a benchmark submitter is not expected to be carrying out the activities mentioned in PERG 2.7.20HG (2) if it collects, analyses or processes information or expressions of opinion for the purposes of making its own submissions. [deleted]

2.7.20J Specified benchmarks are listed in Schedule 5 to the Regulated Activities Order; 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. [deleted]