

**TECHNICAL STANDARDS (BENCHMARK REGULATION) (EU EXIT)
INSTRUMENT 2019**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in [Part 1 of the Schedule to the Regulations].
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

- F. The FCA amends the following EU Regulations in accordance with Annexes A - K of this instrument.

(1)	(2)
Commission Implementing Regulation (EU) 2018/1106 laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks	Annex A

pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council	
Commission Delegated Regulation (EU) 2018/1637 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function	Annex B
Commission Delegated Regulation (EU) 2018/1638 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function	Annex C
Commission Delegated Regulation (EU) 2018/1639 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors	Annex D
Commission Delegated Regulation (EU) 2018/1640 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the governance and control requirements for supervised contributors	Annex E
Commission Delegated Regulation (EU) 2018/1641 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology	Annex F
Commission Delegated Regulation (EU) 2018/1642 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements	Annex G
Commission Delegated Regulation (EU) 2018/1643 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the	Annex H

benchmark statement to be published by the administrator of a benchmark	
Commission Delegated Regulation (EU) 2018/1644 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent	Annex I
Commission Delegated Regulation (EU) 2018/1645 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA)	Annex J
Commission Delegated Regulation (EU) 2018/1646 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration	Annex K

Revocations

- G. The FCA revokes the following EU Regulation.

Commission Implementing Regulation (EU) 2018/1105 laying down implementing technical standards with regard to procedures and forms for the provision of information by competent authorities to ESMA under Regulation (EU) 2016/1011 of the European Parliament and of the Council

Commencement

- H. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

Citation

- I. This instrument may be cited as the Technical Standards (Benchmark Regulation) (EU Exit) Instrument 2019.

By order of the Board
28 March 2019

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

Annex A

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1106 of 8 August 2018 laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council

~~(Text with EEA relevance)~~

...

Article 2

Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX I

Template for the compliance statement referred to in Article 25(7) of Regulation (EU) 2016/1011

Item	Text field
A. General Information	
...	
2. Name of the administrator	2. [As it appears in the 'Register of administrators and benchmarks' published by ESMA <u>the FCA</u>]
3. Relevant National Competent Authority	3. [The competent authority which has authorised or registered the administrator pursuant to Article 34(1) of Regulation (EU) 2016/1011]
...	

ANNEX II

**Template for the compliance statement referred to in Article 26(3) of Regulation (EU)
2016/1011**

Item	Text field
A. General Information	
...	
2. Name of the administrator	2. [As it appears in the 'Register of administrators and benchmarks' published by ESMA <u>the FCA</u>]
...	

Annex B

COMMISSION DELEGATED REGULATION (EU) 2018/1637 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function

(Text with EEA relevance)

...

Article 1

Composition of the oversight function

1. The structure and composition of the oversight function shall be proportionate to the ownership and control structure of the administrator and shall, as a general rule, be determined in accordance with one or more appropriate governance arrangements listed in the Annex to this Regulation. Administrators shall provide ~~competent authorities~~ the FCA with a justification for any deviation from such arrangements.

...

4. Administrators of regulated-data benchmarks shall include, as members of the oversight function, representatives from the entities listed in the definition of a regulated-data benchmark at point (a) of Article 3(1)(24) of Regulation (EU) 2016/1011 and, where applicable, from entities contributing net asset values of investment funds to regulated-data benchmarks. Administrators shall provide ~~competent authorities~~ the FCA with a justification for any exclusion of representatives from these entities.

...

Article 3

Procedures governing the oversight function

1. An oversight function shall have procedures at least relating to the following areas:

...

- (e) where applicable, the criteria for choosing the person or committee responsible for its overall direction and coordination and for acting as the contact point for the management body of the administrator and for the ~~competent authority~~ FCA, in accordance with the appropriate governance arrangements for oversight functions consisting of multiple committees as set out in the Annex;

...

- (m) the notification to the ~~competent authority~~ FCA of any suspected misconduct by contributors or by the administrator and of any anomalous or suspicious input data;

...

Article 4

Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX

Non-exhaustive list of appropriate governance arrangements

...

4. An oversight function consisting of multiple committees, each responsible for the oversight of a benchmark, type of benchmarks or family of benchmarks, provided that a single person or committee is designated as responsible for the overall direction and coordination of the oversight function and for interaction with the management body of the benchmark administrator and the ~~competent authority~~ FCA;
5. An oversight function consisting of multiple committees, each performing a subset of the oversight responsibilities and tasks, provided that a single person or committee is designated as responsible for the overall direction and coordination of the oversight function and for interaction with the management body of the benchmark administrator and the ~~competent authority~~ FCA.

...

Annex C

COMMISSION DELEGATED REGULATION (EU) 2018/1638 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function

~~(Text with EEA relevance)~~

...

Article 4

Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

Annex D

COMMISSION DELEGATED REGULATION (EU) 2018/1639 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors

~~(Text with EEA relevance)~~

...

Article 9

Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

Annex E

COMMISSION DELEGATED REGULATION (EU) 2018/1640 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the governance and control requirements for supervised contributors

~~(Text with EEA relevance)~~

...

Article 8

Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

Annex F

COMMISSION DELEGATED REGULATION (EU) 2018/1641 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology

~~(Text with EEA relevance)~~

...

Article 5

Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

Annex G

COMMISSION DELEGATED REGULATION (EU) 2018/1642 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements

~~(Text with EEA relevance)~~

...

Article 1

Vulnerability of the benchmark to manipulation

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the vulnerability of the benchmark to manipulation shall include at least the following:

...

Article 2

Nature of the input data

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the nature of the input data shall include at least the following:

...

Article 3

Level of conflicts of interest

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the level of conflicts of interest shall include at least the following:

...

Article 4

Degree of discretion of the administrator

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the degree of discretion of the administrator shall include at least the following:

...

Article 5

Impact of the benchmark on markets

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the nature of the impact of the benchmark on markets shall include at least the following:

...

- (b) in cases where the benchmark qualifies as a significant benchmark by virtue of point (b) of Article 24(1) of Regulation (EU) 2016/1011, and where the information is known to the ~~competent authority~~ FCA, any relevant quantitative relation of financial instruments, financial contracts, or investment funds referencing the benchmark to the total value of the respective instruments in a ~~Member State~~ the United Kingdom;

Article 6

Nature, scale and complexity of the provision of the benchmark

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the nature, scale and complexity of the provision of the benchmark shall include at least the following:

...

Article 7

Importance of the benchmark to financial stability

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the importance of the benchmark to financial stability shall include at least an assessment of the relationship between the total value of the financial instruments, financial contracts and investment funds referencing the benchmark and the value of the total assets of the financial sector and of the banking sector in ~~a Member State~~ the United Kingdom, where that information is known to the ~~competent authority~~ FCA.

Article 8

Value of financial instruments, financial contracts and investment funds that reference the benchmark

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the value of financial instruments, financial contracts or investment funds that reference the benchmark shall include at least the following:

- (a) the total value of all financial instruments, financial contracts and investment funds referencing the benchmark on the basis of all the ranges of maturities or tenors of the benchmark, where known to the ~~competent authority~~ FCA;

...

- (c) in cases where the benchmark is a significant benchmark by virtue of point (a) of Article 24(1) of Regulation (EU) 2016/1011, and where known to the ~~competent authority~~ FCA, how close the total value of financial instruments, financial contracts and investment funds that reference the benchmark is to the thresholds referred to in Article 20(1)(a) and (c)(i) of that Regulation.

...

Article 9

The administrator's size, organisational form or structure

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the administrator's size, organisational form or structure shall include at least the following:

...

Article 10
Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

Annex H

COMMISSION DELEGATED REGULATION (EU) 2018/1643 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark

~~(Text with EEA relevance)~~

...

Article 7

Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

Annex I

COMMISSION DELEGATED REGULATION (EU) 2018 / 1644 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent

~~(Text with EEA relevance)~~

...

Article 1

Scope of the cooperation arrangements

1. The cooperation arrangements referred to in Article 30(4) of Regulation (EU) 2016/1011 ("cooperation arrangements") shall clearly set out their scope of application. That scope shall include cooperation by the parties on at least the following matters:

...

- (b) any issues that may be relevant to the operations, activities or services of administrators covered by the cooperation arrangements in question, including the provision to ~~ESMA~~ the FCA of information on the laws and regulations to which those administrators are subject in the third country and any material changes to those laws or regulations;
- (c) any regulatory or supervisory actions taken, or approvals given, by the competent authority of the third country in relation to any administrator which has given its consent to the use of benchmarks in the ~~Union~~ United Kingdom, including changes to the obligations or requirements to which the administrator is subject that may have an impact on the administrator's continued compliance with applicable laws and regulations

...

...

Article 4

Confidentiality, use of information and data protection

1. Cooperation arrangements shall require the parties to refrain from disclosing information exchanged or provided to them under the cooperation arrangements, except where the party which had provided the information has given its prior written consent or where the disclosure of data is a necessary and proportionate obligation required under ~~Union or national law~~ the laws of the United Kingdom or any part thereof, or any other law applicable in the jurisdictions in which the competent authorities which are party to the relevant cooperation arrangement are located, in particular in the context of investigations or subsequent judicial proceedings.

...

Article 5

Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

Annex J

COMMISSION DELEGATED REGULATION (EU) 2018/1645 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with ~~the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA)~~ the FCA

~~(Text with EEA relevance)~~

...

Article 2

Format of the application

1. The application for recognition shall be submitted in ~~the official language or one of the official languages of the Member State of reference~~ English, unless otherwise indicated in the Annex. The documents referred to in point 8 of the Annex shall be submitted in a ~~language customary in the sphere of international finance or in the official language or one of the official languages of the Member State of reference~~ English.
2. The application for recognition shall be submitted by electronic means or, if accepted by the ~~relevant competent authority~~ FCA, in paper form. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission. The applicant shall ensure that each submitted document clearly identifies to which specific requirement of this Regulation it refers.

...

Article 4

Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX

**Information to be provided in the application for recognition under Article 32 of
Regulation (EU) 2016/1011**

**SECTION A – INFORMATION ON THE PROVIDING PERSON AND ITS LEGAL
REPRESENTATIVE IN THE ~~UNION~~ UNITED KINGDOM**

1. GENERAL INFORMATION

...

- (e) Where the applicant is supervised in the non-~~EU~~ UK country where it is located, information about its current authorisation status, including the activities for which it is authorised, the name and address of the competent authority of the non-~~EU~~ UK country and the link to the register of such competent authority, where available; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided.
- (f) A description of the operations of the applicant in the ~~EU~~ United Kingdom and in non-~~EU~~ UK countries, whether or not subject to any ~~EU~~ UK or extra-~~EU~~ UK financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.

...

...

1. LEGAL REPRESENTATIVE IN THE ~~MEMBER STATE OF REFERENCE~~
UNITED KINGDOM

- (a) ~~Documented evidence supporting the choice of the Member State of reference, by application of the criteria laid down in Article 32(4) of Regulation (EU) 2016/1011.~~
- (b) With respect to the legal representative established in the ~~Member State of reference~~ United Kingdom as set out in Article 32(3) of Regulation (EU) 2016/1011, its:

...

- (viii) details of the performance of the oversight function by the legal representative relating to the provision of benchmarks that may be used in the ~~Union~~ United Kingdom;

...

...

4. CONFLICTS OF INTEREST

(a) Policies and procedures that address:

...

(ii) particular circumstances which apply to the applicant or to any particular benchmark provided by the applicant and which may be used in the ~~Union~~ United Kingdom, in relation to which conflicts of interest are most likely to arise, including where expert judgment or discretion is exercised in the benchmark's determination process, where the applicant is within the same group as a user of a benchmark and where the provider is a participant in the market or economic reality that the benchmark intends to measure.

...

...

7. COMPLIANCE WITH IOSCO PRINCIPLES

...

(b) Where available, in cases where the applicant is subject to supervision, a certification provided by the competent authority of the non-~~EU~~ UK country where the applicant is located, attesting compliance with the IOSCO principles referred to in letter (a).

8. OTHER INFORMATION

...

(b) The applicant shall provide this information in a manner and form stipulated by the ~~competent authority~~ FCA.

...

...

SECTION B – INFORMATION ON THE BENCHMARKS

9. **DESCRIPTION OF THE ACTUAL OR PROSPECTIVE BENCHMARKS OR FAMILIES OF BENCHMARKS THAT MAY BE USED IN THE ~~UNION~~ UNITED KINGDOM**

- (a) A list including all the benchmarks provided by the applicant that are already used in the ~~Union~~ United Kingdom and, where available, their International Securities Identification Numbers (ISINs).
- (b) A description of the benchmark or family of benchmarks provided and that are already used in the ~~Union~~ United Kingdom, including a description of the underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.
- (c) A list including all the benchmarks that are intended to be marketed for their use in the ~~Union~~ United Kingdom and, where available, their ISINs.
- (d) A description of the benchmark or family of benchmarks that are intended to be marketed for its use in the ~~Union~~ United Kingdom, including a description of the underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.

...

- (h) Any documented evidence that a benchmark or family of benchmarks described under point (b) has a degree of use within the ~~Union territory~~ United Kingdom which qualifies this benchmark or all the benchmarks included in that family of benchmarks either as significant benchmarks, as defined by point (26) Article 3(1) of Regulation (EU) 2016/1011, or as non-significant benchmarks, as defined by point (27) of Article 3(1) of Regulation (EU) 2016/1011. The information to be provided shall be determined, to the extent possible, on the basis of the provisions in Commission Delegated Regulation (EU) 2018/662 for the assessment of the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds that make reference to the non-~~EU~~ UK-country benchmarks, within the ~~Union~~ United Kingdom, including in the event of an indirect reference to any such benchmark within a combination of benchmarks.

...

...

Annex K

COMMISSION DELEGATED REGULATION (EU) 2018/1646 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration

~~(Text with EEA relevance)~~

...

Article 1

General requirements

...

4. The applicant shall not be required to provide the information listed under points (f) to (j) of paragraph 1 of Annex I or Annex II, as applicable, to the extent that the applicant is already supervised in the ~~Member State~~ United Kingdom by the ~~same competent authority~~ FCA for other activities than the provision of benchmarks.

...

Article 4

Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX I

Information to be provided in the application for recognition under Article 34 of Regulation (EU) 2016/1011

1. GENERAL INFORMATION

...

(b) Address of the office within the ~~European Union~~ United Kingdom.

...

(f) Where the applicant is a supervised entity, information about its current authorisation status, including the activities for which it is authorised ~~and its relevant competent authority in its home Member State~~ by the FCA.

(g) A description of the operations of the applicant in the ~~European Union~~ United Kingdom, whether or not subject to financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.

...

...

8. OTHER INFORMATION

...

(b) The applicant shall provide the requisite information in the manner and form stipulated by the ~~competent authority~~ FCA.

...

...