

Regulation (EU) 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 performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (Text with EEA relevance)

REGULATION (EU) 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 performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure<sup>(3)</sup>,

Whereas:

- (1) The pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. Serious cases of manipulation of interest rate benchmarks such as LIBOR and EURIBOR, as well as allegations that energy, oil and foreign exchange benchmarks have been manipulated, demonstrate that benchmarks can be subject to conflicts of interest. The use of discretion, and weak governance regimes, increase the vulnerability of benchmarks to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks can undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and of the benchmark determination process.
- (2) Directive 2014/65/EU of the European Parliament and of the Council<sup>(4)</sup> contains certain requirements with respect to the reliability of benchmarks used to price a listed financial instrument. Directive 2003/71/EC of the European Parliament and of the Council<sup>(5)</sup> contains certain requirements on benchmarks used by issuers. Directive 2009/65/EC of the European Parliament and of the Council<sup>(6)</sup> contains certain requirements on the

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use of benchmarks by undertakings for collective investment in transferable securities (UCITS). Regulation (EU) No 1227/2011 of the European Parliament and of the Council<sup>(7)</sup> contains certain provisions which prohibit the manipulation of benchmarks that are used for wholesale energy products. However, those legislative acts only cover certain aspects of certain benchmarks and they neither address all the vulnerabilities in the provision of all benchmarks, nor do they cover all uses of financial benchmarks in the financial industry.

- (3) Benchmarks are vital in pricing cross-border transactions, thereby facilitating the effective functioning of the internal market in a wide variety of financial instruments and services. Many benchmarks used as reference rates in financial contracts, in particular mortgages, are provided in one Member State but used by credit institutions and consumers in other Member States. In addition, such credit institutions often hedge their risks or obtain funding for granting those financial contracts in the cross-border interbank market. Only a few Member States have adopted national rules on benchmarks, but their respective legal frameworks on benchmarks already show divergences regarding aspects such as the scope of application. In addition, the International Organisation of Securities Commissions (IOSCO) agreed principles on financial benchmarks on 17 July 2013 ('IOSCO principles for financial benchmarks'), Principles for Oil Price Reporting Agencies on 5 October 2012 ('IOSCO principles for PRAs') (together, 'the IOSCO principles'), and since those principles provide a certain flexibility as to their exact scope and means of implementation, Member States are likely to adopt rules at national level which would implement such principles in a divergent manner.
- (4) Those divergent approaches would result in fragmentation of the internal market since administrators and users of benchmarks would be subject to different rules in different Member States. Thus, benchmarks provided in one Member State could be prevented from being used in other Member States. In the absence of a harmonised framework to ensure the accuracy and integrity of benchmarks used in financial instruments and financial contracts, or in order to measure the performance of investment funds, in the Union it is therefore likely that differences in Member States' laws will create obstacles to the smooth functioning of the internal market for the provision of benchmarks.
- (5) Union consumer protection rules do not cover the particular issue of adequate information on benchmarks in financial contracts. As a result of consumer complaints and litigation relating to the use of benchmarks in several Member States, it is likely that divergent measures, inspired by legitimate concerns of consumer protection, would be adopted at national level, which could result in fragmentation of the internal market due to the divergent conditions of competition attached to different levels of consumer protection.
- (6) Therefore, in order to ensure the proper functioning of the internal market and improve the conditions of its functioning, in particular with regard to financial markets, and to ensure a high level of consumer and investor protection, it is appropriate to lay down a regulatory framework for benchmarks at Union level.

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- (7) It is appropriate and necessary for that framework to take the form of a regulation in order to ensure that provisions directly imposing obligations on persons involved in the provision, contribution and use of benchmarks are applied in a uniform manner throughout the Union. Since a legal framework for the provision of benchmarks necessarily involves measures specifying precise requirements concerning aspects inherent to such provision of benchmarks, even small divergences on the approach taken regarding one of those aspects could lead to significant impediments in the cross-border provision of benchmarks. Therefore, the use of a regulation, which is directly applicable, should reduce the possibility of divergent measures being taken at national level, and should ensure a consistent approach and greater legal certainty, and prevent the appearance of significant impediments in the cross-border provision of benchmarks.
- (8) The scope of this Regulation should be as broad as necessary to create a preventive regulatory framework. The provision of benchmarks involves discretion in their determination and is inherently subject to certain types of conflicts of interest, which implies the existence of opportunities and incentives to manipulate benchmarks. Such risk factors are common to all benchmarks and should be made subject to adequate governance and control requirements. The degree of risk, however, varies, and the approach adopted should therefore be tailored to the particular circumstances. Since the vulnerability and importance of a benchmark varies over time, restricting the scope by reference to indices that are currently important or vulnerable would not address the risks that any benchmark poses in the future. In particular, benchmarks that are currently not widely used could be used more in the future with the result that, in their regard, even a minor manipulation could have a significant impact.
- (9) The critical determinant of the scope of this Regulation should be whether the output value of the benchmark determines the value of a financial instrument or a financial contract, or measures the performance of an investment fund. Therefore, the scope should not be dependent on the nature of the input data. Benchmarks calculated from economic input data, such as share prices and non-economic numbers, or values such as weather parameters should thus be included. The framework provided for in this Regulation should also acknowledge the existence of a large number of benchmarks and the different impact that they have on financial stability and the real economy. This Regulation should also provide for a proportionate response to the risks that different benchmarks pose. This Regulation should therefore cover benchmarks which are used to price financial instruments listed or traded on regulated venues.
- (10) A large number of consumers are parties to financial contracts, in particular consumer credit agreements secured by mortgages, that reference benchmarks that are subject to the same risks. This Regulation should therefore cover credit agreements as defined in Directives 2008/48/EC<sup>(8)</sup> and 2014/17/EU of the European Parliament and of the Council<sup>(9)</sup>.
- (11) Many investment indices involve significant conflicts of interest and are used to measure the performance of a fund such as a UCITS fund. Some of those benchmarks are published and others are made available, for free or upon payment of a fee, to the public or a section of the public and their manipulation can adversely affect investors.

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This Regulation should therefore cover indices or reference rates that are used to measure the performance of an investment fund.

- (12) All contributors of input data to benchmarks can exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation. Contributing to a benchmark is a voluntary activity. If any initiative requires contributors to significantly change their business models, they could cease to contribute. However, for entities already subject to regulation and supervision, requiring good governance and control systems is not expected to lead to substantial costs or disproportionate administrative burden. Therefore this Regulation imposes certain obligations on supervised contributors. When a benchmark is determined on the basis of readily available data, the source of such data should not be considered to be a contributor.
- (13) Financial benchmarks are not only used in the issuance and manufacturing of financial instruments and contracts. The financial industry also relies on benchmarks for measuring the performance of investment funds for the purpose of return tracking or of determining the asset allocation of a portfolio or of computing the performance fees. A given benchmark can be used either directly as a reference for financial instruments and financial contracts or to measure the performance of investment funds, or indirectly within a combination of benchmarks. In the latter case, the setting and review of the weights to be assigned to various indices within a combination for the purpose of determining the pay-out or the value of a financial instrument or a financial contract or measuring the performance of an investment fund also amounts to use as such an activity does not involve discretion, in contrast to the activity of provision of benchmarks. The holding of financial instruments referencing a certain benchmark is not considered to be use of the benchmark.
- (14) Central banks already meet principles, standards and procedures which ensure that they exercise their activities with integrity and in an independent manner. It is therefore not necessary that central banks be subject to this Regulation. When central banks provide benchmarks, especially where those benchmarks are intended for transaction purposes, it is their responsibility to set appropriate internal procedures in order to ensure the accuracy, integrity, reliability and independence of those benchmarks, in particular with respect to transparency in governance and computation methodology.
- (15) Furthermore, public authorities, including national statistics agencies, should not be subject to this Regulation where they contribute data to, provide or have control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation.
- (16) An administrator is the natural or legal person that has control over the provision of a benchmark and in particular administers the arrangements for determining the benchmark, collects and analyses the input data, determines the benchmark and publishes it. An administrator should be able to outsource to a third party one or more of those functions, including the calculation or publication of the benchmark, or other relevant services and activities in the provision of the benchmark. However, where a person merely publishes or refers to a benchmark as part of that person's journalistic

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- activities but does not have control over the provision of that benchmark, that person should not be subject to the requirements imposed on administrators by this Regulation.
- (17) An index is calculated using a formula or some other methodology on the basis of underlying values. There exists a degree of discretion in constructing the formula, performing the necessary calculation and determining the input data which creates a risk of manipulation. Therefore, all benchmarks sharing that characteristic of discretion should be covered by this Regulation.
- (18) However, where a single price or value is used as a reference to a financial instrument, for example where the price of a single security is the reference price for an option or future, there is no calculation, input data or discretion. Therefore single price or single value reference prices should not be considered to be benchmarks for the purposes of this Regulation.
- (19) Reference prices or settlement prices produced by central counterparties (CCPs) should not be considered to be benchmarks because they are used to determine settlement, margins and risk management and thus do not determine the amount payable under a financial instrument or the value of a financial instrument.
- (20) The provision of borrowing rates by creditors should not be considered to be benchmark provision for the purposes of this Regulation. A borrowing rate provided by a creditor is either set by an internal decision or calculated as a spread or mark-up over an index (e.g. EURIBOR). In the first case, the creditor is exempt from this Regulation for activity concerning financial contracts entered into by that creditor with its own clients, while in the latter case the creditor is considered to be only a user of a benchmark.
- (21) In order to ensure the integrity of benchmarks, benchmark administrators should be required to implement adequate governance arrangements to control conflicts of interest and to safeguard confidence in the integrity of benchmarks. Even where effectively managed, most administrators are subject to some conflicts of interest and could have to make judgements and decisions which affect a diverse group of stakeholders. It is therefore important that administrators have in place a function that operates with integrity to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight.
- (22) The manipulation or unreliability of benchmarks can cause damage to investors and consumers. Therefore, this Regulation should set out a framework for retention of records by administrators and contributors as well as for providing transparency about a benchmark's purpose and methodology which facilitates a more efficient and fairer resolution of potential claims in accordance with national or Union law.
- (23) Auditing and the effective enforcement of this Regulation requires *ex post* analysis and evidence. This Regulation should therefore set out requirements for adequate record-keeping by benchmark administrators relating to the calculation of the benchmark for a sufficient period of time. The reality that a benchmark intends to measure and the environment in which it is measured are likely to change over time. Therefore it is necessary that the process and methodology of the provision of benchmarks are reviewed on a periodic basis to identify shortcomings and possible improvements.

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Many stakeholders can be impacted by failures in the provision of the benchmark and can help identify such shortcomings. This Regulation should therefore set out a framework for the establishment of a complaints handling mechanism by benchmark administrators to enable stakeholders to notify the benchmark administrator of complaints and ensure that the benchmark administrator objectively evaluates the merits of any complaint.

- (24) The provision of benchmarks frequently involves the outsourcing of important functions such as calculating the benchmark, gathering input data and disseminating the benchmark. In order to ensure the effectiveness of the governance arrangements, it is necessary to ensure that any such outsourcing does not relieve benchmark administrators of any of their obligations and responsibilities, and is done in such a way that it does not interfere with either the administrators' ability to meet their obligations or responsibilities, or the relevant competent authority's ability to supervise them.
- (25) The benchmark administrator is the central recipient of input data and is able to evaluate the integrity and accuracy of input data on a consistent basis. It is therefore necessary that this Regulation requires administrators to take certain measures where an administrator considers that input data does not represent the market or economic reality that a benchmark intends to measure, comprising measures to change the input data, the contributors or the methodology or else to cease providing that benchmark. Furthermore, an administrator should, as part of its control framework, establish measures to monitor, where feasible, input data prior to the publication of the benchmark and to validate input data after publication, including comparing that data against historical patterns where applicable.
- (26) Any discretion that can be exercised in providing input data creates an opportunity to manipulate a benchmark. Where the input data is transaction-based data, there is less discretion and therefore the opportunity to manipulate the data is reduced. As a general rule, benchmark administrators should therefore use actual transaction-based input data where possible but other data can be used in those cases where the transaction data is insufficient or inappropriate to ensure the integrity and accuracy of the benchmark.
- (27) The accuracy and reliability of a benchmark in measuring the economic reality it is intended to measure depends on the methodology and input data used. It is therefore necessary to adopt a transparent methodology that ensures the benchmark's reliability and accuracy. Such transparency does not mean the publication of the formula applied for the determination of a given benchmark, but rather the disclosure of elements sufficient to allow stakeholders to understand how the benchmark is derived and to assess its representativeness, relevance and appropriateness for its intended use.
- (28) It could become necessary to change the methodology to ensure the continued accuracy of the benchmark, but any changes in the methodology have an impact on users and stakeholders of the benchmark. It is therefore necessary to specify the procedures to be followed when changing the benchmark methodology, including the need for consultation, so that users and stakeholders can take the necessary action in light of those changes or notify the administrator if they have concerns about those changes.

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- (29) Employees of the administrator can identify possible infringements of this Regulation or potential vulnerabilities that could lead to manipulation or attempted manipulation. This Regulation should therefore put in place a framework to enable employees to alert administrators confidentially of possible infringements of this Regulation.
- (30) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of contributors in respect of such input data are clearly specified, that compliance with those obligations can be relied upon, and that the obligations are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that the benchmark administrator produces a code of conduct to specify those requirements and the contributor's responsibilities concerning the provision of input data. The administrator should be satisfied that contributors adhere to the code of conduct. Where contributors are located in third countries, the administrator should be satisfied to the extent possible.
- (31) Contributors are potentially subject to conflicts of interest and are able to exercise discretion in the determination of input data. Therefore, it is necessary for contributors to be subject to governance arrangements in order to ensure that those conflicts are managed and that the input data is accurate, conforms to the administrator's requirements and can be validated.
- (32) Many benchmarks are determined by the application of a formula using input data that is provided by the following entities: a trading venue, an approved publication arrangement, a consolidated tape provider, an approved reporting mechanism, an energy exchange or an emission allowance auction platform. In some situations, data collection is outsourced to a service provider that receives the data entirely and directly from those entities. In those cases, existing regulation and supervision ensure the integrity and transparency of the input data and provide for governance requirements and procedures for the notification of infringements. Therefore, those benchmarks are less vulnerable to manipulation, are subject to independent verifications, and the relevant administrators are accordingly released from certain obligations set out in this Regulation.
- (33) Different types of benchmarks and different benchmark sectors have different characteristics, vulnerabilities and risks. The provisions of this Regulation should be further specified for particular benchmark sectors and types. Interest rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to introduce specific provisions in this Regulation for such benchmarks.
- (34) Physical commodities markets have unique characteristics which should be taken into account. Commodity benchmarks are widely used and can have sector-specific characteristics, so it is necessary to introduce specific provisions in this Regulation for such benchmarks. Certain commodity benchmarks are exempt from this Regulation but would need to nevertheless respect the relevant IOSCO principles. Commodity benchmarks can become critical since the regime is not limited to benchmarks based on submissions by contributors which are in majority supervised entities. For critical commodity benchmarks subject to Annex II, the requirements of this Regulation regarding mandatory contribution and colleges are not applicable.

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- (35) The failure of critical benchmarks can impact market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in Member States. Those potentially destabilising effects of the failure of a critical benchmark could be felt in a single Member State or in more than one. It is therefore necessary that this Regulation provides for a process to determine those benchmarks that should be considered to be critical benchmarks and that additional requirements apply to ensure the integrity and robustness of such benchmarks.
- (36) Critical benchmarks can be determined using a quantitative criterion or a combination of quantitative and qualitative criteria. In addition, in cases where a benchmark does not meet the appropriate quantitative threshold, it could nonetheless be recognised as critical where the benchmark has no or very few market-led substitutes and its existence and accuracy are relevant for market integrity, financial stability or consumer protection in one or more Member States, and where all the relevant competent authorities agree that such a benchmark should be recognised as critical. In the event of disagreement between the relevant competent authorities, the decision of the competent authority of the administrator on whether such a benchmark should be recognised as critical should prevail. In such a case, the European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(10)</sup>, should be able to publish an opinion on the assessment made by the competent authority of the administrator. Furthermore, a competent authority can also designate a benchmark as critical based on certain qualitative criteria where the administrator and the majority of the contributors to the benchmark are located in its Member State. All critical benchmarks should be included in a list established by a way of an implementing act by the Commission, which should be reviewed and updated regularly.
- (37) The cessation of the administration of a critical benchmark by an administrator could render financial contracts or financial instruments invalid, cause losses to consumers and investors, and impact financial stability. It is therefore necessary to include a power for the relevant competent authority to require mandatory administration of a critical benchmark in order to preserve the existence of the benchmark in question. In the event of insolvency proceedings of a benchmark administrator, the competent authority should provide an assessment for the consideration of the relevant judicial authority of whether and how the critical benchmark could be transitioned to a new administrator or could cease to be provided.
- (38) Without prejudice to the application of Union competition law and the ability of Member States to take measures to facilitate compliance with it, it is necessary to require administrators of critical benchmarks, including critical commodity benchmarks, to take adequate steps to ensure that licences of, and information on, benchmarks are provided on a fair, reasonable, transparent and non-discriminatory basis to all users.
- (39) Contributors that cease to contribute input data to critical benchmarks can undermine the credibility of such benchmarks, as the capability of such benchmarks to measure the underlying market or economic reality would as a result be impaired. It is therefore necessary to include a power for the relevant competent authority to require mandatory



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contributions from supervised entities to critical benchmarks in order to preserve the credibility of the benchmark in question. Mandatory contribution of input data is not intended to impose an obligation on supervised entities to enter into, or to commit to entering into, transactions.

- (40) Due to the existence of a large variety of types and sizes of benchmarks, it is important to introduce proportionality in this Regulation and to avoid putting an excessive administrative burden on administrators of benchmarks the cessation of which poses less threat to the wider financial system. Thus, in addition to the regime for critical benchmarks, two distinct regimes should be introduced: one for significant benchmarks and one for non-significant benchmarks.
- (41) Administrators of significant benchmarks should be able to choose not to apply a limited number of detailed requirements of this Regulation. Competent authorities should, however, maintain the right to require the application of those requirements, based on criteria outlined in this Regulation. Delegated acts and implementing acts that apply to significant benchmark administrators should take due account of the principle of proportionality and aim to avoid administrative burden where possible.
- (42) Administrators of non-significant benchmarks are subject to a less detailed regime, whereby administrators should be able to choose not to apply some requirements of this Regulation. In such a case, the administrator in question should explain why it is appropriate not to do so in a compliance statement which should be published and provided to the administrator's competent authority. That competent authority should review the compliance statement and should be able to request additional information or require changes to ensure compliance with this Regulation. While non-significant benchmarks could still be vulnerable to manipulation, they are more easily substitutable, therefore transparency to users should be the main tool used for market participants to make informed choices about the benchmarks they consider appropriate for use. For that reason, the delegated acts in Title II should not apply to non-significant benchmark administrators.
- (43) In order for users of benchmarks to choose appropriately from among, and understand the risks of, benchmarks, they need to know what a given benchmark intends to measure and its susceptibility to manipulation. Therefore, the benchmark administrator should publish a benchmark statement specifying those elements. In order to ensure uniform application and that benchmark statements are of reasonable length but at the same time focus on providing the key information needed to users in an easily accessible manner, ESMA should provide further specification of the content of the benchmark statement, differentiating appropriately among the different types and specificities of benchmarks and their administrators.
- (44) This Regulation should take into account the IOSCO principles, which serve as global standards for regulatory requirements for benchmarks. As an overarching principle, in order to ensure investor protection, supervision and regulation in a third country should be equivalent to Union supervision and regulation of benchmarks. Therefore, benchmarks provided from that third country can be used by supervised entities in the Union where a positive decision on equivalence of the third- country regime has been

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taken by the Commission. In such circumstances, competent authorities should enter into cooperation arrangements with supervisory authorities in third countries. ESMA should coordinate the development of such cooperation arrangements and the exchange between competent authorities of information received from third countries. However, in order to avoid any adverse impact resulting from a possible abrupt cessation of the use in the Union of benchmarks provided from a third country, this Regulation also provides for certain other mechanisms (namely, recognition and endorsement) under which third-country benchmarks can be used by supervised entities located in the Union.

- (45) This Regulation introduces a process for the recognition of administrators located in a third country by the competent authority of the Member State of reference. Recognition should be granted to administrators complying with the requirements of this Regulation. Acknowledging the role of the IOSCO principles as a global standard for the provision of benchmarks, the competent authority of the Member State of reference should be able to grant recognition to administrators on the basis of them applying the IOSCO principles. To do so, the competent authority should assess the application of the IOSCO principles by a specific administrator and determine whether such application is equivalent, for the administrator in question, to compliance with the various requirements established in this Regulation, taking into account the specificities of the regime of recognition as compared to the equivalence regime.
- (46) This Regulation also introduces an endorsement regime allowing, under certain conditions, administrators or supervised entities located in the Union to endorse benchmarks provided from a third country in order for such benchmarks to be used in the Union. To do so, the competent authority should take into account whether, in providing the benchmark to be endorsed, compliance with the IOSCO principles would be equivalent to compliance with this Regulation, taking into account the specificities of the regime of endorsement as compared to the equivalence regime. An administrator or a supervised entity that has endorsed a benchmark provided from a third country should be fully responsible for such endorsed benchmarks and for the fulfilment of the relevant conditions referred to in this Regulation.
- (47) All benchmark administrators are able to exercise discretion, are potentially subject to conflicts of interest, and risk having inadequate governance and control systems in place. As administrators control the benchmark determination process, requiring authorisation or registration and supervision of administrators is the most effective way of ensuring the integrity of benchmarks.
- (48) Certain administrators should be authorised and supervised by the competent authority of the Member State where the administrator in question is located. Entities already subject to supervision and that provide financial benchmarks other than critical benchmarks should be registered and supervised by the competent authority for the purposes of this Regulation. Entities that provide only indices that qualify as non-significant benchmarks should also be registered by the relevant competent authority. Authorisation and registration should be distinct processes with authorisation requiring a more extensive assessment of the administrator's application. Whether an administrator is authorised or registered should not affect the supervision of that

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administrator by the relevant competent authorities. Additionally, a transitional regime should be introduced, according to which persons providing benchmarks which are not critical and are not widely used in one or more Member States could be registered, with a view to facilitating the initial phase of application of this Regulation. ESMA should maintain at the Union level a register that contains information on authorised or registered administrators, on benchmarks and the administrators that provide those benchmarks by virtue of a positive decision under either the equivalence regime or the recognition regime, on Union administrators or supervised entities that have endorsed benchmarks from a third country, and on any such endorsed benchmarks and their administrators located in a third country.

- (49) In some circumstances a person provides an index but could be unaware that the index in question is being used as a reference for a financial instrument, a financial contract or an investment fund. That is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary to increase the level of transparency concerning which specific benchmark is being used. Such transparency can be achieved by improving the content of the prospectuses or key information documents required by Union law and the content of the notifications required by Regulation (EU) No 596/2014 of the European Parliament and of the Council<sup>(11)</sup>.
- (50) A set of effective tools and powers and resources for the competent authorities of Member States guarantees supervisory effectiveness. This Regulation should therefore, in particular, provide for a minimum set of supervisory and investigative powers which should be entrusted to competent authorities of Member States in accordance with national law. When exercising their powers under this Regulation, competent authorities and ESMA should act objectively and impartially and remain autonomous in their decision-making.
- (51) For the purpose of detecting infringements of this Regulation, it is necessary for competent authorities to be able to access, in accordance with national law, the premises of legal persons in order to seize documents. Access to such premises is necessary when there is reasonable suspicion that documents and other data related to the subject-matter of an inspection or investigation exist and could be relevant to prove an infringement of this Regulation. Additionally, access to such premises is necessary where the person to whom a demand for information has already been made fails to comply with it, or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, access to premises should take place after having obtained that prior judicial authorisation.
- (52) Existing recordings of telephone conversations and data traffic records from supervised entities can constitute crucial, and sometimes the only, evidence to detect and prove the existence of infringements of this Regulation, in particular the compliance with governance and control requirements. Such records and recordings can help to verify

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the identity of the person responsible for the submission of input data, those responsible for its approval and whether organisational separation of employees is maintained. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by supervised entities, in those cases where a reasonable suspicion exists that such recordings or records related to the subject-matter of the inspection or investigation could be relevant to prove an infringement of this Regulation.

- (53) This Regulation respects the fundamental rights and observes the principles recognised in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles.
- (54) The rights of defence of the persons concerned should be fully respected. In particular, persons subject to proceedings should be provided with access to the findings upon which the competent authorities has based the decision and should be given the right to be heard.
- (55) Transparency regarding benchmarks is necessary for reasons of financial market stability and investor protection. Any exchange or transmission of information by competent authorities should take place in accordance with the rules on the transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council<sup>(12)</sup>. Any exchange or transmission of information by ESMA should take place in accordance with the rules on the transfer of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>(13)</sup>.
- (56) Taking into consideration the principles set out in the Commission's Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector, and legal acts of the Union adopted as a follow-up to that Communication, Member States should, in order to ensure a common approach and deterrent effect, lay down rules on administrative sanctions and other administrative measures, including pecuniary sanctions, applicable to infringements of the provisions of this Regulation and should ensure that they are implemented. Those administrative sanctions and other administrative measures should be effective, proportionate and dissuasive.
- (57) Administrative sanctions and other administrative measures applied in specific cases should be determined taking into account, where appropriate, factors such as the repayment of any identified financial benefit, the gravity and duration of the infringement, any aggravating or mitigating factors, the need for administrative pecuniary sanctions to have a deterrent effect and, where appropriate, include a reduction in return for cooperation with the competent authority. In particular, the actual amount of administrative pecuniary sanctions to be imposed in a specific case should be able to reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious infringements, while

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administrative pecuniary sanctions significantly lower than the maximum level should be able to be applied to minor infringements or in case of settlement. The possibility of imposing a temporary ban on the exercise of management functions within benchmark administrators or contributors should be available to the competent authority.

- (58) This Regulation should not limit the ability of Member States to provide for higher levels of administrative sanctions and should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.
- (59) Even though nothing prevents Member States from laying down rules for administrative and criminal sanctions for the same infringement, Member States should not be required to lay down rules for administrative sanctions for the infringements of this Regulation which are subject to national criminal law. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal sanctions instead of administrative sanctions for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.
- (60) It is necessary to reinforce provisions on exchange of information between competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their function, so as to ensure the effective enforcement of this Regulation, including in situations where an infringement or suspected infringement is of concern to authorities in two or more Member States. When exchanging information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.
- (61) In order to ensure that decisions made by competent authorities to impose an administrative sanction or other administrative measure have a deterrent effect on the public at large, they should be published. The publication of decisions imposing an administrative sanction or other administrative measure is also an important tool for competent authorities to inform market participants of the type of behaviour that is considered to infringe this Regulation and to promote wider good behaviour amongst market participants. If such publication risks causing disproportionate damage to the persons involved, or jeopardises the stability of financial markets or an on-going investigation, the competent authority should either publish the administrative sanction or other administrative measure on an anonymous basis or delay the publication. In addition, competent authorities should have the option not to publish a decision imposing administrative sanctions or other administrative measures at all where anonymous or delayed publication is considered insufficient to ensure that the stability of financial markets is not jeopardised. Competent authorities are also not required to

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publish administrative sanctions or other administrative measures which are deemed to be of a minor nature where publication would be disproportionate.

- (62) Critical benchmarks can involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that can significantly undermine its integrity could have an impact in more than one Member State, meaning that the supervision of such a benchmark only by the competent authority of the Member State in which the administrator of the benchmark is located will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. In such a case, in order to ensure the effective exchange of supervisory information among competent authorities and coordination of their activities and supervisory measures, colleges, comprising competent authorities and ESMA, should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. The competent authority of the administrator should establish written arrangements regarding the exchange of information, the decision-making process, which could include rules on voting procedures, any cooperation for the purposes of mandatory contribution measures, and the cases where the competent authorities should consult each other. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices.
- (63) Benchmarks can reference financial instruments and financial contracts that have a long duration. In certain cases, such benchmarks risk no longer being permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. At the same time, prohibiting the continued provision of such a benchmark could result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.
- (64) In cases where this Regulation captures or potentially captures supervised entities and markets covered by Regulation (EU) No 1227/2011, the Agency for the Cooperation of Energy Regulators (ACER) would need to be consulted by ESMA in order to draw upon ACER's expertise in energy markets and to mitigate any dual regulation.
- (65) In order to specify further technical elements of this Regulation, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of the specification of technical elements of definitions; in respect of the calculation of the nominal amounts of financial instruments, notional amount of derivatives and the net asset value of investment funds referencing a benchmark to determine whether such benchmark is critical; in respect of reviewing the calculation method used to determine the threshold for the determination of critical and significant benchmarks; in respect of establishing the objective reasons for the endorsement of a benchmark or family of benchmarks provided in a third country; in respect of establishing the elements to assess whether the cessation or the changing of an existing benchmark could reasonably result in a force majeure event, frustrate or otherwise

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breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references such benchmark; and in respect of the extension of the 24-month period envisaged for the registration instead of authorisation of certain administrators. When adopting those acts, the Commission should take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks, in particular the work of IOSCO. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making<sup>(14)</sup> of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (66) Technical standards should ensure consistent harmonisation of the requirements for the provision of and contribution to indices used as benchmarks and adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices for submission to the Commission. The Commission should adopt draft regulatory technical standards developed by ESMA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010, regarding the procedures and the characteristics of the oversight function; regarding how to ensure the appropriateness and the verifiability of the input data as well as the internal oversight and verification procedures of a contributor; regarding the information to be provided by an administrator about the benchmark and methodology; regarding the elements of the code of conduct; regarding the requirements concerning systems and controls; regarding the criteria that the competent authority should take into account when deciding whether to apply certain additional requirements; regarding the contents of the benchmark statement and the cases in which an update of such a statement is required; regarding the minimum content of the cooperation arrangements between the competent authorities and ESMA; regarding the form and content of the application for recognition of a third country administrator and presentation of the information that is to be provided with such an application; and regarding the information to be provided in the application for authorisation or registration.
- (67) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to establish and review a list of public authorities in the Union, to establish and review the list of critical benchmarks, and to determine the equivalence of the legal framework to which providers of benchmarks of third countries are subject for the purposes of full or partial equivalence. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>(15)</sup>.

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- (68) The Commission should also be empowered to adopt implementing technical standards developed by ESMA establishing templates for the compliance statements, procedures and forms for exchange of information between competent authorities and ESMA, by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.
- (69) Since the objectives of this Regulation, namely to lay down a consistent and effective regime to address the vulnerabilities that benchmarks pose, cannot be sufficiently achieved by the Member States, given that the overall impact of the problems relating to benchmarks can be fully perceived only in a Union context, but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (70) Given the urgency of the need to restore confidence in benchmarks and promote fair and transparent financial markets, this Regulation should enter into force on the day following that of its publication.
- (71) Consumers are able to enter into financial contracts, in particular mortgages and consumer credit contracts, that reference a benchmark, but unequal bargaining power and the use of standard terms mean that they can have a limited choice about the benchmark used. It is therefore necessary to ensure that at least adequate information is provided by creditors or credit intermediaries to consumers. To that end, Directives 2008/48/EC and 2014/17/EU should therefore be amended accordingly.
- (72) Regulation (EU) No 596/2014 requires persons discharging managerial responsibilities, as well as persons closely associated with them, to notify the issuer and the competent authority of every transaction conducted on their own account relating to financial instruments that are themselves linked to shares and debt instruments of their issuer. However, there are a variety of financial instruments that are linked to shares and debt instruments of a given issuer. Such financial instruments include units in collective investment undertakings, structured products or financial instruments embedding a derivative that provides exposure to the performance of shares or debt instruments issued by an issuer. Every transaction in such financial instruments above a *de minimis* threshold should be subject to notification to the issuer and the competent authority. An exception should be made where either the linked financial instrument provides an exposure of 20 % or less to the issuer's shares or debt instruments, or the person discharging managerial responsibilities or person closely associated with them did not and could not know the investment composition of the linked financial instrument. Regulation (EU) No 596/2014 should therefore be amended,

HAVE ADOPTED THIS REGULATION:



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## TITLE I

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### Article 1

##### Subject-matter

This Regulation introduces a <sup>F1</sup>... framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the [<sup>F2</sup>United Kingdom]. This Regulation thereby contributes to the proper functioning of the [<sup>F3</sup>UK financial markets] while achieving a high level of consumer and investor protection.

##### Textual Amendments

- F1** Word in Art. 1 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **3(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Art. 1 substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **3(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 1 substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **3(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Article 2

##### Scope

1 This Regulation applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the [<sup>F4</sup>United Kingdom].

2 This Regulation shall not apply to:

- a a central bank;
- b a public authority, where it contributes data to, provides, or has control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation;
- c a central counterparty (CCP) [<sup>F5</sup>as defined in Article 2(1) of Regulation (EU) No 648/2012 of 4 July 2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories as it forms part of retained EU law], where it provides reference prices or settlement prices used for CCP risk-management purposes and settlement;
- d the provision of a single reference price for any financial instrument [<sup>F6</sup>specified in Part 1 of Schedule 2 to the Regulated Activities Order];
- e the press, other media and journalists where they merely publish or refer to a benchmark as part of their journalistic activities with no control over the provision of that benchmark;

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- f a natural or legal person that grants or promises to grant credit in the course of that person's trade, business or profession, only 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;
- g a commodity benchmark based on submissions from contributors the majority of which are non-supervised entities and in respect of which both of the following conditions apply:
  - (i) the benchmark is referenced by financial instruments for which a request for admission to trading has been made on only one [<sup>F7</sup>UK trading venue] or which are traded on only one such trading venue;
  - (ii) the total notional value of financial instruments referencing the benchmark does not exceed EUR 100 million;
- h an index provider in respect of an index provided by said provider where that index provider is unaware and could not reasonably have been aware that that index is used for the purposes referred to in point (3) of Article 3(1).

[<sup>F8</sup>3 Paragraphs 1 and 2 do not limit the application of Articles 23FA to 23FC.]

#### Textual Amendments

- F4** Words in Art. 2(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **4(a)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 2(2)(c) inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **4(b)(i)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4); [S.I. 2020/646](#), regs. 1(2)(c), 9; [S.I. 2020/1385](#), regs. 1(4), 58(3); and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 2(2)(d) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **4(b)(ii)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 2(2)(g)(i) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **4(b)(iii)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Art. 2(3) inserted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021](#) (c. 33), **ss. 3(1), 4(3)**

### Article 3

#### Definitions

- 1 For the purposes of this Regulation, the following definitions apply:
- (1) 'index' means any figure:
    - (a) that is published or made available to the public;
    - (b) that is regularly determined:

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- (i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and
  - (ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys;
- (2) ‘index provider’ means a natural or legal person that has control over the provision of an index;
- (3) ‘benchmark’ means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees;
- (4) ‘family of benchmarks’ means a group of benchmarks provided by the same administrator and determined from input data of the same nature which provides specific measures of the same or similar market or economic reality;
- (5) ‘provision of a benchmark’ means:
  - (a) administering the arrangements for determining a benchmark;
  - (b) collecting, analysing or processing input data for the purpose of determining a benchmark; and
  - (c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose;
- (6) ‘administrator’ means
  - (a) [<sup>F9</sup>a natural or legal person that has control over the provision of a benchmark][<sup>F10</sup>, or
  - (b) in the case of an Article 23A benchmark, a natural or legal person that would have control over the provision of the benchmark but for Article 23D;]
- (7) ‘use of a benchmark’ means:
  - (a) issuance of a financial instrument which references an index or a combination of indices;
  - (b) determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices;
  - (c) being a party to a financial contract which references an index or a combination of indices;
  - (d) providing a borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party;
  - (e) measuring the performance of an investment fund through an index or a combination of indices for the purpose of tracking the return of such index

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- or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees;
- (8) ‘contribution of input data’ means providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose;
- (9) ‘contributor’ means a natural or legal person contributing input data;
- (10) ‘supervised contributor’ means a supervised entity that contributes input data to an administrator located in the [F11]United Kingdom];
- (10A) [F12: ‘supervised third country contributor’ means a supervised third country entity that contributes input data to an administrator located in the United Kingdom;]
- (11) ‘submitter’ means a natural person employed by the contributor for the purpose of contributing input data;
- (12) ‘assessor’ means an employee of an administrator of a commodity benchmark, or any other natural person whose services are placed at the administrator's disposal or under the control of the administrator, and who is responsible for applying a methodology or judgement to input data and other information to reach a conclusive assessment about the price of a certain commodity;
- (13) ‘expert judgement’ means the exercise of discretion by an administrator or a contributor with respect to the use of data in determining a benchmark, including extrapolating values from prior or related transactions, adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, and weighting firm bids or offers greater than a particular concluded transaction;
- (14) ‘input data’ means the data in respect of the value of one or more underlying assets, or prices, including estimated prices, quotes, committed quotes or other values, used by an administrator to determine a benchmark;
- (15) ‘transaction data’ means observable prices, rates, indices or values representing transactions between unaffiliated counterparties in an active market subject to competitive supply and demand forces;
- (16) ‘financial instrument’ means any of the instruments [F13]specified in Part 1 of Schedule 2 to the Regulated Activities Order] for which a request for admission to trading on a [F14]UK trading venue has been made, or which is traded on a UK trading venue or via a systematic internaliser as defined in Article 2(1)(12) of the Markets in Financial Instruments Regulation;]
- (17) ‘supervised entity’ means any of the following:
- (a) [F15]a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, which is a credit institution referred to in point (a)(i) of that definition;
- (b) a UK investment firm, which means an investment firm as defined in Article 2(1A) of the Markets in Financial Instruments Regulation which has its head office in the United Kingdom;]

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- (c) an insurance undertaking as defined in [F16]section 417(1) of FSMA];
- (d) a reinsurance undertaking as defined in [F17]section 417(1) of FSMA];
- (e) a [F18]UK UCITS as defined in section 237(3) of FSMA] or, where applicable, a [F19]management company as defined in section 237(2) of FSMA];
- (f) an alternative investment fund manager (AIFM) as defined in [F20]regulation 4 of the Alternative Investment Fund Managers Regulations 2013];
- (g) an institution for occupational retirement provision as defined in point (a) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council<sup>(16)</sup>;
- (ga) [F21]an occupational pension scheme as defined in section 1(1) of the Pension Schemes Act 1993;]
- (h) a creditor as defined in point (b) of Article 3 of Directive 2008/48/EC for the [F22]purposes of:
  - (i) a credit agreement which, immediately before IP completion day, satisfied the definition of a credit agreement in Article 3(17)(h) of the EU Benchmarks Regulation; or
  - (ii) a credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC read in accordance with the modifications made to that Directive by points (18A) and (18B);]
- (i) [F23]a non-credit institution, which means a mortgage creditor (as defined in s.423A of FSMA) that is not a credit institution (as defined in Article 4(1)(1) of Regulation (EU) No 575/2013), for the purposes of a mortgage agreement (as defined in section 423A of FSMA);]
- (j) a market operator as defined in [F24]Article 2(1)(10) of the Markets in Financial Instruments Regulation];
- (k) a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>(17)</sup>;
- (l) a trade repository as defined in point (2) of Article 2 of Regulation (EU) No 648/2012;
- (m) an administrator;
- (17A) [F25]'supervised third country entity' means an entity that would be a supervised entity by virtue of point (a) of the definition of that term (CRR firm that is a credit institution) but for the fact that it does not have its head office or registered office in the United Kingdom;]
- (18) [F26]'financial contract' means:
  - (a) a credit agreement which, immediately before IP completion day, satisfied the definition of a credit agreement in Article 3(17)(h) of the EU Benchmarks Regulation;
  - (aa) a credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC read in accordance with the modifications made to that Directive by points (18A) and (18B);

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- (b) a mortgage agreement as defined in section 423A of FSMA;]
- (18A) [F27 For the purposes of points (17)(h)(ii) and (18)(aa), Article 2 of Directive 2008/48/EC is to be read as if:
- (a) in paragraph 1—
- (i) for “Directive” there were substituted “ Article ”;
- (ii) after “credit agreements” there were inserted “ where the act of entering into the credit agreement or exercising the lender's rights and duties under the credit agreement is carried on in the United Kingdom ”.
- (b) in paragraph 2:
- (i) in the opening words, for “Directive” there were substituted “ Article ”;
- (ii) for points (a) and (b) there were substituted—
- (a) an agreement to which section 423A(2) of the Financial Services and Markets Act 2000 applies;”
- (iii) in point (h)—
- (aa) for the words from “investment firms” to “financial instruments” there were substituted “ a UK investment firm (as defined in Article 3(1)(17)(b) of Regulation (EU) 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 performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 ) ”;
- (bb) for “as defined in Article 4 of Directive 2006/48/EC” there were substituted “ (as defined in Article 4(1) (1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ) ”;
- (cc) for “listed in Section C of Annex 1 to Directive 2014/65/EU” there were substituted “ specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ”;
- (c) in paragraph 2a, for “Directive” there were substituted “ Article ”;
- (d) paragraphs 3 to 6 were omitted.
- (18B) For the purposes of points (17)(h)(ii) and (18)(aa), Article 3(a) of Directive 2008/48/EC is to be read as if for “transactions covered by this Directive” there were substituted “ respect of a credit agreement to which Article 2 applies ”].

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- (19) [F28] ‘investment fund’ means:
- (a) an AIF as defined in regulation 3 of the Alternative Investment Fund Managers Regulations 2013 ;
  - (b) a UK UCITS as defined in section 237(3) of FSMA;]
- (20) ‘management body’ means the body or bodies of an administrator or another supervised entity which are appointed in accordance with national law, which are empowered to set the strategy, objectives and overall direction of the administrator or other supervised entity, and which oversee and monitor management decision-making and include persons who effectively direct the business of the administrator or other supervised entity;
- (21) ‘consumer’ means a natural person who, in financial contracts covered by this Regulation, is acting for purposes which are outside his or her trade, business or profession;
- (22) ‘interest rate benchmark’ means a benchmark which for the purposes of point (1)(b)(ii) of this paragraph is determined on the basis of the rate at which banks may lend to, or borrow from, other banks, or agents other than banks, in the money market;
- (23) ‘commodity benchmark’ means a benchmark where the underlying asset for the purposes of point (1)(b)(ii) of this paragraph [F29] is:
- (a) a commodity, which means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;
  - (b) not an emission allowance referred to in paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order;]
- (23a) [F30] [F31UK] ‘Climate Transition Benchmark’ means a benchmark which is labelled as an [F31UK] Climate Transition Benchmark and fulfils the following requirements:
- (a) for the purposes of point 1(b)(ii) of this paragraph and of Article 19b, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a decarbonisation trajectory; and
  - (b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2);
- (23b) [F32UK] ‘Paris-aligned Benchmark’ means a benchmark which is labelled as an [F32UK] Paris-aligned Benchmark and fulfils the following requirements:
- (a) for the purposes of point 1(b)(ii) of this paragraph and of the delegated act referred to in Article 19c, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio’s carbon emissions are aligned with the objectives of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, approved by the Union on 5 October 2016<sup>(18)</sup> (the ‘Paris Agreement’);
  - (b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2); and
  - (c) the activities relating to its underlying assets do not significantly harm other environmental, social and governance (ESG) objectives;

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- (23c) ‘decarbonisation trajectory’ means a measurable, science-based and time-bound trajectory towards alignment with the objectives of the Paris Agreement by reducing Scope 1, 2 and 3 carbon emissions as referred to in point (1)(e) of Annex III;]
- (24) ‘regulated-data benchmark’ means a benchmark determined by the application of a formula from:
- (a) input data contributed entirely and directly from:
- (i) [<sup>F33</sup>a UK trading venue, but only with reference to transaction data concerning financial instruments;
- (ia) a trading venue (as defined in Article 2(1)(16) of the Markets in Financial Instruments Regulation) in a third country if:
- (aa) the Treasury have made regulations determining that the legal and supervisory framework of the third country is equivalent in accordance with paragraph 4 of Article 28 of the Markets in Financial Instruments Regulation, or
- (bb) a decision has been adopted by the European Commission before IP completion day determining that the legal and supervisory framework of the third country is equivalent in accordance with paragraph 4 of Article 28 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 as it had effect in the European Union immediately before IP completion day,
- but only with reference to transaction data concerning financial instruments;
- (ib) a regulated market (as defined in Article 2(1)(13) of the Markets in Financial Instruments Regulation) that is considered to be equivalent in accordance with:
- (aa) regulations made by the Treasury under Article 2a of Regulation (EU) No 648/2012, or
- (bb) an implementing act adopted by the European Commission before IP completion day under Article 2a of Regulation (EU) No 648/2012 as it had effect in the European Union immediately before IP completion day,
- but only with reference to transaction data concerning financial instruments;]
- (ii) an approved publication arrangement as defined in [<sup>F34</sup>Article 2(1)(34) of the Markets in Financial Instruments Regulation] or a consolidated tape provider as defined in [<sup>F35</sup>Article 2(1)(35) of the Markets in Financial Instruments Regulation], in accordance with mandatory post-trade transparency requirements, but only with reference to transaction data concerning financial instruments that are traded on a [<sup>F36</sup>UK] trading venue;
- (iii) an approved reporting mechanism as defined in [<sup>F37</sup>Article 2(1)(36) of the Markets in Financial Instruments Regulation], but only with



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- reference to transaction data concerning financial instruments that are traded on a [F38UK] trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements;
- (iv) an electricity exchange [F39operating in an electricity market in the United Kingdom;]
- (v) a natural gas exchange [F40operating in a gas market in the United Kingdom;]
- (vi) [F41an auction platform in relation to which a recognition order is in force under the Recognised Auction Platforms Regulations 2011;]
- (vii) a service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, provided that the service provider receives the data entirely and directly from an entity referred to in points (i) to [F42(v)];
- (b) net asset values of investment funds;
- (25) [F43critical benchmark' means a benchmark listed in:
- (a) Commission Implementing Regulation (EU) 2016/1368 of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council; or
- (b) regulations made by the Treasury under paragraph 5 or 6 of Article A20 or paragraph 5 of Article 20;]
- (25A) [F44Article 23A benchmark' has the meaning given in Article 23A(14);]
- (26) 'significant benchmark' means a benchmark that fulfils the conditions laid down in Article 24(1);
- (27) 'non-significant benchmark' means a benchmark that [F45is not a critical benchmark or a significant benchmark];
- (28) 'located' means, in relation to a legal person, the country where that person's registered office or other official address is situated and, in relation to a natural person, the country where that person is resident for tax purposes;
- (29) 'public authority' means:
- (a) any government or other public administration, including the entities charged with or intervening in the management of the public debt;
- (b) any entity or person either performing public administrative functions under national law or having public responsibilities or functions or providing public services, including measures of employment, economic activities and inflation, under the control of an entity within the meaning of point (a).
- (30) [F46EU Benchmarks Regulation' means Regulation (EU) 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 performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 as it had effect in the European Union before IP completion day;

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- (31) ‘FCA register’ means the register of administrators and benchmarks established and maintained by the FCA in accordance with Article 36(1);
- (32) ‘FSMA’ means the Financial Services and Markets Act 2000;
- (33) ‘Markets in Financial Instruments Regulation’ means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;
- (34) ‘Regulated Activities Order’ means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (35) ‘third country’ means a country outside the United Kingdom;
- (36) ‘UK trading venue’ has the meaning given in Article 2(1)(16A) of the Markets in Financial Instruments Regulation];
- (37) [<sup>F47</sup>‘working day’ means a day other than—
- (a) Saturday or Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.]

[<sup>F48</sup>1A References in this Regulation to the capability of a benchmark to measure the underlying market or economic reality are references to both its current capability to do so and its capability to do so in the future.]

2 The [<sup>F49</sup>Treasury may by regulations] specify further technical elements of the definitions laid down in paragraph 1 of this Article, in particular specifying what constitutes making available to the public for the purposes of the definition of an index.

Where applicable, the [<sup>F50</sup>Treasury] shall take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks.

3 The [<sup>F51</sup>Treasury may by regulations specify] a list of public authorities in the [<sup>F52</sup>United Kingdom] falling within the definition under point (29) of paragraph 1 of this Article.

<sup>F53</sup> ...

Where applicable, the [<sup>F54</sup>Treasury] shall take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks.

#### Textual Amendments

- F9** Words in Art. 3(1)(6) renumbered as Art. 3(1)(6)(a) (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 5 para. 2\(2\)\(a\)](#); S.I. 2021/739, [reg. 3\(n\)](#)
- F10** Art. 3(1)(6)(b) and word inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 5 para. 2\(2\)\(b\)](#); S.I. 2021/739, [reg. 3\(n\)](#)
- F11** Words in Art. 3(1)(10) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), [5\(3\)](#) (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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- F12** Art. 3(1)(10A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 11(1)(a)**, 49(5); S.I. 2021/739, **reg. 3(d)**
- F13** Words in Art. 3(1)(16) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in Art. 3(1)(16) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Art. 3(1)(17)(a)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in Art. 3(1)(17)(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in Art. 3(1)(17)(d) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in Art. 3(1)(17)(e) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(d)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in Art. 3(1)(17)(e) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(d)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in Art. 3(1)(17)(f) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(e)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Art. 3(1)(17)(ga) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(f)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in Art. 3(1)(17)(h) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(g)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(a)(i); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Art. 3(1)(17)(i) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(h)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in Art. 3(1)(17)(j) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(5)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Art. 3(1)(17A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 11(1)(b)**, 49(5); S.I. 2021/739, **reg. 3(d)**

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- F26** Art. 3(1)(18) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(6)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(a)(ii); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Art. 3(1)(18A)(18B) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(7)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Art. 3(1)(19) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(8)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Words in Art. 3(1)(23) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(9)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Inserted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F31** Word in Art. 3(1)(23a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(9A)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(2); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F32** Word in Art. 3(1)(23b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(9B)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(2); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Words in Art. 3(1)(24) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(a)(iii); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Words in Art. 3(1)(24) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F35** Words in Art. 3(1)(24) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F36** Word in Art. 3(1)(24) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(b)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in Art. 3(1)(24) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(c)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F38** Word in Art. 3(1)(24) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(c)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in Art. 3(1)(24) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(d)** (with regs. 51-53, 65) (as

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- amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F40** Words in Art. 3(1)(24) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(e)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F41** Art. 3(1)(24)(a)(vi) substituted (22.4.2021) by The Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/494), regs. 1(2), **11**
- F42** Word in Art. 3(1)(24) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(10)(g)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F43** Art. 3(1)(25) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(11)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F44** Art. 3(1)(25A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 2(3)**; S.I. 2021/739, **reg. 3(n)**
- F45** Words in Art. 3(1)(27) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(12)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F46** Arts. 3(1)(30)-(36) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(13)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(a)(iv); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F47** Art. 3(1)(37) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 2(4)**; S.I. 2021/739, **reg. 3(n)**
- F48** Art. 3(1A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 3**; S.I. 2021/739, **reg. 3(n)**
- F49** Words in Art. 3(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(14)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F50** Word in Art. 3(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(14)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in Art. 3(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(15)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F52** Words in Art. 3(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(15)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F53** Words in Art. 3(3) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(15)(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F54** Word in Art. 3(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **5(15)(b)** (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## TITLE II

### BENCHMARK INTEGRITY AND RELIABILITY

#### CHAPTER 1

##### *Governance of and control by administrators*

##### *Article 4*

##### **Governance and conflict of interest requirements**

1 An administrator shall have in place robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark.

Administrators shall take adequate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees or any person directly or indirectly linked to them by control, and contributors or users, and to ensure that, where any judgement or discretion in the benchmark determination process is required, it is independently and honestly exercised.

2 The provision of a benchmark shall be operationally separated from any part of an administrator's business that may create an actual or potential conflict of interest.

3 Where a conflict of interest arises within an administrator due to the latter's ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or by an entity that is owned or controlled by the administrator or any of the administrator's affiliates, that cannot be adequately mitigated, the [<sup>F55</sup>FCA] may require the administrator to establish an independent oversight function which shall include a balanced representation of stakeholders, including users and contributors.

4 If such a conflict of interest cannot be adequately managed, the [<sup>F56</sup>FCA] may require the administrator to either cease the activities or relationships that create the conflict of interest or cease providing the benchmark.

5 An administrator shall publish or disclose all existing or potential conflicts of interest to users of a benchmark, to the [<sup>F57</sup>FCA] and, where relevant, to contributors, including conflicts of interest arising from the ownership or control of the administrator.

6 An administrator shall establish and operate adequate policies and procedures, as well as effective organisational arrangements, for the identification, disclosure, prevention, management and mitigation of conflicts of interest in order to protect the integrity and independence of benchmark determinations. Such policies and procedures shall be regularly reviewed and updated. The policies and procedures shall take into account and address conflicts of interest, the degree of discretion exercised in the benchmark determination process and the risks that the benchmark poses, and shall:

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- a ensure the confidentiality of information contributed to or produced by the administrator, subject to the disclosure and transparency obligations under this Regulation; and
- b specifically mitigate conflicts of interest due to the administrator's ownership or control, or due to other interests in the administrator's group or as a result of other persons that may exercise influence or control over the administrator in relation to determining the benchmark.

7 Administrators shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of a benchmark:

- a have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision;
- b are not subject to undue influence or conflicts of interest and that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the benchmark determination process;
- c do not have any interests or business connections that compromise the activities of the administrator concerned;
- d are prohibited from contributing to a benchmark determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such way of contribution is explicitly required as part of the benchmark methodology and is subject to specific rules therein; and
- e are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the benchmark.

8 An administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, including at least internal sign-off by management before the dissemination of the benchmark.

#### Textual Amendments

- F55** Word in Art. 4(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 6 (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F56** Word in Art. 4(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 6 (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F57** Word in Art. 4(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 6 (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Article 5

#### Oversight function requirements

1 Administrators shall establish and maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of their benchmarks.

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2 Administrators shall develop and maintain robust procedures regarding their oversight function, which shall be made available to the [F58FCA].

3 The oversight function shall operate with integrity and shall have the following responsibilities, which shall be adjusted by the administrator based on the complexity, use and vulnerability of the benchmark:

- a reviewing the benchmark's definition and methodology at least annually;
- b overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes;
- c overseeing the administrator's control framework, the management and operation of the benchmark, and, where the benchmark is based on input data from contributors, the code of conduct referred to in Article 15;
- d reviewing and approving procedures for cessation of the benchmark, including any consultation about a cessation;
- e overseeing any third party involved in the provision of the benchmark, including calculation or dissemination agents;
- f assessing internal and external audits or reviews, and monitoring the implementation of identified remedial actions;
- g where the benchmark is based on input data from contributors, monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;
- h where the benchmark is based on input data from contributors, taking effective measures in respect of any breaches of the code of conduct referred to in Article 15; and
- i reporting to the [F59FCA] any misconduct by contributors, where the benchmark is based on input data from contributors, or administrators, of which the oversight function becomes aware, and any anomalous or suspicious input data.

4 The oversight function shall be carried out by a separate committee or by means of another appropriate governance arrangement.

5 [F60The FCA may make] technical standards to specify

[F61a] the procedures regarding the oversight function and the characteristics of the oversight function including its composition as well as its positioning within the organisational structure of the administrator, so as to ensure the integrity of the function and the absence of conflicts of interest;

[F62b] F63... a non-exhaustive list of appropriate governance arrangements as laid down in paragraph 4.

[F64The technical standards] shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and [F65when making the standards, the FCA] shall take into consideration the differences in the ownership and control structure of administrators, the nature, scale and complexity of the provision of the benchmark, and the risk and impact of the benchmark, also in light of international convergence of supervisory practice in relation to governance requirements of benchmarks. However, the F66... technical standards shall not cover or apply to administrators of non-significant benchmarks.

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### Textual Amendments

- F58** Word in Art. 5(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F59** Word in Art. 5(3)(i) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F60** Words in Art. 5(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F61** Words in Art. 5(5) renumbered as Art. 5(5)(a) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F62** Words in Art. 5(5) renumbered as Art. 5(5)(b) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F63** Words in Art. 5(5)(b) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(iv)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F64** Words in Art. 5(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F65** Words in Art. 5(5) inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F66** Words in Art. 5(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(b)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F67** Words in Art. 5(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F68** Art. 5(6) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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## Article 6

### Control framework requirements

- 1 Administrators shall have in place a control framework that ensures that their benchmarks are provided and published or made available in accordance with this Regulation.
- 2 The control framework shall be proportionate to the level of conflicts of interest identified, the extent of discretion in the provision of the benchmark and the nature of the benchmark input data.
- 3 The control framework shall include:
  - a management of operational risk;
  - b adequate and effective business continuity and disaster recovery plans;
  - c contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark.
- 4 An administrator shall establish measures to:
  - a ensure that contributors adhere to the code of conduct referred to in Article 15 and comply with the applicable standards for input data;
  - b monitor input data including, where feasible, monitoring input data before publication of the benchmark and validating input data after publication to identify errors and anomalies.
- 5 The control framework shall be documented, reviewed and updated as appropriate and made available to the relevant competent authority and, upon request, to users.

## Article 7

### Accountability framework requirements

- 1 An administrator shall have in place an accountability framework, covering record-keeping, auditing and review, and a complaints process, that provides evidence of compliance with the requirements of this Regulation.
- 2 An administrator shall designate an internal function with the necessary capability to review and report on the administrator's compliance with the benchmark methodology and this Regulation.
- 3 For critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation, at least annually.
- 4 Upon the request of the [F69FCA], an administrator shall provide to the [F69FCA] the details of the reviews and reports provided for in paragraph 2. Upon the request of the [F69FCA] or any user of a benchmark, an administrator shall publish the details of the audits provided for in paragraph 3.

#### Textual Amendments

**F69** Word in Art. 7(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **8** (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 8

### Record-keeping requirements

- 1 An administrator shall keep records of:
  - a all input data, including the use of such data;
  - b the methodology used for the determination of a benchmark;
  - c any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the determination of a benchmark, including the reasoning for said judgement or discretion;
  - d the disregard of any input data, in particular where it conformed to the requirements of the benchmark methodology, and the rationale for such disregard;
  - e other changes in or deviations from standard procedures and methodologies, including those made during periods of market stress or disruption;
  - f the identities of the submitters and of the natural persons employed by the administrator for the determination of a benchmark;
  - g all documents relating to any complaint, including those submitted by a complainant; and
  - h telephone conversations or electronic communications between any person employed by the administrator and contributors or submitters in respect of a benchmark.
- 2 An administrator shall keep the records set out in paragraph 1 for at least five years in such a form that it is possible to replicate and fully understand the determination of a benchmark and enable an audit or evaluation of input data, calculations, judgements and discretion. Records of telephone conversation or electronic communications recorded in accordance with point (h) of paragraph 1 shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of three years.

## Article 9

### Complaints-handling mechanism

- 1 An administrator shall have in place and publish procedures for receiving, investigating and retaining records concerning complaints made, including about the administrator's benchmark determination process.
- 2 Such a complaints-handling mechanism shall ensure that:
  - a the administrator makes available the complaints-handling policy through which complaints may be submitted on whether a specific benchmark determination is representative of market value, on a proposed change to the benchmark determination process, on an application of the methodology in relation to a specific benchmark determination, and on other decisions in relation to the benchmark determination process;
  - b complaints are investigated in a timely and fair manner and the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014; and

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- c the inquiry is conducted independently of any personnel who may be or may have been involved in the subject-matter of the complaint.

## Article 10

### Outsourcing

1 An administrator shall not outsource functions in the provision of a benchmark in such a way as to impair materially the administrator's control over the provision of the benchmark or the ability of the [F70FCA] to supervise the benchmark.

2 Where an administrator outsources to a service provider functions or any relevant services and activities in the provision of a benchmark, the administrator shall remain fully responsible for discharging all of the administrator's obligations under this Regulation.

3 Where outsourcing takes place, the administrator shall ensure that the following conditions are fulfilled:

- a the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;
- b the administrator makes available to the [F71FCA] the identity and the tasks of the service provider that participates in the benchmark determination process;
- c the administrator takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;
- d the administrator retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;
- e the service provider discloses to the administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;
- f the service provider cooperates with the [F72FCA] regarding the outsourced activities, and the administrator and the [F72FCA] have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, and the [F72FCA] is able to exercise those rights of access;
- g the administrator is able to terminate the outsourcing arrangements where necessary;
- h the administrator takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the benchmark determination process.

#### Textual Amendments

- F70** Word in Art. 10(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **9(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F71** Word in Art. 10(3)(b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **9(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F72** Word in Art. 10(3)(f) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **9(b)(ii)** (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## CHAPTER 2

### ***Input data, methodology and reporting of infringements***

#### *Article 11*

#### **Input data**

1 The provision of a benchmark shall be governed by the following requirements in respect of its input data:

- a the input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure.

The input data shall be transaction data, if available and appropriate. If transaction data is not sufficient or is not appropriate to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used, including estimated prices, quotes and committed quotes, or other values;

- b the input data referred to in point (a) shall be verifiable;
- c the administrator shall draw up and publish clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement, to ensure compliance with point (a) and the methodology;
- d where a benchmark is based on input data from contributors, the administrator shall obtain, where appropriate, the input data from a reliable and representative panel or sample of contributors so as to ensure that the resulting benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure;
- e the administrator shall not use input data from a contributor if the administrator has any indication that the contributor does not adhere to the code of conduct referred to in Article 15, and in such a case shall obtain representative publicly available data.

2 Administrators shall ensure that their controls in respect of input data include:

- a criteria that determine who may contribute input data to the administrator and a process for selecting contributors;
- b a process for evaluating a contributor's input data and for stopping the contributor from providing further input data, or applying other penalties for non-compliance against the contributor, where appropriate; and
- c a process for validating input data, including against other indicators or data, to ensure its integrity and accuracy.

3 Where the input data of a benchmark is contributed from a front office function, meaning any department, division, group, or personnel of contributors or any of its affiliates that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities, the administrator shall:

- a obtain data from other sources that corroborate that input data; and
- b ensure that contributors have in place adequate internal oversight and verification procedures.

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4 Where an administrator considers that the input data does not represent the market or economic reality that a benchmark is intended to measure, that administrator shall, within a reasonable time period, either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market or economic reality, or else cease to provide that benchmark.

[<sup>F73</sup>4A In the case of a critical benchmark, paragraph 4 does not require the administrator to cease providing the benchmark before the end of a period during which the administrator is required to continue publishing the benchmark by Article 21(1) or (2) or by a decision of the FCA under Article 21(3).

4B In the case of a critical benchmark in respect of which measures adopted under Article 23(6) have effect—

- a paragraph 4 does not require the administrator to cease providing the benchmark while those measures have effect, and
- b the administrator's duty under paragraph 4 to make changes is a duty to make changes so far as compatible with those measures.]

5 [<sup>F74</sup>The FCA may make] technical standards to specify further how to ensure that input data is appropriate and verifiable, as required under points (a) and (b) of paragraph 1, as well as the internal oversight and verification procedures of a contributor that the administrator has to ensure are in place, in compliance with point (b) of paragraph 3, in order to ensure the integrity and accuracy of input data. However, the <sup>F75</sup>... technical standards shall not cover or apply to administrators of non-significant benchmarks.

[<sup>F76</sup>The FCA] shall take into account the different types of benchmarks and sectors as set out in this Regulation, the nature of input data, the characteristics of the underlying market or economic reality and the principle of proportionality, the vulnerability of the benchmarks to manipulation as well as the international convergence of supervisory practice in relation to benchmarks.

<sup>F77</sup> ...

<sup>F77</sup> ...

<sup>F78</sup>6 .....

#### Textual Amendments

- F73** Art. 11(4A)(4B) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 5 para. 4**; [S.I. 2021/739](#), reg. 3(n)
- F74** Words in Art. 11(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **10(2)(a)(i)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F75** Words in Art. 11(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **10(2)(a)(ii)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F76** Words in Art. 11(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **10(2)(b)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F77** Words in Art. 11(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **10(2)(c)** (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F78** Art. 11(6) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **10(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 12

### Methodology

- 1 An administrator shall use a methodology for determining a benchmark that:
  - a is robust and reliable;
  - b has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;
  - c is rigorous, continuous and capable of validation including, where appropriate, back-testing against available transaction data;
  - d is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity;
  - e is traceable and verifiable.
- 2 When developing a benchmark methodology, a benchmark administrator shall:
  - a take into account factors including the size and normal liquidity of the market, the transparency of trading and the positions of market participants, market concentration, market dynamics, and the adequacy of any sample to represent the market or economic reality that the benchmark is intended to measure;
  - b determine what constitutes an active market for the purposes of that benchmark; and
  - c establish the priority given to different types of input data.
- 3 An administrator shall have in place clear published arrangements that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark is to be calculated in such circumstances.

## Article 13

### Transparency of methodology

- 1 An administrator shall develop, operate and administer the benchmark and methodology transparently. To that end, the administrator shall publish or make available the following information:
  - a the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published;
  - b details of the internal review and the approval of a given methodology, as well as the frequency of such review;
  - c the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes<sup>[F79]</sup>;

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[<sup>F30</sup>d an explanation of how the key elements of the methodology laid down in point (a) reflect ESG factors for each benchmark or family of benchmarks, with the exception of interest rate and foreign exchange benchmarks.]

[<sup>F30</sup>Benchmark administrators shall comply with the requirement laid down in point (d) of the first subparagraph by 30 April 2020.]

- 2 The procedures required under point (c) of paragraph 1 shall provide for:
- a advance notice, with a clear time frame, that gives the opportunity to analyse and comment upon the impact of such proposed material changes; and
  - b the comments referred to in point (a) of this paragraph, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested by the originator of the comments.

[<sup>F30</sup>2a [<sup>F80</sup>The Treasury may make regulations] to supplement this Regulation by laying down the minimum content of the explanation referred to in point (d) of the first subparagraph of paragraph 1 of this Article, as well as the standard format to be used.]

3 [<sup>F81</sup>The FCA may make] technical standards to specify further the information to be provided by an administrator in compliance with the requirements laid down in paragraphs 1 and 2, distinguishing for different types of benchmarks and sectors as set out in this Regulation. [<sup>F82</sup>The FCA] shall take into account the need to disclose those elements of the methodology that provide for sufficient detail to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts and the principle of proportionality. However, the <sup>F83</sup>... technical standards shall not cover or apply to administrators of non-significant benchmarks.

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#### Textual Amendments

- F30** Inserted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F79** Substituted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F80** Words in Art. 13(2a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **11(1A)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(3); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F81** Words in Art. 13(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **11(2)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F82** Words in Art. 13(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **11(2)(a)(ii)** (with regs. 51-53, 65)



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(as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F83** Words in Art. 13(3) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **11(2)(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F84** Words in Art. 13(3) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **11(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F85** Art. 13(4) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **11(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 14

### Reporting of infringements

1 An administrator shall establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the [<sup>F86</sup>FCA] any conduct that may involve manipulation or attempted manipulation of a benchmark, under Regulation (EU) No 596/2014.

2 An administrator shall monitor input data and contributors in order to be able to notify the [<sup>F87</sup>FCA] and provide all relevant information where the administrator suspects that, in relation to a benchmark, any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark, under Regulation (EU) No 596/2014, including collusion to do so.

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3 Administrators shall have procedures in place for their managers, employees and any other natural persons whose services are placed at their disposal or under their control to report internally infringements of this Regulation.

#### Textual Amendments

**F86** Word in Art. 14(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **12(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F87** Word in Art. 14(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **12(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F88** Words in Art. 14(2) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **12(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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## CHAPTER 3

### **Code of conduct and requirements for contributors**

#### Article 15

#### **Code of conduct**

1 Where a benchmark is based on input data from contributors, its administrator shall develop a code of conduct for each benchmark clearly specifying contributors' responsibilities with respect to the contribution of input data and shall ensure that such code of conduct complies with this Regulation. The administrator shall be satisfied that contributors adhere to the code of conduct on a continuous basis and at least annually and in case of changes to it.

2 The code of conduct shall include at least the following elements:

- a a clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with Articles 11 and 14;
- b identification of the persons that may contribute input data to the administrator and procedures to verify the identity of a contributor and any submitters, as well as authorisation of any submitters that contribute input data on behalf of a contributor;
- c policies to ensure that a contributor provides all relevant input data;
- d the systems and controls that a contributor is required to establish, including:
  - (i) procedures for contributing input data, including requirements for the contributor to specify whether input data is transaction data and whether input data conforms to the administrator's requirements;
  - (ii) policies on the use of discretion in contributing input data;
  - (iii) any requirement for the validation of input data before it is provided to the administrator;
  - (iv) record-keeping policies;
  - (v) reporting requirements concerning suspicious input data;
  - (vi) requirements concerning the management of conflicts of interest.

3 Administrators may develop a single code of conduct for each family of benchmarks they provide.

4 In the event that [<sup>F89</sup>the FCA], in the use of its powers referred to in Article 41, finds that there are elements of a code of conduct which do not comply with this Regulation, it shall notify the administrator concerned. The administrator shall adjust the code of conduct to ensure that it complies with this Regulation within 30 days of such a notification.

5 Within 15 working days from the date of [<sup>F90</sup>the Treasury making regulations under Articles A20(5) or (6), or 20(5) specifying a benchmark as critical], the administrator of that critical benchmark shall notify the code of conduct to the [<sup>F91</sup>FCA]. The [<sup>F91</sup>FCA] shall verify within 30 days whether the content of the code of conduct complies with this Regulation. In the event that the [<sup>F91</sup>FCA] finds elements which do not comply with this Regulation, paragraph 4 of this Article shall apply.

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*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

6 [F92The FCA may make] technical standards to specify further the elements of the code of conduct referred to in paragraph 2 for different types of benchmarks, and in order to take account of developments in benchmarks and financial markets.

[F93The FCA] shall take into account the different characteristics of benchmarks and contributors, in particular in terms of differences in input data and methodologies, the risks of input data of being manipulated and international convergence of supervisory practices in relation to benchmarks.

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#### Textual Amendments

- F89** Words in Art. 15(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **13(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F90** Words in Art. 15(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **13(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1385, regs. 1(4), 58(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F91** Words in Art. 15(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **13(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1385, regs. 1(4), 58(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F92** Words in Art. 15(6) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **13(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F93** Words in Art. 15(6) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **13(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F94** Words in Art. 15(6) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **13(4)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Article 16

#### Governance and control requirements for supervised contributors

1 The following governance and control requirements shall apply to a supervised contributor:

- a the supervised contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required, it is independently and honestly exercised based on relevant information in accordance with the code of conduct referred to in Article 15;

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- b the supervised contributor shall have in place a control framework that ensures the integrity, accuracy and reliability of input data and that input data is provided in accordance with this Regulation and the code of conduct referred to in Article 15.
- 2 A supervised contributor shall have in place effective systems and controls to ensure the integrity and reliability of all contributions of input data to the administrator, including:
- a controls regarding who may submit input data to an administrator including, where proportionate, a process for sign-off by a natural person holding a position senior to that of the submitter;
  - b appropriate training for submitters, covering at least this Regulation and Regulation (EU) No 596/2014;
  - c measures for the management of conflicts of interest, including organisational separation of employees where appropriate and consideration of how to remove incentives, created by remuneration policies, to manipulate a benchmark;
  - d record-keeping, for an appropriate period of time, of communications in relation to provision of input data, of all information used to enable the contributor to make each submission, and of all existing or potential conflicts of interest including, but not limited to, the contributor's exposure to financial instruments which use a benchmark as a reference;
  - e record-keeping of internal and external audits.
- 3 Where input data relies on expert judgement, supervised contributors shall establish, in addition to the systems and controls referred to in paragraph 2, policies guiding any use of judgement or exercise of discretion and shall retain records of the rationale for any such judgement or discretion. Where proportionate, supervised contributors shall take into account the nature of the benchmark and its input data.
- 4 A supervised contributor shall fully cooperate with the administrator and the <sup>F95</sup>FCA in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with paragraphs 2 and 3.
- 5 <sup>F96</sup>The FCA may make technical standards to specify further the requirements concerning governance, systems and controls, and policies set out in paragraphs 1, 2 and 3.
- <sup>F97</sup>The FCA shall take into account the different characteristics of benchmarks and supervised contributors, in particular in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks. However, the <sup>F98</sup>... technical standards shall not cover or apply to supervised contributors of non-significant benchmarks.

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#### Textual Amendments

**F95** Word in Art. 16(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F96** Words in Art. 16(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F97** Words in Art. 16(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F98** Words in Art. 16(5) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F99** Words in Art. 16(5) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F100** Art. 16(6) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## TITLE III

### REQUIREMENTS FOR DIFFERENT TYPES OF BENCHMARKS

#### CHAPTER 1

##### *Regulated-data benchmarks*

##### *Article 17*

##### **Regulated-data benchmarks**

1 Article 11(1)(d) and (e), Article 11(2) and (3), Article 14(1) and (2), and Articles 15 and 16 shall not apply to the provision of and the contribution to regulated-data benchmarks. Article 8(1)(a) shall not apply to the provision of regulated-data benchmarks with reference to input data that are contributed entirely and directly as specified in point (24) of Article 3(1).

2 Articles 24 and 25 or Article 26 shall, as applicable, apply to the provision of, and the contribution to, regulated-data benchmarks that are used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of up to EUR 500 billion, on the basis of all the range of maturities or tenors of the benchmark, where applicable.

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## CHAPTER 2

### **Interest rate benchmarks**

#### Article 18

### **Interest rate benchmarks**

The specific requirements laid down in Annex I shall apply to the provision of, and contribution to, interest rate benchmarks in addition to, or as a substitute for, the requirements of Title II.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, interest rate benchmarks.

## CHAPTER 3

### **Commodity benchmarks**

#### Article 19

### **Commodity benchmarks**

1 The specific requirements laid down in Annex II shall apply instead of the requirements of Title II, with the exception of Article 10, to the provision of, and contribution to, commodity benchmarks, unless the benchmark in question is a regulated-data benchmark or is based on submissions by contributors the majority of which are supervised entities.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, commodity benchmarks.

2 Where a commodity benchmark is a critical benchmark and the underlying asset is gold, silver or platinum, the requirements of Title II shall apply instead of Annex II.

## <sup>[F30]</sup>CHAPTER 3A

### <sup>[F101]</sup>**UK Climate Transition Benchmarks and UK Paris-aligned Benchmarks ]**

#### Article 19a

### <sup>[F102]</sup>**UK Climate Transition Benchmarks and UK Paris-aligned Benchmarks]**

1 The requirements laid down in Annex III shall apply to the provision of, and contribution to, <sup>[F103]</sup>UK Climate Transition Benchmarks and <sup>[F103]</sup>UK Paris-aligned Benchmarks, in addition to the requirements of Titles II, III and IV.

2 <sup>[F104]</sup>The Treasury may make regulations] to supplement this Regulation by laying down the minimum standards for <sup>[F105]</sup>UK Climate Transition Benchmarks and <sup>[F105]</sup>UK Paris-aligned Benchmarks to specify:

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- a the criteria for the choice of the underlying assets, including, where applicable, any criteria for excluding assets;
  - b the criteria and method for the weighting of the underlying assets in the benchmark;
  - c the determination of the decarbonisation trajectory for [F105UK] Climate Transition Benchmarks.
- 3 Benchmark administrators which provide an [F106UK] Climate Transition Benchmark or an [F106UK] Paris-aligned Benchmark shall comply with this Regulation by 30 April 2020.

#### Textual Amendments

- F102** Art. 19a heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F103** Word in Art. 19a(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F104** Words in Art. 19a(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(3)(c)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F105** Words in Art. 19a(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(3)(c)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); S.I. 2020/1385, regs. 1(4), 68; and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F106** Word in Art. 19a(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(3)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Article 19b

#### Requirements for [F107UK Climate Transition Benchmarks]

Administrators of [F108UK] Climate Transition Benchmarks shall select, weight, or exclude underlying assets issued by companies that follow a decarbonisation trajectory by 31 December 2022, in accordance with the following requirements:

- (i) the companies disclose measurable carbon emission reduction targets to be achieved within specific timeframes;
- (ii) the companies disclose a reduction in carbon emissions which is disaggregated down to the level of relevant operating subsidiaries;
- (iii) the companies disclose annual information on progress made towards those targets;
- (iv) the activities relating to the underlying assets do not significantly harm other ESG objectives.

*Status: Point in time view as at 15/12/2021.*

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**Textual Amendments**

- F107** Words in Art. 19b heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F108** Word in Art. 19b(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Article 19c*

**Exclusions for <sup>F109</sup>UK Paris-aligned Benchmarks]**

1 <sup>F110</sup>The Treasury may make regulations] in order to supplement this Regulation by identifying, in respect of [<sup>F111</sup>UK] Paris-aligned Benchmarks, the sectors to be excluded because they do not have measurable carbon emission reduction targets with specific deadlines that are aligned with the objectives of the Paris Agreement. <sup>F112</sup>...

<sup>F113</sup>2 .....

**Textual Amendments**

- F109** Words in Art. 19c heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(5)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F110** Words in Art. 19c(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(5)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F111** Word in Art. 19c(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(5)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F112** Words in Art. 19c(1) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(5)(b)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F113** Art. 19c(2) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(5)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs 1(3), 12(4); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)



*Status: Point in time view as at 15/12/2021.*

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### Article 19d

#### Endeavour to provide [<sup>F114</sup>UK Climate Transition Benchmarks]

By 1 January 2022, administrators which are located in the [<sup>F115</sup>United Kingdom] and which provide significant benchmarks determined on the basis of the value of one or more underlying assets or prices shall endeavour to provide one or more [<sup>F116</sup>UK] Climate Transition Benchmarks.]

#### Textual Amendments

- F114** Words in Art. 19d heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(6)(a)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4); [S.I. 2020/628](#), regs 1(3), 12(4); and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F115** Words in Art. 19d(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(6)(b)(i)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4); [S.I. 2020/628](#), regs 1(3), 12(4); and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F116** Word in Art. 19d(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(6)(b)(ii)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4); [S.I. 2020/628](#), regs 1(3), 12(4); and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Textual Amendments

- F101** Ch. 3a heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14A(2)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4); [S.I. 2020/628](#), regs 1(3), 12(4); and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## CHAPTER 4

### Critical benchmarks

#### [<sup>F117</sup>Article A20

#### Critical benchmarks: review of critical benchmarks

1 The FCA must conduct a proportionate review of critical benchmarks in accordance with paragraphs 2 to 4, taking into account information provided to it under paragraph A1 of Article 20.

2 The review must consider:

- [<sup>F118</sup>a whether an administrator located in the United Kingdom provides a benchmark that satisfies one or more of conditions (a), (b), (c) or (d) of paragraph 1 of Article 20;] and
- b where a benchmark satisfies [<sup>F119</sup>point (a)] of this paragraph, whether the FCA recommends that the benchmark is recognised as critical.

*Status: Point in time view as at 15/12/2021.*

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- 3 The FCA must provide a written report to the Treasury:
  - a setting out the result of the review; and
  - b making a recommendation as to whether any benchmark that satisfies [<sup>F120</sup>point (a)] of paragraph 2 should be recognised as critical.
- 4 The FCA must conduct the review and provide the report to the Treasury:
  - a within the period of two years beginning with IP completion day; and
  - b thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.
- 5 The Treasury must by regulations specify that a benchmark is critical if:
  - a the FCA has recommended that the benchmark is recognised as critical in accordance with the review procedure specified in paragraphs 2 and 3; and
  - b the Treasury [<sup>F121</sup>determine] that the FCA's review complies with the requirements of paragraphs 2 and 3.
- 6 The Treasury may by regulations specify that a benchmark is critical if:
  - a the benchmark is provided by an administrator located in the United Kingdom; and
  - [<sup>F122</sup>b the Treasury consider that the benchmark satisfies one or more of conditions (a), (b), (c) or (d) of paragraph 1 of Article 20.]
- 7 The Treasury may not specify a regulated-data benchmark as a critical benchmark under paragraph 5 or 6 of this Article or under paragraph 5 of Article 20.]

#### Textual Amendments

- F117** Art. A20 inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **15** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(b); S.I. 2020/1385, regs. 1(4), 58(6); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F118** Art. A20(2)(a) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(2)**, 49(5); S.I. 2021/739, reg. 3(a)
- F119** Words in Art. A20(2)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(3)**, 49(5); S.I. 2021/739, reg. 3(a)
- F120** Words in Art. A20(3)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(4)**, 49(5); S.I. 2021/739, reg. 3(a)
- F121** Word in Art. A20(5)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), s. 49(5), **Sch. 5 para. 5**; S.I. 2021/739, reg. 3(n)
- F122** Art. A20(6)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(5)**, 49(5); S.I. 2021/739, reg. 3(a)

#### Article 20

#### [<sup>F123</sup>Critical benchmarks: conditions and other matters]

[<sup>F124</sup>A1 An administrator shall immediately notify the FCA when the administrator's benchmark:

- a exceeds the threshold in paragraph 1(a); or
- b fulfils the criterion in paragraph 1(c)(ii) and there is reason to believe that it also fulfils the criterion in paragraph 1(c)(iii).]

*Status: Point in time view as at 15/12/2021.*

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- 1     <sup>F125</sup>The conditions are:]
- a the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable;
  - b the benchmark is based on submissions by contributors the majority of which are located in <sup>F126</sup>the United Kingdom] and is recognised as being critical <sup>F127</sup>... in accordance with the procedure laid down in paragraphs 2, 3, 4 and 5 of this Article;
  - c the benchmark fulfils <sup>F128</sup>both] of the following criteria:
    - (i) <sup>F129</sup>...
    - (ii) the benchmark has no, or very few, appropriate market-led substitutes;
    - (iii) in the event that the benchmark ceases to be provided, or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in <sup>F130</sup>the United Kingdom];

<sup>F131</sup>...

- <sup>F132</sup>d the benchmark has a sufficient number of appropriate market-led substitutes that it does not fulfil the criterion in point (c)(ii), but:
- i it is not reasonably practicable for one or more users of the benchmark to switch to one of those substitutes, and
  - ii the benchmark fulfils the criterion in point (c)(iii).]

<sup>F133</sup>2 Where the FCA considers that a benchmark should be recognised as critical based on an assessment under paragraph 3, and that benchmark is based on submissions by contributors the majority of which are located in the United Kingdom, the FCA shall notify the Treasury and transmit to the Treasury a documented assessment.]

3 For the purposes of paragraph 2, the <sup>F134</sup>FCA] shall assess whether the cessation of the benchmark or its provision on the basis of input data or of a panel of contributors no longer representative of the underlying market or economic reality would have an adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in <sup>F135</sup>the United Kingdom]. The <sup>F136</sup>FCA] shall take into consideration in its assessment:

- a the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the <sup>F137</sup>United Kingdom] and their relevance in terms of the total value of financial instruments and of financial contracts outstanding, and of the total value of investment funds, in the <sup>F137</sup>United Kingdom];
- b the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the <sup>F137</sup>United Kingdom] and their relevance in terms of the gross national product of the <sup>F137</sup>United Kingdom];
- c any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the <sup>F137</sup>United Kingdom].

<sup>F138</sup>...

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

4 Within six weeks of receipt of the notification referred to in paragraph 2, [F139]the Treasury must determine whether the FCA's assessment complies with the requirements of paragraph 3.]

[F140]5 The Treasury must make regulations specifying that a benchmark is critical if:

- a the FCA has recommended that the benchmark is recognised as critical in accordance with the procedure specified in paragraphs 2 and 3; and
- b the Treasury [F141]determine] that the FCA's assessment complies with the requirements of paragraph 3.]

[F142]5A The FCA must:

- a review [F143]the value in point (a) of paragraph 1 (“the paragraph 1(a) value”)] in the light of market, price and regulatory developments and the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close [F144]to the paragraph 1(a) value]; and
- b provide a written report to the Treasury setting out the results of the review and making a recommendation as to whether [F145]the paragraph 1(a) value] should be amended.

5B The FCA must conduct the review and provide the report to the Treasury:

- a within the period of two years beginning with IP completion day; and
- b thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.]

6 [F146]The Treasury may by regulations]

- a specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the [F147]values] referred to in paragraph 1 of this Article and in point (a) of Article 24(1);
- [F148]b amend [F149]the value in point (a)] of paragraph 1 having regard to:
  - i the matters referred to in point (a) of paragraph 5A; and
  - ii any report prepared by the FCA under paragraph 5A;]
  - c specify how the criteria referred to in point (c)(iii) of paragraph 1 of this Article are to be applied, taking into consideration any data which helps assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in [F150]the United Kingdom].

Where applicable, the [F151]Treasury] shall take into account relevant market or technological developments.

#### Textual Amendments

**F123** Art. 20 heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F124** Art. 20(A1) inserted by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(2A)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1385, regs. 1(4), 58(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F125** Words in Art. 20(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F126** Words in Art. 20(1)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F127** Words in Art. 20(1)(b) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F128** Word in Art. 20(1)(c) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 8(6)(a)**, 49(5); S.I. 2021/739, reg. 3(a)
- F129** Art. 20(1)(c)(i) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), **ss. 8(6)(b)**, 49(5); S.I. 2021/739, reg. 3(a)
- F130** Words in Art. 20(1)(c)(iii) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F131** Words in Art. 20(1) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F132** Art. 20(1)(d) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 8(6)(c)**, 49(5); S.I. 2021/739, reg. 3(a)
- F133** Art. 20(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F134** Word in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(aa)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F135** Words in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(bb)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F136** Word in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(cc)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F137** Words in art. 20(3)(a)-(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F138** Words in Art. 20(3) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F139** Words in Art. 20(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(6)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F140** Art. 20(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(7)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F141** Word in Art. 20(5)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(2)**; S.I. 2021/739, reg. 3(n)
- F142** Art. 20(5A)(5B) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(8)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(c); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F143** Words in Art. 20(5A)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(3)(a)**; S.I. 2021/739, reg. 3(n)
- F144** Words in Art. 20(5A)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(3)(b)**; S.I. 2021/739, reg. 3(n)
- F145** Words in Art. 20(5A)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(4)**; S.I. 2021/739, reg. 3(n)
- F146** Words in Art. 20(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F147** Word in Art. 20(6)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(5)**; S.I. 2021/739, reg. 3(n)
- F148** Art. 20(6)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F149** Words in Art. 20(6)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(6)**; S.I. 2021/739, reg. 3(n)
- F150** Words in Art. 20(6)(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F151** Word in Art. 20(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 21

### Mandatory administration of a critical benchmark

1 If an administrator of a critical benchmark intends to cease providing such benchmark, the administrator shall:

- a immediately notify [<sup>F152</sup>the FCA]; and
- b within four weeks of such notification submit an assessment of how the benchmark:
  - (i) is to be transitioned to a new administrator; or
  - (ii) is to be ceased to be provided, taking into account the procedure established in Article 28(1).

During the period referred to in point (b) of the first subparagraph, the administrator shall not cease provision of the benchmark.

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2 Upon receipt of the assessment of the administrator referred to in paragraph 1, [<sup>F153</sup>the FCA] shall:

- <sup>F154</sup>a .....
- b within four weeks, make its own assessment of how the benchmark is to be transitioned to a new administrator or be ceased to be provided, taking into account the procedure established in accordance with Article 28(1).

During the period of time referred to in point (b) of the first subparagraph of this paragraph, the administrator shall not cease the provision of the benchmark without the written consent of [<sup>F155</sup>the FCA].

3 Following completion of the assessment referred to in point (b) of paragraph 2, [<sup>F156</sup>the FCA] shall have the power to compel the administrator to continue publishing the benchmark until such time as:

- a the provision of the benchmark has been transitioned to a new administrator;
- b the benchmark can be ceased to be provided in an orderly fashion [<sup>F157</sup>(whether by the exercise of the FCA's powers under Article 23D or otherwise)]; or
- c the benchmark is no longer critical.

For the purposes of the first subparagraph, the period for which [<sup>F156</sup>the FCA] may compel the administrator to continue to publish the benchmark shall not exceed 12 months.

[<sup>F79</sup>By the end of that period, [<sup>F156</sup>the FCA] shall review its decision to compel the administrator to continue to publish the benchmark. [<sup>F156</sup>The FCA] may, where necessary, extend that period by an appropriate period not exceeding 12 months. The maximum period of mandatory administration shall not exceed [<sup>F158</sup>10 years].]

[<sup>F159</sup>3A If the FCA decides to compel the administrator to continue publishing the benchmark under paragraph 3, the FCA must assess the capability of the benchmark to measure the underlying market or economic reality, taking into account, among other things, the procedure established by the administrator in accordance with Article 28(1).

3B After making its assessment under paragraph 3A, the FCA must give the administrator—

- a a written notice stating that it considers that the benchmark is not representative of the market or economic reality that it is intended to measure or that the representativeness of the benchmark is at risk, or
- b a written notice stating that it considers that the representativeness of the benchmark is not at risk.

3C The FCA must make its assessment under paragraph 3A, and give the notice under paragraph 3B, before the end of the period of 28 days beginning with the day on which the FCA notifies the administrator of its decision to compel the administrator to continue publishing the benchmark.]

4 Without prejudice to paragraph 1, in the event that the administrator of a critical benchmark is to be wound down due to insolvency proceedings, [<sup>F160</sup>the FCA] shall make an assessment of whether and how the critical benchmark can be transitioned to a new administrator or can cease to be provided in an orderly fashion, taking into account the procedure established in accordance with Article 28(1).

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F79** Substituted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F152** Words in Art. 21(1)(a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **17(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F153** Words in Art. 21(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **17(3)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F154** Art. 21(2)(a) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **17(3)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F155** Words in Art. 21(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **17(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F156** Words in Art. 21(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **17(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F157** Words in Art. 21(3)(b) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 7**; S.I. 2021/739, reg. 3(n)
- F158** Words in Art. 21(3) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 9(2)**, 49(5); S.I. 2021/739, reg. 3(b)
- F159** Art. 21(3A)-(3C) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 9(3)**, 49(5); S.I. 2021/739, reg. 3(b)
- F160** Words in Art. 21(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **17(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### <sup>F161</sup> Article 21A

#### Prohibition on new use where administrator to cease providing critical benchmark

1 Where the FCA has completed an assessment of a critical benchmark under Article 21(2), the FCA may, by publishing a notice, prohibit some or all new use of the benchmark by supervised entities.

2 In paragraph 1, the reference to new use of a benchmark is to doing the following on or after the day on which the prohibition takes effect (“the prohibition day”)—

- a issuing a financial instrument which references the benchmark, or amending the terms of a financial instrument so as to include a reference to the benchmark where the instrument did not reference the benchmark immediately before the prohibition day;



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- b determining the amount payable under a financial instrument or a financial contract by referencing the benchmark, where the instrument or contract did not reference the benchmark immediately before the prohibition day;
  - c being a party to a financial contract which references the benchmark—
    - i) where the contract is formed on or after the prohibition day, or
    - ii) where the contract was formed before the prohibition day but did not reference the benchmark immediately before that day;
  - d providing a borrowing rate as described in point (7)(d) of Article 3(1) calculated by reference to the benchmark for the purposes of a financial contract—
    - i) where the contract is formed on or after the prohibition day, or
    - ii) where the contract was formed before the prohibition day but did not use the borrowing rate immediately before that day;
  - e measuring the performance of an investment fund through the benchmark for a purpose described in point (7)(e) of Article 3(1), where the fund's constitutional documents or prospectus did not provide for its performance to be measured through the benchmark immediately before the prohibition day.
- 3 The FCA may only exercise the power under paragraph 1 if it considers it desirable to do so in order to advance either or both of the following—
- a its consumer protection objective (see section 1C of FSMA);
  - b its integrity objective (see section 1D of that Act).
- 4 In exercising the power under paragraph 1 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.
- 5 A notice under this Article may—
- a make different provision for different purposes;
  - b make provision by reference to any aspect of the new use, including the persons involved in the use;
  - c provide that the prohibition has effect only during a period specified in the notice;
  - d make such transitional provision as the FCA considers appropriate.
- 6 A notice under this Article must—
- a give reasons for the prohibition,
  - b specify when the prohibition is to take effect,
  - c explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
  - d provide any further information that the FCA considers appropriate for assisting supervised entities to understand the prohibition.
- 7 A notice under this Article must be published in the manner that appears to the FCA to be best calculated to bring it to the attention of—
- a supervised entities, and
  - b the public.
- 8 The FCA—
- a must give a copy of a notice under this Article to the Treasury before publishing it, and
  - b may charge a reasonable fee for providing a person with a copy of a notice published under this Article.

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

9 In paragraph 2(a) to (e), references to referencing, or measuring performance through, the benchmark (however expressed) include referencing, or measuring performance through, a combination of indices that include the benchmark.]

#### Textual Amendments

**F161** Art. 21A inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 10, 49(5); S.I. 2021/739, reg. 3(c)

### Article 22

#### Mitigation of market power of critical benchmark administrators

Without prejudice to the application of [<sup>F162</sup>United Kingdom] competition law, when providing a critical benchmark, the administrator shall take adequate steps to ensure that licences of, and information relating to, the benchmark are provided to all users on a fair, reasonable, transparent and non-discriminatory basis.

#### Textual Amendments

**F162** Words in Art. 22 substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 18 (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### <sup>F163</sup> Article 22A

#### Assessment of representativeness of critical benchmarks: administrator

- 1 This Article applies to a critical benchmark that—
  - a is based on submissions by contributors the majority of which are supervised entities or supervised third country entities, and
  - b is not an Article 23A benchmark.
- 2 An administrator of a critical benchmark must submit to the FCA an assessment of the capability of the benchmark to measure the underlying market or economic reality—
  - a at the end of the period of two years beginning with the day on which the benchmark became a critical benchmark, and
  - b at the end of each subsequent two year period.
- 3 The FCA may, by written notice, require an administrator of a critical benchmark to submit to the FCA an assessment of the capability of the benchmark to measure the underlying market or economic reality.
- 4 The FCA may only impose a requirement under paragraph 3 if it considers that—
  - a the benchmark does not, or may not, represent the underlying market or economic reality, or
  - b the representativeness of the benchmark is or may be at risk.

*Status: Point in time view as at 15/12/2021.*

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5 A notice under paragraph 3 may require the administrator to submit the assessment before a date specified in the notice, provided that date falls after the end of the period of two weeks beginning with the day on which the notice was given.

6 If a supervised contributor or a supervised third country contributor intends to cease contributing input data to a critical benchmark—

- a the contributor must notify the benchmark administrator promptly in writing, and
- b the notification must state the date on which it intends to cease contributing, which must be after the end of the period of 15 weeks beginning with the first working day after the day on which it gives the notification.

7 If an administrator of a benchmark is notified under paragraph 6, it must—

- a inform the FCA promptly, stating the date on which the notification was given, and
- b submit to the FCA an assessment of the implications of the contributor's withdrawal for the capability of the benchmark to measure the underlying market or economic reality.

8 An assessment under paragraph 7(b) must be submitted to the FCA before the end of the period of 14 days beginning with the first working day after the day on which the notification under paragraph 6 was given.

9 An administrator of a critical benchmark that is required to provide an assessment under this Article must not change the market or economic reality intended to be measured by the benchmark (as defined in the benchmark statement referred to in Article 27) during the assessment period, unless the FCA gives it written permission to do so.

10 For the purposes of paragraph 9, the assessment period begins—

- a in the case of an assessment under paragraph 2, with the day falling one month before the end of the relevant two year period described in that paragraph;
- b in the case of an assessment under paragraph 3, when the administrator receives the FCA's notice requiring the assessment;
- c in the case of an assessment under paragraph 7(b), when the contributor notifies the administrator under paragraph 6.

11 For the purposes of paragraph 9, the assessment period ends—

- a when the FCA notifies the administrator that it considers that the representativeness of the benchmark is not at risk, whether by giving a notice under Article 22B(3)(b) or otherwise, or
- b when the benchmark becomes an Article 23A benchmark.]

#### Textual Amendments

**F163** Arts. 22A, 22B inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 11(2), 49(5) (with s. 11(3)); S.I. 2021/739, reg. 3(d)

### *]*<sup>F163</sup> Article 22B

#### Assessment of representativeness of critical benchmarks: FCA

1 Where the FCA receives an assessment by a benchmark administrator under Article 22A within the period specified by or under that Article, the FCA must make its own assessment of the capability of the benchmark to measure the underlying market or economic reality, taking into account, among other things—

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- a the procedure established by the administrator in accordance with Article 28(1), and
  - b the administrator's assessment.
- 2 If a benchmark administrator does not submit an assessment under Article 22A within the period specified by or under that Article, the FCA may make its own assessment of the capability of the benchmark to measure the underlying market or economic reality and, if it does so—
- a must take into account the procedure established by the administrator in accordance with Article 28(1), and
  - b may take into account, among other things, an assessment submitted by the administrator after the end of the specified period.
- 3 After making its assessment under this Article, the FCA must give the benchmark administrator—
- a a written notice stating that it considers that the benchmark is not representative of the market or economic reality that it is intended to measure or that the representativeness of the benchmark is at risk, or
  - b a written notice stating that it considers that the representativeness of the benchmark is not at risk.
- 4 Where the administrator's assessment was made under Article 22A(7)(b) (contributor intends to cease contributing input data), the FCA must make its assessment under paragraph 1 or 2, and give the notice under paragraph 3, before the end of the period of 28 days beginning with the first working day after the day on which the administrator was notified under Article 22A(6).]

#### Textual Amendments

**F163** Arts. 22A, 22B inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 11(2), 49(5) (with s. 11(3)); S.I. 2021/739, reg. 3(d)

### Article 23

#### Mandatory contribution to a critical benchmark

- F164<sub>1</sub> .....
- F164<sub>2</sub> .....
- F164<sub>3</sub> .....
- F164<sub>4</sub> .....

[<sup>F165</sup>5A If a supervised contributor or supervised third country contributor gives a notification under Article 22A(6), the contributor may not cease contributing input data before the date specified in the notification as the date on which it intends to cease contributing, unless the FCA gives it written permission to do so.

5B Paragraph 5A does not require a contributor to trade or commit to trade.]

6 [<sup>F166</sup>If the FCA gives the administrator of a critical benchmark a notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), it has the power to—]

*Status: Point in time view as at 15/12/2021.*

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- a require supervised entities [<sup>F167</sup>and supervised third country entities] selected in accordance with paragraph 7 of this Article, including entities that are not yet contributors to the relevant critical benchmark, to contribute input data to the administrator in accordance with the administrator's methodology, the code of conduct referred to in Article 15 and other rules. Such requirement shall be in place for an appropriate period of time not exceeding 12 months <sup>F168</sup>...
- b extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months, following a review under paragraph 9 of any measures adopted pursuant to point (a) of this paragraph;
- c determine the form in which, and the time by which, any input data is to be contributed without imposing an obligation on supervised entities [<sup>F169</sup>and supervised third country entities] to either trade or commit to trade;
- d require the administrator to change the methodology, the code of conduct referred to in Article 15 or other rules of the critical benchmark.

[<sup>F79</sup>The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed five years.]

[<sup>F170</sup>6A The FCA may only exercise the powers under paragraph 6 so far as it considers it appropriate to do so for the purpose of maintaining, restoring or improving the representativeness of the benchmark.]

7 For the purposes of paragraph 6, supervised entities [<sup>F171</sup>and supervised third country entities] that are to be required to contribute input data shall be selected by the [<sup>F172</sup>FCA] on the basis of the size of the <sup>F173</sup>... entity's actual and potential participation in the market that the benchmark intends to measure.

<sup>F174</sup>g .....

9 By the end of the period referred to in point (a) of the first subparagraph of paragraph 6, the [<sup>F175</sup>FCA] shall review the measures adopted under paragraph 6. It shall revoke any of them if it considers that:

- a the contributors are likely to continue contributing input data for at least one year if the measure were revoked, which shall be evidenced by at least:
  - (i) a written commitment by the contributors to the administrator and the [<sup>F176</sup>FCA] to continue contributing input data to the critical benchmark for at least one year if the measure were revoked;
  - (ii) a written report by the administrator to the [<sup>F176</sup>FCA] providing evidence for its assessment that the critical benchmark's continued viability can be assured once mandatory contribution has been revoked;
- b the provision of the benchmark is able to continue once the contributors mandated to contribute input data have ceased contributing;
- c an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transitioning to this benchmark; or
- d no appropriate alternative contributors can be identified and the cessation of contributions from the [<sup>F177</sup>contributors mandated to contribute input data] would weaken the benchmark to such an extent to require the cessation of the benchmark.

*Status: Point in time view as at 15/12/2021.*

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<sup>F178</sup>9A In the case of an Article 23A benchmark, any measures adopted under paragraph 6 in relation to the benchmark are to be treated as being revoked when the designation of the benchmark under Article 23A takes effect.]

<sup>F79</sup>10 In the event that a critical benchmark is to be ceased to be provided, each supervised contributor [<sup>F179</sup>and supervised third country contributor] to that benchmark shall contribute input data for a period of time determined by the [<sup>F180</sup>FCA], but not [<sup>F181</sup>extending beyond the end of the period of five years beginning with the day on which the administrator notified the FCA of its intention to cease providing the benchmark under Article 21(1)].]

11 The administrator shall notify the [<sup>F182</sup>FCA] in the event that any contributors breach the requirements set out in paragraph 6 as soon as reasonably possible.

<sup>F183</sup>12 .....

### Textual Amendments

- F79** Substituted by [Regulation \(EU\) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation \(EU\) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks \(Text with EEA relevance\)](#).
- F164** Art. 23(1)-(4) omitted (1.7.2021) by virtue of [Financial Services Act 2021 \(c. 22\), ss. 12\(2\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F165** Art. 23(5A)(5B) substituted for Art. 23(5) (1.7.2021) by [Financial Services Act 2021 \(c. 22\), ss. 12\(3\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F166** Words in Art. 23(6) substituted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), ss. 12\(4\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F167** Words in Art. 23(6)(a) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), ss. 12\(5\)\(a\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F168** Words in Art. 23(6)(a) omitted (1.7.2021) by virtue of [Financial Services Act 2021 \(c. 22\), ss. 12\(5\)\(b\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F169** Words in Art. 23(6)(c) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), ss. 12\(6\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F170** Art. 23(6A) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), ss. 12\(7\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F171** Words in Art. 23(7) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), ss. 12\(8\)\(a\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F172** Word in Art. 23(7) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\), regs. 1\(2\), 19\(7\) \(with regs. 51-53, 65\) \(as amended by S.I. 2019/1212, regs. 1\(3\), 20\(3\)\(4\) and with savings in S.I. 2019/680, reg. 11\); 2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F173** Word in Art. 23(7) omitted (1.7.2021) by virtue of [Financial Services Act 2021 \(c. 22\), ss. 12\(8\)\(b\), 49\(5\); S.I. 2021/739, reg. 3\(e\)](#)
- F174** Art. 23(8) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\), regs. 1\(2\), 19\(8\) \(with regs. 51-53, 65\) \(as amended by S.I. 2019/1212, regs. 1\(3\), 20\(3\)\(4\) and with savings in S.I. 2019/680, reg. 11\); 2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F175** Word in Art. 23(9) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\), regs. 1\(2\), 19\(9\)\(a\) \(with regs. 51-53, 65\) \(as amended by S.I. 2019/1212, regs. 1\(3\), 20\(3\)\(4\) and with savings in S.I. 2019/680, reg. 11\); 2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F176** Word in Art. 23(9)(a) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\), regs. 1\(2\), 19\(9\)\(b\) \(with regs. 51-53, 65\) \(as](#)

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- amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F177** Words in Art. 23(9)(d) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 12(9), 49(5); S.I. 2021/739, reg. 3(e)
- F178** Art. 23(9A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 12(10), 49(5); S.I. 2021/739, reg. 3(e)
- F179** Words in Art. 23(10) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 12(11)(a), 49(5); S.I. 2021/739, reg. 3(e)
- F180** Word in Art. 23(10) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 19(10) (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F181** Words in Art. 23(10) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 12(11)(b), 49(5); S.I. 2021/739, reg. 3(e)
- F182** Word in Art. 23(11) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 19(11) (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F183** Art. 23(12) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), ss. 12(12), 49(5); S.I. 2021/739, reg. 3(e)

#### *F184* Article 23A

### Designation of certain critical benchmarks

1 If the FCA gives the administrator of a critical benchmark a notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), the FCA must, before the end of the period of 21 days beginning with the day on which it gave the notice—

- a consider whether it is appropriate for the FCA to designate the benchmark under this Article, and
- b if it proposes to do so, inform the benchmark administrator by written notice.

2 The FCA may not designate a benchmark under this Article if it considers that it is, and is likely to continue to be, the case that—

- a the representativeness of the benchmark can reasonably be restored and maintained by the administrator or by the FCA exercising its powers under Article 23(6), and
- b there are good reasons to restore and maintain its representativeness.

3 A notice under paragraph 1(b) must—

- a explain when the FCA proposes that the designation of the benchmark should take effect,
- b give reasons for the FCA's proposed decision, and
- c state that the administrator may make written representations to the FCA during the period of 14 days beginning with the day on which the notice is given.

4 If, after considering any representations made in accordance with paragraph 3(c), the FCA decides to designate the benchmark under this Article, it must give the administrator a written notice of its decision.

5 A notice under paragraph 4 must—

- a state when the designation of the benchmark takes effect,

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- b give reasons for the FCA's decision,
  - c explain how the FCA has taken account of the relevant policy statement (see Article 23F),
  - d state that the prohibition on use of the benchmark under Article 23B will take effect when the designation of the benchmark takes effect, unless the FCA exercises its powers under Article 23B(2) or 23C,
  - e inform the administrator of its right to refer the decision to the Upper Tribunal and of the procedure for doing so, and
  - f provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the designation of the benchmark.
- 6 The FCA may, before a designation under this Article takes effect, decide to change when it takes effect to a later time.
- 7 If it decides to make such a change—
  - a the FCA must give the benchmark administrator a written notice of its decision, and
  - b the notice must satisfy the requirements in paragraph 5(a) to (d) and (f).
- 8 The FCA may withdraw a designation of a benchmark under this Article if—
  - a the designation has not taken effect,
  - b paragraph 1 applies again in relation to the benchmark, and
  - c the FCA designates the benchmark again under this Article with effect from an earlier date.
- 9 If the FCA decides to withdraw the designation of a benchmark under paragraph 8—
  - a the FCA must include notice of the withdrawal in the notice under paragraph 4 of the further designation of the benchmark, and
  - b the notice must satisfy the requirements in paragraph 5(b), (c) and (f) in relation to the decision to withdraw.
- 10 A notice under paragraph 4 or 7—
  - a may identify when the designation takes effect in any manner that the FCA considers appropriate, including by specifying a day or by describing a day by reference to the process for a reference to the Upper Tribunal or another process or event, and
  - b must be published by the FCA—
    - i) before the day on which the notice provides for the designation to take effect, and
    - ii) in the manner that appears to the FCA to be best calculated to bring it to the attention of the public.
- 11 The FCA—
  - a must give a copy of a notice under this Article to the Treasury before publishing it, and
  - b may charge a reasonable fee for providing a person with a copy of a notice under this Article.
- 12 If the FCA decides to designate a benchmark under this Article and gives the administrator a notice under paragraph 4, the benchmark administrator may refer the matter to the Upper Tribunal.
- 13 Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.



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14 In this Regulation, references to an “Article 23A benchmark” are to a benchmark in relation to which a designation under this Article has effect.]

#### Textual Amendments

**F184** Art. 23A inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 13, 49(5); S.I. 2021/739, reg. 3(f)

### *f<sup>F185</sup>* Article 23B

#### Prohibition on use of Article 23A benchmark

1 Supervised entities must not use an Article 23A benchmark, except where permitted to do so under paragraph 2 or Article 23C.

2 The FCA may, by publishing a notice before the day on which the designation of the benchmark under Article 23A takes effect, provide that the prohibition in paragraph 1 does not take effect until a date specified in the notice.

3 The date specified in a notice under paragraph 2 must fall before the end of the period of four months beginning with the day on which the designation of the benchmark under Article 23A takes effect.

4 A notice published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of—

- a supervised entities, and
- b the public.

5 The FCA may charge a reasonable fee for providing a person with a copy of a notice published under this Article.]

#### Textual Amendments

**F185** Arts. 23B, 23C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 14, 49(5); S.I. 2021/739, reg. 3(g)

### *f<sup>F185</sup>* Article 23C

#### Exception from the prohibition for legacy use of Article 23A benchmark

1 This Article applies to an Article 23A benchmark.

2 The FCA may, by publishing a notice, permit some or all legacy use of the benchmark by supervised entities.

3 The FCA may, by publishing a notice, alter or withdraw a permission under paragraph 2.

4 The FCA may only exercise a power under paragraph 2 or 3 if it considers it desirable to do so in order to advance either or both of the following—

- a its consumer protection objective (see section 1C of FSMA);
- b its integrity objective (see section 1D of that Act).

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5 In exercising a power under paragraph 2 or 3 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.

6 A notice under this Article may—

- a make provision by reference to any aspect of the legacy use of the benchmark, including the persons involved in the use;
- b provide that the permission has effect only during a period specified in the notice;
- c make different provision for different purposes;
- d make such transitional provision as the FCA considers appropriate.

7 A notice under this Article must—

- a give reasons for the permission, or the alteration or withdrawal of permission,
- b specify when the permission, or the alteration or withdrawal, is to take effect,
- c explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
- d provide any further information that the FCA considers appropriate for assisting supervised entities to understand the permission or the alteration or withdrawal of permission.

8 A notice under this Article must be published in the manner that appears to the FCA to be best calculated to bring it to the attention of—

- a supervised entities, and
- b the public.

9 The FCA—

- a must give a copy of a notice under this Article to the Treasury before publishing it, and
- b may charge a reasonable fee for providing a person with a copy of a notice published under this Article.

10 In this Article—

- a references to legacy use of a benchmark are to use that is not new use, and
- b “new use” has the same meaning, in connection with the prohibition under Article 23B, as it has in connection with a prohibition under Article 21A (see Article 21A(2) and (9)).]

#### Textual Amendments

**F185** Arts. 23B, 23C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 14, 49(5); S.I. 2021/739, reg. 3(g)

### *F186* Article 23D

#### Orderly cessation of Article 23A benchmarks

1 This Article applies to an Article 23A benchmark.

2 The FCA may by written notice impose requirements on the benchmark administrator relating to any of the following—

- a the way in which the benchmark is determined, including the input data,
- b rules of the benchmark, and

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- c where the benchmark is based on submissions by contributors, the code of conduct referred to in Article 15.
- 3 The FCA may only exercise the powers under paragraph 2 if—
  - a it considers it appropriate to do so having regard to the desirability of securing that the cessation of the benchmark takes place in an orderly fashion, and
  - b it considers it desirable to do so in order to advance either or both of the following—
    - i) its consumer protection objective (see section 1C of FSMA);
    - ii) its integrity objective (see section 1D of that Act).
- 4 In exercising a power under paragraph 2 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.
- 5 The powers under paragraph 2—
  - a may be exercised so as to confer a discretion on the administrator,
  - b include power to specify when a requirement must be satisfied, and
  - c include power to vary or withdraw a requirement from time to time.
- 6 The powers under paragraph 2 are not limited by the market or economic reality that was intended to be measured by the benchmark immediately before it became an Article 23A benchmark (as defined in the benchmark statement referred to in Article 27), although the FCA may have regard to that when exercising those powers.
- 7 A notice under paragraph 2 must—
  - a explain the exercise of the power,
  - b give reasons for the decision to exercise the power,
  - c specify when the requirement (or variation or withdrawal of a requirement) is to take effect,
  - d explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
  - e provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the exercise of the power.
- 8 The benchmark administrator may not change anything described in paragraph 2 unless—
  - a the FCA requires it to do so, or gives it a discretion to do so, under paragraph 2, or
  - b the FCA has given a written notice permitting it to do so and has not given a written notice withdrawing the permission.
- 9 A notice under paragraph 2 or 8(b) must be published as soon as reasonably practicable in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 10 The FCA—
  - a must give a copy of a notice under paragraph 2 or 8(b) to the Treasury before publishing it, and
  - b may charge a reasonable fee for providing a person with a copy of a notice under paragraph 2 or 8(b).
- 11 In relation to an Article 23A benchmark, this Regulation applies with the modifications specified in or under Annex 4 (and see also Articles 22A(1)(b) and 23(9A)).]

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### Textual Amendments

**F186** Art. 23D inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. **15(1)**, 49(5); S.I. 2021/739, reg. 3(h)

## <sup>F187</sup> Article 23E

### Review of exercise of powers under Article 23D

- 1 Where the FCA has exercised a power under Article 23D(2) in relation to a benchmark, the FCA must, for each review period—
  - a review its exercise of its powers under Article 23D(2) in relation to that benchmark during the period, and
  - b publish a report setting out the outcome of the review.
- 2 For the purposes of paragraph 1, the review periods are—
  - a the period of two years beginning with the day on which the first notice under Article 23D(2) relating to the benchmark is published, and
  - b each subsequent period of two years, excluding the period in which the benchmark ceases to be provided and subsequent periods.
- 3 The FCA must publish a report under paragraph 1(b) as soon as reasonably practicable after the end of the review period.
- 4 Where the FCA, having exercised a power under Article 23D(2) in relation to a benchmark, exercises a power under Article 23D(2) again in relation to the benchmark, it must—
  - a carry out a review of the most recent previous exercise of that power in relation to that benchmark, and
  - b publish a report setting out the outcome of the review.
- 5 The FCA must take the action described in paragraph 4—
  - a before its subsequent exercise of a power under Article 23D(2), where that is reasonably practicable, or
  - b otherwise, as soon as reasonably practicable afterwards.
- 6 The FCA may fulfil the duty in paragraph 1 and satisfy paragraph 4 by means of the same review and report.
- 7 In a review under this Article, the FCA must—
  - a consider whether the exercise of the power has advanced, or is likely to advance, the objectives mentioned in Article 23D(3)(b), and
  - b have regard to the policy statement with respect to the exercise of its powers under Article 23D (see Article 23F).
- 8 A report published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 9 The FCA—
  - a must give a copy of a report of a review under this Article to the Treasury before publishing it, and
  - b may charge a reasonable fee for providing a person with a copy of a report published in accordance with this Article.]

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F187** Art. 23E inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 16, 49(5); S.I. 2021/739, reg. 3(i)

#### *f*<sup>F188</sup> Article 23F

#### Policy statements

- 1 The FCA must prepare and publish a statement of its policy with respect to—
  - a the exercise of its power under Article 21A,
  - b the designation of benchmarks under Article 23A,
  - c the exercise of its powers under Article 23C, and
  - d the exercise of its powers under Article 23D.
- 2 The FCA—
  - a may alter or replace a statement published under this Article, and
  - b if it does so, must publish the altered or replacement statement.
- 3 A statement published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 4 The FCA—
  - a must give a copy of a statement under this Article to the Treasury before publishing it, and
  - b may charge a reasonable fee for providing a person with a copy of a statement published under this Article.
- 5 In making a decision under Article 23A, or exercising its powers under any of Article 21A, 23C or 23D, the FCA must have regard to any relevant statement of policy published under this Article and in force at the time.]

#### Textual Amendments

**F188** Art. 23F inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 17(1), 49(5) (with s. 17(2)); S.I. 2021/739, reg. 3(j)

#### *f*<sup>F189</sup> Article 23FA

#### References to Article 23A benchmarks

- 1 A reference to a benchmark in a contract or other arrangement is, at any time when the benchmark is an Article 23A benchmark, to be treated for all purposes as including the benchmark as it exists—
  - a when it is an Article 23A benchmark,
  - b when the FCA has exercised a power under Article 23D(2) in respect of the benchmark, and
  - c when the benchmark administrator has exercised a discretion or permission conferred on it by the FCA under Article 23D in respect of the benchmark,

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whether or not the benchmark is representative of the Article 27 market or economic reality at those times.

2 If a contract or other arrangement describes a benchmark or other figure (rather than naming a benchmark), paragraph 1 applies as if the description were a reference to—

- a each benchmark that falls within the description, and
- b each Article 23A benchmark that fell, or was being treated by the parties to the contract or arrangement as falling, within the description immediately before it became an Article 23A benchmark.

3 For the purposes of paragraph 2(b), where the description is of a benchmark or other figure that measures, or is intended to measure, a market or economic reality, a benchmark fell within the description immediately before it became an Article 23A benchmark if its Article 27 market or economic reality fell within the description.

4 Paragraphs 1 and 2 apply—

- a to any contract or other arrangement, whenever it was formed, and
- b to any reference to a benchmark or other figure, however expressed.

5 Where paragraph 1 applies in a case in which the reference formed part of the contract or other arrangement—

- a immediately before this Article came into force, or
- b immediately before the benchmark became an Article 23A benchmark,

the contract or arrangement is to be treated for all purposes as having always provided for the reference to have the meaning provided for by paragraph 1 (and, where relevant, paragraph 2) when the benchmark is an Article 23A benchmark.

6 Nothing in this Article is to be taken to create any right, obligation or liability of a party to a contract or other arrangement or of another person—

- a in relation to an act or omission that is relevant to the formation or variation of the contract or arrangement (such as, among other things, an act or omission in connection with the making of a representation or the giving of advice), where the formation or variation took place before the benchmark in question became an Article 23A benchmark, or
- b in relation to the operation of the contract or arrangement before the benchmark in question became an Article 23A benchmark.

7 Nothing in this Article is to be taken to extinguish, or otherwise affect, any cause of action that arose in relation to a contract or arrangement before the benchmark in question became an Article 23A benchmark, except that the effect of this Article is to be taken into account when determining any loss or damage incurred.

8 This Article has effect subject to Article 23FB and any regulations made under that Article.

9 For the purposes of this Article and Article 23FB, a contract or other arrangement refers to a benchmark if it refers to an index, whether or not the index is used as a benchmark for the purposes of the contract or arrangement (and references to a benchmark are to be interpreted accordingly).

10 In this Article and Article 23FB—

- a “arrangement” means a legally binding arrangement between two or more parties;
- b references to a contract or an arrangement—

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- i are to a contract or arrangement entered into by or on behalf of any person (including the Crown), and
  - ii include any document referred to in, or otherwise forming part of, a contract or arrangement;
- c “Article 27 market or economic reality”, in relation to an Article 23A benchmark, means the market or economic reality that was intended to be measured by the benchmark immediately before it became an Article 23A benchmark (as defined in the benchmark statement referred to in Article 27).]

#### Textual Amendments

**F189** Arts. 23FA, 23FB inserted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\)](#), **ss. 1, 4(3)**

### *[<sup>F189</sup> Article 23FB*

#### **References to Article 23A benchmarks: further provision**

1 Article 23FA(1) and (2) do not apply to the extent that the contract or arrangement provides expressly that those paragraphs do not apply.

2 Article 23FA(1) does not apply to a reference to a benchmark to which it would otherwise apply (taking account of Article 23FA(2), where relevant) to the extent that the contract or arrangement provides expressly that the reference does not include the benchmark as it exists at the times described in Article 23FA(1).

3 Article 23FA(1) to (5) do not prevent or otherwise affect the operation of fallback provision, either before or after the benchmark in question became an Article 23A benchmark, subject to paragraph 5 and any regulations made under paragraph 6.

4 “Fallback provision” means express provision for the contract or arrangement—  
a to operate, or to be varied so as to operate, by reference to something other than the benchmark in question (temporarily or permanently), or  
b to terminate,

either on a particular date or in particular circumstances (such as, among other things, circumstances relating to the benchmark’s representativeness, its designation under Article 23A or the way in which it is determined).

5 To the extent that fallback provision provides that it is triggered when the benchmark in question ceases to exist or to be published or otherwise made available (temporarily or permanently), Article 23FA(1) to (5) prevent it from being triggered by reason of the benchmark’s designation under Article 23A or the exercise of a power, discretion or permission under Article 23D.

6 The Treasury may by regulations provide—  
a that Article 23FA(1) and (2) do not apply—  
i to a specified benchmark or to benchmarks of a specified description;  
ii to contracts or other arrangements of a specified description;  
b that references in this Article to “fallback provision” include (in addition to the provision described in paragraph 4) express provision of a specified description;

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- c that fallback provision is not triggered in cases of a specified description relating to a benchmark's designation under Article 23A (in addition to the cases described in paragraph 5).

In this paragraph “specified” means specified in the regulations.

7 Regulations under paragraph 6 may make provision that applies generally or only for specific purposes (for example, provision that only applies in relation to a particular benchmark, a particular description of contracts or other arrangements or a particular type of fallback provision).]

#### Textual Amendments

**F189** Arts. 23FA, 23FB inserted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\), ss. 1, 4\(3\)](#)

### *[<sup>F190</sup> Article 23FC*

#### **Liability of administrator of Article 23A benchmark**

1 An administrator of an Article 23A benchmark, and its officers and employees, are not liable in damages—

- a for action or inaction required by a notice under Article 23D(2) or by Article 23D(8), or
- b for publishing the benchmark as it exists as a result of such action or inaction.

2 Paragraph 1 does not remove liability in respect of loss or damage arising from the exercise of a discretion conferred on the administrator under Article 23D(2) or as part of a permission given under Article 23D(8)(b).

3 Paragraph 1(b) does not remove liability in respect of loss or damage arising from the exercise of any other discretion of the administrator as to the time or manner of publication.]

#### Textual Amendments

**F190** Art. 23FC inserted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\), ss. 2, 4\(3\)](#)

### *[<sup>F191</sup> Article 23G*

#### **Critical benchmarks provided for different currencies etc**

1 This Article makes provision about critical benchmarks provided for different currencies, maturities or tenors (“umbrella benchmarks”).

2 References in this Article to a “version” of an umbrella benchmark are to the benchmark as provided for a particular currency, maturity or tenor or, where the benchmark is provided for a combination of two or more of those factors, the benchmark as provided for each combination.

3 Articles 11(4), (4A) and (4B), 21, 21A, 22A, 22B, 23 [<sup>F192</sup>, 23A to 23E and 23FA to 23FC] and Annex 4 apply in relation to an umbrella benchmark as if each version of the umbrella benchmark were—



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- a a separate critical benchmark, and
- b intended to measure the market or economic reality defined in the benchmark statement for the umbrella benchmark (whether defined there separately for different versions of the benchmark or for the umbrella benchmark taken as a whole),

subject to the modifications in paragraph 4.

4 The modifications are as follows—

- a the reference in point (c) of Article 21(3) to the benchmark ceasing to be critical is a reference to the umbrella benchmark ceasing to be critical;
- b the reference in Article 22A(1)(a) to a benchmark being based on particular submissions is a reference to the umbrella benchmark, taken as a whole but disregarding any versions that are Article 23A benchmarks, being based on such submissions;
- c the benchmark administrator's duty under Article 22A(2) is a duty to submit an assessment dealing separately with each version of the umbrella benchmark;
- d the FCA's duty under Article 23E(1) is a duty to carry out a review of its exercise of its powers under Article 23D(2) in relation to each version of the umbrella benchmark (and the first review period begins when the first notice under Article 23D(2) relating to any version of the benchmark is published).

5 Notices given under the provisions listed in paragraph 3 may relate to one version, several versions or all versions of the umbrella benchmark.

6 The FCA may exercise its functions under Articles 21, 21A, 22A, 22B, 23 and 23A to 23E and paragraph 3 of Annex 4 in different ways in relation to different versions of the umbrella benchmark.

7 Nothing in this Article is to be interpreted as implying anything about the operation, in relation to umbrella benchmarks, of provisions of this Regulation not mentioned in this Article.

8 The Treasury may by regulations make provision about the operation of this Regulation in relation to umbrella benchmarks, including provision amending or revoking provisions of this Article (other than this paragraph).]

#### **Textual Amendments**

**F191** Art. 23G inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. **18(1)**, 49(5); S.I. 2021/739, reg. 3(k)

**F192** Words in Art. 23G(3) substituted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\)](#), ss. **3(2)**, 4(3)

## *CHAPTER 5*

### ***Significant benchmarks***

#### *Article 24*

### **Significant benchmarks**

- 1 A benchmark which [<sup>F193</sup>is not a critical benchmark] is significant when:
- a it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of

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- investments funds having a total average value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months; or
- b it has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, there would be a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households or businesses in [<sup>F194</sup>the United Kingdom].
- 2 The [<sup>F195</sup>FCA must:]
- [<sup>F196</sup>a] [<sup>F197</sup>review the value in point (a) of paragraph 1 (“the threshold”)] in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold <sup>F198</sup>... [<sup>F199</sup>; and
- b provide a written report to the Treasury setting out the results of the review and making a recommendation as to whether the threshold should be amended.]
- [<sup>F200</sup>2A The FCA must conduct the review and provide the report to the Treasury:
- a within the period of two years beginning with IP completion day; and
- b thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.
- 2B The Treasury may by regulations amend the threshold in point (a) of paragraph 1 having regard to:
- a the matters referred to in point (a) of paragraph 2; and
- b any report prepared by the FCA under paragraph 2.]
- 3 An administrator shall immediately notify [<sup>F201</sup>the FCA] when its significant benchmark falls below the threshold mentioned in point (a) of paragraph 1.

### Textual Amendments

- F193** Words in Art. 24(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(2)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F194** Words in Art. 24(1)(b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F195** Words in Art. 24(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F196** Words in Art. 24(2) renumbered as Art. 24(2)(a) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), **20(3)(4)** and with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F197** Words in Art. 24(2)(a) inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 15/12/2021.*

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- F198** Words in Art. 24(2) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **20(3)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F199** Art. 24(2)(b) and preceding word inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **20(3)(e)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F200** Art. 24(2A)(2B) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **20(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(d); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F201** Words in Art. 24(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **20(5)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 25

### Exemptions from specific requirements for significant benchmarks

1 An administrator may choose not to apply Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) or Article 15(2) with respect to its significant benchmark where that administrator considers that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmark or the size of the administrator.

2 In the event that an administrator chooses not to apply one or more of the provisions referred to in paragraph 1, it shall immediately notify [<sup>F202</sup>the FCA] and provide it with all relevant information confirming the administrator's assessment that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmarks or the size of the administrator.

3 [<sup>F203</sup>The FCA] may decide that the administrator of a significant benchmark is nevertheless to apply one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2) if it considers that it would be appropriate taking into account the nature or the impact of the benchmarks or the size of the administrator. In its assessment, [<sup>F204</sup>the FCA] shall, based on the information provided by the administrator, take into account the following criteria:

- a the vulnerability of the benchmark to manipulation;
- b the nature of the input data;
- c the level of conflicts of interest;
- d the degree of discretion of the administrator;
- e the impact of the benchmark on markets;
- f the nature, scale and complexity of the provision of the benchmark;
- g the importance of the benchmark to financial stability;
- h the value of financial instruments, financial contracts or investment funds that reference the benchmark;
- i the administrator's size, organisational form or structure.

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4 Within 30 days of receipt of a notification from an administrator under paragraph 2, [F205 the FCA] shall notify that administrator of its decision to apply an additional requirement pursuant to paragraph 3. In the event that the notification to [F205 the FCA] is made during the course of an authorisation or registration procedure, the deadlines set out in Article 34 shall apply.

5 When exercising its supervisory powers in accordance with Article 41, [F206 the FCA] shall regularly review whether its assessment pursuant to paragraph 3 of this Article is still valid.

6 If [F207 the FCA] finds, on reasonable grounds, that the information submitted to it pursuant to paragraph 2 of this Article is incomplete or that supplementary information is needed, the 30-day time limit referred to in paragraph 4 of this Article shall apply only from the date on which such complementary information is provided by the administrator, unless the deadlines of Article 34 apply pursuant to paragraph 4 of this Article.

7 Where an administrator of a significant benchmark does not comply with one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2), it shall publish and maintain a compliance statement that clearly states why it is appropriate for that administrator not to comply with those provisions.

8 [F208 The FCA may make] technical standards to develop a template for the compliance statement referred to in paragraph 7.

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F209 ...

9 [F210 The FCA may make] technical standards to specify further the criteria referred to in paragraph 3.

F211 ...

F211 ...

#### Textual Amendments

**F202** Words in Art. 25(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F203** Words in Art. 25(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F204** Words in Art. 25(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F205** Words in Art. 25(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F206** Words in Art. 25(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(5)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F207** Words in Art. 25(6) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(5)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F208** Words in Art. 25(8) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(6)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F209** Words in Art. 25(8) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(6)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F210** Words in Art. 25(9) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(7)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F211** Words in Art. 25(9) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(7)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## CHAPTER 6

### *Non-significant benchmarks*

#### *Article 26*

### **Non-significant benchmarks**

1 An administrator may choose not to apply Articles 4(2), points (c), (d) and (e) of Article 4(7), Articles 4(8), 5(2), 5(3), 5(4), 6(1), 6(3), 6(5), 7(2), point (b) of Article 11(1), points (b) and (c) of Article 11(2), and Articles 11(3), 13(2), 14(2), 15(2), 16(2) and (3) with respect to its non-significant benchmarks.

2 An administrator shall immediately notify [<sup>F212</sup>the FCA] when the administrator's non-significant benchmark exceeds the threshold mentioned in point (a) of Article 24(1). In that case, it shall comply with the requirements applicable to significant benchmarks within three months.

3 Where an administrator of a non-significant benchmark chooses not to apply one or more of the provisions referred to in paragraph 1, it shall publish and maintain a compliance statement which shall clearly state why it is appropriate for that administrator not to comply with those provisions. The administrator shall provide the compliance statement to [<sup>F213</sup>the FCA].

4 The [<sup>F214</sup>FCA] shall review the compliance statement referred to in paragraph 3 of this Article. The [<sup>F215</sup>FCA] may also request additional information from the administrator in respect of its non-significant benchmarks in accordance with [<sup>F216</sup>any United Kingdom legislation which was relied on by the United Kingdom before IP completion day to implement Article 41 of the EU Benchmarks Regulation] and may require changes to ensure compliance with this Regulation.

5 [<sup>F217</sup>The FCA may make] technical standards [<sup>F217</sup>to develop a template for the compliance statement referred to in paragraph 3.

*Status: Point in time view as at 15/12/2021.*

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F218 ...

F218 ...

#### Textual Amendments

- F212** Words in Art. 26(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **22(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F213** Words in Art. 26(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **22(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F214** Word in Art. 26(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **22(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F215** Word in Art. 26(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **22(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F216** Words in Art. 26(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **22(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(e); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F217** Words in Art. 26(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **22(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F218** Words in Art. 26(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **22(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## [<sup>F219</sup>CHAPTER 7

### COMPLIANCE WITH REQUIREMENTS

#### Article 26A

#### Compliance with requirements

Supervised entities and supervised third country entities must comply with prohibitions and other requirements imposed on them by the FCA under this Regulation.]

#### Textual Amendments

- F219** [Title 3 Ch. 7](#) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 5 para. 8**; S.I. 2021/739, reg. 3(n)

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*Status: Point in time view as at 15/12/2021.*

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## TITLE IV

### TRANSPARENCY AND CONSUMER PROTECTION

#### Article 27

##### **Benchmark statement**

1 Within two weeks of the inclusion of an administrator in the [<sup>F220</sup>FCA register], the administrator shall publish, by means that ensure fair and easy access, a benchmark statement for each benchmark or, where applicable, for each family of benchmarks, that may be used in the [<sup>F221</sup>United Kingdom] in accordance with Article 29.

Where that administrator begins providing a new benchmark or family of benchmarks that may be used in the [<sup>F221</sup>United Kingdom] in accordance with Article 29, the administrator shall publish, within two weeks and by means that ensure a fair and easy access, a benchmark statement for each new benchmark or, where applicable, family of benchmarks.

The administrator shall review and, where necessary, update the benchmark statement for each benchmark or family of benchmarks in the event of any changes to the information to be provided under this Article and at least every two years.

The benchmark statement shall:

- a clearly and unambiguously define the market or economic reality measured by the benchmark and the circumstances in which such measurement may become unreliable;
- b lay down technical specifications that clearly and unambiguously identify the elements of the calculation of the benchmark in relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the position of the persons that can exercise discretion, and how such discretion may be subsequently evaluated;
- c provide notice of the possibility that factors, including external factors beyond the control of the administrator, may necessitate changes to, or the cessation of, the benchmark; and
- d advise users that changes to, or the cessation of, the benchmark may have an impact upon the financial contracts and financial instruments that reference the benchmark or the measurement of the performance of investment funds.

2 A benchmark statement shall contain at least:

- a the definitions for all key terms relating to the benchmark;
- b the rationale for adopting the benchmark methodology and procedures for the review and approval of the methodology;
- c the criteria and procedures used to determine the benchmark, including a description of the input data, the priority given to different types of input data, the minimum data needed to determine a benchmark, the use of any models or methods of extrapolation and any procedure for rebalancing the constituents of a benchmark's index;
- d the controls and rules that govern any exercise of judgement or discretion by the administrator or any contributors, to ensure consistency in the use of such judgement or discretion;
- e the procedures which govern the determination of the benchmark in periods of stress or periods where transaction data sources may be insufficient, inaccurate or unreliable and the potential limitations of the benchmark in such periods;

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- f the procedures for dealing with errors in input data or in the determination of the benchmark, including when a re-determination of the benchmark is required; and
- g the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.

<sup>F30</sup>2a By 30 April 2020, for each of the requirements referred to in paragraph 2, the benchmark statement shall contain an explanation of how ESG factors are reflected in each benchmark or family of benchmarks provided and published. For those benchmarks or families of benchmarks that do not pursue ESG objectives, it shall be sufficient for benchmark administrators to clearly state in the benchmark statement that they do not pursue such objectives.

Where no <sup>F222</sup>UK Climate Transition Benchmark or UK Paris-aligned Benchmark] is available in the portfolio of that individual benchmark administrator, or the individual benchmark administrator has no benchmarks that pursue ESG objectives or take into account ESG factors, this shall be stated in the benchmark statements of all benchmarks provided by that administrator. For significant equity and bond benchmarks, as well as for <sup>F223</sup>UK Climate Transition Benchmarks and UK Paris-aligned Benchmarks], benchmark administrators shall disclose in their benchmark statements details on whether or not and to what extent a degree of overall alignment with the target of reducing carbon emissions or the attainment of the objectives of the Paris Agreement is ensured <sup>F224</sup>...

<sup>F224</sup> ...

2b <sup>F225</sup>[The Treasury may make regulations] to supplement this Regulation by further specifying the information to be provided in the benchmark statement pursuant to paragraph 2a of this Article, as well as the standard format to be used for references to ESG factors to enable market participants to make well-informed choices and to ensure the technical feasibility of compliance with that paragraph.]

3 <sup>F226</sup>[The FCA may make] technical standards to specify further the contents of a benchmark statement and the cases in which an update of such statement is required.

<sup>F227</sup>[The FCA] shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into account the principle of proportionality.

<sup>F228</sup> ...

<sup>F228</sup> ...

#### Textual Amendments

- F30** Inserted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F220** Words in Art. 27(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F221** Words in Art. 27(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)



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- F222** Words in Art. 27(2a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2A)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F223** Words in Art. 27(2a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2A)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F224** Words in Art. 27(2a) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2A)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F225** Words in Art. 27(2b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2B)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F226** Words in Art. 27(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F227** Words in Art. 27(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F228** Words in Art. 27(3) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 28

### Changes to and cessation of a benchmark

1 An administrator shall publish<sup>F229</sup> ... [<sup>F230</sup>a robust procedure] concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark which may be used in the [<sup>F231</sup>United Kingdom] in accordance with Article 29(1). The procedure may be drafted, where applicable, for families of benchmarks<sup>F232</sup> ....

<sup>F233</sup>1A The procedure described in paragraph 1—

- a must be published with the benchmark statement for the benchmark when that statement is published in accordance with the first or second subparagraph of Article 27(1), and
- b must be updated and published whenever a material change occurs.

1B In the case of a critical benchmark—

- a on the day on which a procedure described in paragraph 1 is published in accordance with paragraph 1A(a), the administrator must give the FCA an assessment of the matters described in paragraph 1C,
- b the FCA must, before the end of the consideration period, consider whether a procedure published in accordance with paragraph 1A(a) satisfies paragraph 1,
- c before publishing an update of a procedure described in paragraph 1 (whether in accordance with paragraph 1A(b) or otherwise), an administrator must give the update to the FCA, together with an assessment of the matters described in paragraph 1C,

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- d where the FCA is given an update of a procedure described in paragraph 1 by an administrator, it must, before the end of the consideration period, consider whether the update satisfies paragraph 1, and
  - e an administrator must not publish an update of a procedure described in paragraph 1 unless—
    - i) the FCA has given a written notice to the administrator confirming that the update satisfies paragraph 1, or
    - ii) the consideration period has expired without the FCA giving a written notice to the administrator stating that the update does not satisfy that paragraph.
- 1C An assessment provided by an administrator for the purposes of paragraph 1B(a) or (c) must assess the following matters—
- a the nature and extent of the current use of the benchmark,
  - b the availability of suitable alternatives to the benchmark, and
  - c how prepared users of the benchmark are for changes to, or the cessation of, the benchmark.
- 1D For the purposes of paragraph 1B, “the consideration period”, in relation to a procedure or an update of a procedure, means the period of 60 days beginning with the day on which the procedure is published or the update of the procedure is given to the FCA (as appropriate) (“the relevant day”), subject to any extension under paragraph 1E.
- 1E The FCA may extend the consideration period by giving a written notice to the administrator before its expiry but may not extend the period beyond the end of the period of six months beginning with the relevant day.]
- 2 Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives. The supervised entities shall, upon request, provide the [F<sup>234</sup>FCA] with those plans and any updates and shall reflect them in the contractual relationship with clients.

#### Textual Amendments

- F229** Words in Art. 28(1) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), ss. 19(2)(a), 49(5); S.I. 2021/739, reg. 3(l)
- F230** Words in Art. 28(1) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 19(2)(b), 49(5); S.I. 2021/739, reg. 3(l)
- F231** Words in Art. 28(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 24(a) (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F232** Words in Art. 28(1) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), ss. 19(2)(c), 49(5); S.I. 2021/739, reg. 3(l)
- F233** Art. 28(1A)-(1E) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 19(3), 49(5); S.I. 2021/739, reg. 3(l)
- F234** Word in Art. 28(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 24(b) (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## TITLE V

### USE OF BENCHMARKS IN THE [F235 UNITED KINGDOM]

#### Article 29

#### Use of a benchmark

1 A supervised entity may use a benchmark or a combination of benchmarks in the [F236 United Kingdom] if the [F237 benchmark:

- a is on the FCA register; or
- b is provided by an administrator who is on the FCA register and located in the United Kingdom.]

[F238 1A Paragraph 1 does not enable a supervised entity to use a benchmark in the United Kingdom in breach of a prohibition under Article 21A or 23B.

1B The use of a benchmark by a supervised entity for a financial contract, financial instrument or investment fund in breach of a prohibition under Article 21A or 23B does not affect the validity or enforceability of a contract or other arrangement.]

2 Where the object of a prospectus to be published [F239 in accordance with rules made by the FCA under section 84 or 248 of FSMA, as those rules have effect on IP completion day] is transferable securities or other investment products that reference a benchmark, the issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether the benchmark is provided by an administrator included in the [F240 FCA register].

#### Textual Amendments

**F236** Words in Art. 29(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **26(2)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F237** Words in Art. 29(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **26(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F238** Art. 29(1A)(1B) inserted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), s. 49(5), **Sch. 5 para. 9**; S.I. 2021/739, reg. 3(n)

**F239** Words in Art. 29(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **26(3)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F240** Words in Art. 29(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **26(3)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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## Article 30

### Equivalence

1 In order for a benchmark or a combination of benchmarks provided by an administrator located in a third country to be used in the [F241United Kingdom] in accordance with Article 29(1), the benchmark and the administrator shall be included in the [F242FCA register]. The following conditions shall be complied with in order to be included in the register:

[F243a either:

- i the Treasury have made regulations in accordance with paragraph 2 or 3 of this Article; or
- ii the European Commission has adopted a decision before IP completion day in accordance with paragraph 2 or 3 of Article 30 of the EU Benchmarks Regulation;]
- b the administrator is authorised or registered, and is subject to supervision, in the third country in question;
- c [F244the FCA] is notified by the administrator of its consent that its actual or prospective benchmarks may be used by supervised entities in the [F245United Kingdom], of the list of the benchmarks for which they have given consent to be used in the [F245United Kingdom] and of the competent authority responsible for its supervision in the third country; and
- d the cooperation arrangements referred to in paragraph 4 of this Article are operational.

2 The [F246Treasury may by regulations specify] that the legal framework and supervisory practice of a third country ensures that:

- a administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs; and
- b the binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country.

F247 ...

3 Alternatively, the [F248Treasury may by regulations specify] that:

- a binding requirements in a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs; and
- b such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.

F249 ...

4 [F250The FCA] shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2 or 3 [F251of this Article (on or after IP completion

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day) or paragraph 2 or 3 of Article 30 of the EU Benchmarks Regulation (before IP completion day)]. Such arrangements shall specify at least:

- a the mechanism for the exchange of information between [<sup>F252</sup>the FCA] and the competent authorities of third countries concerned, including access to all relevant information regarding the administrator authorised in that third country that is requested by [<sup>F252</sup>the FCA];
- b the mechanism for prompt notification to [<sup>F253</sup>the FCA] where a third country competent authority deems that the administrator authorised in that third country that it is supervising is in breach of the conditions of its authorisation or other national legislation in the third country;
- c the procedures concerning the coordination of supervisory activities, including on-site inspections.

[<sup>F254</sup>5 The FCA may make technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 4 so as to ensure that the FCA is able to exercise all its supervisory powers under this Regulation.]

#### Textual Amendments

- F241** Words in Art. 30(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(2)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F242** Words in Art. 30(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(2)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F243** Art. 30(1)(a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(g)(i); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F244** Words in Art. 30(1)(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(2)(c)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F245** Words in Art. 30(1)(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(2)(c)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F246** Words in Art. 30(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F247** Words in Art. 30(2) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F248** Words in Art. 30(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **27(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F249** Words in Art. 30(3) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **27(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F250** Words in Art. 30(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **27(4)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F251** Words in Art. 30(4) inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **27(4)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(g)(ii); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F252** Words in Art. 30(4)(a) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **27(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F253** Words in Art. 30(4)(b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **27(4)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F254** Art. 30(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **27(5)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Article 31

#### Withdrawal of registration of an administrator located in a third country

- 1 <sup>[F255]</sup>The FCA] shall withdraw the registration of an administrator located in a third country by removing that administrator from the <sup>[F256]</sup>FCA register] where it has well-founded reasons, based on documented evidence, that the administrator:
- a is acting in a manner which is clearly prejudicial to the interests of the users of its benchmarks or the orderly functioning of markets; or
  - b has seriously infringed the national legislation in the third country or other provisions applicable to it in the third country and on the basis of which the <sup>[F257]</sup>Treasury have made regulations in accordance with Article 30(2) or (3) (on or after IP completion day) or the European Commission adopted an implementing decision in accordance with Article 30(2) or (3) of the EU Benchmarks Regulation (before IP completion day)].
- 2 <sup>[F258]</sup>The FCA] shall take a decision under paragraph 1 only if the following conditions are fulfilled:
- a <sup>[F259]</sup>the FCA] has referred the matter to the competent authority of the third country and that competent authority has not taken the appropriate measures needed to protect investors and the orderly functioning of the markets in the <sup>[F260]</sup>United Kingdom], or has failed to demonstrate that the administrator concerned complies with the requirements applicable to it in the third country;
  - b <sup>[F261]</sup>the FCA] has informed the competent authority of the third country of its intention to withdraw the registration of the administrator, at least 30 days before the withdrawal.
- 3 <sup>[F262]</sup>The FCA] shall publish its decision on its website.

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### Textual Amendments

- F255** Words in Art. 31(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(2)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F256** Words in Art. 31(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(2)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F257** Words in Art. 31(1)(b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(h); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F258** Words in Art. 31(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F259** Words in Art. 31(2)(a) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F260** Words in Art. 31(2)(a) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F261** Words in Art. 31(2)(b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F262** Words in Art. 31(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **28(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 32

### Recognition of an administrator located in a third country

1 Until such time as <sup>F263</sup>regulations are made in accordance with Article 30(2) or (3)], a benchmark provided by an administrator located in a third country may be used by supervised entities in the <sup>F264</sup>[United Kingdom] provided that the administrator acquires prior recognition by the <sup>F265</sup>[FCA] in accordance with this Article.

2 An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 of this Article shall comply with the requirements established in this Regulation, excluding Article 11(4) and Articles 16, 20, 21 and 23. The administrator may fulfil that condition by applying the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, provided that such application is equivalent to compliance with the requirements established in this Regulation, excluding Article 11(4), and Articles 16, 20, 21 and 23.

Status: Point in time view as at 15/12/2021.

Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

For the purposes of determining whether the condition referred to in the first subparagraph is fulfilled, and in order to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, the [F266FCA] may rely on an assessment by an independent external auditor or, where the administrator located in a third country is subject to supervision, on the certification provided by the competent authority of the third country where the administrator is located.

If, and to the extent that, an administrator is able to demonstrate that a benchmark it provides is a regulated-data benchmark or a commodity benchmark that is not based on submissions by contributors the majority of which are supervised entities, there shall be no obligation on the administrator to comply with requirements not applicable to the provision of regulated-data benchmarks and of commodity benchmarks as provided for in Article 17 and Article 19(1) respectively.

3 An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative established in [F267the United Kingdom]. The legal representative shall be a natural or legal person located in the [F268United Kingdom], and which, expressly appointed by the administrator located in a third country, acts on behalf of such administrator vis-à-vis the authorities and any other person in the [F268United Kingdom] with regard to the administrator's obligations under this Regulation. The legal representative shall perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation together with the administrator and, in that respect, shall be accountable to the [F269FCA].

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5 An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with the [F271FCA]. The applicant administrator shall provide all information necessary to [F272satisfy the FCA] that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective benchmarks which may be used in the [F273United Kingdom] and shall, where applicable, indicate the competent authority responsible for its supervision in the third country.

Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, the [F274FCA] shall verify that the conditions laid down in paragraphs [F2752 and 3] are fulfilled.

If the [F276FCA] considers that the conditions laid down in paragraphs [F2772 and 3] are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:

- a where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between the [F278FCA] and the competent authority of the third country where the administrator is located, in compliance with the [F279technical standards made] pursuant to Article 30(5), in order to ensure an efficient exchange of information that [F280allows the FCA] to carry out its duties in accordance with this Regulation;
- b the effective exercise by the [F281FCA] of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country's supervisory authority.

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*Status: Point in time view as at 15/12/2021.*

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8 The [<sup>F283</sup>FCA] shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 if it has well-founded reasons, based on documented evidence, to consider that the administrator is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or the orderly functioning of markets or the administrator has seriously infringed the relevant requirements set out in this Regulation, or that the administrator made false statements or used any other irregular means to obtain the recognition.

9 [<sup>F284</sup>The FCA may make] technical standards to determine the form and content of the application referred to in paragraph 5 <sup>F285</sup>...

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#### Textual Amendments

- F263** Words in Art. 32(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(2)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F264** Words in Art. 32(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F265** Word in Art. 32(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(2)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F266** Word in Art. 32(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F267** Words in Art. 32(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F268** Words in Art. 32(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F269** Word in Art. 32(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(4)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F270** Art. 32(4) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(5)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F271** Word in Art. 32(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F272** Words in Art. 32(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F273** Words in Art. 32(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F274** Word in Art. 32(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F275** Words in Art. 32(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F276** Word in Art. 32(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(c)(i)(aa)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F277** Words in Art. 32(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(c)(i)(bb)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F278** Word in Art. 32(5)(a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(c)(ii)(aa)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F279** Words in Art. 32(5)(a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(c)(ii)(bb)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F280** Words in Art. 32(5)(a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(c)(ii)(cc)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F281** Word in Art. 32(5)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(6)(c)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F282** Art. 32(6)(7) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(7)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F283** Word in Art. 32(8) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(8)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F284** Words in Art. 32(9) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **29(9)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F285** Words in Art. 32(9) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **29(9)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F286** Words in Art. 32(9) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **29(9)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Article 33

#### Endorsement of benchmarks provided in a third country

1 An administrator located in the [F287United Kingdom] and authorised or registered in accordance with Article 34, or any other supervised entity located in the [F287United Kingdom] with a clear and well-defined role within the control or accountability framework of a third country administrator, which is able to monitor effectively the provision of a benchmark, may apply to the [F288FCA] to endorse a benchmark or a family of benchmarks provided in a third country for their use in the [F287United Kingdom], provided that all of the following conditions are fulfilled:

- a the endorsing administrator or other supervised entity has verified and is able to demonstrate on an on-going basis to [F289the FCA] that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;
- b the endorsing administrator or other supervised entity has the necessary expertise to monitor effectively the activity of the provision of a benchmark in a third country and to manage the associated risks;
- c there is an objective reason to provide the benchmark or family of benchmarks in a third country and for said benchmark or family of benchmarks to be endorsed for their use in the [F290United Kingdom].

For the purpose of point (a), when assessing whether the provision of the benchmark or family of benchmarks to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation, the [F291FCA] may take into account whether the compliance of the provision of the benchmark or family of benchmarks with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, would be equivalent to compliance with the requirements of this Regulation.

2 An administrator or other supervised entity that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy the [F292FCA] that, at the time of application, all the conditions referred to in that paragraph are fulfilled.

3 Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, the [F293FCA] shall examine the application and adopt a decision either to authorise the endorsement or to refuse it. F294 ...

4 An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator or other supervised entity. The endorsing administrator or other supervised entity shall not use the endorsement with the intention of avoiding the requirements of this Regulation.

*Status: Point in time view as at 15/12/2021.*

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5 An administrator or other supervised entity that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.

6 Where the [F295FCA] has well-founded reasons to consider that the conditions laid down under paragraph 1 of this Article are no longer fulfilled, it shall have the power to require the endorsing administrator or other supervised entity to cease the endorsement <sup>F296</sup>.... Article 28 shall apply in case of cessation of the endorsement.

7 The [F297Treasury may make regulations] to determine the conditions under which the [F298FCA] may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the [F299United Kingdom]. [F300When determining the conditions, the Treasury] shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark.

#### Textual Amendments

- F287** Words in Art. 33(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(2)(a)(i)(aa)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F288** Word in Art. 33(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(2)(a)(i)(bb)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F289** Words in Art. 33(1)(a) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(2)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F290** Words in Art. 33(1)(c) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(2)(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F291** Word in Art. 33(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F292** Word in Art. 33(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F293** Word in Art. 33(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F294** Words in Art. 33(3) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F295** Word in Art. 33(6) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(5)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F296** Words in Art. 33(6) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(5)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F297** Words in Art. 33(7) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(6)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F298** Word in Art. 33(7) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(6)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F299** Words in Art. 33(7) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(6)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F300** Words in Art. 33(7) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **30(6)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Textual Amendments

- F235** Words in Title 5 heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **25** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), **20(3)(4)** and with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

## TITLE VI

### AUTHORISATION, REGISTRATION AND SUPERVISION OF ADMINISTRATORS

#### CHAPTER 1

#### *Authorisation and registration*

#### *Article 34*

#### **Authorisation and registration of an administrator**

1 A natural or legal person located in the [F301United Kingdom] that intends to act as an administrator shall apply to the [F302FCA] in order to receive:

- a authorisation if it provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation;

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- b registration if it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation, on condition that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark; or
  - c registration if it provides or intends to provide only indices which would qualify as non-significant benchmarks.
- 2 An authorised or registered administrator shall comply at all times with the conditions laid down in this Regulation and shall notify the [F303FCA] of any material changes thereof.
- 3 The application referred to in paragraph 1 shall be made within 30 working days of any agreement entered into by a supervised entity to use an index provided by the applicant as a reference to a financial instrument or financial contract or to measure the performance of an investment fund.
- 4 The applicant shall provide all information necessary to satisfy the [F304FCA] that the applicant has established, at the time of authorisation or registration, all the necessary arrangements to meet the requirements laid down in this Regulation.
- 5 Within 15 working days of receipt of the application, the [F305FCA] shall assess whether the application is complete and shall notify the applicant accordingly. If the application is incomplete, the applicant shall submit the additional information required by the [F305FCA]. The time limit referred to in this paragraph shall apply from the date on which such additional information is provided by the applicant.
- 6 The [F306FCA] shall:
- a examine the application for authorisation and adopt a decision to authorise or refuse to authorise the applicant within four months of receipt of a complete application;
  - b examine the application for registration and adopt a decision to register or refuse to register the applicant within 45 working days of receipt of a complete application.

Within five working days of the adoption of a decision referred to in the first subparagraph, the [F307FCA] shall notify it to the applicant. Where the [F307FCA] refuses to authorise or to register the applicant, it shall give reasons for its decision.

F3087 .....

- 8 [F309The FCA may make] technical standards to specify further the information to be provided in the application for authorisation and in the application for registration, taking into account that authorisation and registration are distinct processes where authorisation requires a more extensive assessment of the administrator's application, the principle of proportionality, the nature of the supervised entities applying for registration under point (b) of paragraph 1 and the costs to the applicants and [F310the FCA].

F311 ...

F311 ...

#### Textual Amendments

**F301** Words in Art. 34(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **31(2)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F302** Word in Art. 34(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F303** Word in Art. 34(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F304** Word in Art. 34(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F305** Word in Art. 34(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F306** Word in Art. 34(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(5)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F307** Word in Art. 34(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(5)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F308** Art. 34(7) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(6)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F309** Words in Art. 34(8) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(7)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F310** Words in Art. 34(8) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(7)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F311** Words in Art. 34(8) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **31(7)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 35

### Withdrawal or suspension of authorisation or registration

1 [F312The FCA] may withdraw or suspend the authorisation or registration of an administrator where the administrator:

- a expressly renounces the authorisation or registration or has provided no benchmarks for the preceding 12 months;
- b has obtained the authorisation or registration, or has endorsed a benchmark, by making false statements or by any other irregular means;

*Status: Point in time view as at 15/12/2021.*

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- c no longer meets the conditions under which it was authorised or registered; or
- d has seriously or repeatedly infringed the provisions of this Regulation.

2 <sup>F313</sup> ...

[<sup>F314</sup>The FCA] shall promptly update the [<sup>F315</sup>FCA register].

3 Following the adoption of a decision to suspend the authorisation or registration of an administrator, and where cessation of the benchmark would result in a force majeure event, or frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark, as specified in the [<sup>F316</sup>2018 Delegated Regulation or regulations made by the Treasury] pursuant to Article 51(6), the provision of the benchmark in question may be permitted by the [<sup>F317</sup>FCA] until the decision of suspension has been withdrawn. During that period of time, the use of such benchmark by supervised entities shall be permitted only for financial contracts, financial instruments and investment funds that already reference the benchmark.

4 Following the adoption of a decision to withdraw the authorisation or registration of an administrator, Article 28(2) shall apply.

[<sup>F3185</sup> In paragraph 3, the “2018 Delegated Regulation” means Commission Delegated Regulation (EU) 2018/67 of 3 October 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to the establishment of the conditions to assess the impact resulting from the cessation of or change to existing benchmarks.]

#### Textual Amendments

- F312** Words in Art. 35(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **32(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F313** Words in Art. 35(2) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **32(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F314** Words in Art. 35(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **32(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F315** Words in Art. 35(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **32(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F316** Words in Art. 35(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **32(4)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F317** Word in Art. 35(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **32(4)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)



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**F318** Art. 35(5) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **32(5)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 36

### Register of administrators and benchmarks

1 <sup>[F319]</sup>The FCA] shall establish and maintain a public register that contains the following information:

- a the identities of the administrators authorised or registered pursuant to Article 34 and <sup>[F320]</sup>that the FCA is responsible for the supervision thereof];
- b the identities of administrators that comply with the conditions laid down in Article 30(1), the list of benchmarks referred to in point (c) of Article 30(1) and the third country competent authorities responsible for the supervision thereof;
- c the identities of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks <sup>[F321]</sup>provided by the administrator in accordance with Article 32(5) which may be used in the United Kingdom] and, where applicable, the third country competent authorities responsible for the supervision thereof;
- d the benchmarks that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities of the endorsing administrators or endorsing supervised entities;
- <sup>[F322]</sup>e any prohibitions under Article 21A or 23B on the use of benchmarks by supervised entities that are in force;
- f any benchmarks that are Article 23A benchmarks.]

2 The register referred to in paragraph 1 shall be publicly accessible on the website of <sup>[F323]</sup>the FCA] and shall be updated promptly, as necessary.

#### Textual Amendments

**F319** Words in Art. 36(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **33(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F320** Words in Art. 36(1)(a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **33(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F321** Words in Art. 36(1)(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **33(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F322** Art. 36(1)(e)(f) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 10**; S.I. 2021/739, reg. 3(n)

**F323** Words in Art. 36(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **33(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 2

### **Supervisory cooperation**

#### *F324* Article 37

#### **Delegation of tasks between competent authorities**

##### **Textual Amendments**

**F324** Arts. 37-40 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(1)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### *F324* Article 38

#### **Disclosure of information from another Member State**

##### **Textual Amendments**

**F324** Arts. 37-40 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(1)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### *F324* Article 39

#### **Cooperation on on-site inspections and investigations**

##### **Textual Amendments**

**F324** Arts. 37-40 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(1)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 3

### Role of competent authorities

#### <sup>F324</sup>Article 40

#### Competent authorities

##### Textual Amendments

**F324** Arts. 37-40 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(1)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Article 41

#### Powers of competent authorities

<sup>F325</sup><sub>1</sub> .....

<sup>F325</sup><sub>2</sub> .....

<sup>F325</sup><sub>3</sub> .....

4 An administrator or any other supervised entity making information available [<sup>F326</sup>at the request of the FCA or in response to a requirement imposed by the FCA in the exercise of its functions under Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC] shall not be considered to be in breach of any restriction on disclosure of information posed by any contractual, legislative, regulatory or administrative provision.

##### Textual Amendments

**F325** Art. 41(1)-(3) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(2)(a)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F326** Words in Art. 41(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(2)(b)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### <sup>F327</sup>Article 42

#### Administrative sanctions and other administrative measures

*Status: Point in time view as at 15/12/2021.*

*Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F327** Arts. 42-44 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### <sup>F327</sup> Article 43

### Exercise of supervisory powers and imposition of sanctions

#### Textual Amendments

**F327** Arts. 42-44 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### <sup>F327</sup> Article 44

### Obligation to cooperate

#### Textual Amendments

**F327** Arts. 42-44 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **34(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Article 45

### Publication of decisions

1 Subject to paragraph 2, [<sup>F328</sup>the FCA] shall publish any decision imposing an administrative sanction or other administrative measure in relation to infringements of this Regulation on its official website immediately after the person subject to that decision has been informed of that decision. Such publication shall include at least information on the type and nature of the infringement and the identity of the persons subject to the decision.

The first subparagraph does not apply to decisions imposing measures that are of an investigatory nature.

2 Where [<sup>F329</sup>the FCA] considers that the publication of the identity of the legal person or of the personal data of a natural person, would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such

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publication would jeopardise the stability of financial markets or an on-going investigation, it shall do any of the following:

- a defer publication of the decision until such time as the reasons for that deferral cease to exist;
- b publish the decision on an anonymous basis in accordance with national law where such anonymous publication ensures an effective protection of the personal data concerned;
- c not publish the decision at all in the event that [F330the FCA] is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:
  - i that the stability of financial markets is not jeopardised; or
  - ii the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

Where [F329the FCA] decides to publish a decision on an anonymous basis as referred to in point (b) of the first subparagraph, it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication shall cease to exist during that period.

3 Where the decision is subject to an appeal before a national judicial, administrative or other authority, [F331the FCA] shall also publish, immediately, on its official website such information and any subsequent information on the outcome of such appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

4 The [F332FCA] shall ensure that any decision that is published in accordance with this Article shall remain accessible on its official website for a period of at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the [F332FCA] for the period which is necessary in accordance with the applicable data protection rules.

F3335 .....

#### Textual Amendments

- F328** Words in Art. 45(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **35(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F329** Words in Art. 45(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **35(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F330** Words in Art. 45(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **35(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F331** Words in Art. 45(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **35(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F332** Word in Art. 45(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **35(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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**F333** Art. 45(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **35(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 46

<sup>F334</sup>**Cessation of a critical benchmark in certain circumstances]**

- F335<sup>1</sup> .....
- F335<sup>2</sup> .....
- F335<sup>3</sup> .....
- F335<sup>4</sup> .....
- F335<sup>5</sup> .....
- F335<sup>6</sup> .....
- F335<sup>7</sup> .....
- 8       <sup>F336</sup> ...
- F336 ...

With regard to the decision to withdraw the authorisation or registration of an administrator in accordance with Article 35, whenever the cessation of a <sup>F337</sup>critical benchmark would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark in the <sup>F338</sup>United Kingdom, within the meaning specified in Commission Delegated Regulation (EU) 2018/67 or regulations made by the Treasury under Article 51(6), the FCA] shall consider whether to adopt measures to mitigate the effects referred to in this paragraph, including:

- a a change to the code of conduct referred to in Article 15, the methodology or other rules of the benchmark;
- b a transitional period, during which the procedures envisaged under Article 28(2) shall apply.

- F339<sup>9</sup> .....
- F339<sup>10</sup> .....
- F339<sup>11</sup> .....

**Textual Amendments**

**F334** Art. 46 heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **36(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F335** Art. 46(1)-(7) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **36(3)** (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F336** Words in Art. 46(8) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **36(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F337** Word in Art. 46(8) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **36(4)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F338** Words in Art. 46(8) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **36(4)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F339** Art. 46(9)-(11) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **36(5)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### *F340* Article 47

### Cooperation with ESMA

#### Textual Amendments

**F340** Art. 47 omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **37** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Article 48

### Professional secrecy

1 Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph 2.

2 The obligation of professional secrecy applies to all persons who work or who have worked for the [<sup>F341</sup>FCA] or for any authority or market undertaking or natural or legal person to whom the [<sup>F341</sup>FCA] has delegated its powers, including auditors and experts contracted by the [<sup>F341</sup>FCA].

3 Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by [<sup>F342</sup>the law of the United Kingdom or any part of the United Kingdom].

4 All information [<sup>F343</sup>exchanged between the FCA and competent authorities] that concerns business or operational conditions and other economic or personal affairs shall be considered confidential and shall be subject to the requirements of professional secrecy, except where the [<sup>F344</sup>authority from whom the information is received] states at the time of

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communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

#### Textual Amendments

- F341** Word in Art. 48(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **38(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), **20(3)(4)** and with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F342** Words in Art. 48(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **38(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F343** Words in Art. 48(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **38(c)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F344** Words in Art. 48(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **38(c)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

[<sup>F345</sup>TITLE 6A

## PROVISION OF INFORMATION AND PERIODS OF TIME

### *Article 48A*

#### Provision of information and documents

- 1 The Treasury may by regulations make provision about the procedure to be followed, or rules to be applied, when a provision of or made under this Regulation—
  - a requires information or a document of any kind to be given, or
  - b authorises the imposition of a requirement.
- 2 The regulations may, among other things, make provision—
  - a requiring information to be given in writing;
  - b requiring, or allowing, information or a document to be sent electronically;
  - c requiring, or allowing, information or a document to be given in another manner;
  - d as to the address to which information or a document must or may be sent;
  - e requiring a person to provide an address to which information or a document must or may be sent;
  - f for treating information or a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
  - g as to what must, or may, be done if the person to whom information or a document is required to be given is not an individual;
  - h as to what must, or may, be done if the intended recipient of information or a document is outside the United Kingdom.



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3 Paragraph 1 applies however the obligation to give information or a document is expressed (and so, among other things, includes a provision which requires a person to be notified of something and a provision which requires a document to be submitted).

4 Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Regulation subject to any provision made by regulations under this Article.

#### *Article 48B*

#### **Periods of time**

The following provisions of Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits do not apply to a reference in this Regulation to a period of time—

- a Article 3(2)(c) (periods expressed in weeks, months or years);
- b Article 3(4) (periods ending with a weekend or public holiday).]

#### **Textual Amendments**

**F345** Title 6A inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 5 para. 11](#); [S.I. 2021/739](#), reg. 3(n)

#### TITLE VII

#### **[<sup>F346</sup>Power to make regulations]**

#### *[<sup>F347</sup>Article 49*

#### **Regulations made by the Treasury**

1 Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2 Such regulations may:

- a contain incidental, supplemental, consequential and transitional provision; and
- b make different provision for different purposes.

[<sup>F348</sup>2A Regulations made under Article 23G may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.]

3 [<sup>F349</sup>Subject to paragraph 2A,] a statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.]

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#### Textual Amendments

- F347** Art. 49 substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **40** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F348** Art. 49(2A) inserted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 18(2)(a)**, 49(5); S.I. 2021/739, reg. 3(k)
- F349** Words in Art. 49(3) inserted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 18(2)(b)**, 49(5); S.I. 2021/739, reg. 3(k)

<sup>F350</sup> *Article 50*

#### Committee procedure

#### Textual Amendments

- F350** Art. 50 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **41** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Textual Amendments

- F346** Title 7 heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **39** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### TITLE VIII

#### TRANSITIONAL AND FINAL PROVISIONS

##### *Article 51*

#### Transitional provisions

<sup>F351</sup> An index provider providing a benchmark to which paragraph 1A applies must have applied to the FCA for authorisation or registration in accordance with Article 34 of the EU Benchmarks Regulation on or before 31 December 2019, in order to provide a benchmark that may be used in the United Kingdom on or after 1 January 2020.

1A A supervised entity may, subject to paragraphs 1B and 1C, use a benchmark in the United Kingdom that:

- a is provided by a UK index provider who was providing a benchmark in the United Kingdom on 30 June 2016, or
- b is a benchmark (to which paragraph (a) does not apply) that was provided by a UK index provider in the United Kingdom in the period beginning with 1 July 2016 and ending with 31 December 2017,

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- 1B A supervised entity may not use a benchmark under paragraph 1A if:
- a before 1 January 2020, the index provider providing the benchmark made an application to the FCA for authorisation or registration under Article 34 of the EU Benchmarks Regulation; and
  - b the index provider is notified that the application is refused or approved.

- 1C Where the UK index provider is notified that the application is refused or approved on or after IP completion day, the benchmark may not be used under paragraph 1A:
- a where the application is refused, from the day after the date on which the index provider is notified of the refusal;
  - b where the application is approved, from the day on which the index provider is recorded on the FCA register.]

F352<sub>2</sub> .....

F353<sub>3</sub> .....

4 Where [F354 a benchmark provided by a UK index provider] does not meet the requirements of this Regulation, but ceasing or changing that benchmark to fulfil the requirements of this Regulation would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund, which references that benchmark, [F355 the FCA shall permit the use of the benchmark in the United Kingdom]. No financial instruments, financial contracts, or measurements of the performance of an investment fund shall add a reference to such [F356 a benchmark] after 1 January 2020.

[F30 4a An index provider may continue to provide an existing benchmark that has been recognised as a critical benchmark by [F357 regulations made by the Treasury under Article 20(5)] until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.

4b An existing benchmark that has been recognised as a critical benchmark by [F358 regulations made by the Treasury under Article 20(5)] may be used for existing and new financial instruments, financial contracts, or for measuring the performance of an investment fund until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.]

[F359 5 A supervised entity may use a benchmark provided by an administrator located in a third country as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund in the United Kingdom:

- a during the period beginning with IP completion day and ending with [F360 31 December 2025];
- b on and after [F361 1 January 2026], if the benchmark is used as a reference for that financial instrument, that financial contract or for measuring the performance of that investment fund on [F362 31 December 2025],

(but see paragraph 5A).

5A A benchmark may not be used under paragraph 5 if:

- a before IP completion day:
  - i) the administrator providing the benchmark makes an application for registration or authorisation under Article 34 of the EU Benchmarks Regulation; and
  - ii) the administrator is notified that the application is refused;

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- b the benchmark, or the administrator providing the benchmark, is recorded on the FCA register in accordance with Article 36 of this Regulation.

5B A benchmark that:

- a is provided by an administrator to whom paragraph 5A(a) applies, and
- b is used as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund in the United Kingdom before the administrator is notified the application is refused,

may continue to be used in the United Kingdom as a reference for that financial instrument, that financial contract or for measuring the performance of that investment fund.]

6 The [<sup>F363</sup>Treasury may make regulations to specify] the conditions on which the [<sup>F364</sup>FCA] may assess whether the cessation or the changing of [<sup>F365</sup>a benchmark provided by a UK index provider] to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund which references such benchmark.

[<sup>F366</sup>7 In this Article:

“UK index provider” means an index provider located in the United Kingdom.]

#### Textual Amendments

- F30** Inserted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F351** Art. 51(1)-(1C) substituted for Art. 51(1) (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(2)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(a)(f); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(i); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F352** Art. 51(2) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(3)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(b)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F353** Art. 51(3) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(4)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F354** Words in Art. 51(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(5)(a)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F355** Words in Art. 51(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(5)(b)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F356** Words in Art. 51(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(5)(c)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F357** Words in Art. 51(4a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(5A)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(c)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F358** Words in Art. 51(4b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(5B)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(c)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F359** Art. 51(5)-(5B) substituted for Art. 51(5) (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(6)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(d)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F360** Words in Art. 51(5)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 20(2)**, 49(5); S.I. 2021/739, reg. 3(m)
- F361** Words in Art. 51(5)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 20(3)(a)**, 49(5); S.I. 2021/739, reg. 3(m)
- F362** Words in Art. 51(5)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 20(3)(b)**, 49(5); S.I. 2021/739, reg. 3(m)
- F363** Words in Art. 51(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(7)(a)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F364** Word in Art. 51(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(7)(b)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F365** Words in Art. 51(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(7)(c)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F366** Art. 51(7) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(8)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(e)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 52

### Deadline for updating the prospectuses and key information documents

Article 29(2) is without prejudice to outstanding prospectuses approved under Directive 2003/71/EC prior to 1 January 2018. For prospectuses approved prior to 1 January 2018 under Directive 2009/65/EC, the underlying documents shall be updated at the first occasion or at the latest within 12 months after that date.

## <sup>F367</sup> Article 53

### ESMA reviews

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*Status: Point in time view as at 15/12/2021.*

**Changes to legislation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F367** Arts. 53, 54 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **43** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### <sup>F367</sup> Article 54

#### Review

### Textual Amendments

**F367** Arts. 53, 54 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **43** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Article 55

#### Notification of benchmarks referenced and their administrators

When a benchmark is referenced in a financial instrument covered by Article 4(1) of Regulation (EU) No 596/2014, the notifications under Article 4(1) of that Regulation shall include the name of the benchmark referenced and its administrator.

### Article 56

#### Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

- (1) Article 19 is amended as follows:
  - (a) the following paragraph is inserted:
    - 1a. The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:
      - a the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the assets held by the collective investment undertaking;
      - b the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the portfolio's assets;

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- c the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.;

- (b) in paragraph 7, the following subparagraph is inserted after the second subparagraph:

For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking..

- (2) Article 35 is amended as follows:

- (a) in paragraphs (2) and (3), the phrase ‘and Article 19(13) and (14)’ is replaced by ‘, Article 19(13) and (14) and Article 38’;
- (b) paragraph (5) is replaced by the following:

5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) or (14) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council..

- (3) In Article 38, the following paragraphs are added:

By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

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The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted..

<sup>F368</sup> *Article 57*

**Amendments to Directive 2008/48/EC**

**Textual Amendments**

**F368** Art. 57 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **44** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

<sup>F369</sup> *Article 58*

**Amendments to Directive 2014/17/EU**

**Textual Amendments**

**F369** Art. 58 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **44** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*Article 59*

**Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2018.

Notwithstanding the second paragraph of this Article, Articles 3(2), 5(5), 11(5), 13(3), 15(6), 16(5), Article 20 (excluding point (b) of paragraph (6)), Articles 21 and 23, Articles 25(8), 25(9), 26(5), 27(3), 30(5), 32(9), 33(7), 34(8), Article 46, and Articles 47(3) and 51(6) shall apply from 30 June 2016.

Notwithstanding the second paragraph of this Article, Article 56 shall apply from 3 July 2016.



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### Textual Amendments

**F370** Words in [Signature](#) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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## ANNEX I

### INTEREST RATE BENCHMARKS

#### Accurate and sufficient data

1. For the purposes of points (a) and (c) of Article 11(1), in general the priority of use of input data shall be as follows:
  - (a) a contributor's transactions in the underlying market that a benchmark intends to measure or, if not sufficient, its transactions in related markets, such as:
    - the unsecured inter-bank deposit market,
    - other unsecured deposit markets, including certificates of deposit and commercial paper, and
    - other markets such as overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options, provided that those transactions comply with the input data requirements in the code of conduct;
  - (b) a contributor's observations of third party transactions in the markets described in point (a);
  - (c) committed quotes;
  - (d) indicative quotes or expert judgements.
2. For the purposes of point (a) of Article 11(1) and Article 11(4), input data may be adjusted.

In particular, input data may be adjusted by application of the following criteria:

- (a) proximity of transactions to the time of provision of the input data and the impact of any market events between the time of the transactions and the time of provision of the input data;
- (b) interpolation or extrapolation from transactions data;
- (c) adjustments to reflect changes in the credit standing of the contributors and other market participants.

#### Oversight function

3. The following requirements shall apply in substitution for the requirements of Article 5(4) and (5):
  - (a) the administrator of an interest rate benchmark shall have in place an independent oversight committee. Details of the membership of that committee shall be made public, along with any declarations of any conflict of interest and the processes for election or nomination of its members;
  - (b) the oversight committee shall hold no less than one meeting every four months and shall keep minutes of each such meeting;
  - (c) the oversight committee shall operate with integrity and shall have all of the responsibilities provided for in Article 5(3).

#### Auditing

4. The administrator of an interest rate benchmark shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark

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methodology and this Regulation. The external audit of the administrator shall be carried out for the first time six months after the introduction of the code of conduct and subsequently every two years.

The oversight committee may require an external audit of a contributor to an interest rate benchmark if dissatisfied with any aspects of its conduct.

Contributor systems and controls

5. The following requirements shall apply to contributors to interest rate benchmarks, in addition to the requirements set out in Article 16. Article 16(5) shall not apply.
6. Each contributor's submitter and the direct managers of that submitter shall acknowledge in writing that they have read the code of conduct and that they will comply with it.
7. A contributor's systems and controls shall include:
  - (a) an outline of responsibilities within each firm, including internal reporting lines and accountability, including the location of submitters and managers and the names of relevant individuals and alternates;
  - (b) internal procedures for sign-off of contributions of input data;
  - (c) disciplinary procedures in respect of attempts to manipulate, or any failure to report, actual or attempted manipulation by parties external to the contribution process;
  - (d) effective conflicts of interest management procedures and communication controls, both within contributors and between contributors and other third parties, to avoid any inappropriate external influence over those responsible for submitting rates. Submitters shall work in locations physically separated from interest rate derivatives traders;
  - (e) effective procedures to prevent or control the exchange of information between persons engaged in activities involving a risk of conflict of interest where the exchange of that information may affect the benchmark data contributed;
  - (f) rules to avoid collusion among contributors, and between contributors and the benchmark administrators;
  - (g) measures to prevent, or limit, any person from exercising inappropriate influence over the way in which persons involved in the provision of input data carries out those activities;
  - (h) the removal of any direct link between the remuneration of employees involved in the provision of input data and the remuneration of, or revenues generated by, persons engaged in another activity, where a conflict of interest may arise in relation to those activities;
  - (i) controls to identify any reverse transaction subsequent to the provision of input data.
8. A contributor to an interest rate benchmark shall keep detailed records of:
  - (a) all relevant aspects of contributions of input data;
  - (b) the process governing input data determination and the sign-off of input data;
  - (c) the names of submitters and their responsibilities;

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- (d) any communications between the submitters and other persons, including internal and external traders and brokers, in relation to the determination or contribution of input data;
  - (e) any interaction of submitters with the administrator or any calculation agent;
  - (f) any queries regarding the input data and their outcome of those queries;
  - (g) sensitivity reports for interest rate swap trading books and any other derivative trading book with a significant exposure to interest rate fixings in respect of input data.
9. Records shall be kept on a medium that allows the storage of information to be accessible for future reference with a documented audit trail.
  10. The compliance function of the contributor to an interest rate benchmark shall report any findings, including reverse transactions, to management on a regular basis.
  11. Input data and procedures shall be subject to regular internal reviews.
  12. An external audit of the input data of a contributor to an interest rate benchmark, compliance with the code of conduct and the provisions of this Regulation shall be carried out for the first time six months after the introduction of the code of conduct, and subsequently every two years.

## ANNEX II

### COMMODITY BENCHMARKS

#### Methodology

1. The administrator of a commodity benchmark shall formalise, document, and make public any methodology that the administrator uses for a benchmark calculation. At a minimum, such methodology shall contain and describe the following:
  - (a) all criteria and procedures that are used to develop the benchmark, including how the administrator uses input data including the specific volume, concluded and reported transactions, bids, offers and any other market information in its assessment or assessment time periods or windows, why a specific reference unit is used, how the administrator collects such input data, the guidelines that control the exercise of judgement by assessors and any other information, such as assumptions, models or extrapolation from collected data that are considered in making an assessment;
  - (b) procedures and practices that are designed to ensure consistency between its assessors in exercising their judgement;
  - (c) the relative importance that shall be assigned to each criterion used in benchmark calculation, in particular the type of input data used and the type of criterion used to guide judgement so as to ensure the quality and integrity of the benchmark calculation;
  - (d) criteria that identify the minimum amount of transaction data required for a particular benchmark calculation. If no such threshold is provided for, the reasons why a minimum threshold is not established shall be explained, including setting out the procedures to be used where no transaction data exist;
  - (e) criteria that address the assessment periods where the submitted data fall below the methodology's recommended transaction data threshold or the requisite

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administrator's quality standards, including any alternative methods of assessment including theoretical estimation models. Those criteria shall explain the procedures to be used where no transaction data exist;

- (f) criteria for timeliness of contributions of input data and the means for such contributions of input data whether electronically, by telephone or otherwise;
  - (g) criteria and procedures that address assessment periods where one or more contributors submit input data that constitute a significant proportion of the total input data for that benchmark. The administrator shall also define in those criteria and procedures what constitutes a significant proportion for each benchmark calculation;
  - (h) criteria according to which transaction data may be excluded from a benchmark calculation.
2. The administrator of a commodity benchmark shall publish or make available the key elements of the methodology that the administrator uses for each commodity benchmark provided and published or, when applicable, for each family of benchmarks provided and published.
3. Along with the methodology referred to in paragraph 2, the administrator of a commodity benchmark shall also describe and publish all of the following:
- (a) the rationale for adopting a particular methodology, including any price adjustment techniques and a justification of why the time period or window within which input data is accepted is a reliable indicator of physical market values;
  - (b) the procedure for internal review and approval of a given methodology, as well as the frequency of such review;
  - (c) the procedure for external review of a given methodology, including the procedures to gain market acceptance of the methodology through consultation with users on important changes to their benchmark calculation processes.

Changes to a methodology

4. The administrator of a commodity benchmark shall adopt and make public to users explicit procedures and the rationale of any proposed material change in its methodology. Those procedures shall be consistent with the overriding objective that an administrator must ensure the continued integrity of its benchmark calculations and implement changes for good order of the particular market to which such changes relate. Such procedures shall provide:
- (a) advance notice in a clear time frame that gives users sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the administrator's calculation of the overall circumstances;
  - (b) for users' comments, and the administrator's response to those comments, to be made accessible to all market users after any given consultation period, except where the commenter has requested confidentiality.
5. The administrator of a commodity benchmark shall regularly examine its methodologies for the purpose of ensuring that they reliably reflect the physical market under assessment and shall include a process for taking into account the views of relevant users.

Quality and integrity of benchmark calculations

6. The administrator of a commodity benchmark shall:

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- (a) specify the criteria that define the physical commodity that is the subject of a particular methodology;
- (b) give priority to input data in the following order, where consistent with its methodologies:
  - (i) concluded and reported transactions;
  - (ii) bids and offers;
  - (iii) other information.

If concluded and reported transactions are not given priority, the reasons should be explained, as required in point 7(b).

- (c) employ sufficient measures designed to use input data submitted and considered in a benchmark calculation which are bona fide, meaning that the parties submitting the input data have executed, or are prepared to execute, transactions generating such input data and the concluded transactions were executed at arms-length from each other and particular attention shall be paid to inter-affiliate transactions;
- (d) establish and employ procedures to identify anomalous or suspicious transaction data and keep records of decisions to exclude transaction data from the administrator's benchmark calculation process;
- (e) encourage contributors to submit all of their input data that falls within the administrator's criteria for that calculation. Administrators shall seek, so far as they are able and is reasonable, to ensure that input data submitted is representative of the contributors' actual concluded transactions; and
- (f) employ a system of appropriate measures to ensure that contributors comply with the administrator's applicable quality and integrity standards for input data.

7. The administrator of a commodity benchmark shall describe and publish for each calculation, to the extent reasonable without prejudicing due publication of the benchmark:

- (a) a concise explanation, sufficient to facilitate a benchmark subscriber's or competent authority's ability to understand how the calculation was developed including, at a minimum, the size and liquidity of the physical market being assessed (such as the number and volume of transactions submitted), the range and average volume and range and average of price, and indicative percentages of each type of input data that have been considered in a calculation; terms referring to the pricing methodology shall be included such as transaction-based, spread-based or interpolated or extrapolated; and
- (b) a concise explanation of the extent to which, and the basis upon which, any judgement including the exclusions of data which otherwise conformed to the requirements of the relevant methodology for that calculation, basing prices on spreads or interpolation, extrapolation, or weighting bids or offers higher than concluded transactions, if any, was used in any calculation.

Integrity of the reporting process

8. The administrator of a commodity benchmark shall:

- (a) specify the criteria that define who may submit input data to the administrator;

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- (b) have in place quality control procedures to evaluate the identity of a contributor and any submitter who reports input data and the authorisation of such submitter to report input data on behalf of a contributor;
- (c) specify the criteria applied to employees of a contributor who are permitted to submit input data to an administrator on behalf of a contributor; encourage contributors to submit transaction data from back office functions and seek corroborating data from other sources where transaction data is received directly from a trader; and
- (d) implement internal controls and written procedures to identify communications between contributors and assessors that attempt to influence a calculation for the benefit of any trading position (whether of the contributor, its employees or any third party), attempt to cause an assessor to violate the administrator's rules or guidelines or identify contributors that engage in a pattern of submitting anomalous or suspicious transaction data. Those procedures shall include, to the extent possible, provision for escalation of the inquiry by the administrator within the contributor's company. Controls shall include cross-checking market indicators to validate submitted information.

#### Assessors

- 9. In relation to the role of an assessor, the administrator of a commodity benchmark shall:
  - (a) adopt and have in place explicit internal rules and guidelines for selecting assessors, including their minimum level of training, experience and skills, as well as the process for periodic review of their competence;
  - (b) have in place arrangements to ensure that calculations can be made on a consistent and regular basis;
  - (c) maintain continuity and succession planning in respect of its assessors in order to ensure that calculations are made consistently and by employees who possess the relevant levels of expertise; and
  - (d) establish internal control procedures to ensure the integrity and reliability of calculations. At a minimum, such internal controls and procedures shall require the ongoing supervision of assessors to ensure that the methodology was properly applied and procedures for internal sign-off by a supervisor prior to releasing prices for dissemination to the market.

#### Audit trails

- 10. The administrator of a commodity benchmark shall have rules and procedures in place to document contemporaneously relevant information, including:
  - (a) all input data;
  - (b) the judgements that are made by assessors in reaching each benchmark calculation;
  - (c) whether a calculation excluded a particular transaction which otherwise conformed to the requirements of the relevant methodology for that calculation, and the rationale for doing so;
  - (d) the identity of each assessor and of any other person who submitted or otherwise generated any of the information in points (a), (b) or (c).

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11. The administrator of a commodity benchmark shall have rules and procedures in place to ensure that an audit trail of relevant information is retained for at least five years in order to document the construction of its calculations.

#### Conflicts of interest

12. The administrator of a commodity benchmark shall establish adequate policies and procedures for the identification, disclosure, management or mitigation and avoidance of any conflict of interest and the protection of integrity and independence of calculations. Those policies and procedures shall be reviewed and updated regularly and shall:
- (a) ensure that benchmark calculations are not influenced by the existence of, or potential for, a commercial or personal business relationship or interest between the administrator or its affiliates, its personnel, clients, any market participant or persons connected with them;
  - (b) ensure that personal interests and business connections of the administrator's personnel are not permitted to compromise the administrator's functions, including outside employment, travel, and acceptance of entertainment, gifts and hospitality provided by the administrator's clients or other commodity market participants;
  - (c) ensure, in respect of identified conflicts, appropriate segregation of functions within the administrator by way of supervision, compensation, systems access and information flows;
  - (d) protect the confidentiality of information submitted to or produced by the administrator, subject to the disclosure obligations of the administrator;
  - (e) prohibit managers, assessors and other employees of the administrator from contributing to a benchmark calculation by way of engaging in bids, offers and trades on either a personal basis or on behalf of market participants; and
  - (f) effectively address any identified conflict of interest which may exist between the administrator's provision of a benchmark (including all employees who perform or otherwise participate in benchmark calculation responsibilities), and any other business of the administrator.
13. The administrator of a commodity benchmark shall ensure that its other business operations have in place appropriate procedures and mechanisms designed to minimise the likelihood that a conflict of interest will affect the integrity of benchmark calculations.
14. The administrator of a commodity benchmark shall 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 this Regulation; and
  - (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.
15. The administrator of a commodity benchmark shall disclose to its users as soon as it becomes aware of a conflict of interest arising from the ownership of the administrator.

#### Complaints



*Status: Point in time view as at 15/12/2021.*

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16. The administrator of a commodity benchmark shall have in place and publish a complaints handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made about an administrator's calculation process. Such complaint mechanisms shall ensure that:
- (a) subscribers of the benchmark may submit complaints on whether a specific benchmark calculation is representative of market value, proposed benchmark calculation changes, applications of methodology in relation to a specific benchmark calculation and other editorial decisions in relation to the benchmark calculation processes;
  - (b) there is in place a target timetable for the handling of complaints;
  - (c) formal complaints made against the administrator and its personnel are investigated by that administrator in a timely and fair manner;
  - (d) the inquiry is conducted independently of any personnel who may be involved in the subject of the complaint;
  - (e) the administrator aims to complete its investigation promptly;
  - (f) the administrator advises the complainant and any other relevant parties of the outcome of the investigation in writing and within a reasonable period;
  - (g) there is recourse to an independent third party appointed by the administrator. if a complainant is dissatisfied with the way a complaint has been handled by the relevant administrator or the administrator's decision in the situation no later than six months from the time of the original complaint; and
  - (h) all documents relating to a complaint, including those submitted by the complainant as well as an administrator's own record, are retained for a minimum of five years.
17. Disputes as to daily pricing determinations, which are not formal complaints, shall be resolved by the administrator of a commodity benchmark with reference to its appropriate standard procedures. If a complaint results in a change in price, the details of that change in price shall be communicated to the market as soon as possible.

#### External auditing

18. The administrator of a commodity benchmark shall appoint an independent external auditor with appropriate experience and capability to review and report on the administrator's adherence to its stated methodology criteria and with the requirements of this Regulation. Audits shall take place annually and be published three months after each audit is completed with further interim audits carried out as appropriate.

### [<sup>F30</sup> ANNEX III

#### [<sup>F371</sup> UK Climate Transition Benchmarks and UK Paris-aligned Benchmarks]

##### Textual Amendments

**F371** Words in Annex 3 heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **45A(2)** (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Methodology for [F<sup>372</sup>UK Climate Transition Benchmarks]

- (1) The administrator of an [F<sup>373</sup>UK Climate Transition Benchmark] shall formalise, document and make public any methodology used for the calculation of the benchmark, giving the following information, while ensuring confidentiality and the protection of [F<sup>374</sup>“trade secrets” as defined in regulation 2 of the Trade Secrets (Enforcement, etc.) Regulations 2018]
- (a) the list of the main constituents of the benchmark;
  - (b) all criteria and methods, including selection and weighting factors, metrics and proxies used in the benchmark methodology;
  - (c) the criteria applied to exclude assets or companies that are associated with a level of carbon footprint or a level of fossil fuel reserves that are incompatible with inclusion in the benchmark;
  - (d) the criteria for the determination of the decarbonisation trajectory;
  - (e) the type and source of data used to determine the decarbonisation trajectory for:
    - (i) Scope 1 carbon emissions, namely emissions generated from sources that are controlled by the company that issues the underlying assets;
    - (ii) Scope 2 carbon emissions, namely emissions from the consumption of purchased electricity, steam, or other sources of energy generated upstream from the company that issues the underlying assets;
    - (iii) Scope 3 carbon emissions, namely all indirect emissions that are not covered by points (i) and (ii) that occur in the value chain of the reporting company, including both upstream and downstream emissions, in particular for sectors with a high impact on climate change and its mitigation;
    - (iv) whether the data uses <sup>F<sup>375</sup></sup>... global standards such as those of the Financial Stability Board’s Taskforce on Climate-related Financial Disclosures;
  - (f) the total carbon emissions of the index portfolio.

Where a parent index is used for the construction of an [F<sup>373</sup>UK Climate Transition Benchmark], the tracking error between the [F<sup>373</sup>UK Climate Transition Benchmark] and the parent index shall be disclosed.

Where a parent index is used for the construction of an [F<sup>373</sup>UK Climate Transition Benchmark], the ratio between the market value of the securities that are in the [F<sup>373</sup>UK Climate Transition Benchmark] and the market value of the securities in the parent index shall be disclosed.

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### Textual Amendments

- F373** Words in Annex 3 para. (1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45A(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F374** Words in Annex 3 para. (1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45A(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F375** Words in Annex 3 para. (1) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45A(4)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Methodology for <sup>F376</sup>UK Paris-aligned Benchmarks]

- (2) In addition to points (1)(a), (1)(b), and (1)(c), the administrator of an <sup>F377</sup>UK Paris-aligned Benchmarks] shall specify the formula or calculation that is used to determine whether the emissions are in line with the objectives of the Paris Agreement, while ensuring confidentiality and the protection of <sup>F378</sup>“trade secrets” as defined in regulation 2 of the Trade Secrets (Enforcement, etc.) Regulations 2018].

### Textual Amendments

- F377** Words in Annex 3 para. (2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45A(6)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F378** Words in Annex 3 para. (2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45A(6)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### Changes to the methodology

- (3) Administrators of <sup>F379</sup>UK] Climate Transition and <sup>F379</sup>UK] Paris-aligned Benchmarks shall adopt procedures for introducing changes to their methodology. They shall make those procedures public, and shall make public any proposed changes to their methodology and the rationale for those changes. Those procedures shall be consistent with the overriding objective that benchmark calculations be consistent with points (23a) and (23b) of Article 3(1). Those procedures shall provide:
- (a) advance notice within a clear timeframe that gives users of benchmarks sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the administrators’ calculation of the overall circumstances;
  - (b) for the possibility for users of benchmarks to comment on those changes and for the administrators to respond to those comments, and shall make those comments accessible after any given consultation period, except where the commenter has requested confidentiality.

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- (4) Administrators of <sup>F380</sup>[UK] Climate Transition Benchmarks and <sup>F380</sup>[UK] Paris-aligned Benchmarks shall regularly examine their methodologies on at least an annual basis to ensure that their benchmarks reliably reflect the stated objectives, and shall have a process in place for taking the views of all relevant users into account.]

#### Textual Amendments

**F379** Word in Annex 3 para. (3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45A(7)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4); [S.I. 2020/628](#), regs. 1(3), 12(7); and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**F380** Word in Annex 3 para. (4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **45A(7)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4); [S.I. 2020/628](#), regs. 1(3), 12(7); and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### <sup>F381</sup>ANNEX 4

#### ARTICLE 23A BENCHMARKS

#### Textual Amendments

**F381** [Annex 4](#) inserted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 15(2)**, 49(5); [S.I. 2021/739](#), reg. 3(h)

- 1 This Regulation applies in relation to an Article 23A benchmark with—
  - (a) the modifications listed in paragraph 2, and
  - (b) any modifications specified in a notice given by the FCA to the benchmark administrator under paragraph 6.
- 2 The modifications referred to in paragraph 1(a) are the following—
  - (a) Article 11(1) has effect as if—
    - (i) point (a) were omitted, and
    - (ii) in point (d), the words “and representative” (in the first place they occur) and “and representative of the market or economic reality that the benchmark is intended to measure” were omitted;
  - (b) point (a) in Article 27(1) has effect as if for “and the circumstances in which such measurement may become unreliable” there were substituted “immediately before it became an Article 23A benchmark”.
- 3 The FCA may, in accordance with paragraphs 4 to 9, provide that this Regulation applies to an Article 23A benchmark with modifications, where it considers it appropriate to do so having regard to the effects of the designation under Article 23A or the FCA's exercise of its powers under Article 23D(2) (or both).

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- 4 If the FCA proposes that this Regulation should apply to an Article 23A benchmark with modifications, or that existing modifications applied by a notice under paragraph 6 should be varied, it must inform the benchmark administrator by written notice.
- 5 A notice under paragraph 4 must—
- (a) explain the proposed modifications or variations,
  - (b) give reasons for the FCA's proposed decision, and
  - (c) state that the administrator may make written representations to the FCA during the period of 14 days beginning with the day on which the notice is given.
- 6 If, after considering any representations made in accordance with paragraph 5(c), the FCA decides to make the proposed modifications or variations, it must give the administrator a written notice of its decision.
- 7 A notice under paragraph 6 must—
- (a) specify the modifications or variations,
  - (b) give reasons for the FCA's decision, and
  - (c) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the modifications or variations.
- 8 A notice under paragraph 6 must be published as soon as reasonably practicable in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 9 The FCA—
- (a) must give a copy of a notice under paragraph 6 to the Treasury before publishing it, and
  - (b) may charge a reasonable fee for providing a person with a copy of a notice published under this Annex.
- 10 Paragraphs 11 to 13 apply where the FCA gives the administrator of an Article 23A benchmark a notice under Article 23D(2) or (8)(b).
- 11 The FCA must, before the end of the period of three months beginning with the day on which it gave the notice referred to in paragraph 10, consider whether to exercise its power under paragraph 3 in relation to the benchmark.
- 12 During the interim period, the benchmark administrator is only required to comply with this Regulation to the extent that, taking account of the changes made by the notice referred to in paragraph 10, it remains reasonably practicable to do so.
- 13 In paragraph 12, “interim period” means a period beginning when the notice referred to in paragraph 10 is given and ending—
- (a) at the end of the three month period referred to in paragraph 11, if that period ends without the FCA giving a notice under paragraph 4, or
  - (b) when the FCA, having given the administrator a notice under paragraph 4, gives the administrator —
    - (i) a written notice that it has decided not to make the proposed modifications or variations, or

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- (ii) a notice under paragraph 6.
- 14 References in this Annex to varying modifications (however expressed) include removing or replacing some or all modifications.]

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- (1) [OJ C 113, 15.4.2014, p. 1.](#)
- (2) [OJ C 177, 11.6.2014, p. 42.](#)
- (3) Position of the European Parliament of 28 April 2016 (not yet published in the Official Journal) and decision of the Council of 17 May 2016.
- (4) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([OJ L 173, 12.6.2014, p. 349](#)).
- (5) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC ([OJ L 345, 31.12.2003, p. 64](#)).
- (6) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ([OJ L 302, 17.11.2009, p. 32](#)).
- (7) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ([OJ L 326, 8.12.2011, p. 1](#)).
- (8) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ([OJ L 133, 22.5.2008, p. 66](#)).
- (9) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 ([OJ L 60, 28.2.2014, p. 34](#)).
- (10) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([OJ L 331, 15.12.2010, p. 84](#)).
- (11) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ([OJ L 173, 12.6.2014, p. 1](#)).
- (12) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995, p. 31](#)).
- (13) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([OJ L 8, 12.1.2001, p. 1](#)).
- (14) [OJ L 123, 12.5.2016, p. 1.](#)
- (15) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([OJ L 55, 28.2.2011, p. 13](#)).
- (16) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision ([OJ L 235, 23.9.2003, p. 10](#)).
- (17) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([OJ L 201, 27.7.2012, p. 1](#)).
- (18) [<sup>F30</sup>Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change ([OJ L 282, 19.10.2016, p. 1](#))]

#### Textual Amendments

- F30** Inserted by [Regulation \(EU\) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation \(EU\) 2016/1011 as regards EU Climate Transition Benchmarks,](#)

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EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).



**Status:**

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**Changes to legislation:**

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