



# Financial Services Act 2021

## 2021 CHAPTER 22

### *Benchmarks*

#### **15 Orderly cessation of Article 23A benchmarks**

(1) In the Benchmarks Regulation, after Article 23C (inserted by section 14) insert—

#### *“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
  - (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)).”

(2) In the Benchmarks Regulation, after Annex 3 insert—

“ANNEX 4

ARTICLE 23A BENCHMARKS

- 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

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- (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).
- 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.

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