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## STATUTORY INSTRUMENTS

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# 2018 No. 135

## The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018

### PART 3

FCA powers in relation to persons publishing or contributing to benchmarks

#### Variation of permission: continued publication of a benchmark by authorised person

27.—(1) This regulation applies where—

- (a) the FCA imposes a requirement on an authorised person under Article 21(3) of the EU Benchmarks Regulation 2016 to continue publishing a benchmark; and
- (b) the authorised person does not have a permission to carry on an activity of the kind specified in article 63O(1)(b)<sup>M1</sup> or 63S of the RAO to administer the benchmark.

(2) The requirement takes effect when the FCA notifies the authorised person in writing.

(3) The authorised person's Part 4A<sup>M2</sup> permission is treated as having been varied by the FCA to include the activity in article 63S of the RAO<sup>M3</sup> with effect from the day on which the FCA exercises its powers under Article 21(3) of the EU Benchmarks Regulation 2016.

#### Marginal Citations

**M1** [S.I. 2001/544](#). Article 63O was inserted by article 5 of [S.I. 2013/655](#). There are other amending instruments but none is relevant.

**M2** [Part 4A](#) was inserted by section 11 of the Financial Services Act 2012 and amended by [S.I. 2011/1613](#), [S.I. 2013/1773](#), [S.I. 2013/3115](#), OJ No. L173, 12.06.2014, p.84, [S.I. 2015/486](#), [S.I. 2015/575](#), [S.I. 2015/910](#), [S.I. 2015/1882](#), [S.I. 2016/225](#), [S.I. 2016/680](#), [S.I. 2016/1239](#) and [S.I. 2017/1064](#).

**M3** [S.I. 2001/544](#).

#### Variation of permission: continued contribution to a benchmark by authorised person

28.—(1) This regulation applies where—

- (a) the FCA imposes a requirement on an authorised person under Article 23(6) of the EU Benchmarks Regulation 2016 to contribute input data to the administrator of a specified benchmark;
- (b) the authorised person does not have a permission to carry on an activity of the kind specified in article 63O(1)(a) of the RAO; and
- (c) the administrator of the specified benchmark does not have a permission to carry on an activity of the kind specified in article 63S of the RAO.

(2) The requirement takes effect when the FCA notifies the authorised person in writing.

*Status: Point in time view as at 27/02/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, PART 3. (See end of Document for details)*

(3) The authorised person's Part 4A permission is treated as having been varied by the FCA to include the activity in article 63O(1)(a) of the RAO with effect from the day on which the FCA exercises its powers under Article 23(6) of the EU Benchmarks Regulation 2016.

#### **Interim permission: continued publication of a benchmark by non-authorised person**

**29.**—(1) This regulation applies where the FCA imposes a requirement under Article 21(3) of the EU Benchmarks Regulation 2016 to continue publishing a benchmark on a non-authorised person.

(2) The requirement takes effect when the FCA notifies the relevant non-authorised person in writing.

(3) The relevant non-authorised person is treated as having a Part 4A permission to carry on the activity in article 63S of the RAO <sup>M4</sup> with effect from the day on which the FCA exercises its powers under Article 21(3) of the EU Benchmarks Regulation 2016.

(4) The Part 4A permission which the relevant non-authorised person is treated as having is referred to in these Regulations as an “interim permission”.

(5) The relevant non-authorised person's interim permission lapses on any of the following—

- (a) the date specified in a notice of cancellation of permission given under this sub-paragraph by the FCA;
- (b) the cancellation of permission by the FCA under section 55H <sup>M5</sup> of the Act (variation by FCA at request of authorised person); or
- (c) the cancellation of permission by the FCA under section 55J <sup>M6</sup> of the Act (variation or cancellation on initiative of regulator).

(6) A notice of cancellation of permission under paragraph (5)(a) may only be given by the FCA when—

- (a) whether in relation to the relevant non-authorised person or another person, a Part 4A <sup>M7</sup> permission to carry on the activity in article 63S of the RAO is given or an existing Part 4A permission is varied so as to include permission to carry on the activity in article 63S <sup>M8</sup> in respect of the benchmark; or
- (b) the relevant non-authorised person does not make an application for a Part 4A permission to carry on the activity in article 63S of the RAO within three months beginning with the date on which the FCA exercises its powers under Article 21(3) of the EU Benchmarks Regulation 2016.

(7) A notice of cancellation of permission given to the relevant non-authorised person under paragraph (5)(a) must be given—

- (a) in writing; and
- (b) at least seven days in advance of the cancellation of the interim permission.

(8) For the purposes of paragraph (5)(a), section 55Z of the Act (cancellation of Part 4A permission: procedure) does not apply.

#### **Marginal Citations**

**M4** [S.I. 2001/544](#).

**M5** [Section 55H](#) was inserted by section 11 of the Financial Services Act 2012 and amended by [S.I. 2013/1773](#).

**M6** [Section 55J](#) was inserted by section 11 of the Financial Services Act 2012 and amended by [S.I. 2011/1613](#), [S.I. 2013/1773](#), [S.I. 2013/3115](#), [S.I. 2015/575](#), [S.I. 2015/910](#), [S.I. 2015/1882](#), [S.I. 2016/225](#), [S.I. 2016/680](#).

- M7** Part 4A was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2011/1613, S.I. 2013/1773, S.I. 2013/3115, S.I. 2015/486, S.I. 2015/575, S.I. 2015/910, S.I. 2015/1882, S.I. 2016/225, S.I. 2016/680, S.I. 2016/1239 and S.I. 2017/1064.
- M8** S.I. 2001/544.

**Interim permission: continued contribution to a benchmark by non-authorised person**

- 30.**—(1) This regulation applies where—
- (a) the FCA imposes a requirement under Article 23(6) of the EU Benchmarks Regulation 2016 to contribute input data to the administrator of a specified benchmark on a person who is not an authorised person; and
  - (b) the administrator of the specified benchmark does not have a permission to carry on an activity of the kind specified in article 63S of the RAO.
- (2) The requirement takes effect when the FCA notifies the relevant non-authorised person in writing.
- (3) The relevant non-authorised person is treated as having a Part 4A permission to carry on the activity in article 63O(1)(a) <sup>M9</sup> of the RAO with effect from the day on which the FCA exercises its powers under Article 23(6) of the EU Benchmarks Regulation 2016.
- (4) The Part 4A permission which the relevant non-authorised person is treated as having is referred to in these Regulations as an “interim permission”.
- (5) The relevant non-authorised person's interim permission lapses on any of the following—
- (a) the date specified in a notice of cancellation of permission given under this sub-paragraph by the FCA;
  - (b) the cancellation of permission by the FCA under section 55H of the Act (variation by FCA at request of authorised person); or
  - (c) the cancellation of permission by the FCA under section 55J of the Act (variation or cancellation on initiative of regulator).
- (6) A notice of cancellation of permission under paragraph (5)(a) may only be given by the FCA when—
- (a) whether in relation to the relevant non-authorised person or another person, a Part 4A <sup>M10</sup> permission is given or an existing Part 4A permission is varied so as to include permission to carry on the activity of providing information in relation to the specified benchmark;
  - (b) the relevant non-authorised person does not make an application for a Part 4A permission within three months beginning with the date on which the FCA exercises its powers under Article 23(6) of the EU Benchmarks Regulation 2016;
  - (c) the specified benchmark ceases being a specified benchmark; or
  - (d) the administrator of the specified benchmark obtains permission to carry on the activity in article 63S of the RAO <sup>M11</sup>.
- (7) A notice of cancellation of permission given to the relevant non-authorised person under paragraph (5)(a) must be given—
- (a) in writing; and
  - (b) at least seven days in advance of the cancellation of the interim permission.
- (8) For the purposes of paragraph (5)(a), section 55Z of the Act (cancellation of Part 4A permission: procedure) does not apply.

**Status:** Point in time view as at 27/02/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, PART 3. (See end of Document for details)

#### Marginal Citations

**M9** Article 63O was inserted by article 5 of S.I. 2013/655.

**M10** Part 4A was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2011/1613, S.I. 2013/1773, S.I. 2013/3115, S.I. 2015/486, S.I. 2015/575, S.I. 2015/910, S.I. 2015/1882, S.I. 2016/225, S.I. 2016/680, S.I. 2016/1239 and S.I. 2017/1064.

**M11** S.I. 2001/544.

#### Application of the Act to persons with interim permission

**31.**—(1) This regulation applies to every person with an interim permission under regulations 29 or 30 of these Regulations.

(2) A person with an interim permission is to be treated as an authorised person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this regulation.

(3) For the purpose of section 20<sup>M12</sup> of the Act (authorised person acting without permission), a person's interim permission is treated as having been given to that person by the FCA under Part 4A of the Act.

(4) The FCA may exercise its power under section 55L(1)<sup>M13</sup> of the Act (imposition of requirements by FCA) in relation to a person treated as having been given permission under regulations 29 or 30, as if the person had applied for the permission.

(5) For the purpose of section 55L(2) of the Act, a person's interim permission is treated as having been given to that person by the FCA.

(6) A person's interim permission is to be disregarded for the purposes of the following sections of the Act—

- (a) section 38(2)<sup>M14</sup> (exemption orders);
- (b) section 55A(3)<sup>M15</sup> (application for permission);
- (c) section 55E (giving permission: the FCA);
- (d) section 55F (giving permission: the PRA).

#### Marginal Citations

**M12** Section 20 was amended by paragraph 2(2) of Schedule 9 to the Financial Services Act 2012.

**M13** Section 55L was inserted by section 11 of the Financial Services Act 2012.

**M14** Section 38 was amended by paragraph 4 of Schedule 18(1) to the Financial Services Act 2012.

**M15** Section 55A was inserted by section 11 of the Financial Services Act 2012.

#### Application of the FCA's rules etc. to persons with interim permission

**32.**—(1) The FCA may direct in writing that any relevant provision which would otherwise apply to a person by virtue of an interim permission is not to apply, or is to apply to that person as modified in the way specified in the direction.

(2) Where the FCA makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission (or only to a class of such persons), the following sections of the Act do not apply to that rule, guidance, statement or code—

- (a) section 63D<sup>M16</sup> (statement of policy: procedure);

(b) section 138I <sup>M17</sup> (consultation by the FCA); and

(c) subsection (3) of section 139A <sup>M18</sup> (power of the FCA to give guidance).

(3) For the purpose of paragraph (1), a “relevant provision” is any provision made as a result of the exercise by the FCA of any of its legislative functions mentioned in paragraph 8(3) <sup>M19</sup> of Schedule 1ZA to the Act (the FCA: arrangements for discharging functions).

#### **Marginal Citations**

**M16** [Section 61D](#) was inserted by section 11 of the Financial Services Act 2010.

**M17** [Section 138I](#) was inserted by section 24 of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 3 to the [Pension Schemes Act 2015 \(c. 8\)](#), [section 33\(4\)](#) of the Bank of England and Financial Services Act 2016.

**M18** [Section 139A](#) was inserted by section 24 of the Financial Services Act 2012 and amended by paragraph 9 of Schedule 3 to the Pension Schemes Act 2015 and [S.I. 2016/680](#).

**M19** [Paragraph 8\(3\)](#) was inserted by Schedule 3 to the Financial Services Act 2012 and amended by paragraph 16(b)(ii) of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2016/680](#).

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