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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019**

**PART 3**

Transitional provision

**CHAPTER 1**

Registration

**Conditions to be satisfied for information to be recorded on the FCA register**

**51.**—(1) Information that satisfies conditions A and B must, on exit day, be recorded on the register to be established by the FCA under Article 36 of the UK Benchmarks Regulation.

(2) Condition A is that the information is recorded on the ESMA register at 5pm on the day on which exit day occurs.

(3) Condition B is that the information is listed in regulation 52.

**Information to be recorded on the FCA register**

**52.** The information is—

- (a) the identity of an administrator who has acquired recognition from the FCA in accordance with Article 32 of the EU Benchmarks Regulation, the list of benchmarks referred to in Article 32(7) of that Regulation and, where applicable, the third country competent authority responsible for the administrator's supervision;
- (b) where the FCA has authorised the endorsement of a benchmark under Article 33 of the EU Benchmarks Regulation, the benchmark that has been endorsed, the identity of the benchmark's administrator and the identity of the endorsing administrator or endorsing supervising entity;
- (c) the identity of an administrator who has been authorised or registered by the FCA under Article 34 of the EU Benchmarks Regulation and that the FCA is responsible for the supervision of the administrator.

**Application of the UK Benchmarks Regulation**

**53.** Where the FCA approved an application made under Article 32, 33 or 34 of the EU Benchmarks Regulation before exit day, the UK Benchmarks Regulation applies as if the application were approved under Article 32, 33 or 34 (respectively) of the UK Benchmarks Regulation.

## CHAPTER 2

### Temporary registration

#### **The temporary registration period**

54. The temporary registration period is the period of two years beginning with exit day.

#### **Conditions to be satisfied for information to be temporarily recorded on the FCA register**

55.—(1) Information that meets conditions A and B must be recorded on the FCA register during the temporary registration period (but see regulation 58).

(2) Condition A is that the information is recorded on the ESMA register at 5pm on the day on which exit day occurs.

(3) Condition B is that the information is listed in regulation 56.

#### **Information to be recorded on the FCA register**

56. The information is—

- (a) the identity of an administrator who complies with the conditions in Article 30(1) of the EU Benchmarks Regulation, the list of benchmarks referred to in point (c) of that provision and the third country competent authority responsible for the administrator's supervision;
- (b) the identity of an administrator who has acquired recognition from a competent authority of an EEA State in accordance with Article 32 of the EU Benchmarks Regulation, the list of benchmarks referred to in Article 32(7) of that Regulation and, where applicable, the third country competent authority responsible for the administrator's supervision;
- (c) where a competent authority of an EEA State has authorised the endorsement of a benchmark under Article 33 of the EU Benchmarks Regulation, the benchmark that has been endorsed, the identity of the benchmark's administrator and the identity of the endorsing administrator or endorsing supervising entity;
- (d) the identity of an administrator who has been authorised or registered by a competent authority of an EEA State under Article 34 of the EU Benchmarks Regulation and the competent authority responsible for the administrator's supervision.

#### **Information to be added to the FCA register**

57.—(1) The FCA must add a benchmark to the FCA register that is—

- (a) recorded on the ESMA register during the temporary registration period; and
- (b) provided by an administrator whose information is recorded on the FCA register as a result of the application of sub-paragraph (a) or (b) of regulation 56.

(2) The benchmark must be recorded on the FCA register—

- (a) before the end of the period of five working days beginning with the day on which the benchmark is recorded on the ESMA register;
- (b) until the end of the temporary registration period (but see regulation 58).

#### **Removal of temporary information from the FCA register**

58.—(1) The FCA must remove temporary information from the FCA register if paragraph (2) or (3) applies during the temporary registration period (but see regulation 59).

(2) This paragraph applies if the corresponding information on the ESMA register is removed from that register.

(3) This paragraph applies if the temporary information relates to—

- (a) an administrator who is refused recognition by the FCA under Article 32 of the UK Benchmarks Regulation;
- (b) a benchmark in respect of which the FCA has refused an application for endorsement under Article 33 of that Regulation; or
- (c) an administrator who is refused authorisation or registration by the FCA under Article 34 of that Regulation.

(4) The benchmark must be removed from the FCA register before the end of the period of five working days beginning with the day on which paragraph (2) or (3) applies.

### **Removal of temporary information and the FCA's objectives**

**59.** The FCA may only remove temporary information from the FCA register under regulation 58 if it considers that removal—

- (a) is compatible with the FCA's strategic objective as defined in section 1B(2) of the Financial Services and Markets Act 2000(1); and
- (b) advances one or more of its operational objectives as defined in section 1B(3) of that Act.

### **Reinstatement of information on the FCA register**

**60.**—(1) The FCA must reinstate information on the FCA register if—

- (a) the information has been removed from the FCA register under regulation 58(2); and
- (b) ESMA reinstates the corresponding information on the ESMA register during the temporary registration period.

(2) The information must be reinstated on the FCA register before the end of the period of five working days beginning with the day on which the benchmark is reinstated on the ESMA register.

### **Use of a benchmark that is temporarily recorded on the FCA register**

**61.** During the temporary registration period, a supervised entity may use a benchmark in the United Kingdom that is—

- (a) recorded on the FCA register under this Chapter; or
- (b) provided by an administrator who is located in the European Union and recorded on the FCA register under this Chapter.

### **Use of a benchmark that is removed from the FCA register**

**62.**—(1) A supervised entity may continue to use a benchmark in the United Kingdom which is—

- (a) used by virtue of regulation 61 as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund; and
- (b) either—
  - (i) removed from the FCA register; or
  - (ii) administered by an administrator who is removed from the FCA register.

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(1) 2000 c. 16. Section 1B was inserted by s.6(1) of the Financial Services Act 2012 (c.21). There are amendments to section 1B which are not relevant.

(2) But the benchmark may only be used as a reference for the financial instrument, the financial contract or for measuring the performance of the investment fund referred to in paragraph (1)(a).

### **Application of the UK Benchmarks Regulation**

**63.**—(1) The UK Benchmarks Regulation does not apply in respect of an administrator or benchmark recorded on the FCA register under this Chapter (but see paragraph 2 and regulation 64).

(2) Article 28(2) of the UK Benchmarks Regulation applies to a supervised entity using a benchmark by virtue of regulation 61.

(3) For the purposes of paragraph (2), Article 28(2) shall be read as if for “other than an administrator as referred to in paragraph 1” there were substituted “that are not administrators”.

### **New applications made under the UK Benchmarks Regulation**

**64.**—(1) This paragraph applies to—

- (a) an administrator who satisfies the conditions in Article 30(1) of the UK Benchmarks Regulation;
- (b) an administrator who acquires recognition under Article 32 of that Regulation;
- (c) a benchmark that is endorsed under Article 33 of that Regulation;
- (d) an administrator who is authorised or registered under Article 34 of that Regulation.

(2) If paragraph (1) applies (or has applied) to an administrator or benchmark—

- (a) information recorded on the FCA register that relates to the administrator or benchmark is no longer temporary information (and so this Chapter does not apply to it, but see paragraph (3));
- (b) the FCA may remove temporary information relating to the administrator or benchmark from the FCA register; and
- (c) regulation 63 no longer applies to the administrator or benchmark (and so the UK Benchmarks Regulation applies to it).

(3) If paragraph (1) applies (or has applied) to an administrator or benchmark, regulation 62 continues to apply.

## **CHAPTER 3**

### **Interpretation**

#### **Interpretation of this Part**

**65.**—(1) In this Part—

“ESMA register” means the register of administrators and benchmarks established and maintained by ESMA under Article 36(1) of the EU Benchmarks Regulation;

“EU 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\(2\)](#) as it had effect in the European Union before exit day;

“temporary information” means information recorded on the FCA register in accordance with regulation 55, 57 or 60;

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(2) OJ L 171, 29.6.2016, p.1-65

“temporary registration period” has the meaning given in regulation 54;

“UK 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 applies in the United Kingdom on and after exit day;

“working day” means a day other than—

- (a) a Saturday or a Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(3)</sup> in any part of the United Kingdom.

(2) Terms defined in the UK Benchmarks Regulation have the same meaning in this Chapter as in that Regulation.

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(3) [1971 c. 80](#); amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act [2007 \(asp 2\)](#).