

2018 No. 135

FINANCIAL SERVICES AND MARKETS

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

Made - - - - *1st February 2018*

Laid before Parliament *5th February 2018*

Coming into force in accordance with regulation 1(2)

The Treasury are designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018.

(2) These Regulations come into force on 27th February 2018 except for—

(a) regulation 57 (amendments to the Consumer Credit (Disclosure of Information) Regulations 2010)(c) which comes into force on 1st July 2018; and

(b) regulations 37(c) and (d), 39, 43(b), 49(2)(c) and (d), 50 and 53 which come into force on 1st May 2020.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(d);

(a) S.I. 2012/1759.

(b) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) S.I. 2010/1013.

(d) 2000 c. 8.

“the EU Benchmarks Regulation 2016” means Regulation EU 2016/1011(a) 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(b) and 2014/17/EU(c) and Regulation (EU) No 596/2014(d);

“benchmark administrator” means a person who acts as an administrator of a benchmark within the meaning of Article 3 of the EU Benchmarks Regulation 2016;

“competent authority” means an authority designated under Article 40 of the EU Benchmarks Regulation 2016;

“the FCA” means the Financial Conduct Authority;

“non-authorised person” means a person who is not an authorised person;

“the RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(e);

“relevant requirement” means a requirement imposed by or under these Regulations or by or under the EU Benchmarks Regulation 2016; and

“third country” means a State other than an EEA State.

(2) In Part 2 of these Regulations—

“overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the EU Benchmarks Regulation 2016;

“own-initiative requirement powers” means the FCA’s powers in regulation 6(2); and

“senior management” has the meaning given in Article 4.1.37 of Directive 2014/65/EU of the European Parliament and of the Council of 16 April 2014 on Markets in Financial Instruments (recast)(f);

(3) Except as provided by paragraphs (1) and (2)—

(a) any expression used in these Regulations which is defined for the purposes of the EU Benchmarks Regulation 2016 has the meaning which it has in the EU Benchmarks Regulation 2016; and

(b) any other expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act.

Directly applicable EU regulations

3. In these Regulations, a reference to an Article of the EU Benchmarks Regulation 2016 includes a reference to any directly applicable EU regulation made under that Article.

Designation of competent authority

4. The FCA is designated to carry out all of the duties of the competent authority under the EU Benchmarks Regulation 2016.

(a) OJ No. L171 29.06.2016, p.1.

(b) OJ No. L133 22.05.2008, p.66.

(c) OJ No. L60 28.02.2014, p.34.

(d) OJ No L171 29.06.16, p.1.

(e) S.I. 2001/544.

(f) OJ No. L173 12.06.2014, p.349; the Directive was amended by Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ No. L257, 28.08.2014 p.1) and Directive (EU) 2016 of the European Parliament and of the Council of 23 June 2016 (OJ No. L 175 30.06.2016 p.8).

PART 2

FCA powers over Miscellaneous BM persons

5.—(1) The FCA has the powers conferred on it by this Part of the Regulations in respect of Miscellaneous BM persons.

- (2) A “Miscellaneous BM person” is a person who is not an authorised person and is—
- (a) involved in the provision of, or contribution of input data to, a benchmark;
 - (b) a service provider to whom functions or any relevant services and activities in the provision of a benchmark have been outsourced;
 - (c) a person who is not the service provider but who is or has been party to a contract in relation to the outsourcing of functions or any relevant services and activities in the provision of a benchmark;
 - (d) a legal representative of a benchmark administrator located in a third country which has obtained or has applied for prior recognition as referred to in Article 32(1) and as provided for in Article 32(3) of the EU Benchmarks Regulation 2016;
 - (e) a person who administers a benchmark relying on Article 51(4) of the EU Benchmarks Regulation 2016; or
 - (f) a supervised entity.

FCA’s power to impose requirements

6.—(1) The FCA may exercise its power under paragraph (2) in relation to a Miscellaneous BM person if it appears to the FCA that—

- (a) the Miscellaneous BM person has contravened or is likely to contravene a relevant requirement;
 - (b) it is desirable for the FCA to exercise its powers in order to advance any of its operational objectives; or
 - (c) it is desirable for the FCA to exercise its powers order to facilitate the performance of its functions under the EU Benchmarks Regulation 2016.
- (2) The FCA’s power under this paragraph is a power to—
- (a) impose a requirement that the FCA considers appropriate;
 - (b) vary a requirement already imposed under this paragraph; or
 - (c) cancel such a requirement.
- (3) The FCA may, on the application of the Miscellaneous BM person—
- (a) impose a requirement that the FCA considers appropriate;
 - (b) vary a requirement already imposed by the FCA; or
 - (c) cancel such a requirement.
- (4) The FCA may refuse an application under paragraph (3) if it appears to the FCA that—
- (a) the Miscellaneous BM person has contravened or is likely to contravene a relevant requirement;
 - (b) it is desirable to do so in order to advance any of the FCA’s operational objectives; or
 - (c) it is desirable to do so in order to facilitate the performance of the FCA’s functions under the EU Benchmarks Regulation 2016.
- (5) Where the FCA refuses an application under paragraph (3), section 55X of the Act (determination of applications: warning notices and decision notices) applies as if—
- (a) the reference in section 55X(2) to “an application made under this Part” included applications made under paragraph (3) of this regulation;

- (b) the reference to section 55X(4) to “an application under this Part” included applications made under paragraph (3) of this regulation; and
- (c) each reference to a “regulator” were a reference to the FCA.

(6) Where the FCA proposes to impose or vary a requirement or imposes or varies a requirement under paragraph (2), section 55Y of the Act^(a) (exercise of own-initiative power: procedure) applies as if—

- (a) each reference to either regulator’s own-initiative requirement power were a reference to the FCA’s power to impose a requirement under this regulation;
- (b) each reference to the regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only;
- (c) each reference to an authorised person were a reference to a Miscellaneous BM person;
- (d) each reference to a variation of permission, or the imposition or variation of a requirement, were a reference to a restriction imposed on a Miscellaneous BM person under paragraph (2); and
- (e) the reference in subsection (12)^(b) to section 391(8) were a reference to section 391(8) as applied by these Regulations.

Right to refer matters to the Tribunal

7. A Miscellaneous BM person who is aggrieved by the exercise of the FCA’s powers under regulation 6 may refer the matter to the Tribunal.

Exercise of power in support of overseas regulator

8.—(1) The FCA’s own-initiative requirement powers may be exercised in respect of a Miscellaneous BM person at the request of, or for the purpose of, assisting an overseas regulator.

(2) If a request to the FCA for the exercise of its own-initiative requirement powers has been made by an overseas regulator, the FCA must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.

(3) In deciding whether or not to do so, in any case in which the FCA does not consider that the exercise of its own-initiative requirement powers is necessary in order to comply with an EU obligation, it may take into account in particular—

- (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
- (c) the seriousness of the case and its importance to persons in the United Kingdom;
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(4) (a) The FCA may decide not to exercise its own-initiative requirement powers in response to a request unless the overseas regulator concerned undertakes to make such contribution towards the cost of their exercise as the FCA considers appropriate.

- (b) in subparagraph (a) “request” means a request of a kind mentioned in paragraph (1).

(5) Paragraph (4) does not apply if the FCA decides that it is necessary for it to exercise its own-initiative requirement powers in order to comply with an EU obligation.

(a) Section 55Y was inserted by section 11(2) of the Financial Services Act 2012 (c. 21).

(b) Subsection (12) of section 55Y of the Act was inserted by section 11(2) of the Financial Services Act 2012.

Reporting requirements

9.—(1) A Miscellaneous BM person must provide the FCA with such information in respect of its compliance or non-compliance with any relevant requirement as the FCA may direct.

(2) Such information must be provided at such times, in such form, and verified in such manner, as the FCA may direct.

(3) If at any time a Miscellaneous BM person considers that it is unable to comply with a relevant requirement, it must as soon as reasonably practicable notify the FCA of that fact, including the reasons why it is unable to comply.

Public censure

10. If the FCA considers that—

- (a) a Miscellaneous BM person has contravened a relevant requirement;
- (b) a member of the management body^(a) of a Miscellaneous BM person is responsible for the contravention by the Miscellaneous BM person of a relevant requirement; or
- (c) another member of the senior management^(b) of a Miscellaneous BM person is responsible for the contravention by the Miscellaneous BM person of a relevant requirement;

the FCA may publish a statement to that effect.

Financial penalties

11.—(1) If the FCA considers that a Miscellaneous BM person has contravened a relevant requirement, it may impose a penalty of such amount as it considers appropriate on—

- (a) the Miscellaneous BM person;
- (b) a member of the management body of the Miscellaneous BM person if the FCA considers the member is responsible for the contravention;
- (c) another member of the senior management of the Miscellaneous BM person if the FCA considers the member is responsible for the contravention.

(2) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

Warning notice

12.—(1) If the FCA proposes to—

- (a) publish a statement in respect of a person under regulation 10 (public censure); or
- (b) impose a penalty on a person under regulation 11 (financial penalties);

it must give the person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(a) “management body” is defined in point (20) of paragraph 1 of Article 3 of the EU Benchmarks Regulation 2016 (OJ No. L171 29.06.2016, p.1).

(b) “senior management” is defined in Article 4.1.37 of the Markets in Financial Instruments Directive (OJ No. L173 12.06.2014, p.349; the Directive was amended by Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ No. L257, 28.08.2014 p.1) and Directive (EU) 2016 of the European Parliament and of the Council of 23 June 2016 (OJ No. L 175 30.06.2016 p.8)).

Decision notice

13.—(1) If, having considered any representations made in response to the warning notice, the FCA decides to—

- (a) publish a statement under regulation 10 (public censure) (whether or not in the terms proposed); or
- (b) impose a penalty under regulation 11 (financial penalties) (whether or not of the amount proposed);

it must without delay give the person concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If the FCA decides to—

- (a) publish a statement in respect of a person under regulation 10 (public censure); or
- (b) impose a penalty on a person under regulation 11 (financial penalties);

the person may refer the matter to the Tribunal.

(5) After a statement under regulation 10 (public censure) is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4)(a) of the Act (third party rights) (as applied by regulation 23 (application of Part 26 of the Act (notices))).

Statements of policy

14.—(1) The FCA must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under regulation 11 (financial penalties); and
- (b) the amount of penalties under that regulation.

(2) The policy must require the FCA, in determining the amount of penalties, to have regard to—

- (a) the gravity and duration of the infringement;
- (b) the criticality of the benchmark to financial stability and the real economy;
- (c) the degree of responsibility of the responsible person;
- (d) the financial strength of the responsible person, as indicated, in particular, by the total annual turnover of the responsible legal person or the annual income of the responsible natural person;
- (e) the level of the profits gained or the losses avoided by the responsible person, insofar as they can be determined;
- (f) the level of cooperation of the responsible person with the FCA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (g) previous infringements by the person concerned;
- (h) measures taken, after the infringement, by a responsible person to prevent a repetition of the infringement;
- (i) the seriousness of the contravention in question in relation to the nature of the requirement contravened.

(3) The FCA may at any time alter or replace a statement issued by it under this regulation.

(4) If a statement issued under this regulation is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(a) Section 393(4) was amended by paragraph 32(4) of Schedule 9(6) to the Financial Services Act 2012.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under regulation 11 (financial penalties) in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

Statements of policy: procedure

15.—(1) Before the FCA issues a statement under regulation 14 (statements of policy), the FCA must publish a draft of the proposed statement in a way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that representations about the proposed statement may be made to the FCA within a specified time.

(3) Before issuing the proposed statement the FCA must have regard to any representations made to it in accordance with paragraph (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with paragraph (2); and
- (b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).

(7) This regulation also applies to a proposed statement made by way of an alteration to or a replacement of a previous statement.

Misleading the FCA

16.—(1) A person must not, for the purposes of compliance or purported compliance with a requirement under these Regulations, knowingly or recklessly give the FCA information which is false or misleading in a material particular.

(2) A person must not provide information to another person—

- (a) knowingly; or
- (b) being reckless as to whether;

the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purpose of providing information to, the FCA in connection with the discharge of its functions under this Part.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence.

(4) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Restriction on penalties

17.—(1) A person who is convicted of an offence under regulation 16 (misleading the FCA) is not subsequently liable to a penalty under regulation 11 (financial penalties) in respect of the same acts or omissions that constituted the offence.

(2) A person on whom a penalty has been imposed under regulation 11 (financial penalties) is not subsequently liable for an offence under regulation 16 (misleading the FCA) in respect of the same contravention that led to the imposition of the penalty.

Application of Part 9 of the Act (hearings and appeals)

18.—(1) Part 9(a) of the Act (hearings and appeals) applies with respect to proceedings pursuant to references to the Tribunal under Part 2 of these Regulations and under the Act as applied by Part 2 of these Regulations (“relevant proceedings”) as it applies with respect to proceedings pursuant to references to the Tribunal under the Act, with the following modifications.

(2) Section 133(b) of the Act (proceedings before the Tribunal: general provision) applies as if—

- (a) in subsection (1)—
 - (i) “(whether made under this or any other Act)” were omitted;
 - (ii) in paragraph (a) “or the PRA” were omitted; and
 - (iii) paragraphs (b) and (c) were omitted;
- (b) in subsection (2) “, (b) or (c)” were omitted;
- (c) a decision to impose a penalty under regulation 11 (financial penalties) and a decision to publish a statement of censure under regulation 10 (public censure) were a “disciplinary reference” in subsection (7A).

(3) Section 133A of the Act (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if—

- (a) for subsection (1) there were substituted—

“(1) In determining in accordance with section 133(5) (as applied by these Regulations) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, have the power to take when giving the notice.”;
- (b) in subsection (5) “or the PRA” were omitted.

(4) Section 133B(c) of the Act (offences) applies as if in subsection (1)—

- (a) in paragraph (a) “or the PRA” were omitted; and
- (b) paragraphs (b) and (c) were omitted.

Application of Part 11 of the Act (information gathering and investigations)

19.—(1) Part 11(d) of the Act (information gathering and investigations) applies with respect to the discharge by the FCA of its functions under Part 2 of these Regulations and the EU

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- (a) Part 9 was amended by paragraphs 44 and 45 of Schedule 2 to S.I. 2010/22, section 23(2)(a), (b), (c), and section 23(4) of Part 2 of the Financial Services Act 2012, paragraph 83 of Schedule 9(3) to the Crime and Courts Act 2013 (c.22), regulation 3(3) of Part 2 of S.I. 2013/1388, article 116 of S.I. 2014/3329, regulation 10(4) of Part 2 of S.I. 2016/680, and regulation 2(5)(b) of S.I. 2017/1064. There are other amendments but none is relevant.
 - (b) Section 133 was amended by paragraph 45 of Schedule 2 to S.I. 2010/22, section 23(2)(a), (b) and (c) of the Financial Services Act 2012, paragraph 83 of Schedule 9(3) to the Crime and Courts Act 2013 (c.22), regulation 3(3) of Part 2 of S.I. 2013/1388, regulation 10(4) of Part 2 of S.I. 2016/680 and regulation 2(5)(b) of S.I. 2017/1064. There are other amendments but none is relevant.
 - (c) Section 133B was inserted by paragraph 45 of Schedule 2 to S.I. 2010/22 and amended by section 23(4) of the Financial Services Act 2012.
 - (d) Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c. 44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c. 28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c. 28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraphs 36 and 37 of Schedule 2 to

Benchmarks Regulation 2016 in respect of Miscellaneous BM persons, as it applies with respect to the discharge by the FCA of its functions under the Act, with the following modifications.

(2) Part 11 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
- (c) each reference to an authorised person were a reference to a Miscellaneous BM person;
- (d) each reference to the PRA were omitted;
- (e) each reference to a regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only.

(3) Section 165(a) of the Act (regulators' power to require information: authorised persons etc.) applies as if subsections (4)(b) and (8A) were omitted.

(4) Sections 165A(b) (PRA's power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) of the Act do not apply.

(5) Section 166A(c) of the Act (appointment of skilled person to collect and update information) applies as if—

(a) for subsection (1) there were substituted—

“(1) This section applies if the FCA considers that a Miscellaneous BM person has contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 or the EU Benchmarks Regulation 2016 to collect, and keep up to date, information of a description specified in those regulations.”;

(6) subsection (10) were omitted.

(7) Section 167(d) of the Act (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to the FCA that there is a good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—

- (a) the nature, conduct or state of the business of a Miscellaneous BM person in respect of whom a requirement is imposed by or under the EU Benchmarks Regulation 2016 (“a person subject to the 2016 Regulation”);
- (b) a particular aspect of that business; or
- (c) the ownership or control of a person subject to the 2016 Regulation.”;

(b) subsections (2)(c) and (3A) were omitted;

(c) for subsection (4) there were substituted—

“(4) The power conferred by this section may be exercised in relation to a person who was a person subject to the 2016 Regulation but only in relation to—

- (a) business carried on when the person was a person subject to the 2016 Regulation;
- or

the Bank of England and Financial Services Act 2016 (c. 14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c. 25), S.I. 2001/1090, 2005/11433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575 and 2016/680. There are other amendments but none is relevant.

- (a) Section 165 was amended by Schedule 2 to the Financial Services Act 2010, Schedule 12 to the Financial Services Act 2012, S.I. 2013/1773 and S.I. 2015/575.
- (b) Section 165A was inserted by section 18(2) of the Financial Services Act 2010, and amended by Schedule 12(1) to the Financial Services Act 2012 and Schedule 2(2) to the Bank of England and Financial Services Act 2016 (c.14).
- (c) Section 166A was inserted by paragraph 6 of Schedule 12(1) to the Financial Services Act 2012.
- (d) Section 167 was amended by paragraph 7(2) of Schedule 12 to the Financial Services and Markets Act 2000, S.I. 2007/126 and S.I. 2015/575.

- (b) the ownership or control of a person who was formerly a person subject to the 2016 Regulation at any time when the person was a person subject to the 2016 Regulation.”;
- (d) subsections (5A) and (6) were omitted.
- (8) Section 168(a) of the Act (appointment of persons to carry out investigations in particular cases) applies as if—
- (a) for subsection (1) there were substituted—
- “(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that—
- (a) a Miscellaneous BM person may have contravened a requirement imposed by or under the EU Benchmarks Regulation 2016 or the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018;
- (b) a member of the management body of a person referred to in paragraph (a) or another member of the senior management of a person referred to in paragraph (a) may be responsible for the contravention of a requirement imposed by or under either of those Regulations; or
- (c) a person may be guilty of an offence under either of those Regulations or under the Act as applied by these Regulations.”;
- (b) subsections (2), (4) and (5) were omitted;
- (c) for subsection (6) there were substituted—
- “(6) “Investigating authority” means the FCA.”
- (9) Section 169(b) of the Act (investigations etc. in support of overseas regulator) applies as if—
- (a) subsection (2A) were omitted;
- (b) for subsection (13) there were substituted—
- “(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the EU Benchmarks Regulation 2016.”.
- (10) Section 169A(c) of the Act (support of overseas regulator with respect to financial stability) does not apply.
- (11) Section 170(d) of the Act (investigations: general) applies as if—
- (a) each reference to the investigating authority were a reference to the FCA;
- (b) in subsection (1) “or (5)” were omitted;
- (c) for subsection (3) there were substituted—
- “(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the FCA believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;
- (d) subsection (10) were omitted.
- (12) Section 172 of the Act (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.
- (13) Section 174(e) of the Act (admissibility of statements made to investigators) applies as if—

(a) Section 168 was amended by S.I. 2007/126, paragraph 33(3) of Schedule 7(7) to the Counter-Terrorism Act 2008 (c.28) Schedule 2(1) to the Financial Services Act 2010, Schedule 12(1) to the Financial Services Act 2012 (c.21), paragraph 11 of Schedule 3 to the Pension Schemes Act 2015 (c.8) and S.I. 2016/680

(b) Section 169 was amended by S.I. 2011/1043 and Schedule 12(1) to the Financial Services Act 2012 (c.21).

(c) Section 169A was inserted by section 18(3) of the Financial Services Act 2010 and amended by paragraph 10 of Schedule 12(1) to the Financial Services Act 2012.

(d) Section 170 was amended by paragraph 11, Schedule 12(1) to the Financial Services Act 2012.

(e) Section 174 was amended by paragraph 12 of Schedule 12(1) to the Financial Services Act 2012 and S.I. 2016/680. There are other amendments but none is relevant.

- (a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123(a) to which this subsection applies” were omitted;
 - (b) in the list of offences in subsection (3), after paragraph (d), there was inserted—
 - “(e) under regulation 18 (misleading the FCA) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018.”.
 - (c) subsection (3A) were omitted;
 - (d) in subsection (4) the words from “or (5),” to the end were omitted.
- (14) Section 175(b) of the Act (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.
- (15) Section 176(c) of the Act (entry of premises under warrant) applies as if—
- (a) for subsection (1) there were substituted—
 - “(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.”
 - ;
 - (b) in subsection (3)(a) “or an appointed representative” were omitted;
 - (c) in subsection (10) “or (5)” were omitted;
 - (d) in subsection (11)(a) “87C, 87J,” and “165A, 169A” were omitted.
- (16) In section 191G(d) of the Act (interpretation) after the definition of “credit institution” there was inserted—
- ““Miscellaneous BM person” means a person who is not an authorised person as defined by section 31 and is—
- (a) involved in the provision of, or contribution of input data to, a benchmark;
 - (b) a service provider to whom functions, or any relevant services or activities in the provision of a benchmark have been outsourced;
 - (c) a person who is not the service provider but who is or has been party to a contract in relation to the outsourcing of functions, or any relevant services, or activities in the provision of a benchmark;
 - (d) a legal representative of an administrator located in a third country which has obtained or has applied for prior recognition as referred to in Article 32(1) and as provided for in Article 32(3) of the EU Benchmarks Regulation 2016;
 - (e) a person who administers a benchmark relying on Article 51(4) of the EU Benchmarks Regulation 2016; or
 - (e) a supervised entity, as defined in Article 3(1)(17) of the EU Benchmarks Regulation 2016;”.

Information given by an auditor

20. Sections 342(e) (information given by auditor or actuary to a regulator), 343(f) (information given by auditor or actuary to a regulator: persons with close links) and 344 (duty of auditor or actuary resigning etc. to give notice) of the Act apply with respect to the auditor of a Miscellaneous BM person as if—

- (a) each reference to an authorised person were a reference to a Miscellaneous BM person;

(a) Section 123 was substituted by regulation 9(1) of S.I. 2016/680.
 (b) Section 175 was amended by paragraph 13 of Schedule 12(1) to the Financial Services Act 2012.
 (c) Section 176 was amended by paragraphs 14 and 17 of Schedule 12(1) to the Financial Services Act 2012.
 (d) Section 191G was inserted by S.I. 2009/534, and amended by section 26(12) of Part 2 of the Financial Services Act 2012 and S.I. 2013/3115.
 (e) Section 342 was amended by paragraph 4 of Schedule 13 to the Financial Services Act 2012 and S.I. 2013/3115.
 (f) Section 343 was amended by paragraph 5 of Schedule 13 to the Financial Services Act 2012 and S.I. 2013/3115.

- (b) each reference to a regulator were a reference to the FCA;
- (c) each reference to the appropriate regulator were a reference to the FCA;
- (d) references to an actuary were omitted;
- (e) sections 342(2), 343(2) and 344(4) were omitted.

Restrictions on disclosure of information

21. Sections 348(a) (restrictions on disclosure of confidential information by FCA, PRA etc.), 349(b) (exceptions from section 348) and 352 (offences) of the Act apply with respect to information received under these Regulations and under the Act as applied by these Regulations as they apply with respect to information received under the Act as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of the Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348(2), for “In this Part” there were substituted “In sections 348, 349 and 352 as applied by the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018”;
- (d) in section 352—
 - (i) in subsection (1) “or 350(5)” were omitted;
 - (ii) subsection (4) were omitted;
 - (iii) in subsection (5) “or (4)” were omitted;
 - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

Application of Part 25 of the Act (injunctions and restitution)

22.—(1) Part 25(c) of the Act (injunctions and restitution) applies for the purposes of these Regulations and the Act as applied by these Regulations, with the following modifications.

- (2) Part 25 of the Act applies as if—
- (a) each reference to the Act included a reference to these Regulations;
 - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
 - (c) each reference to a regulator, the regulator concerned or the appropriate regulator were a reference to the FCA;
 - (d) references to the Secretary of State were omitted;
 - (e) each reference to a relevant requirement in Part 25 were a reference to a requirement which is imposed by or under—
 - (i) these Regulations;
 - (ii) the Act as applied by these Regulations; or
 - (iii) the EU Benchmarks Regulation 2016.
- (3) Section 380 of the Act (injunctions) applies as if subsections (6) to (12) were omitted.
- (4) Section 381 of the Act (injunctions in cases of market abuse) does not apply.

(a) Section 348 was amended by paragraph 26 of Schedule 2(1) to the Financial Services Act 2010, paragraph 18 of Schedule 12(2) to the Financial Services Act 2012, paragraph 5 of Schedule 8(1) to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2(2) to the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2016/1239.

(b) Section 349 was amended by section 964(4) of the Companies Act 2006 (c.46), S.I. 2007/1093, S.I. 2011/1043 and paragraph 19 of Schedule 12(2) to the Financial Services Act 2012.

(c) Part 25 and the relevant sections thereof were amended by paragraphs 19, 21 and 23 of Schedule 9(5) to the Financial Services Act 2012 and S.I. 2016/680. There are other amendments but none is relevant.

- (5) Section 382 of the Act (restitution orders) applies as if subsections (9) to (15) were omitted.
- (6) Section 383 of the Act (restitution orders in cases of market abuse) does not apply.
- (7) Section 384 of the Act (power of FCA or PRA to require restitution) applies as if—
 - (a) the reference to “authorised person” in subsection (1) were a reference to a “Miscellaneous BM person”;
 - (b) in subsection (1) references to “the appropriate regulator” and “the regulator concerned” were references to “the FCA”;
 - (c) subsections (2) and (3) and references to those subsections were omitted;
 - (d) in subsection (6) the reference to “the regulator concerned” is a reference to the “the FCA”; and
 - (e) subsections (7) to (13) were omitted.

Application of Part 26 of the Act (notices)

23.—(1) Part 26(a) of the Act (notices) applies with respect to the giving of notices under these Regulations and under the Act as applied by these Regulations as it applies with respect to the giving of notices under the Act, with the following modifications.

- (2) Part 26 of the Act applies as if—
 - (a) each reference to the Act included a reference to these Regulations;
 - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
 - (c) each reference to a regulator or to the regulator concerned were a reference to the FCA;
 - (d) references to the PRA were omitted.
- (3) Section 387 of the Act (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (4) Section 388 of the Act (decision notices) applies as if subsections (1A) and (2) were omitted.
- (5) Section 391 of the Act (publication) applies as if—
 - (a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) were to a warning notice given under regulation 13 (warning notice);
 - (b) subsection (1ZB) were omitted;
 - (c) subsection (4A) were omitted; and
 - (d) subsections (5A), (6A), (8A), (8B) and (8C) were omitted.
- (6) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive), 391C (publication: special provisions relating to the UCITS directive) and 391D (publication: special provisions relating to the markets in financial instruments directive) of the Act do not apply.
- (7) Section 392 of the Act (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—
 - “(a) a warning notice given in accordance with—
 - (i) regulation 13 (warning notice) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, or
 - (ii) section 385 as applied by those Regulations;

(a) Part 26 and the relevant sections thereof were amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), S.I. 2005/1433, S.I. 2007/126, S.I. 2007/1973, S.I. 2009/534, section 13(3) and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, S.I. 2010/22, sections 18, 19 and 24 and paragraphs 26, 27, 28, 29, 30, 32, 33 and 34 of Schedule 9(6) and paragraph 8 of Schedule 13 to the Financial Services Act 2012, S.I. 2012/916, paragraphs 12 and 14 of Schedule 3 to the Financial Services (Banking Reform) Act 2013, S.I. 2013/1388, S.I. 2016/225, S.I. 2016/680, S.I. 2016/1239. There are other amendments but none is relevant.

- (b) a decision notice given in accordance with—
 - (i) regulation 14 (decision notice) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, or
 - (ii) section 386 as applied by those Regulations.”.
- (8) Section 395 of the Act (the FCA’s and PRA’s procedures) applies as if—
 - (a) for subsection (1) there were substituted—
 - “(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give—
 - (a) a supervisory notice, warning notice or decision notice; or
 - (b) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”;
 - (b) in subsection (2)(a) for “any of paragraphs (a) to (c)” there were substituted “paragraph (a)”;
 - (c) in subsection (2)(b) for “(d)” there were substituted “(b)”;
 - (d) in subsection (2)(c)—
 - (i) for “(d)” there were substituted “(b)”;
 - (ii) for “(b) or (c)” there were substituted “(a)”;
 - (e) subsections (3)(b) and (4) were omitted;
 - (f) in subsection (9) “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii)” were omitted;
 - (g) subsection (9A) were omitted; and
 - (h) for subsection (13) there were substituted—
 - “(13) “Supervisory notice” means a notice given in accordance with—
 - (a) section 55Y of the Act as applied by regulation 6 (FCA’s power to impose requirements) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018,
 - (b) regulation 34(5), (7) and (10) (procedure for prior recognition of a benchmark administrator located in a third country) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, where the decision falls within regulation 34(5), and
 - (c) regulation 35(5), (7) and (10) (endorsement of benchmarks provided in a third country) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 where the decision falls within regulation 35(5) or (10).”.

Application of Part 27 of the Act (offences)

24.—(1) Part 27(a) of the Act (offences) applies with respect to offences under these Regulations and the Act as applied by Part 2 of these Regulations as it applies with respect to offences under the Act, with the following modifications.

- (2) Part 27 of the Act applies as if—
 - (a) each reference to the Act included a reference to these Part 2 of Regulations;
 - (b) each reference to a section of the Act were a reference to that section as applied by Part 2 of these Regulations;
 - (c) references to the Secretary of State were omitted; and

(a) Part 27 and the relevant sections thereof were amended by section 95 and paragraphs 37, 38 and 40 of Schedule 9(7) to the Financial Services Act 2012 and S.I. 2013/1881.

(d) references to the appropriate regulator were references to the FCA.

(3) Sections 398 (misleading the FCA or PRA: residual cases) and 399 (misleading the CMA) of the Act do not apply.

(4) Section 400 of the Act (offences by bodies corporate) applies as if subsection (6A) were omitted.

(5) Section 401 of the Act (proceedings for offences) applies as if—

(a) subsection (1)(c) were omitted; and

(b) subsections (3A), (3AB) and (3B) were omitted.

(6) Section 402 of the Act (power of FCA to institute proceedings for certain other offences) does not apply.

(7) Section 403(7) of the Act (jurisdiction and procedure in respect of offences) applies as if the words from “or an offence” to the end were omitted.

Application of section 413 of the Act (protected items)

25. Section 413 of the Act (protected items) applies for the purposes of Part 2 of these Regulations as it applies for the purposes of the Act.

FCA: penalties, fees and exemption from liability in damages

26.—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages) of Schedule 1ZA(a) to the Act apply with respect to the discharge by the FCA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

(2) Those paragraphs apply as if—

(a) each reference to penalties imposed under the Act included a reference to penalties imposed under Part 2 of these Regulations;

(b) each reference to a section or Part of the Act included a reference to that section or Part as applied by Part 2 of these Regulations; and

(c) each reference to the functions of the FCA included a reference to its functions under Part 2 of these Regulations.

(3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—

(a) its powers under these Regulations and under Part 25(b) of the Act as applied by Part 2 of these Regulations;

(b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by Part 2 of these Regulations; and

(c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under these Regulations or under the Act as applied by Part 2 of these Regulations.

(4) Paragraph 21 applies as if regulated persons included Miscellaneous BM persons.

(5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations and under the Act as applied by Part 2 of these Regulations.

(a) Schedule 1ZA and the relevant paragraphs thereof were amended by Schedule 3 to the Financial Services Act 2012, section 109(1), paragraph 7(3) of Schedule 8(1) and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, S.I. 2013/1773, paragraphs 15 and 16 of Schedule 3 to the Pension Schemes Act 2015 (c.8) and section 29(6) of the Bank of England and Financial Services Act 2016 (c.14).

(b) Part 25 was amended by paragraphs 19, 21 and 23 of Schedule 9(5) to the Financial Services Act 2012 and S.I. 2016/680. There are other amendments but none is relevant.

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)(a) 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(b) permission is treated as having been varied by the FCA to include the activity in article 63S of the RAO(c) with effect from the day on which the FCA exercises its powers under Article 21(3) of the EU Benchmarks Regulation 2016.

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.

(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(d) 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) 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.
 - (b) 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.
 - (c) S.I. 2001/544.
 - (d) S.I. 2001/544.

- (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(a) of the Act (variation by FCA at request of authorised person); or
 - (c) the cancellation of permission by the FCA under section 55J(b) 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(c) 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(d) 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.

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)(e) 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

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

(b) 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.

(c) 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.

(d) S.I. 2001/544.

(e) Article 63O was inserted by article 5 of S.I. 2013/655.

- (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(a) 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(b).
- (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.

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(c) 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)(d) 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)(e) (exemption orders);
- (b) section 55A(3)(f) (application for permission);
- (c) section 55E (giving permission: the FCA);
- (d) section 55F (giving permission: the PRA).

(a) 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.

(b) S.I. 2001/544.

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

(d) Section 55L was inserted by section 11 of the Financial Services Act 2012.

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

(f) 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(a) (statement of policy: procedure);
- (b) section 138I(b) (consultation by the FCA); and
- (c) subsection (3) of section 139A(c) (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)(d) of Schedule 1ZA to the Act (the FCA: arrangements for discharging functions).

PART 4

Administering a benchmark

Power to direct form of notifications

33.—(1) Where a person administering a benchmark submits a notification, application or report required by the EU Benchmarks Regulation 2016 to the FCA, that notification, application or report must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such other information as the FCA may reasonably require.

(2) At any time after receiving an application or notification and before determining it, the FCA may require the person administering a benchmark to provide it with such further information as it reasonably considers necessary to enable it to determine the application or consider the notification.

(3) The FCA may give different directions, and impose different requirements, in relation to different applications, notifications or reports or categories of application, notification or report.

(4) The FCA may require the person administering a benchmark to provide information under this regulation in such form, or to verify it in such a way, as the FCA may reasonably direct.

Procedure for prior recognition of a benchmark administrator located in a third country

34.—(1) An application for prior recognition of a benchmark administrator located in a third country under Article 32 of the EU Benchmarks Regulation 2016 must be made in such manner as the FCA may direct.

(2) The FCA must either—

- (a) determine the application within 90 working days of receipt of the completed application; or
- (b) notify ESMA, without undue delay, where the FCA considers that Article 32(6) applies.

(a) Section 61D was inserted by section 11 of the Financial Services Act 2010.

(b) 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.

(c) 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.

(d) 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.

(3) The FCA must make a recognition order granting the administrator prior recognition if the conditions in Article 32 of the EU Benchmarks Regulation 2016 are met.

(4) The FCA must—

- (a) notify the administrator in writing of its decision; and
- (b) state whether the decision is to take effect immediately or on such date as may be specified in the notice.

(5) Where the conditions in Article 32 of the EU Benchmarks Regulation 2016 are not met and the FCA refuses to grant a recognition order it must give the administrator a written notice to that effect.

(6) The FCA may—

- (a) on its own initiative; or
- (b) on an application by the administrator;

withdraw, suspend or vary a recognition order.

(7) Where the FCA exercises its power under paragraph (6)(a) or refuses the administrator's application under paragraph (6)(b), to withdraw, suspend or vary a recognition order, it must give the administrator a written notice.

(8) The written notice under paragraph (5) or (7) must—

- (a) give details of the decision;
- (b) state the FCA's reasons for the decision;
- (c) inform the administrator of its right either to—
 - (i) request a review of the decision and make written representations for the purposes of the review within such period as may be specified in the notice; or
 - (ii) refer the matter to the Tribunal within such period as may be specified in the notice, and indicate the procedure on such a reference; and
- (d) inform the administrator when the withdrawal, suspension or variation of the recognition order is to take effect.

(9) If the administrator requests a review of the decision made by the FCA, the FCA must review its decision, taking into account any written representations.

(10) On a review under paragraph (9) the FCA may—

- (a) affirm its original decision in respect of the recognition order; or
- (b) make any other decision the FCA could have made on the application in respect of the recognition order;

by giving the administrator a written notice of its decision.

(11) A written notice under paragraph (10) must—

- (a) give details of the decision made by the FCA;
- (b) state the FCA's reasons for the decision;
- (c) state whether the decision is to take effect immediately or on such date as may be specified in the notice; and
- (d) inform the administrator of its right to refer the matter to the Tribunal within such period as may be specified in the notice, and indicate the procedure on such a reference.

Endorsement of benchmarks provided in a third country

35.—(1) An administrator authorised by the FCA or any other supervised entity^(a) which is entitled to apply to the FCA under Article 33 of the EU Benchmarks Regulation 2016 (“the

(a) “Supervised entity” is defined in point 17 of paragraph 1 of Article 1 to the EU Benchmarks Regulation 2016 (OJ No. L171 29.06.2016, p.1.).

endorser”) may apply to the FCA for approval of its decision to endorse a benchmark or a family of benchmarks administered by an administrator located outside the EU.

(2) The application for approval of its decision must be made in such manner as the FCA may direct.

(3) The FCA must determine the application within 90 working days of receipt of the completed application.

(4) The FCA must make an endorsement order granting the application if the conditions in Article 33(1) of the EU Benchmarks Regulation 2016 are met.

(5) The FCA must—

- (a) notify the endorser in writing of its decision; and
- (b) state whether the decision is to take effect immediately or on such date as may be specified in the notice.

(6) Where one or more of the conditions in Article 33(1) of the EU Benchmarks Regulation 2016 are not met and the FCA refuses to make an endorsement order it must give the endorser a written notice to that effect.

(7) The FCA may—

- (a) on its own initiative; or
- (b) on an application by the endorser;

withdraw, vary or suspend an endorsement order.

(8) Where the FCA exercises its power under paragraph (7)(a) or refuses the endorser’s application under paragraph (7)(b) it must give the endorser a written notice to withdraw, suspend or vary an endorsement order.

(9) The written notice under paragraphs (6) or (8) must—

- (a) give details of the decision;
- (b) state the FCA’s reasons for the decision;
- (c) inform the endorser of its right either to—
 - (i) request a review of the decision, and make written representation for the purposes of the review, within such period as may be specified in the notice; or
 - (ii) refer the matter to the Tribunal within such period as may be specified in the notice, and indicate the procedure on such a reference; and
- (d) inform the endorser when the withdrawal, suspension or variation of the endorsement order is to take effect.

(10) If the endorser requests a review under paragraph (9)(c), the FCA must consider any written representations made by the endorser and review its decision.

(11) On a review under paragraph (10) the FCA may—

- (a) affirm its original decision; or
- (b) make any other decision the FCA could have made on the application;

by giving the endorser a written notice of its decision.

(12) A written notice under paragraph (11) must—

- (a) give details of the decision made by the FCA under paragraph (11);
- (b) state the FCA’s reasons for the decision;
- (c) state whether the decision is to take effect immediately or on such date as may be specified in the notice; and
- (d) inform the endorser of its right to refer the matter to the Tribunal within such period as may be specified in the notice, and indicate the procedure on such a reference.

Right to refer matters to the Tribunal

36.—(1) Subject to paragraph (2), an administrator who has applied for a recognition order under regulation 34 (procedure for prior recognition of a benchmark administrator located in a third country) or a person who has applied to endorse a benchmark under regulation 35 (endorsement of benchmarks provided in a third country) who is aggrieved by the FCA’s decision to—

- (a) refuse to make a recognition order under regulation 34 (procedure for prior recognition of a benchmark administrator located in a third country), exercise its power under regulation 34(6)(a) or refuse the administrator’s application under regulation 34(6)(b) to withdraw, vary or suspend a recognition order; or
- (b) refuse to make an endorsement order under regulation 35 (endorsement of benchmarks provided in a third country), exercise its power under regulation 35(7)(a) or refuse the administrator’s application under regulation 35(7)(b) to withdraw, vary or suspend an endorsement order;

may refer the matter to the Tribunal.

(2) Where there is a review under regulation 34(9) or 35(10), paragraph (1) applies only in relation to the FCA’s decision in response to that review.

PART 5

Amendments to the Act

Amendments to section 1H

37. In subsection (7A)(a) of section 1H(b) of the Act (further interpretative provisions for sections 1B to 1G)—

- (a) after “section 22(6)” insert “or (6A)”;
- (b) after “section 22(1A)(b)” insert “or (c)”;
- (c) omit “(6) or”; and
- (d) omit “(b) or”.

Amendments to section 22 (regulated activities)

38. Section 22(c) of the Act (regulated activities) is amended as follows—

- (a) at the end of subsection (1A)(a) omit “or”;
- (b) at the end of subsection (1A)(b) insert “, or”;
- (c) after subsection (1A)(b) insert—
“ (c) administering a benchmark.”;
- (d) in subsection (6), for “Benchmark” substitute—
“For the purposes of subsection (1A)(b), “benchmark”;
- (e) after subsection (6) insert—
“(6A) For the purposes of subsection (1A)(c), “benchmark” has the meaning given by Article 3 of the EU Benchmarks Regulation 2016, and “administering” a benchmark means acting as an administrator of that benchmark within the meaning of that Article.”.

(a) Subsection (7A) was inserted by S.I. 2013/655.

(b) Section 1H was inserted by section 6(1) of the Financial Services Act 2012, S.I. 2013/655, S.I. 2013/1881 and S.I. 2013/3115.

(c) Section 22 was amended by section 7(1) of the Financial Services Act 2012.

39. In section 22 of the Act (regulated activities)—

- (a) at the end of subsection (1A)(a), insert “or”;
- (b) omit subsection(1A)(b); and
- (c) omit subsection (6).

Amendments to Part 4A (permission to carry on regulated activities)

40.—(1) Part 4A(a) of the Act (permission to carry on regulated activities) is amended as follows.

(2) In section 55A (application for permission)—

- (a) in subsection (2), after “means” insert “(subject to subsection (2B))”;
- (b) after subsection (2) insert—

“(2A) An application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 may not include an application for permission to carry on any other regulated activity.

(2B) The appropriate regulator, in relation to an application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, is the FCA.”.

(3) In section 55B (the threshold conditions) after subsection (4) insert—

“(5) The duty imposed by subsection (3) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.

(4) In section 55E (giving permission: the FCA) of the Act after subsection (3) insert—

“(3A) The FCA must consult the PRA before determining an application for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark) made by a person who is a PRA-authorized person otherwise than by virtue of a Part 4A permission.”.

(5) Section 55H (variation by FCA at request of authorised person) is amended as follows—

- (a) omit subsection (1);
- (b) in subsections (2) and (3) for “the authorised person” there is substituted “an authorised person who has a Part 4A permission but is not a PRA-authorized person”;
- (c) after subsection (3) insert—

“(3A) The FCA may, on the application of a PRA-authorized person with a Part 4A permission, vary the permission by—

- (a) adding to the regulated activities to which the permission relates the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark),
- (b) removing that regulated activity from those to which the permission relates, or
- (c) varying the description of that regulated activity.

(3B) The FCA must consult the PRA before exercising its power under subsection (3A).”;
and

- (d) in subsection (5) before “the applicant” insert “on an application under subsection (2) or (3)”.

(6) In section 55I (variation by PRA at request of authorised person)—

(a) Part 4A (sections 55A to 55Z4) of the Act was inserted by section 11(2) of the Financial Services Act 2012.

- (a) in subsection (1) after paragraph (c) insert—
- “but the PRA may not under this subsection add, remove or vary the description of the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”;
- (b) at the end of subsection (2) insert—
- “, but the PRA may not under this subsection cancel a permission where the only regulated activity to which the permission relates is the regulated activity in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”; and
- (c) at the end of subsection (3) insert—
- “, but the PRA may not under this subsection add the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.
- (7) In section 55J(a) (variation or cancellation on initiative of regulator)—
- (a) in subsection (4), after paragraph (b) insert—
- “, but paragraph (b) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”; and
- (b) after subsection (7ZB) insert—
- “(7ZC) Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA, in relation to a person who has a permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark), that the conditions in Article 35(1) of the EU Benchmarks Regulation 2016 are met, the FCA may exercise its powers under this section—
- (a) to vary the Part 4A permission by removing that activity from those to which the permission relates, or
- (b) to cancel the Part 4A permission.”.
- (8) In section 55M (imposition of requirements by PRA) after subsection (6) insert—
- “(6A) The PRA may not exercise its powers under this section to impose a requirement relating to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.
- (9) In section 55X (determination of applications: warning notices and decision notices) after subsection (4) insert—
- “(5) This section does not apply to applications to which section 55XA applies.”.
- (10) After section 55X (determination of applications: warning notices and decision notices) insert—

“Applications relating to administering a benchmark

55XA.—(1) If the FCA decides—

- (a) to give a Part 4A(b) permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55E(5)(a)(c) or (b) in connection with the application for permission,

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- (a) Subsection (7ZB) was inserted by regulation 10(3) of S.I. 2016/680. There are other amendments to section 55J none is relevant.
- (b) 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.
- (c) Section 55E was inserted by section 11(2) of the Financial Services Act 2012.

- (b) to give a Part 4A(a) permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55L(1)(b) in connection with the application for permission,
- (c) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO(c) (administering a benchmark) on the application of an authorised person but to exercise its power in section 55E(5)(a) or (b) in connection with the application for variation,
- (d) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) on the application of an authorised person but to exercise its power in section 55L(1) in connection with the application for variation,
- (e) to refuse an application for a Part 4A permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark), or
- (f) to refuse an application for a variation of a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark),

it must give the applicant a written notice.

(2) A written notice under subsection (1) must—

- (a) give details of the decision made by the FCA,
- (b) state the FCA’s reasons for the decision,
- (c) state whether the decision takes effect immediately or on such date as may be specified in the notice,
- (d) inform the applicant that the applicant may either—
 - (i) request a review of the decision, and make written representations for the purpose of the review, within such period as may be specified in the notice, or
 - (ii) refer the matter to the Tribunal within such period as may be specified in the notice, and
- (e) indicate the procedure on a reference to the Tribunal.

(3) If the applicant requests a review of the decision made by the FCA (“the original decision”), the FCA must consider any written representations made by the applicant and review the original decision.

(4) On a review under subsection (3) the FCA may make any decision (“the new decision”) the FCA could have made on the application.

(5) The FCA must give the applicant written notice of its decision on the review.

(6) If the new decision is to do any of the things mentioned in subsection (1)(a) to (f), the written notice under subsection (5) must—

- (a) give details of the new decision made by the FCA,
- (b) state the FCA’s reasons for the new decision,
- (c) inform the applicant that the applicant may, within such period as may be specified in the notice, refer the new decision to the Tribunal, and
- (d) indicate the procedure on a reference to the Tribunal.

(8) In this section “the RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.

(a) 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.

(b) Section 55L was inserted by section 11(2) of the Financial Services Act 2012.

(c) S.I. 2001/544.

(11) In section 55Z3 after subsection (2) insert—

“(3) Where there is a review under section 55XA(3) of a determination within section 55XA(1), subsection (1) applies only in relation to the determination made on the review.”.

Amendment to Part 8 of the Act (provisions relating to market abuse)

41. After section 122H of the Act (publication of corrective statements generally) insert—

“Publication of corrective statements relating to benchmarks

122HA.—(1) If condition A or B is met, the FCA may, by notice in writing, require a person to publish—

- (a) specified information, or
- (b) a specified statement,

correcting false or misleading information made public, or a false or misleading impression given to the public, by that person.

(2) Condition A is met if the FCA considers that the publication of the information or statement is necessary for the purpose of protecting the interests of users of regulated benchmarks.

(3) Condition B is met if the FCA considers that the publication of the information or statement is necessary for the purpose of the exercise by it of its functions under Article 41(1)(j) of the EU Benchmarks Regulation 2016.

(4) Information or statements required to be published under this section must be published—

- (a) before the end of such reasonable period as may be specified; and
- (b) by any such method as may be specified.

(5) If a person fails to comply with a requirement to publish information or a statement under this section the FCA may publish the information or statement.

(6) But before doing so, the FCA must give that person an opportunity to make representations to it regarding its decision to publish the information or statement under subsection (5).

(7) In this section—

“specified” means specified in the notice, and

“regulated benchmark” means a regulated benchmark as defined in section 425A(7).”.

42.—(1) In section 123(a) of the Act (power to impose penalties or issue censure) in subsection (1)(c)(i) after “122H,” insert “122HA,”.

(2) In sections 123A and 123B of the Act (power to prohibit individuals from managing or dealing and suspending permission to carry on regulated activities etc.) in each subsection (1)(c) after “122H,” insert “122HA,”.

(3) In section 124 of the Act (statement of policy)—

- (a) in subsection (2) after “market abuse regulation” insert “or Article 43(1) of the EU Benchmarks Regulation 2016”;
- (b) in subsection (10), in paragraph (c)(i) of the definition of “relevant person”, after “122H,” insert “122HA,”.

(a) Sections 123 to 123C were substituted by regulation 9(1) and (5) of S.I. 2016/680.

Amendment to section 137F of the Act (rules requiring participation in benchmark)

43. — In section 137F of the Act (rules requiring participation in benchmark)—

(a) in subsection (4), for the definition of “benchmark” substitute—

““benchmark” means a benchmark within the meaning of section 22(6) or (6A);”,

(b) in subsection (4) in the definition of “benchmark” omit “(6) or”.

Amendment to section 178 of the Act (obligation to notify the appropriate regulator: acquisitions of control)

44. After subsection (2) of section 178(a) of the Act (obligation to notify the appropriate regulator: acquisitions of control) insert—

“(2ZA) This section does not apply if the only regulated activity for which the UK authorised person has a Part 4A permission is the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.

Amendment to Part 18 of the Act (recognised investment exchanges and clearing houses)

45. In section 285(b) of the Act (exemption for recognised bodies etc.), after subsection (3) insert—

“(3ZA) Subsections (2) and (3) do not apply in respect of the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”

Amendment to section 391 of the Act (publication)

46. After subsection (8C) of section 391(c) of the Act (publication) insert—

“(8D) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the EU Benchmarks Regulation 2016 or any directly applicable regulation made under the EU Benchmarks Regulation 2016, this section has effect subject to Article 45 of the EU Benchmarks Regulation 2016 (publication of decisions).”.

Amendment to section 395 (the FCA’s and PRA’s procedures)

47. In subsection (13) of section 395(d) of the Act (the FCA’s and PRA’s procedures) before paragraph (a) insert—

“(za) 55XA(1) or (5) (where subsection (6) applies);”.

Amendment to section 398 of the Act (misleading FCA or PRA: residual cases)

48.—(1) Subsection (1A) of section 398(e) of the Act (misleading FCA or PRA: residual cases) is amended as follows—

(2) At the end of paragraph (f) omit “or”.

(3) At the end of paragraph (g) insert “or”.

(4) After paragraph (g) insert—

(a) Section 178 was inserted by S.I. 2009/534 and amended by section 26 of the Financial Services Act 2012.
(b) Section 285 was amended by section 28 of the Financial Services Act 2012 and by S.I. 2013/504. There are also other amendments but none is relevant to these Regulations.
(c) Subsection 8C of section 391 was inserted by S.I. 2016/715.
(d) Section 395 was amended by section 17(3) of the Financial Services Act 2012.
(e) Subsection 1A of section 398 was inserted by S.I. 2016/680).

“(h) the EU Benchmarks Regulation 2016.”

Amendment to Part 29 of the Act (interpretation)

49.—(1) In subsection (1) of section 417 of the Act (definitions), after the definition of the “ESMA”, insert—

““the EU Benchmarks Regulation 2016” 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) In the definition of “regulated benchmark” in subsection (7) of section 425A(a) (consumers: regulated activities etc carried on by authorised persons) of the Act—

- (a) after “section 22(6)” insert “or (6A)”,
- (b) after “section 22(1A)(b)” insert “or (c)”,
- (c) omit “(6) or”, and
- (d) omit “(b) or”.

Omission of Part 2B of Schedule 2 to the Act (regulated activities relating to the setting of benchmarks)

50. In Schedule 2(b) to the Act (regulated activities relating to the setting of benchmarks) omit Part 2B.

PART 6

Amendments to secondary legislation

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

51. After article 63R of the RAO (specified benchmarks) insert—

“Administering a benchmark

63S.—(1) Administering a benchmark is a specified kind of activity.

(2) In paragraph (1) “administering a benchmark” means acting as an administrator of a benchmark within the meaning of Article 3 of Regulation EU 2016/1011(c) 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(d) and 2014/17/EU(e) and Regulation (EU) No 596/2014(f).

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- (a) Section 425A was inserted by paragraph 32 of Schedule 2(1) to the Financial Services Act 2010 and amended by S.I. 2013/655 and S.I. 2013/3115.
 - (b) Part 2B of Schedule 2 to the Act was inserted by section 7(5) of the Financial Services Act 2012. There are other amendments to Part 2B of Schedule 2 but none is relevant to these Regulations.
 - (c) OJ No. L171, 29.06.2016, p.1.
 - (d) OJ No. L133, 22.05.2008, p.66.
 - (e) OJ No. L60, 28.02.2014, p.34.
 - (f) OJ No. L173, 12.06.2014, p.1.

Administration of a benchmark by the FCA

63T. The FCA does not carry on the activity of the kind specified by article 63S(1) in relation to a benchmark where the FCA administers the benchmark itself.”.

52. In article 64 (agreeing to carry on specified kinds of activity)—

- (a) omit “and” and insert “,”;
- (b) after “63N” insert “and 63S”.

53. The following provisions of the RAO are revoked—

- (a) article 63O (specified benchmarks);
- (b) article 63P (publicly available factual data and subscription services);
- (c) article 63Q (administration of a specified benchmark by the FCA);
- (d) article 63R (Schedule); and
- (e) Schedule 5 (specified benchmarks).

Amendment to the Financial Services and Markets Act 2000 (Exemption) Order 2001

54. The Financial Services and Markets Act 2000 (Exemption) Order 2001(a) is amended by inserting, after article 5—

“Persons exempt in respect of administering a benchmark

5A. Part 1 of the Schedule does not apply to the regulated activity specified in article 63S of the Regulated Activities Order (administering a benchmark). The persons exempt in respect of the regulated activity of administering a benchmark are those listed, or carrying out an activity listed, in Article 2(2) 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(b) and 2014/17/EU(c) and Regulation (EU) No 596/2014(d).”.

Amendment to the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001

55. Article 4(e) of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(f) is amended by inserting, after paragraph (h)—

“(i) article 63S (administering a benchmark).”.

Amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

56.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(g) is amended as follows.

(2) In regulation 2(h) in the appropriate places insert—

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- (a) S.I. 2001/1201.
 - (b) OJ No L133 22.05.08, p.66.
 - (c) OJ No L60 28.02.14, p.34.
 - (d) OJ No L171 29.06.16, p.1.
 - (e) Article 4 was amended by S.I. 2001/3650, S.I. 2004/2737, S.I. 2006/1969, S.I. 2012/1906, S.I. 2013/1773.
 - (f) S.I. 2001/1227.
 - (g) S.I. 2001/2188.
 - (h) Regulation 2 was amended by S.I. 1992/3218, S.I. 1994/1696, S.I. 1995/3275, S.I. 1997/2781, S.I. 1999/2094, S.I. 2003/693, S.I. 2003/2066, S.I. 2004/1862, S.I. 2004/3379, S.I. 2006/3413, S.I. 2010/2628, S.I. 2011/1043, S.I. 2011/1613, S.I. 2012/916, S.I. 2012/2554, S.I. 2013/472, S.I. 2013/504, S.I. 2013/1162, S.I. 2013/1773, S.I. 2013/3115, S.I. 2014/3329, S.I. 2014/3348, S.I. 2015/575, S.I. 2015/910, S.I. 2016/225, S.I. 2016/680, S.I. 2016/715 and S.I. 2017/1064.

““EU Benchmarks Regulation 2016” means Regulation EU 2016/1011(a) 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(b) and 2014/17/EU(c) and Regulation (EU) No 596/2014(d);” and

“EU Benchmarks Regulation 2016 information” means information received by the FCA in the course of discharging its functions as a competent authority under the EU Benchmarks Regulation 2016;”.

(3) In regulation 12, after paragraph (5) insert—

“(6) This regulation does not permit disclosure of the EU Benchmarks Regulation 2016 information which has been received from another competent authority unless the disclosure is in accordance with Article 38 of the EU Benchmarks Regulation 2016.”.

Amendments to the Consumer Credit (Disclosure of Information) Regulations 2010

57.—(1) The Consumer Credit (Disclosure of Information) Regulations 2010(e) are amended as follows.

(2) In regulation 3(4)—

- (a) in paragraph (u)(ii) omit “and”;
- (b) in paragraph (v) omit “.” and insert “, and”;
- (c) after paragraph (v) insert—

“(w)where the agreement references a benchmark, as defined in point 3 of Article 3(1) of Regulation EU 2016/1011(f) 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(g) and 2014/17/EU(h) and Regulation (EU) No 596/2014(i), the name of the benchmark and of its administrator and the potential implications on the debtor.”.

(3) In regulation 4(2)(b), for “and (j)” substitute “, (j) and (w)”.

(4) In regulation 8, after paragraph (5) insert—

“(6) Where a consumer credit agreement references a benchmark, the name of the benchmark and of its administrator and the potential implications for the debtor shall be provided by the creditor, or where applicable, by the credit intermediary, to the debtor in a separate document, which may be annexed to the form in Schedule 1.”.

Amendments to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

58.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(j) is amended as follows.

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- (a) OJ No. L171, 29.06.2016, p.1.
 - (b) OJ No. L133, 22.05.2008, p.66.
 - (c) OJ No. L60, 28.02.2014, p.34.
 - (d) OJ No. L173, 12.06.2014, p.1.
 - (e) S.I. 2010/1013.
 - (f) OJ No L171 29.06.2016, p.1.
 - (g) OJ No. L133, 22.05.2008, p.66.
 - (h) OJ No. L60, 28.02.2014, p.34.
 - (i) OJ No. L173, 12.06.2014, p.1.
 - (j) S.I. 2013/419.

(2) In article 1(2)(a) (citation, commencement and interpretation) in the appropriate place, insert—

““the EU Benchmarks Regulation 2016” means Regulation EU 2016/1011(b) 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(c) and 2014/17/EU and Regulation (EU) No 596/2014;”.

(3) In article 2(d) (qualifying EU provisions: general), after paragraph (11), insert—

“(12) The EU Benchmarks Regulation 2016 is a specified qualifying EU provision for the purpose of section 1A(6)(d)(e) of the Act.

(13) The EU Benchmarks Regulation 2016 and any directly applicable regulation made under the EU Benchmarks Regulation 2016 is a specified qualifying EU provision for the purposes of sections 1L(2)(b)(f), 39(4)(b)(g), 66A(4)(b)(h), 168(4)(k)(i), 192K(1)(c)(j) and 293A(k) of the Act.”.

(4) In article 3(l) (qualifying EU provisions: disciplinary measures)—

(a) in paragraph (2), at the end of sub-paragraph (l) for “.” substitute “;”;

(b) in paragraph (2) after sub-paragraph (l) insert—

“(m)the EU Benchmarks Regulation 2016 and any directly applicable regulation made under the EU Benchmarks Regulation 2016.”; and

(c) in paragraph (3) after sub-paragraph (j) insert—

“(k) in relation to a contravention of a requirement imposed by the EU Benchmarks Regulation 2016 or of any directly applicable regulation made under that Regulation, the FCA.”.

(5) In article 4 (qualifying EU provisions etc.: recognised investment exchanges and clearing houses) after paragraph (11) insert—

“(12) The EU Benchmarks Regulation 2016 or any directly applicable regulation made under that Regulation are specified qualifying EU provisions for the purposes of sections 296(1A)(m), 297(2A)(c)(n) and 312E(2)(c)(o).”.

(6) In article 5(p) (qualifying EU provisions: injunctions and restitution) —

(a) at the end of paragraph (2)(l) for “.” substitute “;”;

(b) after paragraph (2)(l) insert—

“(m)the EU Benchmarks Regulation 2016 and any directly applicable measure made under that Regulation.”;

(c) in paragraph (5)—

-
- (a) Article 1(2) was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/3348 and S.I. 2015/1882.
(b) OJ No L171 29.06.2016, p.1.
(c) OJ No. L133, 22.05.2008, p.66.
(d) Article 2 was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/3348, S.I. 2015/1882, S.I. 2016/680, S.I. 2016/715, S.I. 2016/936 and S.I. 2016/1023.
(e) Section 1A(6)(d) was inserted by section 6(1) of the Financial Services Act 2012.
(f) Section 1L(2)(b) was inserted by section 6(1) of the Financial Services Act 2012.
(g) Section 39(4)(b) was inserted by paragraph 5(3) of Schedule 18(1) to the Financial Services Act 2012.
(h) Section 66A(4)(b) was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013.
(i) Section 168(4)(k) was inserted by paragraph 8(4) of Schedule 12 to the Financial Services Act 2012.
(j) Section 192K(1)(c) was inserted by section 27 of the Financial Services and Markets Act 2012 and S.I. 2014/3329.
(k) Section 293A was inserted by paragraph 11 of Schedule 8 to the Financial Services Act 2012 and amended by S.I. 2017/1064.
(l) Article 3 was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/3348, S.I. 2015/1882, S.I. 2016/715 and S.I. 2016/936.
(m) Section 296(1A) was added by S.I. 2007/126.
(n) Section 297(2A)(c) was inserted by S.I. 2007/126 and by paragraph 15(3)(c) of Schedule 8 to the Financial Services Act 2012.
(o) Section 312E(2)(c) was inserted by section 33 of the Financial Services Act 2012.
(p) Article 5 was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/3348, S.I. 2015/1882, S.I. 2016/680, S.I. 2016/715, S.I. 2016/936 and S.I. 2017/1127.

- (i) at the end of sub-paragraph (k) for “.” substitute “;”; and
 - (ii) after sub-paragraph (k) insert—
 - “(l) in relation to a contravention of a requirement imposed by the EU Benchmarks Regulation 2016 or any directly applicable measure made under that Regulation, the FCA.”.
- (7) In article 6(2)(a) (qualifying EU provisions: fees)—
- (a) at the end of sub-paragraph (n) for “.” substitute “;”;
 - (b) after sub-paragraph (n) insert—
 - “(o) the EU Benchmarks Regulation 2016 and any directly applicable regulation made under the EU Benchmarks Regulation 2016.”.

PART 7

Transitional provisions

Administrators of specified benchmarks: transitional provision

59. A person who carries on an activity of the kind specified in article 63O(1)(b) of the RAO in relation to a specified benchmark without permission to carry on that activity is not by virtue of section 20(1) of the Act (authorised person acting without permission) to be taken to have contravened a requirement imposed by the FCA if that person has a permission to carry on an activity of the kind specified in article 63S(1) of the RAO.

Submitters to specified benchmarks: transitional provision

60. A person who carries on an activity of the kind specified in article 63O(1)(a) of the RAO in relation to a specified benchmark without permission to carry on that activity—

- (a) does not contravene the general prohibition in section 19 of the Act (the general prohibition), and
- (b) is not by virtue of section 20(1) or (1A) of the Act (authorised persons acting without permission) to be taken to have contravened a requirement imposed by the FCA

if the administrator of that benchmark has a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO.

Existing administrators as at 30th June 2016: transitional provision

61.—(1) A person who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO and who was administering one or more benchmarks on or before 30th June 2016 does not in relation to that benchmark or those benchmarks—

- (a) contravene the general prohibition in section 19 of the Act (the general prohibition), or
- (b) contravene a requirement imposed by the FCA or PRA by virtue of section 20(1) or (1A) of the Act (authorised person acting without permission)

in respect of carrying on the activity in article 63S(1) of the RAO until the relevant date.

(2) The relevant date in paragraph (1) is—

- (a) where the person has not applied for permission to carry on the activity in article 63S(1) of the RAO before 1st January 2020, 1st January 2020; and

(a) Article 6(2) was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/3348, S.I. 1025/1882, S.I. 2016/680, S.I. 2016/715 and S.I. 2017/1127.

- (b) where the person has applied for permission to carry on the activity in article 63S(1) of the RAO before 1st January 2020, the date on which the application is determined.

Existing administrators as at 1st of January 2018: transitional provision

62.—(1) A person who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO and who—

- (a) did not administer any benchmark on or before 30th June 2016;
- (b) began to administer one or more benchmarks between 30th June 2016 and 1st of January 2018; and
- (c) has not started to administer any new benchmarks since 1st January 2018;

does not breach the general prohibition in section 19 of the Act (the general prohibition) or contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission) in respect of carrying on the activity in article 63S(1) of the RAO(a) until the relevant date.

(2) The relevant date in paragraph (1) is the relevant date as defined in regulation 61(2).

New administrators: transitional provision

63.—(1) A person who—

- (a) does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO;
- (b) begins to administer one or more benchmarks after 1st January 2018; and
- (c) satisfies the conditions in paragraph (2);

does not breach the general prohibition in section 19 of the Act (the general prohibition) or contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission) in respect of carrying on the activity in article 63S(1) of the RAO until their application mentioned in paragraph (2)(c) has been determined.

(2) The conditions in this paragraph are that—

- (a) a supervised entity has entered into a benchmark agreement in respect of a benchmark provided by the person;
- (b) the benchmark agreement was entered into before the person started carrying on the activity in article 63S(1) of the RAO; and
- (c) the person applied for permission to carry on the activity in article 63S(1) of the RAO within the later of 30 working days from the date on which the supervised entity entered into that benchmark agreement or 30 working days from 27th February 2018.

(3) In paragraph (2) “benchmark agreement” means an agreement of the type referred to in Article 34(3) of the EU Benchmarks Regulation 2016.

Use of an index: transitional provision

64.—(1) An index provider who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO and who satisfies the condition in paragraph (2) does not—

- (a) contravene the general prohibition in section 19 of the Act (the general prohibition); or
- (b) contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission).

in respect of carrying on the activity in article 63S(1) of the RAO.

(2) The conditions in this paragraph are that—

(a) S.I. 2001/544.

- (a) the index provider has become aware or has reasonable cause to suspect that their index is used for the purposes referred to in point (3) of Article 3(1) of the EU Benchmarks Regulation 2016; and
- (b) the index provider has applied for permission to carry on the activity in article 63S(1) of the RAO within 30 working days from the point at which they became aware or have reasonable cause to suspect that their index is used for the purposes referred to in point (3) of Article 3(1) of the EU Benchmarks Regulation 2016.

Administering a benchmark under Article 51(4) of the EU Benchmarks Regulation 2016

65. A person who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO(a) does not—

- (1) contravene the general prohibition in section 19 of the Act (the general prohibition); or
- (2) contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission)

in respect of carrying on the activity in article 63S(1) of the RAO in relation to a benchmark if the FCA has permitted the use of that benchmark in accordance with Article 51(4) of the EU Benchmarks Regulation 2016 and that permission has not expired or been withdrawn.

Authorisations and registrations granted by the FCA prior to 27th February 2018

66.—(1) Regulations 61(1), 62(1) and 63(1) take effect subject to paragraphs (2) and (3).

(2) A person who—

- (a) does not have a Part 4A permission; and
- (b) obtained an authorisation or registration from the FCA under Article 34 of the EU Benchmarks Regulation 2016 before 27th February 2018;

shall be deemed to have a Part 4A permission granted by the FCA on 27th February 2018 in relation to the activity specified in article 63S(1) of the RAO.

(3) A person who—

- (a) has a Part 4A permission but not in relation to the activity specified in article 63S(1) of the RAO; and
- (b) obtained an authorisation or registration from the FCA under Article 34 of the EU Benchmarks Regulation 2016 before 27th February 2018;

shall be deemed to have their permission varied by the FCA on 27th February 2018 to include the activity specified in article 63S(1) of the RAO.

PART 8

Miscellaneous provisions

Amendment to the Act

67. In subsection (3) of section 293(b) of the Act (notification requirements), for “under”, in the second place where it appears, substitute “for the purposes of”.

Review

68.—(1) The Treasury must from time to time—

(a) S.I. 2001/544.

(b) Section 293(3) was amended by paragraph 10(2) of Schedule 8 to the Financial Services Act 2012 and by S.I. 2017/1064.

- (a) carry out a review of regulations 2 to 58; and
 - (b) publish the report setting out the conclusions of the review.
- (2) The first report under this regulation must be published on or before 27th February 2023.
- (3) Subsequent reports must be published at intervals not exceeding five years.
- (4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EU Benchmarks Regulation 2016 is implemented in other countries which are subject to its obligations.
- (5) Section 30(4) of that Act requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
 - (b) assess the extent to which those objectives are achieved;
 - (c) assess whether those objectives remain appropriate; and
 - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way that imposes less onerous regulatory provision.
- (6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

David Rutley
Mark Spencer

1st February 2018

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement parts of Regulation (EU) No 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 (OJ L171, 29/06/2016 p.1) and amending Directive 2008/48/EC (OJ L133, 22/05/2008 p.66) and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L173 12/06/2014 p.1) (“the EU Benchmarks Regulation 2016”).

Part 1 of these Regulations (introductory provisions) designates the Financial Conduct Authority (the “FCA”) as the competent authority in the United Kingdom responsible for carrying on the duties of the competent authority under the EU Benchmarks Regulation 2016.

Part 2 of these Regulations (FCA powers over Miscellaneous BM persons) makes provision for the FCA to exercise powers in respect of persons who are involved in the provision of a benchmark (Miscellaneous BM persons) but are not benchmark administrators within the meaning of Article 3 of the EU Benchmarks Regulation 2016.

Part 3 of these Regulations (FCA powers in relation to persons publishing or contributing to benchmarks) makes provision for the FCA to impose requirements on persons requiring them to administer or contribute to a benchmark.

Part 4 of these Regulations (administering a benchmark) makes provision in respect of the administration of a benchmark.

Part 5 of these Regulations (amendments to the Act) makes amendments to the Financial Services and Markets Act 2000 (c.8) (“the Act”) to give effect to the EU Benchmarks Regulation 2016. Section 22 of the Act (regulated activities) is amended to provide that administration of a benchmark is a regulated activity. There are also other amendments to the Act.

(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

Part 6 of these Regulations (amendments to secondary legislation) makes amendments to secondary legislation made under the Act. Amendments are made to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) to provide that administering a regulated benchmark is a specified activity for the purposes of section 22 of the Act. There are also amendments to other secondary legislation.

Part 7 of these Regulations makes transitional provisions in respect of benchmarks.

Part 8 of these Regulations (miscellaneous provisions) makes a minor amendment to the Act for the purposes of Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (“the Directive”) (OJ No L194, 19.7.2016, p1). Provision is also made in Part 8 for a review of these Regulations within five years.

An impact assessment of the effect these Regulations will have on the costs of business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or www.gov.uk and is published alongside these Regulations on www.legislation.gov.uk.

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