
STATUTORY INSTRUMENTS

2018 No. 135

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

PART 4

Administering a benchmark

Endorsement of benchmarks provided in a third country

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

(1) “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.).

- (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.