

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 (Text with EEA relevance)

TITLE II

BENCHMARK INTEGRITY AND RELIABILITY

CHAPTER I

Governance of and control by administrators

Article 4

Governance and conflict of interest requirements

1 An administrator shall have in place robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark.

Administrators shall take adequate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees or any person directly or indirectly linked to them by control, and contributors or users, and to ensure that, where any judgement or discretion in the benchmark determination process is required, it is independently and honestly exercised.

2 The provision of a benchmark shall be operationally separated from any part of an administrator's business that may create an actual or potential conflict of interest.

3 Where a conflict of interest arises within an administrator due to the latter's ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or by an entity that is owned or controlled by the administrator or any of the administrator's affiliates, that cannot be adequately mitigated, the [F¹FCA] may require the administrator to establish an independent oversight function which shall include a balanced representation of stakeholders, including users and contributors.

4 If such a conflict of interest cannot be adequately managed, the [F²FCA] may require the administrator to either cease the activities or relationships that create the conflict of interest or cease providing the benchmark.

5 An administrator shall publish or disclose all existing or potential conflicts of interest to users of a benchmark, to the [F³FCA] and, where relevant, to contributors, including conflicts of interest arising from the ownership or control of the administrator.

6 An administrator shall establish and operate adequate policies and procedures, as well as effective organisational arrangements, for the identification, disclosure, prevention, management and mitigation of conflicts of interest in order to protect the integrity and independence of benchmark determinations. Such policies and procedures shall be regularly

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reviewed and updated. The policies and procedures shall take into account and address conflicts of interest, the degree of discretion exercised in the benchmark determination process and the risks that the benchmark poses, and shall:

- a ensure the confidentiality of information contributed to or produced by the administrator, subject to the disclosure and transparency obligations under this Regulation; and
- b specifically mitigate conflicts of interest due to the administrator's ownership or control, or due to other interests in the administrator's group or as a result of other persons that may exercise influence or control over the administrator in relation to determining the benchmark.

7 Administrators shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of a benchmark:

- a have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision;
- b are not subject to undue influence or conflicts of interest and that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the benchmark determination process;
- c do not have any interests or business connections that compromise the activities of the administrator concerned;
- d are prohibited from contributing to a benchmark determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such way of contribution is explicitly required as part of the benchmark methodology and is subject to specific rules therein; and
- e are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the benchmark.

8 An administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, including at least internal sign-off by management before the dissemination of the benchmark.

Textual Amendments

- F1** Word in Art. 4(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 6 (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in Art. 4(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 6 (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Word in Art. 4(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 6 (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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Article 5

Oversight function requirements

1 Administrators shall establish and maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of their benchmarks.

2 Administrators shall develop and maintain robust procedures regarding their oversight function, which shall be made available to the ^[F4]FCA].

3 The oversight function shall operate with integrity and shall have the following responsibilities, which shall be adjusted by the administrator based on the complexity, use and vulnerability of the benchmark:

- a reviewing the benchmark's definition and methodology at least annually;
- b overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes;
- c overseeing the administrator's control framework, the management and operation of the benchmark, and, where the benchmark is based on input data from contributors, the code of conduct referred to in Article 15;
- d reviewing and approving procedures for cessation of the benchmark, including any consultation about a cessation;
- e overseeing any third party involved in the provision of the benchmark, including calculation or dissemination agents;
- f assessing internal and external audits or reviews, and monitoring the implementation of identified remedial actions;
- g where the benchmark is based on input data from contributors, monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;
- h where the benchmark is based on input data from contributors, taking effective measures in respect of any breaches of the code of conduct referred to in Article 15; and
- i reporting to the ^[F5]FCA] any misconduct by contributors, where the benchmark is based on input data from contributors, or administrators, of which the oversight function becomes aware, and any anomalous or suspicious input data.

4 The oversight function shall be carried out by a separate committee or by means of another appropriate governance arrangement.

5 ^[F6]The FCA may make] technical standards to specify

^[F7]a] the procedures regarding the oversight function and the characteristics of the oversight function including its composition as well as its positioning within the organisational structure of the administrator, so as to ensure the integrity of the function and the absence of conflicts of interest;

^[F8]b] ^{F9}... a non-exhaustive list of appropriate governance arrangements as laid down in paragraph 4.

^[F10]The technical standards] shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and ^[F11]when making the standards, the FCA] shall take into consideration the differences in the ownership and control structure of administrators, the nature, scale and complexity of the provision of the benchmark, and the risk and impact of the benchmark, also in light of international convergence of supervisory practice in relation to governance requirements of benchmarks. However,

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the ^{F12}... technical standards shall not cover or apply to administrators of non-significant benchmarks.

F13 ...

F13 ...

F14⁶

Textual Amendments

- F4** Word in Art. 5(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Word in Art. 5(3)(i) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 5(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 5(5) renumbered as Art. 5(5)(a) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Art. 5(5) renumbered as Art. 5(5)(b) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 5(5)(b) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(a)(iv)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in Art. 5(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 5(5) inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Art. 5(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(b)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Art. 5(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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F14 Art. 5(6) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **7(4)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 6

Control framework requirements

- 1 Administrators shall have in place a control framework that ensures that their benchmarks are provided and published or made available in accordance with this Regulation.
- 2 The control framework shall be proportionate to the level of conflicts of interest identified, the extent of discretion in the provision of the benchmark and the nature of the benchmark input data.
- 3 The control framework shall include:
 - a management of operational risk;
 - b adequate and effective business continuity and disaster recovery plans;
 - c contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark.
- 4 An administrator shall establish measures to:
 - a ensure that contributors adhere to the code of conduct referred to in Article 15 and comply with the applicable standards for input data;
 - b monitor input data including, where feasible, monitoring input data before publication of the benchmark and validating input data after publication to identify errors and anomalies.
- 5 The control framework shall be documented, reviewed and updated as appropriate and made available to the relevant competent authority and, upon request, to users.

Article 7

Accountability framework requirements

- 1 An administrator shall have in place an accountability framework, covering record-keeping, auditing and review, and a complaints process, that provides evidence of compliance with the requirements of this Regulation.
- 2 An administrator shall designate an internal function with the necessary capability to review and report on the administrator's compliance with the benchmark methodology and this Regulation.
- 3 For critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation, at least annually.
- 4 Upon the request of the ^[F15]FCA, an administrator shall provide to the ^[F15]FCA the details of the reviews and reports provided for in paragraph 2. Upon the request of the ^[F15]FCA or any user of a benchmark, an administrator shall publish the details of the audits provided for in paragraph 3.

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Textual Amendments

F15 Word in Art. 7(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **8** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 8

Record-keeping requirements

- 1 An administrator shall keep records of:
 - a all input data, including the use of such data;
 - b the methodology used for the determination of a benchmark;
 - c any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the determination of a benchmark, including the reasoning for said judgement or discretion;
 - d the disregard of any input data, in particular where it conformed to the requirements of the benchmark methodology, and the rationale for such disregard;
 - e other changes in or deviations from standard procedures and methodologies, including those made during periods of market stress or disruption;
 - f the identities of the submitters and of the natural persons employed by the administrator for the determination of a benchmark;
 - g all documents relating to any complaint, including those submitted by a complainant; and
 - h telephone conversations or electronic communications between any person employed by the administrator and contributors or submitters in respect of a benchmark.
- 2 An administrator shall keep the records set out in paragraph 1 for at least five years in such a form that it is possible to replicate and fully understand the determination of a benchmark and enable an audit or evaluation of input data, calculations, judgements and discretion. Records of telephone conversation or electronic communications recorded in accordance with point (h) of paragraph 1 shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of three years.

Article 9

Complaints-handling mechanism

- 1 An administrator shall have in place and publish procedures for receiving, investigating and retaining records concerning complaints made, including about the administrator's benchmark determination process.
- 2 Such a complaints-handling mechanism shall ensure that:
 - a the administrator makes available the complaints-handling policy through which complaints may be submitted on whether a specific benchmark determination is representative of market value, on a proposed change to the benchmark determination process, on an application of the methodology in relation to a specific benchmark determination, and on other decisions in relation to the benchmark determination process;

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- b complaints are investigated in a timely and fair manner and the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014; and
- c the inquiry is conducted independently of any personnel who may be or may have been involved in the subject-matter of the complaint.

Article 10

Outsourcing

1 An administrator shall not outsource functions in the provision of a benchmark in such a way as to impair materially the administrator's control over the provision of the benchmark or the ability of the [F16FCA] to supervise the benchmark.

2 Where an administrator outsources to a service provider functions or any relevant services and activities in the provision of a benchmark, the administrator shall remain fully responsible for discharging all of the administrator's obligations under this Regulation.

3 Where outsourcing takes place, the administrator shall ensure that the following conditions are fulfilled:

- a the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;
- b the administrator makes available to the [F17FCA] the identity and the tasks of the service provider that participates in the benchmark determination process;
- c the administrator takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;
- d the administrator retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;
- e the service provider discloses to the administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;
- f the service provider cooperates with the [F18FCA] regarding the outsourced activities, and the administrator and the [F18FCA] have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, and the [F18FCA] is able to exercise those rights of access;
- g the administrator is able to terminate the outsourcing arrangements where necessary;
- h the administrator takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the benchmark determination process.

Textual Amendments

F16 Word in Art. 10(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 9(a) (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F17 Word in Art. 10(3)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 9(b)(i) (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F18 Word in Art. 10(3)(f) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **9(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 2

Input data, methodology and reporting of infringements

Article 11

Input data

1 The provision of a benchmark shall be governed by the following requirements in respect of its input data:

- a the input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure.

The input data shall be transaction data, if available and appropriate. If transaction data is not sufficient or is not appropriate to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used, including estimated prices, quotes and committed quotes, or other values;

- b the input data referred to in point (a) shall be verifiable;
- c the administrator shall draw up and publish clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement, to ensure compliance with point (a) and the methodology;
- d where a benchmark is based on input data from contributors, the administrator shall obtain, where appropriate, the input data from a reliable and representative panel or sample of contributors so as to ensure that the resulting benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure;
- e the administrator shall not use input data from a contributor if the administrator has any indication that the contributor does not adhere to the code of conduct referred to in Article 15, and in such a case shall obtain representative publicly available data.

2 Administrators shall ensure that their controls in respect of input data include:

- a criteria that determine who may contribute input data to the administrator and a process for selecting contributors;
- b a process for evaluating a contributor's input data and for stopping the contributor from providing further input data, or applying other penalties for non-compliance against the contributor, where appropriate; and
- c a process for validating input data, including against other indicators or data, to ensure its integrity and accuracy.

3 Where the input data of a benchmark is contributed from a front office function, meaning any department, division, group, or personnel of contributors or any of its affiliates

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that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities, the administrator shall:

- a obtain data from other sources that corroborate that input data; and
- b ensure that contributors have in place adequate internal oversight and verification procedures.

4 Where an administrator considers that the input data does not represent the market or economic reality that a benchmark is intended to measure, that administrator shall, within a reasonable time period, either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market or economic reality, or else cease to provide that benchmark.

[^{F19}4A In the case of a critical benchmark, paragraph 4 does not require the administrator to cease providing the benchmark before the end of a period during which the administrator is required to continue publishing the benchmark by Article 21(1) or (2) or by a decision of the FCA under Article 21(3).

4B In the case of a critical benchmark in respect of which measures adopted under Article 23(6) have effect—

- a paragraph 4 does not require the administrator to cease providing the benchmark while those measures have effect, and
- b the administrator's duty under paragraph 4 to make changes is a duty to make changes so far as compatible with those measures.]

5 [^{F20}The FCA may make] technical standards to specify further how to ensure that input data is appropriate and verifiable, as required under points (a) and (b) of paragraph 1, as well as the internal oversight and verification procedures of a contributor that the administrator has to ensure are in place, in compliance with point (b) of paragraph 3, in order to ensure the integrity and accuracy of input data. However, the ^{F21}... technical standards shall not cover or apply to administrators of non-significant benchmarks.

[^{F22}The FCA] shall take into account the different types of benchmarks and sectors as set out in this Regulation, the nature of input data, the characteristics of the underlying market or economic reality and the principle of proportionality, the vulnerability of the benchmarks to manipulation as well as the international convergence of supervisory practice in relation to benchmarks.

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Textual Amendments

F19 Art. 11(4A)(4B) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), Sch. 5 para. 4; S.I. 2021/739, reg. 3(n)

F20 Words in Art. 11(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **10(2)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F21 Words in Art. 11(5) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **10(2)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F22** Words in Art. 11(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **10(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in Art. 11(5) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **10(2)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Art. 11(6) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **10(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 12

Methodology

- 1 An administrator shall use a methodology for determining a benchmark that:
 - a is robust and reliable;
 - b has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;
 - c is rigorous, continuous and capable of validation including, where appropriate, back-testing against available transaction data;
 - d is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity;
 - e is traceable and verifiable.
- 2 When developing a benchmark methodology, a benchmark administrator shall:
 - a take into account factors including the size and normal liquidity of the market, the transparency of trading and the positions of market participants, market concentration, market dynamics, and the adequacy of any sample to represent the market or economic reality that the benchmark is intended to measure;
 - b determine what constitutes an active market for the purposes of that benchmark; and
 - c establish the priority given to different types of input data.
- 3 An administrator shall have in place clear published arrangements that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark is to be calculated in such circumstances.

Article 13

Transparency of methodology

- 1 An administrator shall develop, operate and administer the benchmark and methodology transparently. To that end, the administrator shall publish or make available the following information:
 - a the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published;

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- b details of the internal review and the approval of a given methodology, as well as the frequency of such review;
- c the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes^[F25];
- ^[F26]d an explanation of how the key elements of the methodology laid down in point (a) reflect ESG factors for each benchmark or family of benchmarks, with the exception of interest rate and foreign exchange benchmarks.]

^[F26]Benchmark administrators shall comply with the requirement laid down in point (d) of the first subparagraph by 30 April 2020.]

- 2 The procedures required under point (c) of paragraph 1 shall provide for:
- a advance notice, with a clear time frame, that gives the opportunity to analyse and comment upon the impact of such proposed material changes; and
 - b the comments referred to in point (a) of this paragraph, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested by the originator of the comments.

^[F26]2a ^[F27]The Treasury may make regulations] to supplement this Regulation by laying down the minimum content of the explanation referred to in point (d) of the first subparagraph of paragraph 1 of this Article, as well as the standard format to be used.]

3 ^[F28]The FCA may make] technical standards to specify further the information to be provided by an administrator in compliance with the requirements laid down in paragraphs 1 and 2, distinguishing for different types of benchmarks and sectors as set out in this Regulation. ^[F29]The FCA] shall take into account the need to disclose those elements of the methodology that provide for sufficient detail to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts and the principle of proportionality. However, the ^{F30}... technical standards shall not cover or apply to administrators of non-significant benchmarks.

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Textual Amendments

- F25** Substituted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F26** Inserted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F27** Words in Art. 13(2a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 11(1A) (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(3); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) 2016/1011 of the European Parliament and of the Council, TITLE II is up to date with all changes known to be in force on or before 09 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F28** Words in Art. 13(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **11(2)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Words in Art. 13(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **11(2)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in Art. 13(3) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **11(2)(a)(iii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in Art. 13(3) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **11(2)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F32** Art. 13(4) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **11(3)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 14

Reporting of infringements

1 An administrator shall establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the [^{F33}FCA] any conduct that may involve manipulation or attempted manipulation of a benchmark, under Regulation (EU) No 596/2014.

2 An administrator shall monitor input data and contributors in order to be able to notify the [^{F34}FCA] and provide all relevant information where the administrator suspects that, in relation to a benchmark, any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark, under Regulation (EU) No 596/2014, including collusion to do so.

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3 Administrators shall have procedures in place for their managers, employees and any other natural persons whose services are placed at their disposal or under their control to report internally infringements of this Regulation.

Textual Amendments

- F33** Word in Art. 14(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **12(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Word in Art. 14(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **12(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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F35 Words in Art. 14(2) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **12(b)(ii)** (with regs. 51-53, 65) (as amended by [S.I. 2019/1212](#), regs. 1(3), 20(3)(4) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 3

Code of conduct and requirements for contributors

Article 15

Code of conduct

1 Where a benchmark is based on input data from contributors, its administrator shall develop a code of conduct for each benchmark clearly specifying contributors' responsibilities with respect to the contribution of input data and shall ensure that such code of conduct complies with this Regulation. The administrator shall be satisfied that contributors adhere to the code of conduct on a continuous basis and at least annually and in case of changes to it.

2 The code of conduct shall include at least the following elements:

- a a clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with Articles 11 and 14;
- b identification of the persons that may contribute input data to the administrator and procedures to verify the identity of a contributor and any submitters, as well as authorisation of any submitters that contribute input data on behalf of a contributor;
- c policies to ensure that a contributor provides all relevant input data;
- d the systems and controls that a contributor is required to establish, including:
 - (i) procedures for contributing input data, including requirements for the contributor to specify whether input data is transaction data and whether input data conforms to the administrator's requirements;
 - (ii) policies on the use of discretion in contributing input data;
 - (iii) any requirement for the validation of input data before it is provided to the administrator;
 - (iv) record-keeping policies;
 - (v) reporting requirements concerning suspicious input data;
 - (vi) requirements concerning the management of conflicts of interest.

3 Administrators may develop a single code of conduct for each family of benchmarks they provide.

4 In the event that [^{F36}the FCA], in the use of its powers referred to in Article 41, finds that there are elements of a code of conduct which do not comply with this Regulation, it shall notify the administrator concerned. The administrator shall adjust the code of conduct to ensure that it complies with this Regulation within 30 days of such a notification.

5 Within 15 working days from the date of [^{F37}the Treasury making regulations under Articles A20(5) or (6), or 20(5) specifying a benchmark as critical], the administrator of that

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critical benchmark shall notify the code of conduct to the ^[F38]FCA]. The ^[F38]FCA] shall verify within 30 days whether the content of the code of conduct complies with this Regulation. In the event that the ^[F38]FCA] finds elements which do not comply with this Regulation, paragraph 4 of this Article shall apply.

6 ^[F39]The FCA may make] technical standards to specify further the elements of the code of conduct referred to in paragraph 2 for different types of benchmarks, and in order to take account of developments in benchmarks and financial markets.

^[F40]The FCA] shall take into account the different characteristics of benchmarks and contributors, in particular in terms of differences in input data and methodologies, the risks of input data of being manipulated and international convergence of supervisory practices in relation to benchmarks.

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Textual Amendments

- F36** Words in Art. 15(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **13(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in Art. 15(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **13(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1385, regs. 1(4), 58(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F38** Words in Art. 15(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **13(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1385, regs. 1(4), 58(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in Art. 15(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **13(4)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F40** Words in Art. 15(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **13(4)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F41** Words in Art. 15(6) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **13(4)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 16

Governance and control requirements for supervised contributors

1 The following governance and control requirements shall apply to a supervised contributor:

- a the supervised contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required,

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it is independently and honestly exercised based on relevant information in accordance with the code of conduct referred to in Article 15;

- b the supervised contributor shall have in place a control framework that ensures the integrity, accuracy and reliability of input data and that input data is provided in accordance with this Regulation and the code of conduct referred to in Article 15.

2 A supervised contributor shall have in place effective systems and controls to ensure the integrity and reliability of all contributions of input data to the administrator, including:

- a controls regarding who may submit input data to an administrator including, where proportionate, a process for sign-off by a natural person holding a position senior to that of the submitter;
- b appropriate training for submitters, covering at least this Regulation and Regulation (EU) No 596/2014;
- c measures for the management of conflicts of interest, including organisational separation of employees where appropriate and consideration of how to remove incentives, created by remuneration policies, to manipulate a benchmark;
- d record-keeping, for an appropriate period of time, of communications in relation to provision of input data, of all information used to enable the contributor to make each submission, and of all existing or potential conflicts of interest including, but not limited to, the contributor's exposure to financial instruments which use a benchmark as a reference;
- e record-keeping of internal and external audits.

3 Where input data relies on expert judgement, supervised contributors shall establish, in addition to the systems and controls referred to in paragraph 2, policies guiding any use of judgement or exercise of discretion and shall retain records of the rationale for any such judgement or discretion. Where proportionate, supervised contributors shall take into account the nature of the benchmark and its input data.

4 A supervised contributor shall fully cooperate with the administrator and the ^{F42}FCA in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with paragraphs 2 and 3.

5 ^{F43}The FCA may make] technical standards to specify further the requirements concerning governance, systems and controls, and policies set out in paragraphs 1, 2 and 3.

^{F44}The FCA] shall take into account the different characteristics of benchmarks and supervised contributors, in particular in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks. However, the ^{F45}... technical standards shall not cover or apply to supervised contributors of non-significant benchmarks.

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Textual Amendments

F42 Word in Art. 16(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **14(2)** (with regs. 51-53, 65) (as

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- amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F43** Words in Art. 16(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F44** Words in Art. 16(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F45** Words in Art. 16(5) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F46** Words in Art. 16(5) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F47** Art. 16(6) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **14(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

Regulation (EU) 2016/1011 of the European Parliament and of the Council, TITLE II is up to date with all changes known to be in force on or before 09 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Title 6Ch. 4 addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 3.1(24) words omitted by [S.I. 2019/657 reg. 5\(10\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(10)(f) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 58(4))
- Art. 51(1B)(a)(ii) words substituted in earlier amending provision S.I. 2019/657, reg. 42(2) by [S.I. 2019/1212 reg. 20\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 20(2) omitted (30.6.2020) by virtue of S.I. 2020/628, regs. 1(4), 16)
- Art. 51(2)(b) word substituted by [S.I. 2019/657 reg. 42\(3\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 42(3) substituted immediately before IP completion day by S.I. 2020/628, regs. 1(3), 12(6)(b))
- Art. 51(2)(b) words substituted by [S.I. 2019/657 reg. 42\(3\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 42(3) substituted immediately before IP completion day by S.I. 2020/628, regs. 1(3), 12(6)(b))