

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 III

## REQUIREMENTS FOR DIFFERENT TYPES OF BENCHMARKS

### CHAPTER 5

#### *Significant benchmarks*

#### *Article 24*

#### **Significant benchmarks**

- 1 A benchmark which [<sup>F1</sup>is not a critical benchmark] is significant when:
  - a it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total average value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months; or
  - b it has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, there would be a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households or businesses in [<sup>F2</sup>the United Kingdom].
- 2 The [<sup>F3</sup>FCA must:]
  - [<sup>F4</sup>a] [<sup>F5</sup>review the value in point (a) of paragraph 1 (“the threshold”)] in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold <sup>F6</sup>... [<sup>F7</sup>; and
  - b provide a written report to the Treasury setting out the results of the review and making a recommendation as to whether the threshold should be amended.]
- [<sup>F8</sup>2A] The FCA must conduct the review and provide the report to the Treasury:
  - a within the period of two years beginning with IP completion day; and
  - b thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.
- 2B The Treasury may by regulations amend the threshold in point (a) of paragraph 1 having regard to:
  - a the matters referred to in point (a) of paragraph 2; and
  - b any report prepared by the FCA under paragraph 2.]

**Changes to legislation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council, CHAPTER 5 is up to date with all changes known to be in force on or before 31 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

3 An administrator shall immediately notify [<sup>F9</sup>the FCA] when its significant benchmark falls below the threshold mentioned in point (a) of paragraph 1.

#### Textual Amendments

- F1** Words in Art. 24(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(2)(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)
- F2** Words in Art. 24(1)(b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(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)
- F3** Words in Art. 24(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(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)
- F4** Words in Art. 24(2) renumbered as Art. 24(2)(a) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(3)(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)**
- F5** Words in Art. 24(2)(a) inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(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)
- F6** Words in Art. 24(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), **20(3)(d)** (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** Art. 24(2)(b) and preceding word inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(3)(e)** (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** Art. 24(2A)(2B) inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(d); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 24(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **20(5)** (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 25

#### Exemptions from specific requirements for significant benchmarks

1 An administrator may choose not to apply Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) or Article 15(2) with respect to its significant benchmark where that administrator considers that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmark or the size of the administrator.

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2 In the event that an administrator chooses not to apply one or more of the provisions referred to in paragraph 1, it shall immediately notify <sup>[F10]</sup>the FCA] and provide it with all relevant information confirming the administrator's assessment that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmarks or the size of the administrator.

3 <sup>[F11]</sup>The FCA] may decide that the administrator of a significant benchmark is nevertheless to apply one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2) if it considers that it would be appropriate taking into account the nature or the impact of the benchmarks or the size of the administrator. In its assessment, <sup>[F12]</sup>the FCA] shall, based on the information provided by the administrator, take into account the following criteria:

- a the vulnerability of the benchmark to manipulation;
- b the nature of the input data;
- c the level of conflicts of interest;
- d the degree of discretion of the administrator;
- e the impact of the benchmark on markets;
- f the nature, scale and complexity of the provision of the benchmark;
- g the importance of the benchmark to financial stability;
- h the value of financial instruments, financial contracts or investment funds that reference the benchmark;
- i the administrator's size, organisational form or structure.

4 Within 30 days of receipt of a notification from an administrator under paragraph 2, <sup>[F13]</sup>the FCA] shall notify that administrator of its decision to apply an additional requirement pursuant to paragraph 3. In the event that the notification to <sup>[F13]</sup>the FCA] is made during the course of an authorisation or registration procedure, the deadlines set out in Article 34 shall apply.

5 When exercising its supervisory powers in accordance with Article 41, <sup>[F14]</sup>the FCA] shall regularly review whether its assessment pursuant to paragraph 3 of this Article is still valid.

6 If <sup>[F15]</sup>the FCA] finds, on reasonable grounds, that the information submitted to it pursuant to paragraph 2 of this Article is incomplete or that supplementary information is needed, the 30-day time limit referred to in paragraph 4 of this Article shall apply only from the date on which such complementary information is provided by the administrator, unless the deadlines of Article 34 apply pursuant to paragraph 4 of this Article.

7 Where an administrator of a significant benchmark does not comply with one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2), it shall publish and maintain a compliance statement that clearly states why it is appropriate for that administrator not to comply with those provisions.

8 <sup>[F16]</sup>The FCA may make] technical standards to develop a template for the compliance statement referred to in paragraph 7.

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9 <sup>[F18]</sup>The FCA may make] technical standards to specify further the criteria referred to in paragraph 3.

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### Textual Amendments

- F10** Words in Art. 25(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(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)
- F11** Words in Art. 25(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(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)
- F12** Words in Art. 25(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(3)(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)
- F13** Words in Art. 25(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(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)
- F14** Words in Art. 25(5) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(5)** (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)
- F15** Words in Art. 25(6) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(5)** (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)
- F16** Words in Art. 25(8) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(6)(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** Words in Art. 25(8) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(6)(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)
- F18** Words in Art. 25(9) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(7)(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)
- F19** Words in Art. 25(9) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **21(7)(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)

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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))