

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 IV

TRANSPARENCY AND CONSUMER PROTECTION

Article 27

Benchmark statement

1 Within two weeks of the inclusion of an administrator in the [^{F1}FCA register], the administrator shall publish, by means that ensure fair and easy access, a benchmark statement for each benchmark or, where applicable, for each family of benchmarks, that may be used in the [^{F2}United Kingdom] in accordance with Article 29.

Where that administrator begins providing a new benchmark or family of benchmarks that may be used in the [^{F2}United Kingdom] in accordance with Article 29, the administrator shall publish, within two weeks and by means that ensure a fair and easy access, a benchmark statement for each new benchmark or, where applicable, family of benchmarks.

The administrator shall review and, where necessary, update the benchmark statement for each benchmark or family of benchmarks in the event of any changes to the information to be provided under this Article and at least every two years.

The benchmark statement shall:

- a clearly and unambiguously define the market or economic reality measured by the benchmark and the circumstances in which such measurement may become unreliable;
- b lay down technical specifications that clearly and unambiguously identify the elements of the calculation of the benchmark in relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the position of the persons that can exercise discretion, and how such discretion may be subsequently evaluated;
- c provide notice of the possibility that factors, including external factors beyond the control of the administrator, may necessitate changes to, or the cessation of, the benchmark; and
- d advise users that changes to, or the cessation of, the benchmark may have an impact upon the financial contracts and financial instruments that reference the benchmark or the measurement of the performance of investment funds.

2 A benchmark statement shall contain at least:

- a the definitions for all key terms relating to the benchmark;
- b the rationale for adopting the benchmark methodology and procedures for the review and approval of the methodology;
- c the criteria and procedures used to determine the benchmark, including a description of the input data, the priority given to different types of input data, the minimum data

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- needed to determine a benchmark, the use of any models or methods of extrapolation and any procedure for rebalancing the constituents of a benchmark's index;
- d the controls and rules that govern any exercise of judgement or discretion by the administrator or any contributors, to ensure consistency in the use of such judgement or discretion;
 - e the procedures which govern the determination of the benchmark in periods of stress or periods where transaction data sources may be insufficient, inaccurate or unreliable and the potential limitations of the benchmark in such periods;
 - f the procedures for dealing with errors in input data or in the determination of the benchmark, including when a re-determination of the benchmark is required; and
 - g the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.

[^{F3}2a By 30 April 2020, for each of the requirements referred to in paragraph 2, the benchmark statement shall contain an explanation of how ESG factors are reflected in each benchmark or family of benchmarks provided and published. For those benchmarks or families of benchmarks that do not pursue ESG objectives, it shall be sufficient for benchmark administrators to clearly state in the benchmark statement that they do not pursue such objectives.

Where no [^{F4}UK Climate Transition Benchmark or UK Paris-aligned Benchmark] is available in the portfolio of that individual benchmark administrator, or the individual benchmark administrator has no benchmarks that pursue ESG objectives or take into account ESG factors, this shall be stated in the benchmark statements of all benchmarks provided by that administrator. For significant equity and bond benchmarks, as well as for [^{F5}UK Climate Transition Benchmarks and UK Paris-aligned Benchmarks], benchmark administrators shall disclose in their benchmark statements details on whether or not and to what extent a degree of overall alignment with the target of reducing carbon emissions or the attainment of the objectives of the Paris Agreement is ensured [^{F6}...

[^{F6} ...

2b [^{F7}The Treasury may make regulations] to supplement this Regulation by further specifying the information to be provided in the benchmark statement pursuant to paragraph 2a of this Article, as well as the standard format to be used for references to ESG factors to enable market participants to make well-informed choices and to ensure the technical feasibility of compliance with that paragraph.]

3 [^{F8}The FCA may make] technical standards to specify further the contents of a benchmark statement and the cases in which an update of such statement is required.

[^{F9}The FCA] shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into account the principle of proportionality.

[^{F10} ...

[^{F10} ...

Textual Amendments

- F1** Words in Art. 27(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **23(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)

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- F2** Words in Art. 27(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(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** 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).
- F4** Words in Art. 27(2a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2A)(a)** (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(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 27(2a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2A)(b)** (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(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 27(2a) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2A)(c)** (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(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 27(2b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(2B)** (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(5); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Art. 27(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(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)
- F9** Words in Art. 27(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **23(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)
- F10** Words in Art. 27(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), **23(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)

Article 28

Changes to and cessation of a benchmark

1 An administrator shall publish^{F11}... [^{F12}a robust procedure] concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark which may be used in the [^{F13}United Kingdom] in accordance with Article 29(1). The procedure may be drafted, where applicable, for families of benchmarks^{F14}....

[^{F15}1A The procedure described in paragraph 1—

- a must be published with the benchmark statement for the benchmark when that statement is published in accordance with the first or second subparagraph of Article 27(1), and
- b must be updated and published whenever a material change occurs.

1B In the case of a critical benchmark—

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- a on the day on which a procedure described in paragraph 1 is published in accordance with paragraph 1A(a), the administrator must give the FCA an assessment of the matters described in paragraph 1C,
- b the FCA must, before the end of the consideration period, consider whether a procedure published in accordance with paragraph 1A(a) satisfies paragraph 1,
- c before publishing an update of a procedure described in paragraph 1 (whether in accordance with paragraph 1A(b) or otherwise), an administrator must give the update to the FCA, together with an assessment of the matters described in paragraph 1C,
- d where the FCA is given an update of a procedure described in paragraph 1 by an administrator, it must, before the end of the consideration period, consider whether the update satisfies paragraph 1, and
- e an administrator must not publish an update of a procedure described in paragraph 1 unless—
 - i) the FCA has given a written notice to the administrator confirming that the update satisfies paragraph 1, or
 - ii) the consideration period has expired without the FCA giving a written notice to the administrator stating that the update does not satisfy that paragraph.

1C An assessment provided by an administrator for the purposes of paragraph 1B(a) or (c) must assess the following matters—

- a the nature and extent of the current use of the benchmark,
- b the availability of suitable alternatives to the benchmark, and
- c how prepared users of the benchmark are for changes to, or the cessation of, the benchmark.

1D For the purposes of paragraph 1B, “the consideration period”, in relation to a procedure or an update of a procedure, means the period of 60 days beginning with the day on which the procedure is published or the update of the procedure is given to the FCA (as appropriate) (“the relevant day”), subject to any extension under paragraph 1E.

1E The FCA may extend the consideration period by giving a written notice to the administrator before its expiry but may not extend the period beyond the end of the period of six months beginning with the relevant day.]

2 Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives. The supervised entities shall, upon request, provide the [FCA] with those plans and any updates and shall reflect them in the contractual relationship with clients.

Textual Amendments

- F11** Words in Art. 28(1) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), ss. 19(2)(a), 49(5); S.I. 2021/739, reg. 3(1)
- F12** Words in Art. 28(1) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 19(2)(b), 49(5); S.I. 2021/739, reg. 3(1)
- F13** Words in Art. 28(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 24(a) (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)

F14 Words in Art. 28(1) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), ss. 19(2)(c), 49(5); S.I. 2021/739, reg. 3(1)

F15 Art. 28(1A)-(1E) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 19(3), 49(5); S.I. 2021/739, reg. 3(1)

F16 Word in Art. 28(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), 24(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))