



# Financial Services Act 2021

## 2021 CHAPTER 22

### *Benchmarks*

#### **13 Designation of certain critical benchmarks**

In the Benchmarks Regulation, after Article 23 insert—

#### *“Article 23A*

##### ***Designation of certain critical benchmarks***

1. If the FCA gives the administrator of a critical benchmark a notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), the FCA must, before the end of the period of 21 days beginning with the day on which it gave the notice—
  - (a) consider whether it is appropriate for the FCA to designate the benchmark under this Article, and
  - (b) if it proposes to do so, inform the benchmark administrator by written notice.
2. The FCA may not designate a benchmark under this Article if it considers that it is, and is likely to continue to be, the case that—
  - (a) the representativeness of the benchmark can reasonably be restored and maintained by the administrator or by the FCA exercising its powers under Article 23(6), and
  - (b) there are good reasons to restore and maintain its representativeness.
3. A notice under paragraph 1(b) must—
  - (a) explain when the FCA proposes that the designation of the benchmark should take effect,
  - (b) give reasons for the FCA’s proposed decision, and
  - (c) state that the administrator may make written representations to the FCA during the period of 14 days beginning with the day on which the notice is given.

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*Status: This is the original version (as it was originally enacted).*

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4. If, after considering any representations made in accordance with paragraph 3(c), the FCA decides to designate the benchmark under this Article, it must give the administrator a written notice of its decision.
5. A notice under paragraph 4 must—
  - (a) state when the designation of the benchmark takes effect,
  - (b) give reasons for the FCA's decision,
  - (c) explain how the FCA has taken account of the relevant policy statement (see Article 23F),
  - (d) state that the prohibition on use of the benchmark under Article 23B will take effect when the designation of the benchmark takes effect, unless the FCA exercises its powers under Article 23B(2) or 23C,
  - (e) inform the administrator of its right to refer the decision to the Upper Tribunal and of the procedure for doing so, and
  - (f) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the designation of the benchmark.
6. The FCA may, before a designation under this Article takes effect, decide to change when it takes effect to a later time.
7. If it decides to make such a change—
  - (a) the FCA must give the benchmark administrator a written notice of its decision, and
  - (b) the notice must satisfy the requirements in paragraph 5(a) to (d) and (f).
8. The FCA may withdraw a designation of a benchmark under this Article if—
  - (a) the designation has not taken effect,
  - (b) paragraph 1 applies again in relation to the benchmark, and
  - (c) the FCA designates the benchmark again under this Article with effect from an earlier date.
9. If the FCA decides to withdraw the designation of a benchmark under paragraph 8—
  - (a) the FCA must include notice of the withdrawal in the notice under paragraph 4 of the further designation of the benchmark, and
  - (b) the notice must satisfy the requirements in paragraph 5(b), (c) and (f) in relation to the decision to withdraw.
10. A notice under paragraph 4 or 7—
  - (a) may identify when the designation takes effect in any manner that the FCA considers appropriate, including by specifying a day or by describing a day by reference to the process for a reference to the Upper Tribunal or another process or event, and
  - (b) must be published by the FCA—
    - (i) before the day on which the notice provides for the designation to take effect, and
    - (ii) in the manner that appears to the FCA to be best calculated to bring it to the attention of the public.
11. The FCA—
  - (a) must give a copy of a notice under this Article to the Treasury before publishing it, and

- (b) may charge a reasonable fee for providing a person with a copy of a notice under this Article.
- 12. If the FCA decides to designate a benchmark under this Article and gives the administrator a notice under paragraph 4, the benchmark administrator may refer the matter to the Upper Tribunal.
- 13. Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.
- 14. In this Regulation, references to an “Article 23A benchmark” are to a benchmark in relation to which a designation under this Article has effect.”