
STATUTORY INSTRUMENTS

2018 No. 135

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

PART 4

Administering a benchmark

Power to direct form of notifications

33.—(1) Where a person administering a benchmark submits a notification, application or report required by the EU Benchmarks Regulation 2016 to the FCA, that notification, application or report must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such other information as the FCA may reasonably require.

(2) At any time after receiving an application or notification and before determining it, the FCA may require the person administering a benchmark to provide it with such further information as it reasonably considers necessary to enable it to determine the application or consider the notification.

(3) The FCA may give different directions, and impose different requirements, in relation to different applications, notifications or reports or categories of application, notification or report.

(4) The FCA may require the person administering a benchmark to provide information under this regulation in such form, or to verify it in such a way, as the FCA may reasonably direct.

Procedure for prior recognition of a benchmark administrator located in a third country

34.—(1) An application for prior recognition of a benchmark administrator located in a third country under Article 32 of the EU Benchmarks Regulation 2016 must be made in such manner as the FCA may direct.

[^{F1}(2) The FCA must determine the application within 90 working days of receipt of the completed application.]

(3) The FCA must make a recognition order granting the administrator prior recognition if the conditions in Article 32 of the EU Benchmarks Regulation 2016 are met.

(4) The FCA must—

- (a) notify the administrator 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.

(5) Where the conditions in Article 32 of the EU Benchmarks Regulation 2016 are not met and the FCA refuses to grant a recognition order it must give the administrator a written notice to that effect.

(6) The FCA may—

- (a) on its own initiative; or

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(b) on an application by the administrator;
withdraw, suspend or vary a recognition order.

(7) Where the FCA exercises its power under paragraph (6)(a) or refuses the administrator's application under paragraph (6)(b), to withdraw, suspend or vary a recognition order, it must give the administrator a written notice.

(8) The written notice under paragraph (5) or (7) must—

- (a) give details of the decision;
- (b) state the FCA's reasons for the decision;
- (c) inform the administrator of its right either to—
 - (i) request a review of the decision and make written representations 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 administrator when the withdrawal, suspension or variation of the recognition order is to take effect.

(9) If the administrator requests a review of the decision made by the FCA, the FCA must review its decision, taking into account any written representations.

(10) On a review under paragraph (9) the FCA may—

- (a) affirm its original decision in respect of the recognition order; or
- (b) make any other decision the FCA could have made on the application in respect of the recognition order;

by giving the administrator a written notice of its decision.

(11) A written notice under paragraph (10) must—

- (a) give details of the decision made by the FCA;
- (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 administrator 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.

F1 Reg. 34(2) substituted (31.12.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(3), **12(7)**; 2020 c. 1, Sch. 5 para. 1(1)

Endorsement of benchmarks provided in a third country

35.—(1) An administrator authorised by the FCA or any other supervised entity ^{F2} 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 [^{F3}in a third country].

(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;
- (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.

F2 “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.).

F3 Words in [reg. 35\(1\)](#) substituted (31.12.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(3), [12\(8\)](#); 2020 c. 1, Sch. 5 para. 1(1)

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Right to refer matters to the Tribunal

36.—(1) Subject to paragraph (2), an administrator who has applied for a recognition order under regulation 34 (procedure for prior recognition of a benchmark administrator located in a third country) or a person who has applied to endorse a benchmark under regulation 35 (endorsement of benchmarks provided in a third country) who is aggrieved by the FCA's decision to—

- (a) refuse to make a recognition order under regulation 34 (procedure for prior recognition of a benchmark administrator located in a third country), exercise its power under regulation 34(6)(a) or refuse the administrator's application under regulation 34(6)(b) to withdraw, vary or suspend a recognition order; or
- (b) refuse to make an endorsement order under regulation 35 (endorsement of benchmarks provided in a third country), exercise its power under regulation 35(7)(a) or refuse the administrator's application under regulation 35(7)(b) to withdraw, vary or suspend an endorsement order;

may refer the matter to the Tribunal.

(2) Where there is a review under regulation 34(9) or 35(10), paragraph (1) applies only in relation to the FCA's decision in response to that review.

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)