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## STATUTORY INSTRUMENTS

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# 2018 No. 135

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

### PART 5

#### Amendments to the Act

##### Amendments to section 1H

**37.** In subsection (7A) <sup>F1</sup> of section 1H <sup>F2</sup> of the Act (further interpretative provisions for sections 1B to 1G)—

- (a) after “section 22(6)” insert “ or (6A) ”;
- (b) after “section 22(1A)(b)” insert “ or (c) ”;
- (c) omit “(6) or”; and
- (d) omit “(b) or”.

**F1** Subsection (7A) was inserted by [S.I. 2013/655](#).

**F2** Section 1H was inserted by section 6(1) of the Financial Services Act 2012, [S.I. 2013/655](#), [S.I. 2013/1881](#) and [S.I. 2013/3115](#).

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##### Commencement Information

- I1** Reg. 37(a)(b) in force at 27.2.2018, see reg. 1(2)
- I2** Reg. 37(c)(d) in force at 1.5.2020, see reg. 1(2)(b)

##### Amendments to section 22 (regulated activities)

**38.** Section 22 <sup>F3</sup> of the Act (regulated activities) is amended as follows—

- (a) at the end of subsection (1A)(a) omit “or”;
- (b) at the end of subsection (1A)(b) insert “, or”;
- (c) after subsection (1A)(b) insert—
  - “(c) administering a benchmark.”;
- (d) in subsection (6), for “Benchmark” substitute—
  - “For the purposes of subsection (1A)(b), “benchmark”;
- (e) after subsection (6) insert—

“(6A) For the purposes of subsection (1A)(c), “benchmark” has the meaning given by Article 3 of the EU Benchmarks Regulation 2016, and “administering” a benchmark means acting as an administrator of that benchmark within the meaning of that Article.”.

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**F3** [Section 22](#) was amended by section 7(1) of the Financial Services Act 2012.

**39.** In section 22 of the Act (regulated activities)—

- (a) at the end of subsection (1A)(a), insert “ or ”;
- (b) omit subsection(1A)(b); and
- (c) omit subsection (6).

#### Commencement Information

**I3** [Reg. 39](#) in force at 1.5.2020, see [reg. 1\(2\)\(b\)](#)

#### Amendments to Part 4A (permission to carry on regulated activities)

**40.**—(1) Part 4A <sup>F4</sup> of the Act (permission to carry on regulated activities) is amended as follows.

(2) In section 55A (application for permission)—

- (a) in subsection (2), after “means” insert “ (subject to subsection (2B)) ”;
- (b) after subsection (2) insert—

“(2A) An application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 may not include an application for permission to carry on any other regulated activity.

(2B) The appropriate regulator, in relation to an application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, is the FCA.”.

(3) In section 55B (the threshold conditions) after subsection (4) insert—

“(5) The duty imposed by subsection (3) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.

(4) In section 55E (giving permission: the FCA) of the Act after subsection (3) insert—

“(3A) The FCA must consult the PRA before determining an application for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark) made by a person who is a PRA-authorised person otherwise than by virtue of a Part 4A permission.”.

(5) Section 55H (variation by FCA at request of authorised person) is amended as follows—

- (a) omit subsection (1);
- (b) in subsections (2) and (3) for “the authorised person” there is substituted “ an authorised person who has a Part 4A permission but is not a PRA-authorised person ”;
- (c) after subsection (3) insert—

“(3A) The FCA may, on the application of a PRA-authorised person with a Part 4A permission, vary the permission by—

- (a) adding to the regulated activities to which the permission relates the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark),
- (b) removing that regulated activity from those to which the permission relates, or

- (c) varying the description of that regulated activity.
  - (3B) The FCA must consult the PRA before exercising its power under subsection (3A).”; and
  - (d) in subsection (5) before “the applicant” insert “ on an application under subsection (2) or (3) ”.
- (6) In section 55I (variation by PRA at request of authorised person)—
- (a) in subsection (1) after paragraph (c) insert—

“but the PRA may not under this subsection add, remove or vary the description of the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”;
  - (b) at the end of subsection (2) insert—

“, but the PRA may not under this subsection cancel a permission where the only regulated activity to which the permission relates is the regulated activity in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”; and
  - (c) at the end of subsection (3) insert—

“, but the PRA may not under this subsection add the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.
- (7) In section 55J <sup>F5</sup> (variation or cancellation on initiative of regulator)—
- (a) in subsection (4), after paragraph (b) insert—

“, but paragraph (b) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”; and
  - (b) after subsection (7ZB) insert—

“(7ZC) Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA, in relation to a person who has a permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark), that the conditions in Article 35(1) of the EU Benchmarks Regulation 2016 are met, the FCA may exercise its powers under this section—

    - (a) to vary the Part 4A permission by removing that activity from those to which the permission relates, or
    - (b) to cancel the Part 4A permission.”.
- (8) In section 55M (imposition of requirements by PRA) after subsection (6) insert—

“(6A) The PRA may not exercise its powers under this section to impose a requirement relating to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.

(9) In section 55X (determination of applications: warning notices and decision notices) after subsection (4) insert—

“(5) This section does not apply to applications to which section 55XA applies.”.

(10) After section 55X (determination of applications: warning notices and decision notices) insert—

## **“55XA Applications relating to administering a benchmark**

(1) If the FCA decides—

- (a) to give a Part 4A <sup>F6</sup> permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55E(5)(a) <sup>F7</sup> or (b) in connection with the application for permission,
- (b) to give a Part 4A <sup>F8</sup> permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55L(1) <sup>F9</sup> in connection with the application for permission,
- (c) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO <sup>F10</sup> (administering a benchmark) on the application of an authorised person but to exercise its power in section 55E(5)(a) or (b) in connection with the application for variation,
- (d) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) on the application of an authorised person but to exercise its power in section 55L(1) in connection with the application for variation,
- (e) to refuse an application for a Part 4A permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark), or
- (f) to refuse an application for a variation of a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark),

it must give the applicant a written notice.

(2) A written notice under subsection (1) 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 takes effect immediately or on such date as may be specified in the notice,
- (d) inform the applicant that the applicant may either—
  - (i) request a review of the decision, and make written representations for the purpose 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
- (e) indicate the procedure on a reference to the Tribunal.

(3) If the applicant requests a review of the decision made by the FCA (“the original decision”), the FCA must consider any written representations made by the applicant and review the original decision.

(4) On a review under subsection (3) the FCA may make any decision (“the new decision”) the FCA could have made on the application.

(5) The FCA must give the applicant written notice of its decision on the review.

(6) If the new decision is to do any of the things mentioned in subsection (1)(a) to (f), the written notice under subsection (5) must—

- (a) give details of the new decision made by the FCA,
- (b) state the FCA's reasons for the new decision,

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- (c) inform the applicant that the applicant may, within such period as may be specified in the notice, refer the new decision to the Tribunal, and
  - (d) indicate the procedure on a reference to the Tribunal.
- (8) In this section “the RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.
- (11) In section 55Z3 after subsection (2) insert—
- “(3) Where there is a review under section 55XA(3) of a determination within section 55XA(1), subsection (1) applies only in relation to the determination made on the review.”.

- F4** [Part 4A](#) (sections 55A to 55Z4) of the Act was inserted by section 11(2) of the Financial Services Act 2012.
- F5** Subsection (7ZB) was inserted by regulation 10(3) of [S.I. 2016/680](#). There are other amendments to section 55J none is relevant.
- F6** [Part 4A](#) was inserted by section 11 of the Financial Services Act 2012 and amended by [S.I. 2011/1613](#), [S.I. 2013/1773](#), [S.I. 2013/3115](#), [S.I. 2015/486](#), [S.I. 2015/575](#), [S.I. 2015/910](#), [S.I. 2015/1882](#), [S.I. 2016/225](#), [S.I. 2016/680](#), [S.I. 2016/1239](#) and [S.I. 2017/1064](#).
- F7** [Section 55E](#) was inserted by section 11(2) of the Financial Services Act 2012.
- F8** [Part 4A](#) was inserted by section 11 of the Financial Services Act 2012 and amended by [S.I. 2011/1613](#), [S.I. 2013/1773](#), [S.I. 2013/3115](#), [S.I. 2015/486](#), [S.I. 2015/575](#), [S.I. 2015/910](#), [S.I. 2015/1882](#), [S.I. 2016/225](#), [S.I. 2016/680](#), [S.I. 2016/1239](#) and [S.I. 2017/1064](#).
- F9** [Section 55L](#) was inserted by section 11(2) of the Financial Services Act 2012.
- F10** [S.I. 2001/544](#).

## Amendment to Part 8 of the Act (provisions relating to market abuse)

- 41.** After section 122H of the Act (publication of corrective statements generally) insert—

### “122HA Publication of corrective statements relating to benchmarks

(1) If condition A or B is met, the FCA may, by notice in writing, require a person to publish—

- (a) specified information, or
- (b) a specified statement,

correcting false or misleading information made public, or a false or misleading impression given to the public, by that person.

(2) Condition A is met if the FCA considers that the publication of the information or statement is necessary for the purpose of protecting the interests of users of regulated benchmarks.

(3) Condition B is met if the FCA considers that the publication of the information or statement is necessary for the purpose of the exercise by it of its functions under Article 41(1)(j) of the EU Benchmarks Regulation 2016.

(4) Information or statements required to be published under this section must be published—

- (a) before the end of such reasonable period as may be specified; and
- (b) by any such method as may be specified.

(5) If a person fails to comply with a requirement to publish information or a statement under this section the FCA may publish the information or statement.

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(6) But before doing so, the FCA must give that person an opportunity to make representations to it regarding its decision to publish the information or statement under subsection (5).

(7) In this section—

“specified” means specified in the notice, and

“regulated benchmark” means a regulated benchmark as defined in section 425A(7).”.

**42.—**(1) In section 123 <sup>F11</sup> of the Act (power to impose penalties or issue censure) in subsection (1)(c)(i) after “122H,” insert “ 122HA, ”.

(2) In sections 123A and 123B of the Act (power to prohibit individuals from managing or dealing and suspending permission to carry on regulated activities etc.) in each subsection (1)(c) after “122H,” insert “ 122HA, ”.

(3) In section 124 of the Act (statement of policy)—

(a) in subsection (2) after “market abuse regulation” insert “ or Article 43(1) of the EU Benchmarks Regulation 2016 ”;

(b) in subsection (10), in paragraph (c)(i) of the definition of “relevant person”, after “122H,” insert “ 122HA, ”.

**F11** Sections 123 to 123C were substituted by regulation 9(1) and (5) of [S.I. 2016/680](#).

#### **Amendment to section 137F of the Act (rules requiring participation in benchmark)**

**43. —** In section 137F of the Act (rules requiring participation in benchmark)—

(a) in subsection (4), for the definition of “benchmark” substitute—

““benchmark” means a benchmark within the meaning of section 22(6) or (6A);”,

(b) in subsection (4) in the definition of “benchmark” omit “(6) or”.

#### **Commencement Information**

**I4** [Reg. 43\(a\)](#) in force at 27.2.2018, see [reg. 1\(2\)](#)

**I5** [Reg. 43\(b\)](#) in force at 1.5.2020, see [reg. 1\(2\)\(b\)](#)

#### **Amendment to section 178 of the Act (obligation to notify the appropriate regulator: acquisitions of control)**

**44.** After subsection (2) of section 178 <sup>F12</sup> of the Act (obligation to notify the appropriate regulator: acquisitions of control) insert—

“(2ZA) This section does not apply if the only regulated activity for which the UK authorised person has a Part 4A permission is the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.

**F12** Section 178 was inserted by [S.I. 2009/534](#) and amended by section 26 of the Financial Services Act 2012.

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### **Amendment to Part 18 of the Act (recognised investment exchanges and clearing houses)**

**45.** In section 285 <sup>F13</sup> of the Act (exemption for recognised bodies etc.), after subsection (3) insert—

“(3ZA) Subsections (2) and (3) do not apply in respect of the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”

**F13** Section 285 was amended by section 28 of the Financial Services Act 2012 and by [S.I. 2013/504](#). There are also other amendments but none is relevant to these Regulations.

### **Amendment to section 391 of the Act (publication)**

**46.** After subsection (8C) of section 391 <sup>F14</sup> of the Act (publication) insert—

“(8D) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the EU Benchmarks Regulation 2016 or any directly applicable regulation made under the EU Benchmarks Regulation 2016, this section has effect subject to Article 45 of the EU Benchmarks Regulation 2016 (publication of decisions).”

**F14** Subsection 8C of section 391 was inserted by [S.I. 2016/715](#).

### **Amendment to section 395 (the FCA's and PRA's procedures)**

**47.** In subsection (13) of section 395 <sup>F15</sup> of the Act (the FCA's and PRA's procedures) before paragraph (a) insert—

“(za) 55XA(1) or (5) (where subsection (6) applies);”

**F15** Section 395 was amended by section 17(3) of the Financial Services Act 2012.

### **Amendment to section 398 of the Act (misleading FCA or PRA: residual cases)**

**48.—**(1) Subsection (1A) of section 398 <sup>F16</sup> of the Act (misleading FCA or PRA: residual cases) is amended as follows—

(2) At the end of paragraph (f) omit “or”.

(3) At the end of paragraph (g) insert “ or ”.

(4) After paragraph (g) insert—

“(h) the EU Benchmarks Regulation 2016.”

**F16** Subsection 1A of section 398 was inserted by [S.I. 2016/680](#).

### **Amendment to Part 29 of the Act (interpretation)**

**49.—**(1) In subsection (1) of section 417 of the Act (definitions), after the definition of the “ESMA”, insert—

““the EU Benchmarks Regulation 2016” means Regulation EU 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments

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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;”.

(2) <sup>F17</sup>In the definition of “regulated benchmark” in subsection (7) of section 425A (consumers: regulated activities etc carried on by authorised persons) of the Act—

- (a) after “section 22(6)” insert “ or (6A) ”,
- (b) after “section 22(1A)(b)” insert “ or (c) ”,
- (c) omit “(6) or”, and
- (d) omit “(b) or”.

**F17** Section 425A was inserted by paragraph 32 of Schedule 2(1) to the Financial Services Act 2010 and amended by S.I. 2013/655 and S.I. 2013/3115.

#### Commencement Information

**I6** Reg. 49(1)(2)(a)(b) in force at 27.2.2018, see reg. 1(2)

**I7** Reg. 49(2)(c)(d) in force at 1.5.2020, see reg. 1(2)(b)

#### Omission of Part 2B of Schedule 2 to the Act (regulated activities relating to the setting of benchmarks)

**50.** In Schedule 2 <sup>F18</sup> to the Act (regulated activities relating to the setting of benchmarks) omit Part 2B.

**F18** Part 2B of Schedule 2 to the Act was inserted by section 7(5) of the Financial Services Act 2012. There are other amendments to Part 2B of Schedule 2 but none is relevant to these Regulations.

#### Commencement Information

**I8** Reg. 50 in force at 1.5.2020, see reg. 1(2)(b)



**Changes to legislation:**

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**Changes and effects yet to be applied to :**

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