

General guidance on Benchmark Submission and Administration

General guidance on Benchmark Submission and Administration

BENCH 1	Handbook requirements in relation to benchmark contribution activity and benchmark administration activity
1.1	Application and purpose
BENCH 2	Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors
2.1	Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors
2.2	Parts of the Handbook applicable to benchmark contributors
2.3	Guidance for benchmark users: articles 28(2) and 29(1) of the benchmarks regulation

Chapter 1

Handbook requirements in relation to benchmark contribution activity and benchmark administration activity

1.1 Application and purpose

Application

1.1.1

G

This special guide is for *firms* which;

- (1) carry out the *regulated activity of administering a benchmark*;
- (2) contribute input data to a *BMR benchmark administrator*; or
- (3) use a *benchmark*.

Purpose

1.1.2

G

The purpose of this special guide is to:

- (1) help *regulated benchmark administrators* by setting out which parts of the *Handbook* apply to them when they carry out the *regulated activity of administering a benchmark*;
- (2) help *benchmark contributors* by setting out which parts of the *Handbook* apply to them when they *contribute input data* to a *BMR benchmark administrator*;
- (3) remind all *firms* of their obligations under the *benchmarks regulation* when using a *benchmark*.

Benchmarks Regulation and transitional arrangements

1.1.3

G

- (1) The *EU benchmarks regulation* applied from 1 January 2018. The *benchmarks regulation* is the *United Kingdom* version of this *EU regulation* and applies from *IP completion day*.
- (2) Various changes were made to the *Regulated Activity Order* as a result of the *EU benchmarks regulation* . In particular:
 - (a) A new *regulated activity of: administering a benchmark* (article 63S of the *Regulated Activities Order*) was introduced.
 - (b) The *regulated activity of administering a specified benchmark* ceased to apply (subject to the transitional provisions described in ■ SUP TP 10).
 - (c) The *regulated activity of providing information in relation to a specified benchmark* ceased to apply (subject to the transitional provisions described in ■ SUP TP 10). However, *benchmark contributors* which *contribute input data* to a *BMR benchmark administrator* are still subject to various requirements in the *Handbook* and are subject to the *benchmarks regulation* when doing so.

- (3) ■ SUP TP 10 contains *guidance* on the transitional arrangements governing the changes to the *regulated activities* above.
- (4) The following transitional provisions are also relevant to a *firm* which, immediately before 1 January 2018, was authorised to *administer a specified benchmark* or to *provide information in relation to a specified benchmark*:
 - (a) ■ SYSC TP 6 and ■ SYSC TP 7;
 - (b) ■ FEES TP 17AR;
 - (c) ■ MAR TP 1; and
 - (d) ■ SUP TP 10.

Chapter 2

Parts of the Handbook
applicable to regulated
benchmark administrators
and benchmark contributors

2.1 Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors

2.1.1

G

The parts of the *Handbook* applicable to *regulated benchmark administrators* when they carry out the *regulated activity of administering a benchmark* are listed in ■ BENCH 2.1.2G.

- (2) *Regulated benchmark administrators* should read the applicable parts of the *Handbook* to find out what the detailed *regulatory requirements* are for the *regulated activity of administering a benchmark*. *Firms* should note that in some cases, different *Handbook* provisions apply depending on whether or not the *regulated benchmark administrator* is an *Annex II benchmark administrator* (see ■ MAR 8.5.2R, ■ MAR 8.5.4R and ■ MAR 8.5.7R).
- (3) *Regulated benchmark administrators* which also carry on other *regulated activities* may be subject to other parts of the *Handbook* as well. The table in ■ BENCH 2.1.2G does not refer to those.
- (4) In some cases, the application of other parts of the *Handbook* is excluded in relation to a *firm's benchmark activities* (see the relevant *Handbook* provisions for the detailed application).
- (5) *Regulated benchmark administrators* are also reminded of their directly applicable obligations under the *benchmarks regulation* and *onshored regulations* which were previously *EU regulations* made under the *EU benchmarks regulation*.

2.1.2

G

Parts of the *Handbook* applicable to the the *regulated activity of administering a benchmark*.

	Part of the Handbook	Applicability to the <i>regulated activity of administering a benchmark</i>
High Level Standards	Principles for Businesses (<i>PRIN</i>) Senior Management Arrangements, Systems and Controls (<i>SYSC</i>)	This applies. The detailed application of this is set out in <i>SYSC 1 Annex 1</i> . However, in general, only the following parts of <i>SYSC</i> will be relevant to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity of administering a benchmark</i> :

	Part of the Handbook	Applicability to the <i>regulated activity of administering a benchmark</i>
	<p>Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)</p> <p>Code of Conduct sourcebook (<i>COCON</i>)</p> <p>The Fit and Proper test for Employees and Senior Personnel (<i>FIT</i>)</p> <p>General Provisions (<i>GEN</i>)</p>	<p>(a) SYSC 1; (b) SYSC 18.3.9G; (c) SYSC 22 to SYSC 26.</p> <p>This does not apply</p> <p>This applies to a <i>firm's conduct rules staff</i>.</p> <p>This applies.</p> <p>This applies. However, the application of GEN 4 is very limited in relation to <i>administering a benchmark</i>. GEN 7 does not apply to the activity of <i>administering a benchmark</i>.</p>
Business Standards	<p>Fees Manual (<i>FEES</i>)</p> <p>Market Conduct Sourcebook (<i>MAR</i>)</p>	<p>This applies.</p> <p>MAR 1 (Market Abuse), MAR 2 (Stabilisation) and MAR 8 (Benchmarks) apply.</p>
Regulatory processes	<p>Supervision manual (<i>SUP</i>)</p>	<p>This applies, with the following qualifications:</p> <p>(a) In general only the following parts of <i>SUP</i> will be relevant to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity of administering a benchmark</i>: SUP 1-2, SUP 5-8, SUP 9, SUP 10C, SUP 15-15B, SUP 16.1-16.3 and SUP 16.10.</p> <p>(b) [deleted]</p> <p>(c) A <i>regulated benchmark administrator</i> is an <i>SMCR firm</i> and so SUP 10C applies to it. That chapter deals with the <i>designated senior management functions</i> that apply to a <i>regulated benchmark administrator</i> and other <i>SMCR firms</i>.</p> <p>If a <i>regulated benchmark administrator</i> is a <i>core SMCR firm</i>, the following <i>FCA-designated senior management functions</i>, which normally apply to a <i>core SMCR firm</i>, do not apply:</p> <p>(i) the <i>compliance oversight function</i>; and</p>

Part of the Handbook		Applicability to the regulated activity of administering a benchmark
		(ii) the money laundering reporting function. That is because those FCA-designated senior management functions are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to benchmark activities (which includes administering a benchmark).
	Decision Procedure and Penalties Manual (DEPP)	This applies.
Handbook Guides	General guidance on Benchmark Administration, Contribution and Use (BENCH)	This applies.
Regulatory Guides	The Enforcement Guide (EG)	This applies.
	The Perimeter Guidance Manual (PERG)	This applies.
	Glossary of definitions	This applies.

2.2 Parts of the Handbook applicable to benchmark contributors

2

2.2.1

G

- (1) The *regulated activity of providing information in relation to a specified benchmark* no longer applies except in limited circumstances (see ■ SUP TP 10 for an explanation of those circumstances).
- (2) *Contributing input data to a BMR benchmark administrator* is not a *regulated activity*. However, *benchmark contributors* are still subject to various obligations under the *benchmarks regulation* and the *Handbook*.
- (3) *Benchmark contributors* are reminded of the following provisions in or made under the *benchmarks regulation*:
 - (a) article 15 (Code of conduct);
 - (b) article 16 (Governance and control requirements for supervised contributors); and
 - (c) article 23 (Mandatory contribution to a critical benchmark).
- (4) *Benchmark contributors, as authorised persons*, are subject to requirements under the *Handbook*. However, in some cases the application of the *Handbook* is excluded in relation to a *firm's* activities as a *benchmark contributor* (see the relevant *Handbook* provisions for their detailed application).
- (5) *Benchmark contributors* are also subject to the following *rules* which apply only to *benchmark contributors*:
 - (a) ■ MAR 8.4 (Third country benchmark contributors); and
 - (b) ■ MAR 8.6 (Responsibility for benchmark activities: benchmark contributors).
- (6) However, some provisions in *MAR* are disapplied where a *firm* is *contributing input data* in relation to a *commodity benchmark* the provision of which is governed by Annex II to the *benchmarks regulation* (see ■ MAR 8.4.1R and ■ MAR 8.6.1R).

2.3 Guidance for benchmark users: articles 28(2) and 29(1) of the benchmarks regulation

- 2.3.1** **G** All *supervised entities* are reminded of the requirements of articles 28(2) and 29(1) of the *benchmarks regulation*.
- 2.3.2** **G**
- (1) Article 28(2) imposes requirements on *supervised entities* in relation to the need to produce and maintain robust written plans setting out the actions that they would take in the event that a *benchmark* which they use materially changes or ceases to be provided.
 - (2) The effect of the prohibition in article 29(1) is that, subject to the exclusions in article 2 of the *benchmarks regulation*, a *firm* which is a *supervised entity* may only use a *benchmark* in cases where:
 - (a) if the benchmark administrator is *located* in the *UK*, the benchmark administrator is listed in the register maintained by the *FCA* under article 36 of the *benchmarks regulation*; or
 - (b) if the benchmark administrator is *located* outside the *United Kingdom*, the benchmark administrator and the *benchmark* itself is listed in the register maintained by the *FCA* under article 36 of the *benchmarks regulation*.
- 2.3.3** **G** In considering articles 28(2) and article 29(1), *firms* will need to consider the *benchmarks regulation* and the *onshored regulations* which were previously *EU regulations* made under the *EU benchmarks regulation*. *Firms* should also note the points below.
- (1) "Use of a benchmark" is defined in article 3.1(7) of the *benchmarks regulation*. *ESMA* has provided guidance on that definition (when used in the context of the *EU benchmarks regulation*) in the form of "Q&As". That guidance is available on *ESMA's* website.
 - (2) Article 28(2) and article 29(1) of the *benchmarks regulation* may not apply to the use of a *benchmark* in cases which are excluded from the requirements of the *benchmarks regulation* (see article 2 of the regulation).

- (3) The prohibition in article 29 of the *benchmarks regulation* is subject to the transitional provisions in article 51 of that regulation.
- (14) *ESMA* has produced guidance (in the form of "Q&As") on various aspects of the *EU benchmarks regulation*. That guidance is available on *ESMA's* website.

