

BENCHMARKS INSTRUMENT 2013**WHEREAS:**

- A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of making rules, giving guidance and issuing codes.
- B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.
- C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.
- D. Article 2(1)(c) of the Early Commencement Order commenced certain of the Financial Conduct Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.

Interpretation

1 In this Instrument (including the Recitals):

- (1) "Designation Order" means the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161);
- (2) "Early Commencement Order" means the Financial Services Act 2012 (Commencement No. 1) Order 2013 (SI 2013/113);
- (3) "the 2000 Act" means the Financial Services and Markets Act 2000;
- (4) "the 2012 Act" means the Financial Services Act 2012;
- (5) "the Authority" means the Financial Services Authority; and
- (6) "Financial Conduct Authority" means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act.

Rules etc. made, given or amended by the Financial Conduct Authority

2 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 3, the Financial Conduct Authority makes, amends, issues, gives, or imposes each provision in the Annexes to this Instrument as set out below:

- (1) The modules of the Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this Instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fit and Proper test for Approved Persons (FIT)	Annex B
Fees manual (FEES)	Annex C
Market Conduct sourcebook (MAR)	Annex D

Supervision manual (SUP)	Annex E
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- (2) General guidance on the parts of the Handbook that apply to benchmark submitters and to benchmark administrators when they carry out the regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark is made in the form of Annex F to this instrument. This guidance is a Handbook Guide and does not form part of the Handbook.
- (3) The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this Instrument. The general guidance in PERG does not form part of the Handbook.
- 3 The Financial Conduct Authority makes, amends, issues, gives or imposes the provisions in the Annexes to this Instrument in exercise of the following powers and related provisions of the 2000 Act, as amended by the 2012 Act:
- (1) Section 137A (The FCA's general rules);
 - (2) Section 137F (Rules requiring participation in benchmark);
 - (3) Section 137T (General supplementary powers); and
 - (4) Section 139A (Power of the FCA to give guidance).
- 4 The rule-making powers in paragraph 3 are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

Commencement: Financial Conduct Authority

- 5 The Financial Conduct Authority directs that paragraph 2 of this Instrument comes into force on 2 April 2013.

Citation

- 6 This Instrument may be cited as the **Benchmarks Instrument 2013**.

By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body

19 March 2013

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

Insert the following new definitions and amendments in the appropriate alphabetical position. The text is not underlined.

<i>administering a specified benchmark</i>	<p>The <i>regulated activity</i>, specified in article 63O(1)(b) of the <i>Regulated Activities Order</i>, which means:</p> <ol style="list-style-type: none"> (1) administering the arrangements for determining a <i>specified benchmark</i>, or (2) collecting, analysing or processing information or expressions of opinion for the purpose of determining a <i>specified benchmark</i>, or (3) determining a <i>specified benchmark</i> through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.
BENCH	Guide for Benchmark Activities (BENCH)
<i>benchmark administrator</i>	A person carrying out the <i>regulated activity</i> of <i>administering a specified benchmark</i> .
<i>benchmark administration function</i>	<i>FCA-controlled function</i> CF50 in the <i>table of FCA-controlled functions</i> which is the function of acting in the capacity of a <i>person</i> who is responsible for oversight of a <i>firm's</i> compliance with <i>MAR 8.3</i> (requirements for <i>benchmark administrators</i>).
<i>benchmark submitter</i>	A person carrying out the <i>regulated activity</i> of <i>providing information in relation to a specified benchmark</i> .
<i>benchmark submission</i>	The information or expression of opinion provided to a <i>benchmark administrator</i> for the purpose of determining a <i>specified benchmark</i> as defined in article 63O(2)(a) of the <i>Regulated Activities Order</i>
<i>benchmark submission function</i>	<i>FCA-controlled function</i> CF40 in the <i>table of FCA-controlled functions</i> which is the function of acting in the capacity of a <i>person</i> who is responsible for oversight of a <i>firm's</i> compliance with <i>MAR 8.2</i> (benchmark manager).
<i>providing information in relation to a specified</i>	The <i>regulated activity</i> , specified in article 63O(1)(a) of the <i>Regulated Activities Order</i> , which in summary means making <i>benchmark submissions</i> .

benchmark

*specified
benchmark*

a benchmark as defined in section 22(1A)(b) of the *Act* and specified in Schedule 5 to the *Regulated Activities Order* pursuant to article 63R of the *Regulated Activities Order*

Amend the following definition as shown.

*conflicts of
interest policy*

~~the policy established and maintained in accordance with SYSC 10.1.10 R.~~

- (1) the policy established and maintained in accordance with SYSC 10.1.10R; and
- (2) (in MAR 8) the policy established and maintained in accordance with MAR 8.2.8G which identifies circumstances that constitute, or may give rise to, a conflict of interest arising from *benchmark submissions* and the process of gathering information in order to make *benchmark submissions*, and sets out the process to manage such conflicts.

Annex B

Amendments to the Fit and Proper test for Approved Persons (FIT)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.2 Introduction

...

- 1.2.4A G Under Article 5(1)(d) of the *MiFID Implementing Directive* and Article 31 and 32 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of a *person* to perform a *controlled function* solely in relation to the *MiFID business* of an *incoming EEA firm*, the *appropriate regulator* will not have regard to that *person's* competence and capability. Where the *controlled function* relates to matters outside the scope of *MiFID*, for example *money laundering* responsibilities (see CF11) or activities related to a *specified benchmark* (see CF 40 and CF 50), or to business outside the scope of the *MiFID* business of an *incoming EEA firm*, for example *insurance mediation activities* in relation to *life policies*, the ~~FSA~~ FCA will have regard to a *candidate's* competence and capability as well as his honesty, integrity, reputation and financial soundness.

Annex C

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification and vetting fees payable to the FCA

(1) Fee payer	(2) Fee payable	Due Date
(a) Any applicant for <i>Part IV permission</i> (including an <i>incoming firm</i> applying for <i>top-up permission</i>) <u>whose fee is not payable pursuant to sub-paragraph (ga) of this table</u>
...		
(g) Any applicant for recognition as a <i>UK recognised body</i> : (i) under section 287 of the <i>Act</i> ; or (ii) under regulation 2(1) of the <i>RAP regulations</i>
(ga) Any applicant for: (i) a <i>Part 4A permission</i> to carry out the <i>regulated activity of administering a specified benchmark</i> ; or (ii) varying its <i>Part 4A permission</i> to carry out the <i>regulated activity of administering a specified benchmark</i>	<u>FEES 3 Annex 3 R, part 1</u>	<u>On or before the date the application is made</u>
...
(p) A <i>firm</i> applying for a variation of its <i>Part 4A permission</i> <u>whose fee is not payable pursuant to sub-paragraph (ga) of this table</u>	...	

...

3 Annex Application fees payable in connection with Recognised Investment Exchanges,
3 R and Recognised Auction Platforms and Benchmark Administrators

Description of Applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
...		
Applicant for recognition as an <i>RAP</i> (payable in addition to any other application fee due under this part)
<u>Any applicant for:</u> <u>(i) a Part 4A permission to carry out the regulated activity of administering a specified benchmark; or</u> <u>(ii) varying its Part 4A permission to carry out the regulated activity of administering a specified benchmark</u>	<u>£25,000</u>	Date the application is made
...		

4 Annex 1AR FCA Activity groups, tariff bases and valuation dates

Part 1	
This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i>	
Activity Group	Fee payer falls in the activity group if
...	
B. <i>MTF</i> operators	...
<u>B. Benchmark administrators</u>	<u>It is a benchmark administrator</u>

Part 3	
This table indicates the tariff base for each fee-block set out in Part 1.	
Activity Group	Tariff-base
...	

B. <i>MTF</i> operators	...
<u>B. Benchmark administrators</u>	<u>Not applicable</u>

...

Part 5	
This table indicates the valuation date for each fee-block. A <i>firm</i> can calculate its tariff data by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.	
Activity Group	Valuation date
...	
B. <i>MTF</i> operators	...
<u>B. Benchmark administrators</u>	<u>Not applicable</u>

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2013 to 31 March 2014

Part 1		
This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of <i>FEES</i> 4 Annex 1AR		
...		
Activity Group	Fee payable	
...		
B. Service companies

<u>B. Benchmark administrators</u>	<u>£175,000</u>	
B. <i>MTF</i> operators	...	

...

Annex D

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, the entire text is new and is not underlined.

8 Benchmarks

8.1 Application and purpose

Application

- 8.1.1 R This chapter applies to every *firm* which is a *benchmark submitter* or a *benchmark administrator*.

Purpose

- 8.1.2 G The purpose of this chapter is to set out the requirements applying to *firms* who are *benchmark submitters* or *benchmark administrators* when carrying out the activities of *providing information in relation to a specified benchmark* or *administering a specified benchmark*.

Actions for damages

- 8.1.3 R A contravention of a rule in *MAR 8* does not give rise to a right of action by a private person under section 138D(2) of the *Act* (and each rule in *MAR 8* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

8.2 Requirements for benchmark submitters

Organisational and governance arrangements

- 8.2.1 R A *benchmark submitter* must establish and maintain adequate and effective organisational and governance arrangements for the process of making *benchmark submissions*.
- 8.2.2 G These arrangements should include:
- (1) appropriate oversight of the submission process by the *benchmark submitter's senior personnel*;
 - (2) appropriate oversight of the submission process by the compliance function of the *firm* to ensure compliance with the *benchmark submitter's* obligations under this section; and
 - (3) periodic internal audit reviews.

- 8.2.3 R A *benchmark submitter* who maintains an establishment in the *United Kingdom* must:
- (1) appoint a benchmark manager with responsibility for the oversight of its compliance with this chapter; and
 - (2) ensure that its benchmark manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.
- 8.2.4 G The requirements in *MAR 8.2.3R* apply, regardless of the place from which *benchmark submissions* are made. The *FCA* expects that a benchmark manager will be based in the *United Kingdom*.
- 8.2.5 R A *benchmark submitter* must:
- (1) ensure that its *benchmark submissions* are determined using an effective methodology to establish the *benchmark submission* on the basis of objective criteria and relevant information; and
 - (2) review this methodology as and when market circumstances require, but at least every quarter, to ensure that its *benchmark submissions* are credible and robust.
- 8.2.6 G An effective methodology for determining *benchmark submissions* in addition to quantitative criteria may include the use of qualitative criteria, such as the expert judgment of the *benchmark submitter*.

Conflict management

- 8.2.7 R A *benchmark submitter* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of making *benchmark submissions*.
- 8.2.8 G In order to identify and manage conflicts of interest as set out in *MAR 8.2.7R* a *benchmark submitter* should:
- (1) establish, implement and maintain a *conflicts of interest policy* which
 - (a) identifies the circumstances that constitute, or may give rise to, a conflict of interest arising from its *benchmark submissions* or the process of gathering information in order to make *benchmark submissions*; and
 - (b) sets out the approach to managing such conflicts;
 - (2) establish effective controls to manage conflicts of interest between the parts of the business responsible for the *benchmark submission* and those parts of the business who may use, or have an interest in, the benchmark rate; and

- (3) establish effective measures to prevent or limit any person from exercising inappropriate influence over the *benchmark submission*.

Notification of suspicions of manipulation

- 8.2.9 R A *benchmark submitter* who suspects that any person:
- (1) is manipulating, or has manipulated, a *specified benchmark*;
 - (2) is attempting, or has attempted, to manipulate a *specified benchmark*; or
 - (3) is colluding, or has colluded, in the manipulation or attempted manipulation of a *specified benchmark*;
- must notify the *FCA* without delay.

Record keeping

- 8.2.10 R A *benchmark submitter* must:
- (1) keep for at least five years:
 - (a) records of its *benchmark submissions*, as well as all information used to enable it to make a *benchmark submission*; and
 - (b) reports on the key sensitivities the *benchmark submitter* may have regarding the *specified benchmark* it is submitting to, including (but not limited to) the *benchmark submitter's* exposure to instruments which may be affected by changes in the *specified benchmark*;
 - (2) provide to the relevant *benchmark administrator* all information used to enable it to make a *benchmark submission* on a daily basis; and
 - (3) provide to the relevant *benchmark administrator*, on a quarterly basis, aggregate information which will allow the *benchmark administrator* to produce statistics relevant to the *specified benchmark* as required by *MAR 8.3.12R*.
- 8.2.11 G The information provided to the *benchmark administrator* in accordance with *MAR 8.2.10R(2)* should include:
- (1) a description of the methodology used to establish the *benchmark submission*; and
 - (2) if applicable, an explanation of how any quantitative and qualitative criteria were used to establish the *benchmark submission*.

Auditor's report

- 8.2.12 R A *benchmark submitter* must appoint an independent auditor to report to the

FCA on the *benchmark submitter's* compliance with the requirements of this section on a regular basis.

- 8.2.13 G (1) The *FCA* expects the report required under *MAR* 8.2.12R to be issued annually, although the *FCA* may agree a longer period depending on the *benchmark submitter's* particular circumstances, including the nature and scale of its engagement in the *specified benchmark* and the internal framework for monitoring compliance with the requirements of this chapter.
- (2) A *benchmark submitter* which proposes to appoint an auditor to report to the *FCA* under *MAR* 8.2.12R on a less frequent than annual basis should notify the *FCA* explaining why it believes it would be appropriate to do so.

8.3 Requirements for benchmark administrators

- 8.3.1 R A *benchmark administrator* must establish and maintain effective organisational and governance arrangements to enable it to carry out the activity of *administering a specified benchmark*.
- 8.3.2 R In discharging its duties, the *benchmark administrator* must have regard to the importance of maintaining integrity of the market and the continuity of the *specified benchmark* including the need for contractual certainty for contracts which reference the *specified benchmark*.
- 8.3.3 R A *benchmark administrator* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of administering a *specified benchmark*.
- 8.3.4 G The arrangements described in *MAR* 8.3.3R should include measures designed to ensure the confidentiality of *benchmark submissions* and additional information received from *benchmark submitters* (to the extent that such submissions and information have not been made public by mutual agreement between the *benchmark administrator* and *benchmark submitter*), for example, through confidentiality agreements for the *benchmark administrator's* employees and members of the oversight committee.
- 8.3.5 R A *benchmark administrator* must:
- (1) appoint a benchmark administration manager with responsibility for oversight of its compliance with this section; and
 - (2) ensure that its benchmark administration manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.
- 8.3.6 R A *benchmark administrator* must:

- (1) have effective arrangements and procedures that allow the regular monitoring and surveillance of *benchmark submissions*:
- (2) monitor the *benchmark submissions* in order to identify breaches of its practice standards (set out in *MAR 8.3.10R(1)*) and conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers and provide to the oversight committee of the *specified benchmark* timely updates of suspected breaches of practice standards and attempted manipulation; and
- (3) notify the *FCA* and provide all relevant information where it suspects that, in relation to the *specified benchmark* it administers, there has been:
 - (a) a material breach of the *benchmark administrator's* practice standards (set out in *MAR 8.3.10R(1)*);
 - (b) conduct that may involve manipulation or attempted manipulation of the *specified benchmark* it administers; or
 - (c) collusion to manipulate or to attempt to manipulate the *specified benchmark* it administers.

- 8.3.7 G The arrangements and procedures referred to in *MAR 8.3.6R(1)* should include (but not be limited to):
- (1) carrying out statistical analysis of *benchmark submissions*, using other relevant market data in order to identify irregularities in *benchmark submissions*; and
 - (2) an effective whistle-blowing procedure which allows any person on an anonymous basis to alert the *benchmark administrator* of conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers.

Oversight committee

- 8.3.8 R A *benchmark administrator* must establish an oversight committee (which must be a committee of the *benchmark administrator*) which includes representatives of *benchmark submitters*, market infrastructure providers, users of the *specified benchmark* and at least two independent *non-executive directors* of the *benchmark administrator* approved to carry out the *non-executive director function*.
- 8.3.9 G The oversight committee should be responsible for:
- (1) considering matters of definition and scope of the *specified benchmark*;
 - (2) exercising collective scrutiny of *benchmark submissions* if and when required; and

- (3) notifying the *FCA* of *benchmark submitters* that fail on a recurring basis to follow the practice standards (as set out in *MAR 8.3.10R(1)*) for the *specified benchmark*.

8.3.10 R The *benchmark administrator* through its oversight committee must:

- (1) develop practice standards in a published code which set out the responsibilities for *benchmark submitters*, the *benchmark administrator*, and its oversight committee in relation to the relevant *specified benchmark*;
- (2) undertake regular periodic reviews of:
 - (a) the practice standards mentioned in *MAR 8.3.10R(1)*;
 - (b) the setting and definition of the *specified benchmark* it administers;
 - (c) the composition of *benchmark submitter* panels; and
 - (d) the process of making relevant *benchmark submissions*; and
- (3) before making any changes as a result of such review:
 - (a) notify the *FCA*;
 - (b) after doing so, publish a draft of the proposed changes and a notice that representations about the proposed changes may be made to the *benchmark administrator* within a specified time; and
 - (c) have regard to any such representations.

Review of the benchmark and publication of statistics

8.3.11 R The *benchmark administrator* must provide to the *FCA*, on a daily basis, all *benchmark submissions* it has received relating to the *specified benchmark* it administers.

8.3.12 R A *benchmark administrator* must publish quarterly aggregate statistics outlining the activity in the underlying market relevant to the *specified benchmark*.

Adequate financial resources

8.3.13 R Notwithstanding any other financial resource requirements that may apply, a *firm* whose *permitted activities* include *administering a specified benchmark* must:

- (1) be able to meet its liabilities as they fall due; and

- (2) maintain, at all times, sufficient financial resources to be able to cover the operating costs of administering the *specified benchmark* for a period of at least six months.
- 8.3.14 G *MAR 8.3.13R* sets out the minimum amount of financial resources a *benchmark administrator* must hold in order to carry out *administering a specified benchmark*. However, the *FCA* expects *benchmark administrators* to normally hold sufficient financial resources to cover the operating costs of administering the *specified benchmark* for a period of nine months.
- 8.3.15 G The financial resources in respect of the requirement in *MAR 8.3.13R(2)*:
- (1) can include liquid financial assets held on the balance sheet of the *benchmark administrator*, for example, cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect, common stock, retained earnings, disclosed reserves and other instruments generally classified as common equity tier one capital or additional tier one capital; and
- (2) should not include holdings of the *benchmark administrator's* own securities or those of any undertaking in the *benchmark administrator's* group; any amount owed to the *benchmark administrator* by an undertaking in its group under any loan or credit arrangement, and any exposure arising under any guarantee, charge or contingent liability.
- 8.3.16 G The *FCA* may use its powers under section 55L of the *Act* to impose on a *benchmark administrator* a requirement to hold additional financial resources to *MAR 8.3.13R* if the *FCA* considers it desirable to meet any of its *statutory objectives*.

Annex E

Amendments to the Supervision manual (SUP)

In Part 1 of this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Amendments to the new Chapter 10A of the Supervision Manual

10A.1 Application

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Overseas firms: UK establishments

...

Territorial scope of SUP 10A in relation to benchmark submission

10A.1.22 **R** Notwithstanding anything to the contrary in SUP 10A.1.5R, SUP 10A.1.6 R and SUP 10A.1.13 R the application of SUP 10A to the benchmark submission function is as set out in MAR 8.2.3R.

10A.1.23 **G** MAR 8.2.3R says that the obligation on a benchmark submitter to appoint a benchmark manager applies if it maintains an establishment in the United Kingdom. Therefore, SUP 10A applies to the benchmark submission function whether or not the activity of providing information in relation to a specified benchmark (or any other regulated activity) or the benchmark submission function are carried on from that establishment.

...

10A.4 Specification of functions

...

10A.4.5 **R** FCA-controlled functions

Part 1 (FCA-controlled functions for FCA-authorised persons and appointed representatives)		
Type	CF	Description of FCA-controlled function
...		

<i>FCA-required functions*</i>		...
...		
	11	<i>Money laundering reporting function</i>
	<u>40</u>	<u><i>Benchmark submission function</i></u>
	<u>50</u>	<u><i>Benchmark administration function</i></u>
...		

Part 2 (FCA-controlled functions for PRA-authorised persons)		
Type	CF	Description of FCA-controlled function
...		
<i>FCA-required functions*</i>		...
	11	<i>Money laundering reporting function</i>
	<u>40</u>	<u><i>Benchmark submission function</i></u>
	<u>50</u>	<u><i>Benchmark administration function</i></u>
...		

10A.7 FCA-required functions

...

Benchmark submission function (CF40)

- 10A.7.12 **R** The benchmark submission function is the function of acting in the capacity of a person to whom is allocated the function set out in MAR 8.2.3R(1) (Organisational and governance arrangements).

Benchmark administration function (CF50)

10A.7.13 R The *benchmark administration function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in MAR 8.3.5R(1) (Requirements for benchmark administrators).

...

In Part 2 of this Annex, the entire text is new and is not underlined.

Part 2 Amendments to SUP TP (Transitional provisions)

TP 4 Transitional provisions relating to SUP 10A

TP 4.1 Transitional provisions relating to LIBOR submitters

- 4.1.1 R *SUP* TP 4.1 applies to a *firm* with a *permission* under article 7 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (*Part 4A permission* to carry on the activity of *providing information in relation to a specified benchmark*).
- 4.1.2 R The *benchmark submission function* does not apply during the first transitional period.
- 4.1.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of the *benchmark submission function* in relation to a *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person* and *firm*, when the application is approved.
- 4.1.4 R The *benchmark submission function* does not apply in relation to a particular *person* and particular *firm* during the second transitional period if:
- (1) an application has been made to the *FCA* for the approval of the performance by that *person* of the *benchmark submission function* in relation to that *firm* during the first transitional period; and
 - (2) that application has not been finally decided before the end of the first transitional period.
- 4.1.5 R The second transitional period begins when the first transitional period ends.
- 4.1.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:
- (1) the end of the six *month* period beginning on 2 April 2013; and

- (2) the date on which the application referred to in *SUP* TP 4.1.4R is granted.
- 4.1.7 R An application is finally decided for the purpose of *SUP* TP 4.1:
- (1) when the application is withdrawn;
- (2) when the *FCA* grants the application for approval under section 62 of the *Act* (applications for approval: procedure and right to refer to the *Tribunal*);
- (3) where the *FCA* has refused an application and the matter is not referred to the *Tribunal*, when the time for referring the matter to the *Tribunal* has expired;
- (4) where the *FCA* has refused an application and the matter is referred to the *Tribunal*, when:
- (a) if the reference is determined by the *Tribunal*, the time for bringing an appeal has expired; or
- (b) on an appeal from a determination by the *Tribunal*, the Court itself determines the application.
- TP 4.2 Transitional provisions relating to LIBOR administration: New firm
- 4.2.1 R *SUP* TP 4.2 applies to a *firm* that immediately before it was granted an interim *part 4A permission* under article 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (Interim *permission* in relation to *administering a specified benchmark*) did not hold a *part 4A permission*.
- 4.2.2 R No *controlled function* applies during the first transitional period.
- 4.2.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of a *controlled function* in relation to the *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person, firm* and *controlled function*, when the application is approved.
- 4.2.4 R A *controlled function* does not apply in relation to a particular *person* and *firm* during the second transitional period if:
- (1) an application has been made to the *FCA* for the approval of the performance by that *person* of that *controlled function* in relation to the *firm* during the first transitional period; and

- (2) that application has not been finally decided before the end of the first transitional period.
- 4.2.5 R The second transitional period begins when the first transitional period ends.
- 4.2.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:
- (1) the end of the six-month period beginning on 2 April 2013;
 - (2) the date on which the application referred to in SUP TP 4.2.4R is finally decided; or
 - (3) the date on which the *firm's* interim permission lapses as set out in Article 8(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013
- 4.2.7 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of SUP TP 4.2 in the circumstances described in SUP TP 4.1.7R.
- TP 4.3 Transitional provisions relating to LIBOR administration: Existing firm
- 4.3.1 R SUP TP 4.3 applies to a *firm* that was granted an interim *Part 4A permission* under article 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (Interim *permission* in relation to *administering a specified benchmark*) and already held a *Part 4A permission*.
- 4.3.2 R The *benchmark administration function* does not apply during the first transitional period.
- 4.3.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of the *benchmark administration function* in relation to the *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person* and *firm*, when the application is approved.
- 4.3.4 R The *benchmark administration function* does not apply in relation to a particular *person* and *firm* during the second transitional period if:
- (1) an application has been made to the *FCA* for the approval of the performance by that *person* of the *benchmark administration function* in relation to the *firm* during the first transitional period; and

- (2) that application has not been finally decided before the end of the first transitional period.
- 4.3.5 R The second transitional period begins when the first transitional period ends.
- 4.3.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:
 - (1) the end of the six-*month* period beginning on 2 April 2013;
 - (2) the date on which the application referred to in *SUP* TP 4.3.4R is finally decided; or
 - (3) the date on which the *firm's* interim permission lapses as set out in Article 8(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013
- 4.3.7 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of *SUP* TP 4.3 in the circumstances described in *SUP* TP 4.1.7R.

Annex F

General guidance on Benchmark Submission and Administration (BENCH)

In this Annex, the entire text is new and is not underlined. This guide should be inserted on the Handbook website after SERV.

1 Handbook requirements in relation to benchmark submission activity and benchmark administration activity

1.1 Application and purpose

Application

- 1.1.1 G This special guide is for *firms* which carry out the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark*.

Purpose

- 1.1.2 G The purpose of this special guide is to help *benchmark submitters* and *benchmark administrators* by setting out which parts of the *Handbook* apply to them when they carry out the *regulated activities* of *providing information in relation to a specified benchmark* or *administering a specified benchmark*.

Other parts of the *Handbook* will apply to *benchmark submitters* or to *benchmark administrators* in respect of other *regulated activities* they carry out.

2 Parts of the Handbook applicable to benchmark submission activity and benchmark administration activity

- 2.1.1 G The parts of the *Handbook* applicable to *benchmark submitters* and to *benchmark administrators* when they carry out the *regulated activities* of *providing information in relation to a specified benchmark* or *administering a specified benchmark* are listed in *BENCH 2.1.2G*. *Benchmark submitters* and *benchmark administrators* should read applicable parts of the *Handbook* to find out what the detailed regulatory requirements are for the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark*.

- 2.1.2 G Parts of the *Handbook* applicable to the *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark*.

	Part of the Handbook	Applicability to the <i>regulated activities</i> of <i>providing information in relation to a specified benchmark and administering a specified benchmark</i>
High Level Standards	Principles for Businesses (<i>PRIN</i>)	This applies.
	Senior management arrangements, Systems and Controls (<i>SYSC</i>)	This applies.
	Threshold Conditions (<i>COND</i>)	This applies.
	Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)	This applies to an <i>approved person</i> who performs a <i>benchmark submission function</i> or a <i>benchmark administration function</i> .
	The Fit and Proper test for Approved Persons (<i>FIT</i>)	This applies.
	General Provisions (<i>GEN</i>)	This applies.
	Fees Manual (<i>FEES</i>)	This applies.
Business Standards	Market Conduct Sourcebook (<i>MAR</i>)	<i>MAR 1</i> (Code of Market Conduct), <i>MAR 2</i> (Stabilisation) and <i>MAR 8</i> (Benchmarks) apply.
Regulatory processes	Supervision manual (<i>SUP</i>)	This applies, with the following qualifications: <p>(a) <i>SUP 4</i> (Actuaries), <i>SUP 12</i> (Appointed representatives), <i>SUP 13</i> (Exercise of passport rights by UK firms), <i>SUP 13A</i> (Qualifying for authorisation under the Act), <i>SUP 14</i> (incoming EEA firms changing details and cancelling qualification for authorisation), <i>SUP 17</i> (Transaction Reporting), <i>SUP 18</i> (Transfer of business), <i>SUP 21</i> (Waiver), <i>SUP App 2</i> (Insurers: Regulatory intervention points and run-off plans) and <i>SUP App 3</i> (Guidance on passporting issues) will not be relevant to the <i>regulated activities</i> of <i>providing information in relation to a specified</i></p>

		<i>benchmark and administering a specified benchmark .</i>
	Decision Procedure and Penalties Manual (<i>DEPP</i>)	This applies.
Redress	Dispute Resolution: the Complaints sourcebook (<i>DISP</i>)	<p>All firms are subject to the <i>Compulsory Jurisdiction</i> of the <i>Financial Ombudsman Service</i>.</p> <p>However, a <i>firm</i> which does not, and notifies the <i>FCA</i> under <i>DISP</i> 1.1.12R that it does not, conduct business with <i>eligible complainants</i> (persons eligible to have a <i>complaint</i> considered by the <i>Financial Ombudsman Service</i>, as defined in <i>DISP</i> 2.7) will be exempt from the rules on treating complaints fairly (<i>DISP</i> 1.2 to <i>DISP</i> 1.11) and from the Financial Ombudsman Funding rules (<i>FEES</i> 5.1 to <i>FEES</i> 5.7).</p> <p>The definition of the <i>regulated activities</i> of providing information in relation to a <i>specified benchmark</i> and <i>administering a specified benchmark</i> mean that <i>benchmark submitters</i> and <i>benchmark administrators</i> will qualify for these exemptions if it applies for them.</p>
Handbook Guides	Special Guide for benchmark administrators (<i>BENCH</i>)	This applies.
Regulatory Guides	The Enforcement Guide (<i>EG</i>)	This applies.
	The Perimeter Guidance Manual (<i>PERG</i>)	This applies.
Glossary of definitions		This applies.

Annex G

Amendments to the Perimeter Guidance Manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 2.2.3 G Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG 2 Annex 1G*):
- ...
- (3) ...
- (3a) Are my activities related to a *specified benchmark*?
- (4) If ~~so~~ the answer is 'Yes' to (3) or (3a), will my activities be, or include, *regulated activities* (see *PERG 2.7*)?
- ...
- ...
- 2.3.4 G A *person* carrying out the activity of *administering a specified benchmark* or *providing information in relation to a specified benchmark* will always be carrying out these activities by way of business.
- ...
- 2.4.8 G For the avoidance of doubt, a *person* who is based outside of the *United Kingdom* but who *makes benchmark submissions to a benchmark administrator* is carrying out *regulated activities* in the *United Kingdom*.
- ...
- 2.5.1A G The *regulated activities* of *providing information in relation to a specified benchmark* and *administering a specified benchmark* do not require the involvement of a *specified investment in any way*.
- ...
- Specified benchmarks activities
- 2.7.20D G There are two *regulated activities* associated with *specified benchmarks*
- (1) *providing information in relation to a specified benchmark*; and
- (2) *administering a specified benchmark*
- 2.7.20E G A *person* will be *providing information in relation to a specified benchmark* where information or an expression of opinion necessary to determine a

specified benchmark is provided to, or for the purposes of passing to, a benchmark administrator so he can administer a specified benchmark.

- 2.7.20F G We expect that only firms which are members of a benchmark submission panel will carry out the activity of providing information in relation to a specified benchmark.
- 2.7.20G G A person is not providing information in relation to a specified benchmark where the information he is providing:
- (1) consists solely of factual data obtained from a publicly available source; or
 - (2) is compiled by a subscription service for purposes other than in connection with the determination of a specified benchmark and is provided to a benchmark administrator only in the administrator's capacity as a subscriber to the service.
- 2.7.20H G The activity of administering a specified benchmark comprises:
- (1) administering the arrangements for determining the benchmark;
 - (2) collecting, analysing or processing information or expressions of opinion provided for the purpose of determining a specified benchmark; or
 - (3) determining a specified benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.
- 2.7.20I G For the avoidance of doubt, a firm who is a benchmark submitter is not expected to be carrying out the activities mentioned in PERG 2.7.20HG(2) if it collects, analyses or processes information or expressions of opinion for the purposes of making its own submissions.
- 2.7.20J G Specified benchmarks are listed in Schedule 5 to the Regulated Activities Order; currently the only specified benchmark is the London Interbank Offered Rate (LIBOR).

...

2Annex 1G Authorisation and regulated activities

- 1 G Do you need authorisation?

	NO	Will you be carrying on in any activities by way of business?	YES	Consult the <i>Business Order</i>
	NO	Are you, or will you be, involved with <i>specified investments</i> of any kind or establishing etc a <i>CIS</i> or <i>stakeholder pension scheme</i> ?	YES	Consult Part III of the <i>RAO</i>
	NO	Are your activities related to a <i>specified benchmark</i> ?	YES	Consult article 630 of the <i>RAO</i>
	NO	Are you, or will you be, carrying on a regulated activity?	YES	Consult Part III of the <i>RAO</i>
	NO	Are you, or will you be, carrying on a regulated activity in the <i>United Kingdom</i> ?	YES	Consult section 418 of the <i>Act</i>
	YES	Are your activities excluded in full under the <i>RAO</i> ?	NO	Consult Part II of the <i>RAO</i> and, if an <i>investment firm</i> , article 4 of the <i>RAO</i>
	YES	Do you conduct <i>regulated activities</i> only as a members or former <i>underwriting members</i> of <i>Lloyd's</i> ?	NO	Consult Part XIX of the <i>Act</i>
	YES	Are you a member of the professions whose activities are exempt under Part XX of the <i>Act</i> ?	NO	Consult Part XX of the <i>Act</i> and the <i>Non-Exempt Activities Order</i> and Part XIX of the <i>Act</i>
	YES	Are you an exempt person under section 38 or 39 of the <i>Act</i> ?	No	Consult the <i>Exemption Order</i> and the <i>Appointed Representatives Regulations</i> .
		Will you be managing the assets of an <i>OPS</i> (e.g. as a trustee)?	YES	
		No		
Authorisation not required	YES	Will you be delegating decisions or be a trustee of a qualifying <i>SSAS</i> as provided for in the <i>Business Order</i> ?	NO	Authorisation required
	YES	Are you an <i>EEA firm</i> , a <i>Treaty firm</i> or a <i>UCITS</i> qualifier in relation to the regulated activity?	NO	
		Apply for Part IV permission from the <i>FSA</i> under Part IV 4A of the <i>Act</i> .		Obtain exemption under the <i>Act</i> as an <i>appointed representative</i> (section 39) or <i>recognised investment exchange</i> or <i>recognised cleaning house</i> (Part XVIII).
		Contact the <i>Home State regulator</i> , and the <i>FSA</i> , to obtain <i>authorisation</i> under Schedule 3,4 or 5 of the <i>Act</i> (see <i>PERG</i> 5)		