

FSCA COMMUNICATION 15 OF 2024 (FM)

Publication of a Draft Determination of procedures and requirements for licence applications of benchmark administrators – for public comment

1. PURPOSE

The purpose of this communication is –

- (a) to inform stakeholders that the Financial Sector Conduct Authority (FSCA) today published a Draft Determination setting out the procedures and requirements for licence applications of benchmark administrators (Draft Determination); and
- (b) to invite comments on the Draft Determination and the accompanying forms from interested stakeholders and the public by **3 June 2024**.

2. BACKGROUND

- 2.1 The FSCA is, in terms of the Financial Sector Regulations Act, 2017 (Act No 9 of 2017) (FSRA), mandated to, amongst other things, enhance and support the efficiency and integrity of the financial markets. A number of policy considerations have highlighted the need for the regulation, supervision and oversight of the provision of a benchmark as a financial service in South Africa. It has proven necessary that a regulatory framework for relevant benchmarks be developed that is fit for purpose and aligns with international standards and best practice, to ensure efficiency and integrity in the development, use and provision of benchmarks.
- 2.2 Since 2019, work has been underway to develop an appropriate regulatory framework for activities related to the provision of financial benchmarks. This project pivots around the Minister of Finance designating the “provision of a benchmark” as a financial service in accordance with section 3(3) of the FSRA, and to specify that the FSCA is the responsible authority for the regulation, supervision, and oversight of the financial service of the “provision of a benchmark,” in accordance with section 3(5) of the FSRA.
- 2.3 It is worth noting that the provision of a benchmark is currently not a regulated activity in South Africa, and the development of the framework for this purpose has required various sub-projects to ensure a structured, methodical and coherent approach to ultimately regulating and supervising these activities.
- 2.4 As such, and in support of the designation of the provision of a benchmark as a financial service, the FSCA developed a draft Conduct Standard setting out requirements relating to the provision of a benchmark. The draft Conduct Standard proposes the regulatory framework in terms of which benchmark administrators will be supervised and whereby the provision of a benchmark will be regulated once the Regulations in terms of section 3(3) FSRA come into effect. The draft Conduct Standard¹ has been publicly consulted on twice,

¹ The documents are available on the FSCA’s website www.fsca.co.za under *Home > Regulatory Framework > Documents for Consultation > Capital Markets > 2022* or by clicking on the following link: [Capital Markets](#)

and comments received from the second consultation process are currently under consideration and the consultation report is being drafted.

- 2.5 The FSCA also on 2 November 2023 published a Discussion Document² on the development of a framework for regulation and supervision of financial benchmarks, alongside a questionnaire to gather information regarding financial benchmarks currently published and administered in South Africa. The information received in response to the questionnaire is currently being analysed.

3. DRAFT DETERMINATION OF PROCEDURES AND REQUIREMENTS FOR LICENCE APPLICATIONS OF BENCHMARK ADMINISTRATORS

- 3.1 In terms of section 111(2) of the FSRA, a person may not provide, as a business or part of a business, a financial product designated in terms of section 2, or a financial service designated in terms of section 3, except in accordance with a licence in terms of Chapter 8 of the FSRA. Accordingly, once the designation of the provision of a benchmark as a financial service takes effect, new and existing benchmark administrators will be required to apply for a license in terms of the FSRA and evidence compliance with the requirements in the Conduct standard, in order to qualify to be licensed as such. The license application will need to comply with requirements of Chapter 8 of the FSRA.
- 3.2 The provision of a benchmark is a previously unregulated activity, and FSCA developed the proposed licensing framework that sets out the procedures and requirements for the applications for the licencing of benchmark administrators.
- 3.3 The documents that are published for public consultation are:
- (a) Draft Determination of procedures and requirements for licence applications of benchmark administrators;
 - (b) Form 1: Declaration by the CEO or duly authorised representative;
 - (c) Form 2: Application index to be completed by the benchmark administrator;
 - (d) Form 3: Application forms for members of a governing body, senior managers, or oversight committee members of a benchmark administrator; and
 - (e) Form 4: Application form for authorisation of benchmark administrators.
- 3.4 The intention is to publicly consult for a period of 6 weeks on the draft Determination and the accompanying Forms 1 – 4 (that would require completion in support of an application to be licensed as a benchmark administrator).
- 3.5 The final licensing framework will be made effective at the same time as the effective date of the Conduct Standard and the Regulations. The process will be coordinated with National Treasury to ensure a consistent and coherent framework for the regulation and supervision of financial benchmarks.

4. INVITATION TO SUBMIT INFORMATION

Interested parties are invited to submit comments using the comments template set out in Annexure A published with the draft Determination and submit same in Word format to the FSCA via email to FSCA.RFDstandards@fsca.co.za by **3 June 2024**.

² The documents are available on the Authority's website www.fsca.co.za under *Home > Regulatory Framework > Documents for Consultation > Capital Markets > 2023* or by clicking on the following link: [Capital Markets](#)

5. ENQUIRIES

For further information regarding this Communication, please contact Roslynne van Wyk at FSCA.RFDStandards@fsca.co.za



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