

FINANCIAL SECTOR REGULATION ACT, 2017

NOTICE REGARDING THE PUBLICATION OF DRAFT CONDUCT STANDARD [-] OF 2022 (FM) - REQUIREMENTS RELATING TO THE PROVISION OF A BENCHMARK

The Financial Sector Conduct Authority (FSCA), in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), hereby invites submissions on the draft Conduct Standard to be made in terms of section 106(1)(a), read with sections 106(2)(a), 106(3)(a), 108(1) and 108(2) of the Financial Sector Regulation Act, 2017, as per the Schedule below.

The draft Conduct Standard, together with a statement supporting the draft Conduct Standard, is available on the FSCA's website.

Submissions on the draft Conduct Standard must be submitted in writing, using the submission template available on the FSCA's website, **on or before 12 April 2022** to the FSCA at FSCA.RFDStandards@fsca.co.za.



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COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

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**SCHEDULE
CONDUCT STANDARD [-] of 2022 (FM)**

REQUIREMENTS RELATING TO THE PROVISION OF A BENCHMARK

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CHAPTER 1 Definitions, Interpretation and Application

1. Definitions

In this Schedule, “**the Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) and “**the Regulations**” means the Designation of Benchmarks Regulations, 2022, published under sections 3(3)(a)(iii), (5) and 288 of the Act, and any word or expression to which a meaning has been assigned in the Act or the Regulations bears the meaning so assigned to it, and unless the context otherwise indicates, and –

“**alternative investment fund**” means an arrangement, but excluding a collective investment scheme, constituted in any legal form, including in a company, in terms of a contract, by means of a trust or a partnership, or in terms of a statute, which—

- (a) raises capital from two or more financial customers to facilitate the participation or interest in, subscription, contribution or commitment to, a fund or portfolio, with a view to investing it in accordance with a defined investment policy for the benefit of the financial customers; and
- (b) the financial customers share the risk and the benefit of investment in proportion to their participation or interest in, subscription, contribution or commitment to, the fund, or such other proportions as may be agreed between them; and
- (c) the financial customers (as a collective group) have no day-to-day discretion or control over the fund or portfolio, but excludes —
 - (i) any undertaking with the purpose of pursuing a business strategy which includes running predominantly –
 - (aa) a commercial activity, involving the purchase, sale, and/or exchange of immoveable property, goods or commodities and/or the supply of non-financial services; or
 - (bb) an industrial activity, involving the production of goods or construction of properties; or
 - (cc) a combination thereof;
 - (ii) holding companies;
 - (iii) retirement funds;
 - (iv) supra-national institutions;
 - (v) national central banks;
 - (vi) national and regional local governments and bodies or institutions which manage funds supporting unemployment insurance and retirement fund schemes;
 - (vii) employee participation or incentive schemes; and
 - (viii) securitisation special purpose entities;

“**assessor**” means an employee of an administrator of a commodity benchmark, or any other natural person whose services are placed at the administrator’s disposal or under the control of the administrator, and who is responsible for applying a methodology or judgment to input data and other information to reach a conclusive assessment about the price of a certain commodity;

“**auditor**” means an auditor registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005);

“**back-office function**” means the business functions related to the operations of the contributor that enables the corroboration of data received by the contributor from other sources, and including I.T., operations, Human Resources, accounting, and compliance functions;

“**benchmark contributor**” means a person that provides or contributes input data to a benchmark administrator for the purpose of determining a benchmark;

“benchmark user” means a licensed financial institution which:

- (a) Issues a financial instrument that references an index;
- (b) determines the amount payable under a financial instrument or a mortgage or consumer credit contract by referencing an index;
- (c) is a party to a mortgage or consumer credit contract that references an index (e.g. as a lender);
- (d) provides a borrowing rate calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a consumer credit contract to which the creditor is a party; or
- (e) measures the performance of an investment fund through an index either to track the return of the fund or to define its asset allocation;

“calculation agent” means a juristic person –

- (a) to whom the responsibility for determining a benchmark has been outsourced in writing by the benchmark administrator; and
- (b) that determines the benchmark through the application of a formula or other method of calculating the information in accordance with the methodology set out by the benchmark administrator for the designated benchmark;

“cessation of a benchmark” means to discontinue the provision of a benchmark, including where as a consequence of changes in the underlying components or interest referenced by the benchmark such components or interest are no longer adequately represented by the benchmark in the manner originally intended.

“commodity benchmark” means a benchmark which is regularly determined on the basis of the value of an underlying asset which is a commodity;

“complaint” means an expression of dissatisfaction, made orally or in writing, by a person to a benchmark administrator or, to the knowledge of the benchmark administrator, relating to the provision of a benchmark, which indicates or alleges, regardless of whether the expression of dissatisfaction is submitted together with or in relation to a query by a financial customer, that—

- (a) the benchmark administrator or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the benchmark administrator or its service provider or to which it subscribes, or that a dispute of fact or law has arisen in relation to such agreement, law, rule or code of conduct or its application or interpretation;
- (b) the benchmark administrator’s or its service provider’s maladministration or wilful or negligent action or failure to act, has caused or is likely to cause the person harm, prejudice, distress or substantial inconvenience; or
- (c) the benchmark administrator or its service provider has treated the person unfairly;

“critical benchmark” means a benchmark determined to be critical in accordance with the criteria set out in paragraph 42 and listed on the list of benchmark administrators established and maintained by the Authority, as required in Regulation 6 of the Designation of Benchmarks Regulations, 2022;

“determining a benchmark” means the application of a formula or other method of calculation or an assessment of input data provided for that purpose;

“durable medium” means an instrument which enables a benchmark administrator to store information in a way that is accessible for future reference for a period of at least five years, and which allows the unchanged reproduction of the information stored;

“endorsing administrator” means a licensed benchmark administrator located in the Republic, that has applied to the Authority to endorse a benchmark or a family of benchmarks provided in a foreign country for use in the Republic;

“exchange” means an exchange licensed in terms of the Financial Markets Act or an external exchange defined in section 1(1) of the Financial Markets Act;

“expert judgment” means the exercise of discretion by a benchmark administrator or a benchmark contributor with respect to the use of data in determining a benchmark, including –

- (a) extrapolating values from prior or related transactions;
- (b) adjusting values for factors that might influence the quality of data; and
- (c) weighting firm bids or offers greater than a particular concluded transaction;

“family of benchmarks” means a group of benchmarks provided by the same benchmark administrator and determined from input data of the same nature which provides specific measures of the same or similar market or economic reality;

“financial contract” means a legally binding agreement to buy or sell a financial instrument on a designated time in future at a price agreed upon by the buyer and seller;

“Financial Markets Act” means the Financial Market Act, 2012 (Act No. 19 of 2012);

“foreign benchmark administrator” means a person domiciled in a foreign country that is authorised to perform services related to the provision of a benchmark in a jurisdiction outside of the Republic, and that is subject to the laws of a country other than the Republic;

“front office function” means any department, division, group, or personnel of a contributor or any of its affiliates that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a third party or for proprietary purposes;

“investment fund” includes a collective investment scheme administered by a manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), an alternative investment fund and a foreign investment fund similar in nature to a collective investment scheme or a alternative investment fund;

“IOSCO” means the International Organisation of Securities Commissions;

“non-significant benchmark” means a benchmark that does not fulfil the conditions set out in paragraph 44.;

“observer member” means an external stakeholder who has an interest in the benchmark and who may provide expertise to the oversight committee of the benchmark administrator in a non-voting capacity;

“oversight committee” means the committee established by a benchmark administrator for purposes of paragraph 12(5);

“oversight function” means the function established by a benchmark administrator for purposes of paragraph 12(1);

“regulated-data benchmark” means a benchmark determined by the application of a formula from input data contributed entirely and directly from a licensed exchange;

“senior manager” means a person referred to in paragraphs (b) to (e) of the definition of key person in the Act;

“significant benchmark” means a benchmark that fulfils the conditions set out in paragraph 44;

“submitter” means a natural person employed by the benchmark contributor for the purpose of contributing input data; and

“transaction data” means observable prices, rates, indices or values representing transactions between unaffiliated counterparties in an active market subject to competitive supply and demand forces.

2. Application of the Conduct Standard

- (1) This Conduct Standard applies to benchmark administrators acting in the Republic.
- (2) This Standard does not apply to –
 - (a) a central bank;
 - (b) a public entity, where it contributes data to, provides, or has control over the provision of benchmarks for public policy purposes, including measures of employment, economic activity, and inflation;
 - (c) a licensed central counterparty as contemplated in section 1 of the Financial Markets Act, where it provides reference prices or settlement prices used for central counterparty risk-management purposes and settlement;
 - (d) the use of a single reference price for any financial instrument in the press or other media where the benchmark is merely published in the media or referred to as part of journalistic activities;
 - (e) a credit provider regulated in terms of the National Credit Act, where that credit provider publishes on its website, or makes available to the public, that credit provider's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that provider, or by a company within the same group with their respective clients;

- (f) a commodity benchmark based on submissions from benchmark contributors, on condition that:
 - (i) The benchmark is referenced by a listed financial instrument or financial instrument for which an application for listing on an exchange has been made; and
 - (ii) the total notional value of the financial instruments referencing the benchmark does not exceed an amount as determined by the Authority by notice on its website;
- (g) an index provider where that index provider is unaware and could not reasonably have been aware that that index is used to –
 - (i) determine the amount payable under a financial instrument or a financial contract;
 - (ii) determine the value of a financial instrument; or
 - (iii) measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees.

CHAPTER 2

Business Principles, culture, governance and key persons

3. Business principles

- (1) A benchmark administrator must—
 - (a) act in good faith;
 - (b) conduct its business transparently, with integrity, honestly, fairly, and with due skill, care and diligence;
 - (c) observe proper standards of conduct;
 - (d) ensure that where any judgement or discretion in the benchmark determination process is required, it is independently and honestly exercised;
 - (e) organise and control its affairs responsibly and effectively, with an adequate control function environment;
 - (f) enhance and support the efficiency and integrity of financial markets;
 - (g) support trust and confidence in the financial sector;
 - (h) deal with the Authority in an open, accountable and cooperative manner.

4. Culture

- (1) A benchmark administrator must identify and promote a culture within the benchmark administrator that supports ethical behaviour and aims to ensure that the matters referred to in paragraph 3 are central to the values and practices of the benchmark administrator.
- (2) The governing body of a benchmark administrator must commit to the identified culture of the benchmark administrator and is responsible for ensuring that the culture is embedded in the benchmark administrator.

5. Obligations of governing body and governance arrangements

- (1) The governing body of a benchmark administrator is accountable for—
 - (a) compliance with the requirements of this Conduct Standard;
 - (b) approval of the governance arrangements referred to in subparagraph (2); and
 - (c) overseeing the establishment, implementation, subsequent review of, and continued compliance with, the governance arrangements referred to in subparagraph (2).
- (2) A benchmark administrator must document, establish, implement, monitor and review the effectiveness of governance arrangements that are reasonably necessary to ensure compliance with the requirements in this Conduct Standard.
- (3) The governance arrangements referred to in subparagraph (2) must—
 - (a) include a clear organisational structure with well-defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark;
 - (b) promote accountability of key persons;
 - (c) ensure that key persons possess the necessary skills, knowledge and expertise, and have appropriate resources, to fulfil their functions, and perform those functions in a manner consistent this Conduct Standard;
 - (d) provide for mechanisms to identify and, where appropriate, remove practices that, or persons whose, conduct materially increases the risk of the benchmark administrator not complying with this Conduct Standard;

- (e) be proportionate to the nature, size, scale and complexity of the risks and/or business model of, and activities performed by, the benchmark administrator;
 - (f) provide for management processes and responsibilities and the establishment, implementation and management of control functions within the benchmark administrator;
 - (g) deal with internal and external remuneration and compensation practices in a manner that promotes compliance with this Conduct Standard; and
 - (h) demonstrate how the benchmark administrator will comply with this Conduct Standard.
- (4) A benchmark administrator must –
- (a) ensure that any person that is responsible for making decisions or recommendations in respect of determining a benchmark –
 - (i) have the necessary skills, knowledge and experience for the duties assigned to that person;
 - (ii) is subject to effective management and supervision;
 - (iii) is not subject to undue influence or conflicts of interest and that the compensation and performance evaluation of that person does not create conflicts of interest or otherwise impinge upon the integrity of the benchmark determination process;
 - (iv) does not have any or business connections that compromise the activities of the benchmark administrator concerned;
 - (v) is prohibited from contributing to a benchmark determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such way of contribution is explicitly required as part of the benchmark methodology and is subject to specific rules therein; and
 - (vi) is subject to effective procedures to control the sharing of information with other employees or with third parties, where that information may affect the benchmark.
 - (b) establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining a benchmark;
 - (c) have documented processes and procedures which requires the approval of a benchmark by a senior manager or person of appropriate seniority to whom the senior manager has delegated the approval before benchmark is disseminated.

6. Key persons

- (1) A key person of a benchmark administrator may not be –
 - (a) an unrehabilitated insolvent as referred to in paragraph 7(3) or subject to debt review as contemplated by the National Credit Act; and
 - (b) subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period.
- (2) A benchmark administrator must, in addition to any conditions imposed by the Authority when the benchmark administrator was licensed –
 - (a) within 14 days of the termination of the appointment of a key person inform the Authority and provide the reason(s) for the termination;
 - (b) inform the Authority when a new key person is appointed;
 - (c) annually submit a written statement to the Authority wherein continued compliance with this Conduct Standard with respect to each key person is confirmed.

CHAPTER 3 Fit and proper requirements

7. Honesty and integrity

- (1) A key person of a benchmark administrator must be honest and have integrity.
- (2) In determining whether a key person complies with subparagraph (1), the Authority may refer to any information in possession of the Authority or brought to the Authority's attention.

- (3) Without limiting the generality of subparagraph (1), if the key person is a person referred to in subparagraph (d) to (k) of the definition of a “disqualified person” in the Act, it constitutes *prima facie* evidence that the person does not qualify in terms of subparagraph (1).

8. Competence requirements

- (1) Senior managers and head of a control function (where relevant) of a benchmark administrator must at all times have –
- (a) adequate, appropriate and relevant skills, knowledge and expertise in respect of the function that, that person performs; and
 - (b) relevant educational qualifications and experience in respect of the function that, that person performs.
- (2) A benchmark administrator must ensure that any person employed by it that is responsible for making decisions or recommendations in respect of the provision of the benchmark have the competency to undertake the relevant duties and functions of the benchmark administrator.
- (3) A benchmark administrator must establish and maintain policies dealing with –
- (a) training of employees including specific training of all employees involved in the protection of data integrity to ensure its ability to-
 - (i) detect and identify any suspicious data that could be the result of benchmark manipulation or attempted manipulation; and
 - (ii) promptly report to the oversight function potential manipulation;
 - (b) periodic reviews for competence of employees referred to in subparagraph (1) and (2). .
- (4) Without limiting the generality of subparagraph (2), in determining the competence of the person referred to in subparagraph (2) the following matters may be taken into account:
- (a) The person’s past performance or expertise in the nature of the business being conducted;
 - (b) the person’s skills and experience to understand, operate and manage the regulated activities and financial affairs; and
 - (c) the person’s technical knowledge and ability to perform prescribed duties for which he or she is engaged, including recognised professional qualifications and membership of relevant professional institutions.

CHAPTER 4 Financial matters

9. Financial soundness

- (1) A benchmark administrator must at all times have sufficient financial resources to cover operating costs of administering all its benchmarks for at least six months.
- (2) A benchmark administrator may not be in liquidation or in provisional liquidation, or subject to business rescue proceedings as contemplated in the Companies Act, or have made arrangements with creditors, or filed for winding-up.
- (3) The assets of a benchmark administrator (excluding goodwill and other intangible assets) must exceed its liabilities (excluding loans validly subordinated in favour of all other creditors).
- (4) A benchmark administrator-
- (a) must maintain current assets which are at least sufficient to meet current liabilities; and
 - (b) may not be subject to any judgment or debt that remains outstanding.

10. Financial management

- (1) A benchmark administrator must appoint and at all times have an independent auditor who registered in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005) to on an annual basis review the accounting records of the benchmark administrator and prepare the annual financial statements required in terms of this paragraph.
- (2) The appointment of the auditor of the benchmark administrator must be approved by the Authority and takes effect only if the Authority approves the appointment.
- (3) For purposes of subparagraph (2), the Authorities may determine the form, manner, and content of the application form by notice on its website.
- (4) The Authority may, if the Authority reasonably believes that auditor does not comply or no longer complies with the requirements in this paragraph, direct the benchmark administrator to make arrangements to the satisfaction of the Authority to address the non-compliance.

- (5) A benchmark administrator must-
 - (a) maintain on a continual basis the accounting records as may be determined by the Authority and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act;
 - (b) cause such accounting records and annual financial statements to be audited by an auditor appointed in terms of subparagraph (1), within six months after its financial year end or within such later date as the Authority may allow on application by a benchmark administrator; and
 - (c) preserve the accounting records referred to in subparagraph(a), which may be in electronic form, in a safe place for a period of not less than five years as from the date of the last entry therein.
- (6) When the auditor of a benchmark administrator furnishes copies of a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, the benchmark administrator must, despite any contrary law, also furnish a copy of the report to the Authority.
- (7) If an auditor's appointment is terminated for any reason, including by way of resignation, the benchmark administrator must within 30 days from the date of termination, notify the Authority, in writing, of such termination and reasons for the termination.

CHAPTER 5

Operational requirements, oversight function and committee, and business continuity

11. Operational requirements

- (1) A benchmark administrator must have and be able to maintain the operational ability to fulfil the responsibilities imposed by this Conduct Standard, including the following-
 - (a) a business address in the Republic of South Africa;
 - (b) adequate communication and administrative facilities in the Republic of South Africa;
 - (c) adequate storage and filing systems for the safe keeping of records, business communications and correspondence in the Republic of South Africa; and
 - (d) a bank account with a registered bank in the Republic of South Africa.

12. Composition and positioning of oversight function

- (1) A benchmark administrator must establish and maintain an adequately resourced permanent and effective function to ensure oversight of all aspects of the provision of benchmarks.
- (2) A benchmark administrator must ensure that the oversight function is embedded within the organisational structure of the administrator, and that the function is separate from the governing body and other governance functions of the benchmark administrator.
- (3) The composition of the oversight function must be such that the members collectively have the skills and expertise appropriate to carry out the oversight of the provision of a particular benchmark and the responsibilities the oversight function is required to fulfil.
- (4) A benchmark administrator must ensure that members of the oversight function have appropriate knowledge of the underlying market or economy the benchmark seeks to record.
- (5) Where a benchmark administered by the benchmark administrator is a critical or interest rate benchmark, the oversight function must be carried out by a committee which has at least two independent members.
- (6) An independent member for purposes of subparagraph (5) –
 - (a) may not be a related party to the benchmark administrator, other than through the member's involvement in the oversight function, and
 - (b) must avoid a conflict of interest with the relevant benchmark.
- (7) A benchmark administrator must publicly disclose the details of the membership of the oversight, along with any declarations of any conflict of interest and the processes for election or nomination of its members.
- (8) Where a benchmark is based on contributions, a benchmark administrator must ensure that the representatives of contributors or of supervised entities are not members of the oversight function, as to avoid a conflict of interest amongst the members of the oversight function.
- (9) Before the appointment of a member of the oversight function, a benchmark administrator must give due consideration to actual or potential conflict of interest arising from a relationship between the potential member and other external stakeholders, in particular resulting from a potential interest in the level of the relevant benchmark.
- (10) A benchmark administrator must ensure that a person directly involved in the provision of the benchmark is not a voting member of the oversight function.

- (11) A member of the governing body of benchmark administrator may not be a member of the oversight function or act as an observer member to such an oversight function, but may be invited to attend a meeting of the oversight function in a non-voting capacity.
- (12) A benchmark administrator must ensure that a member of the oversight function or oversight committee is honest and has integrity consistent with paragraph 7.

13. Procedures governing the oversight committee

- (1) A benchmark administrator must develop and maintain robust policies and procedures regarding its oversight committee, at least relating to the following areas:
 - (a) Its terms of reference, the frequency of its meetings, which must occur regularly, the recording of minutes of the meetings or decisions of the oversight function and procedures for periodic information sharing with the governing body of the benchmark administrator;
 - (b) the criteria to select members of the oversight function, including to evaluate the potential members' expertise and skills and whether they can meet the time commitments required, taking into account their role in any other oversight function;
 - (c) the criteria to select observer members who may be permitted to join a meeting of the oversight function;
 - (d) the election, nomination or removal and replacement of its members;
 - (e) where applicable, the criteria for choosing the person or function responsible for its overall direction and coordination and for acting as the contact point for the governing body of the benchmark administrator and the Authority;
 - (f) the public disclosure of summary details of its membership;
 - (g) the suspension of voting rights of external members for decisions that would have a direct business impact on the organisation's they represent;
 - (h) requiring members to disclose any perceived or potential conflict of interest before discussion of an agenda item during meetings of the oversight function and the recording of such declaration in the minutes of the meeting;
 - (i) the exclusion of members from specific discussions in respect of which they have a potential or perceived conflict of interest and the recording of the exclusion in the minutes of the meeting;
 - (j) its access to all documentation necessary to carry out its duties;
 - (k) the management of any disputes within it;
 - (l) measures to be taken in respect of breaches of the code of conduct, where appropriate;
 - (m) the notification to the Authority of any suspected misconduct by benchmark contributors or the benchmark administrator and of any anomalous or suspicious input data; and
 - (n) the prevention of improper disclosure of confidential or sensitive information received, produced or discussed by the oversight function.
- (2) The policies and procedures referred to in subparagraph (1) must be documented and must be made available to the Authority upon request.

14. Duties of the oversight committee

- (1) An oversight committee must hold at least one meeting every four months and must keep minutes of each such meeting.
- (2) An oversight committee must-
 - (a) operate with integrity;
 - (b) operate honestly, fairly, with due skill, care and diligence;
 - (c) review the benchmark's definition and methodology at least annually;
 - (d) oversee any changes to the benchmark methodology and request the benchmark administrator to consult on such changes;
 - (e) oversee the benchmark administrator's control framework, the management and operation of the benchmark, and, where the benchmark is based on input data from benchmark contributors, the code of conduct;
 - (f) review and approve procedures for cessation of the benchmark, including any consultation about a cessation;
 - (g) oversee any third party involved in the provision of the benchmark, including calculation or dissemination agents;
 - (h) assess internal and external audits or reviews, and monitor the implementation of identified remedial actions;
 - (i) where the benchmark is based on input data from benchmark contributors,
 - (i) monitor the input data and contributors and the actions of the benchmark administrator in challenging or

- validating contributions of input data; and
- (ii) take effective measures in respect of any breaches of the code of conduct;
- (j) report to the Authority any misconduct by contributors, where the benchmark is based on input data from benchmark contributors, or benchmark administrators, of which it becomes aware, and any anomalous or suspicious input data;
- (k) assess, and where appropriate challenge, the decisions of the governing body of the benchmark administrator with regards to benchmarks provision;
- (l) address all recommendations on benchmark oversight to the governing body; and
- (m) where it becomes aware that the governing body has acted or intends to act contrary to any recommendations resulting from a decision of the oversight function, it must record this fact clearly in the minutes of its next meeting, or in its record of decisions.

15. Business continuity

- (1) A benchmark administrator must-
 - (a) maintain a business continuity plan which adequately identifies and mitigates material business continuity risks faced by the benchmark administrator, including continuity and succession planning for management and employees; and
 - (b) regularly test the effectiveness of the continuity plan and address any deficiencies.

CHAPTER 6 Conflicts of interest and complaints handling

16. Requirements for identifying and managing conflicts of interest

- (1) A benchmark administrator must –
 - (a) establish and operate adequate policies and procedures, as well as effective organisational arrangements, for the identification, prevention, management, and disclosure of any perceived and actual conflicts of interest between employees or any other person in order to protect the integrity and independence of benchmark determinations; and
 - (b) regularly review the policies and procedures referred to in subparagraph (a) and document any changes thereto.
- (2) The policies and procedures referred to in subparagraph (1) must –
 - (a) ensure the confidentiality of information contributed to or produced by the benchmark administrator, subject to the disclosure and transparency obligations under this Conduct Standard; and
 - (b) take into account and address conflicts of interest, the degree of discretion exercised in the benchmark determination process and the risks that the benchmark poses.
- (3) A benchmark administrator must ensure that its business operations, including all staff who perform or otherwise participate in benchmark provision responsibilities, are operationally separated from any part of its business that may create an actual, potential or perceived conflict of interest.
- (4) A benchmark administrator must-
 - (a) report all existing or potential conflicts of interest to the Authority;
 - (b) disclose all existing or potential conflicts of interest to benchmark users, and, where relevant, to contributors, including conflicts of interest arising from the ownership or control of the benchmark administrator.
- (5) The policies and procedures referred to in subparagraph (1) must be reviewed and updated regularly and must-
 - (a) ensure that benchmark calculations are not influenced by the existence of, or potential for, a commercial or personal business relationship or interest between the benchmark administrator or its affiliates, its personnel, clients, any market participant or persons connected with them;
 - (b) ensure that personal interests and business connections of the benchmark administrator's personnel are not permitted to compromise the benchmark administrator's functions, including outside employment, travel, and acceptance of entertainment, gifts and hospitality provided by the benchmark administrator's clients or other commodity market participants;
 - (c) ensure, in respect of identified conflicts, appropriate segregation of functions within the benchmark administrator by way of supervision, compensation, systems access and information flows;
 - (d) protect the confidentiality of information submitted to or produced by the benchmark administrator, subject to the disclosure obligations of benchmark administrator;

- (e) prohibit managers, assessors and other employees of the benchmark administrator from contributing to a benchmark calculation by way of engaging in bids, offers and trades on either a personal basis or on behalf of market participants; and
- (f) effectively address any identified conflict of interest which may exist between the benchmark administrator's provision of a benchmark (including all employees who perform or otherwise participate in benchmark calculation responsibilities), and any other business of the benchmark administrator.

17. Complaints handling

- (1) A benchmark administrator must have in place and publish on its website a complaints' handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made against the benchmark administrator.
- (2) An benchmark administrator must regularly review its complaints handling policy referred to in subparagraph (1) and document any changes thereto.
- (3) The complaint mechanisms must be adequate and effective to ensure the fair treatment of complainants that does not impose unreasonable barriers to complainants.
- (4) An benchmark administrator must record and categorise complaints in accordance with the following minimum categories-
 - (a) complaints relating to whether a specific benchmark calculation is representative of market value;
 - (b) complaints relating to proposed benchmark calculation changes;
 - (c) complaints relating to applications of methodology in relation to a specific benchmark calculation; and
 - (d) complaints relating to other editorial decisions in relation to the benchmark calculation processes;
- (5) Complaints information recorded in accordance with this paragraph must be scrutinised and analysed by a benchmark administrator on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for benchmark users, and to prevent recurrences of poor outcomes and errors.
- (6) A benchmark administrator must establish and maintain appropriate processes for reporting of the information in subparagraph (4) and (5) to its governing body and oversight function.
- (7) A benchmark administrator must ensure that –
 - (a) complaints are investigated and handled fairly, effectively and in good time and within target time period as set out in the complaints handling policy referred to in subparagraph (1);
 - (b) the investigation referred to in item (a) is conducted independently of any personnel who may be involved in the subject of the complaint;
 - (c) the complainant and any other relevant parties are advised of the outcome of the investigation in writing and within a reasonable period;
 - (d) there is recourse to an independent third party appointed by the benchmark administrator if a complainant is dissatisfied with the way a complaint has been handled by the relevant benchmark administrator
 - (e) a decision in relation to a complaint may be reviewed or appealed, and allow for a period of not less than six months from the time of the original complaint for such request for review or appeal to be lodged; and
 - (f) all documents relating to a complaint, including those submitted by the complainant as well as a benchmark administrator's own record, are retained for a minimum of five years.
- (8) Disputes as to daily pricing determinations, which are not formal complaints, must be resolved by benchmark administrator with reference to its appropriate standard procedures.
- (9) If a complaint results in a change in price, a benchmark administrator must communicate the details of that change in price to the market as soon as possible.

CHAPTER 7 **Requirements related to benchmarks**

18. Benchmark statement

- (1) Within 30 days of being licensed as a benchmark administrator, a benchmark administrator must publish on its website a benchmark statement for each benchmark or, where applicable, for each family of benchmarks, that may be used in the Republic in accordance with this Chapter.
- (2) A benchmark administrator must, when it provides a new benchmark or family of benchmarks for the first time –
 - (a) within two weeks of first publication of the benchmark publish a benchmark statement for each new benchmark

- or, where applicable, family of benchmarks on its website; and
 - (b) ensure that the benchmark statements referred to in item (a) is easily accessible.
- (3) A benchmark administrator must review and, where necessary, update the benchmark statement for each benchmark or family of benchmarks at least every 24 months, and in the event of any changes to the information to be provided under this paragraph.
- (4) A benchmark administrator must ensure that a benchmark statement –
 - (a) clearly and unambiguously defines the market or economic reality measured by the benchmark and the circumstances in which such measurement may become unreliable;
 - (b) lay down technical specifications that clearly and unambiguously identify-
 - (i) the elements of the calculation of the benchmark in relation to which discretion may be exercised;
 - (ii) the criteria applicable to the exercise of such discretion; and
 - (iii) the position of the persons that may exercise discretion, and how such discretion may be subsequently evaluated;
 - (c) provide notice of the possibility that factors, including external factors beyond the control of the benchmark administrator, may necessitate changes to, or the cessation of, the benchmark; and
 - (d) advise benchmark users that changes to, or the cessation of, the benchmark may have an impact upon the financial contracts and financial instruments that reference the benchmark or the measurement of the performance of investment funds.
- (5) A benchmark administrator must ensure that a benchmark statement contain at least the –
 - (a) definitions for all key terms relating to the benchmark;
 - (b) rationale for adopting the benchmark methodology and procedures for the review and approval of the methodology;
 - (c) criteria and procedures used to determine the benchmark, including a description of the input data, the priority given to different types of input data, the minimum data needed to determine a benchmark, the use of any models or methods of extrapolation and any procedure for rebalancing the constituents of a benchmark's index;
 - (d) controls and rules that govern any exercise of judgment or discretion by the benchmark administrator or any benchmark contributors, to ensure consistency in the use of such judgment or discretion;
 - (e) procedures which govern the determination of the benchmark in periods of stress or periods where transaction data sources may be insufficient, inaccurate or unreliable and the potential limitations of the benchmark in such periods;
 - (f) procedures for dealing with errors in input data or in the determination of the benchmark, including when a re-determination of the benchmark is required; and
 - (g) identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.

19. Changes to and cessation of a benchmark

- (1) A benchmark administrator must publish on its website, together with the benchmark statement referred to in paragraph 18, procedure for the actions to be taken by the benchmark administrator in the event of changes to or the cessation of a benchmark which may be used in the Republic .
- (2) The procedure referred to in subparagraph (1) may be drafted, where applicable, for families of benchmarks and must be updated and published on the website of the benchmark administrator whenever a material change occurs.
- (3) A benchmark administrator must, as part of the procedure referred to in subparagraph (1) nominate one or more alternative benchmarks that could be referenced to substitute the benchmarks in the event that it materially changes or ceases to be provided, and indicate why such benchmarks would be a suitable alternative to enable supervised entities to plan the actions that they would take in the event that a benchmark materially changes or ceases to be provided.
- (4) If a benchmark administrator of a critical benchmark intends to cease providing such benchmark, the benchmark administrator must-
 - (a) within 24 hours of the decision by the governing body to cease providing the benchmark notify the Authority of the decision; and
 - (b) within four weeks of such notification submit an assessment to the Authority of how the benchmark-
 - (i) will be transitioned to another licensed benchmark administrator; or
 - (ii) will be ceased to be provided, taking into account the procedure established in subparagraph (1).
- (5) Upon receipt of the assessment of the benchmark administrator referred to in subparagraph (4)(b), the Authority may, determine how the benchmark is to be transitioned to another licensed benchmark administrator or whether the

benchmark must be ceased to be provided, taking into account the benchmark administrator's procedure for cessation of the benchmark.

- (6) During the transition mentioned in subparagraph (5) above, the benchmark administrator may not cease the provision of the benchmark without the written approval of the Authority.
- (7) Following completion of the assessment referred to in subparagraph (4)(b), the benchmark administrator must continue to publish the benchmark on its website until such time as the provision of the benchmark has been transitioned to another licensed benchmark administrator; or the Authority approves the cessation of the provision of the benchmark in writing.
- (8) Despite subparagraph (5), in the event that insolvency proceedings are instituted against a benchmark administrator of a critical benchmark, the Authority may undertake a review of whether and how the critical benchmark could be transitioned to a new administrator and how the provision of the critical benchmark can cease to be provided in an orderly and appropriate manner.
- (9) The Authority may direct the benchmark administrator to secure an independent review in terms of subparagraph (8), at the cost of the benchmark administrator, by an independent third party to be approved by the Authority.

CHAPTER 8

Input data, methodology and reporting requirements

20. General requirements related to Input data

- (1) A benchmark administrator must ensure that input data -
 - (a) is sufficient to accurately and reliably represent the market or economic reality that the benchmark is intended to measure;
 - (b) is based on concluded and reported transactions (to the extent available and appropriate); and
 - (c) is objectively verifiable.
- (2) A benchmark administrator must -
 - (a) draw up and publish on its website clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgment, to ensure compliance with subparagraph (1) and its methodology;
 - (b) where a benchmark is based on input data from benchmark contributors, obtain, where appropriate, the input data from a reliable and representative panel or sample of benchmark contributors to ensure that the resulting benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure.
- (3) A benchmark administrator may not use input data from a benchmark contributor if the benchmark administrator has any indication that the benchmark contributor does not adhere to the code of conduct contemplated in paragraph 30.
- (4) Where transaction data is not sufficient or is not appropriate to accurately and reliably represent the market or economic reality that the benchmark is intended to measure, the benchmark administrator may use input data which is not transaction data, including estimated prices, quotes and committed quotes, or other values.
- (5) A benchmark administrator must ensure the availability of all information necessary to check, where applicable, that-
 - (a) the submitter has been authorised to contribute input data on behalf of the benchmark contributor in accordance with any requirement for authorisation;
 - (b) the input data is provided by the benchmark contributor or is selected from a source specified by the benchmark administrator, within the time-period as required by the benchmark administrator;
 - (c) the input data is provided by the benchmark contributor in a format as specified by the benchmark administrator;
 - (d) the input data is contributed from the input data sources which are reliable;
 - (e) the input data meets the requirements set out in the methodology relating to, in particular the requirements on the currency or the unit of measurement, the tenor, and the types of counterparties;
 - (f) relevant thresholds for the quantity of input data and standards for the quality of input data are met in accordance with the methodology;
 - (g) the priority of use of different types of input data are applied in accordance with the methodology; and
 - (h) the exercise of any discretion or expert judgment in the contribution of input data is applied within the limits of the methodology and the code of conduct set by the benchmark administrator.
- (6) For the purposes of subparagraph (3), a benchmark administrator must rely on information retained in accordance with the record-keeping requirements contemplated in paragraph 38.
- (7) A benchmark administrator must on a regular basis review the input data in accordance with subparagraph (2).
- (8) Where the contribution of input data relies on expert judgement, a benchmark administrator must ensure that the policies

of a benchmark contributor in relation of the use of judgment or the exercise of discretion must include at least:

- (a) A framework for ensuring consistency between different submitters, and consistency over time, in relation to the use of judgment or the exercise of discretion;
- (b) identification of the information that may be used to support expert judgment or discretion, and of any information that may not be taken into account; and
- (c) procedures for the systematic review of any use of expert judgment.

21. Input data for interest rate benchmarks

- (1) The priority of use of input data for interest rate benchmarks must be as follows:
 - (a) A benchmark contributor's transactions in the underlying market that a benchmark intends to measure or, if the transactions are not sufficient, its transactions in related markets, including where applicable -
 - (i) the unsecured inter-bank deposit market;
 - (ii) other unsecured deposit markets, including certificates of deposit and commercial paper; and
 - (iii) other markets such as overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options, provided that those transactions comply with the input data requirements set out in the code of conduct contemplated in paragraph 30;
 - (b) a benchmark contributor's observations of third-party transactions in the markets described in subparagraph (a);
 - (c) committed quotes;
 - (d) indicative quotes or expert judgments.
- (2) Input data for interest rate benchmarks may be adjusted by application of the following criteria:
 - (a) Proximity of transactions to the time of provision of the input data and the impact of any market events between the time of the transactions and the time of provision of the input data;
 - (b) interpolation or extrapolation from transaction data; and
 - (c) adjustments to reflect changes in the credit standing of the benchmark contributors.

22. Input data for commodity benchmarks

- (1) A benchmark administrator of a commodity benchmark must-
 - (a) specify the criteria that define the physical commodity that is the subject of a particular methodology;
 - (b) as far practicable and where consistent with its methodologies, give priority to input data in the following order:
 - (i) concluded and reported transactions;
 - (ii) bids and offers;
 - (iii) other information;
 - (c) employ sufficient measures designed to use input data submitted and considered in a benchmark calculation which are bona fide, meaning that the parties submitting the input data have executed, or are prepared to execute, transactions generating such input data and the concluded transactions were executed at arms-length from each other and particular attention must be paid to inter-affiliate transactions;
 - (d) establish and employ procedures to identify anomalous or suspicious transaction data and keep records of decisions to exclude transaction data from the benchmark administrator's benchmark calculation process;
 - (e) encourage benchmark contributors to submit all of their input data that falls within the benchmark administrator's criteria for that calculation;
 - (f) seek to ensure, as far as it is able and reasonable, that input data submitted is representative of the benchmark contributors' actual concluded transactions; and
 - (g) employ a system of appropriate measures to ensure that benchmark contributors comply with the benchmark administrator's applicable quality and integrity standards for input data.
- (2) Where a benchmark administrator of a commodity benchmark is unable to give priority to input data as required in subparagraph (1)(b), such benchmark administrator must, on the request of the Authority, be able to provide sound reasons for its non-compliance.
- (3) A benchmark administrator of a commodity benchmark must describe and publish on its website for each calculation, to the extent reasonable without prejudicing due publication of the benchmark, -
 - (a) a concise explanation, sufficient to facilitate a benchmark user's or the Authority's ability to understand how the calculation was developed including, at a minimum, -
 - (i) the size and liquidity of the physical market being assessed (such as the number and volume of transactions submitted);
 - (ii) the range and average volume and price;

- (iii) indicative percentages of each type of input data that have been considered in a calculation; and
 - (iv) terms referring to the pricing methodology, such as transaction-based, spread-based or interpolated or extrapolated; and
- (b) a concise explanation of the extent to which, and the basis on which, any judgment, including the exclusions of data which otherwise conformed to the requirements of the relevant methodology for that calculation, basing prices on spreads or interpolation, extrapolation, or weighting bids or offers higher than concluded transactions, if any, was used in any calculation.
- (4) The benchmark administrator of a commodity benchmark must -
 - (a) specify the criteria that define who may submit input data to the benchmark administrator;
 - (b) have in place quality control procedures to evaluate the identity of a benchmark contributor and any submitter who reports input data and the authorisation of such submitter to report input data on behalf of a contributor;
 - (c) specify the criteria applied to employees of a benchmark contributor who are permitted to submit input data to a benchmark administrator on behalf of a benchmark contributor;
 - (d) encourage benchmark contributors to submit transaction data from back-office functions and seek corroborating data from other sources where transaction data is received directly from a trader; and
 - (e) implement internal controls and written procedures -
 - (i) to identify communications between benchmark contributors and assessors that attempt to-
 - (aa) influence a calculation for the benefit of any trading position, whether of the benchmark contributor, its employees or any third party; or
 - (bb) cause an assessor to violate the benchmark administrator's rules or guidelines; and
 - (ii) to identify benchmark contributors that engage in a pattern of submitting anomalous or suspicious transaction data; and
 - (iii) to provide for escalation of an inquiry by the benchmark administrator within the benchmark contributor's company, to the extent possible; and
 - (iv) which include cross-checking market indicators to validate submitted information.
- (5) A benchmark administrator of a commodity benchmark must have rules and procedures in place to document relevant information, including:
 - (a) Input data;
 - (b) the judgments that are made by assessors in reaching each benchmark calculation;
 - (c) whether a calculation excluded a particular transaction which otherwise conformed to the requirements of the relevant methodology for that calculation, and the rationale for doing so;
 - (d) the identity of each assessor and of any other person who submitted or otherwise generated any of the information in items (a), (b) or (c).
- (6) A benchmark administrator of a commodity benchmark must have rules and procedures in place to ensure that an audit trail of relevant information is retained for at least five years to document the construction of its calculations.

23. Controls and control framework in respect of input data

- (1) A benchmark administrator must ensure that its controls in respect of input data include-
 - (a) criteria that determine who may contribute input data to the benchmark administrator and a process for selecting benchmark contributors;
 - (b) a process for evaluating a benchmark contributor's input data and for stopping the benchmark contributor from providing further input data, or applying other penalties for non-compliance against the benchmark contributor, where appropriate; and
 - (c) a process for validating input data, including against other benchmark indicators or data, to ensure its integrity and accuracy.
- (2) Where the input data of a benchmark is contributed from a front office function, a benchmark administrator must-
 - (a) obtain data from other sources that corroborate that input data; and
 - (b) ensure that contributors have adequate internal oversight and verification procedures in place.
- (3) Where a benchmark administrator considers that the input data contributed does not represent the market or economic reality that a benchmark is intended to measure, that benchmark administrator must, within 48 hours,-
 - (a) change the input data, the contributors or the methodology in order to ensure that the input data represents the market or economic reality; or
 - (b) cease to provide that benchmark.
- (4) A benchmark administrator must ensure that the control framework of a benchmark contributor include -

- (a) effective oversight of the process for contributing input data, including risk management, the identification of senior personnel responsible for the process, and the involvement, if any, of the compliance and internal audit functions;
 - (b) a policy on whistleblowing, including appropriate safeguards for whistleblowers;
 - (c) a procedure for detecting and managing any matter or incident that may lead to a contravention of this Conduct Standard, including a -
 - (i) review of any detected contravention or error, and
 - (ii) procedure for recording the actions taken to rectify the detected contravention or error;
 - (d) a procedure for detecting and managing breaches of the code of conduct referred to in the Conduct Standard;
 - (e) a periodic review of the process for contributing input data, to be conducted at least annually and whenever there is a change in the applicable code of conduct; and
 - (f) a framework that ensures the integrity, accuracy and reliability of input data and that input data is provided in accordance with this Conduct Standard and the code of conduct referred to in paragraph 30.
- (5) A benchmark administrator must ensure that the control framework consists of effective systems and controls to ensure the integrity and reliability of all contributions of input data to the benchmark administrator, including:
- (a) Controls regarding who may submit input data to a benchmark administrator and where proportionate, a process for sign-off by a natural person holding a position senior to that of the submitter;
 - (b) measures for the management of conflicts of interest, including –
 - (i) organisational separation of employees, where appropriate, and
 - (ii) considerations of how to remove incentives, created by remuneration policies, to manipulate a benchmark;
 - (c) record-keeping, for at least five years in line with the requirements in subparagraph 38(2), of –
 - (i) all communications in relation to provision of input data;
 - (ii) all information used to enable the benchmark contributor to make each submission;
 - (iii) all existing or potential conflicts of interest including, but not limited to, the benchmark contributor's exposure to financial instruments which use a benchmark as a reference; and
 - (d) record-keeping for internal and external audit purposes.

24. Methodology

- (1) A benchmark administrator must use a methodology for determining a benchmark that-
 - (a) is robust and reliable;
 - (b) has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;
 - (c) is rigorous, continuous and capable of validation including, where appropriate, back-testing against available transaction data;
 - (d) is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity; and
 - (e) is traceable and verifiable.
- (2) When developing a benchmark methodology, a benchmark administrator must-
 - (a) take into account factors, such as the size and normal liquidity of the market, the transparency of trading and the positions of market participants, market concentration, market dynamics, and the adequacy of any sample to represent the market or economic reality that the benchmark is intended to measure;
 - (b) determine what constitutes an active market for the purposes of that benchmark; and
 - (c) establish the priority given to different types of input data.
- (3) A benchmark administrator must have in place clear arrangements which are published on its website, that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark is to be calculated in such circumstances.
- (4) The benchmark administrator of a commodity benchmark must formalise, document, and make public any methodology that the benchmark administrator uses for a benchmark calculation.
- (5) At a minimum, the methodology referred to in subparagraph (4) must contain and describe the following:
 - (a) All criteria and procedures that are used to develop the benchmark, including-
 - (i) how the benchmark administrator uses input data including the specific volume, concluded and reported transactions, bids, offers and any other market information in its assessment or assessment time periods or windows;
 - (ii) why a specific reference unit is used;
 - (iii) how the benchmark administrator collects such input data;

- (iv) the guidelines that control the exercise of judgement by assessors; and
- (v) any other information, such as assumptions, models or extrapolation from collected data that are considered in making an assessment;
- (b) procedures and practices that are designed to ensure consistency between its assessors in exercising their judgment;
- (c) the relative importance that must be assigned to each criterion used in benchmark calculation, in particular the type of input data used and the type of criterion used to guide judgment so as to ensure the quality and integrity of the benchmark calculation;
- (d) criteria that identify the minimum amount of transaction data required for a particular benchmark calculation, and if no such threshold is provided for, the reasons why a minimum threshold is not established, including setting out the procedures to be used where no transaction data exist;
- (e) criteria that-
 - (i) address the assessment periods where the submitted data fall below the methodology's recommended transaction data threshold or the requisite benchmark administrator's quality standards, including any alternative methods of assessment including theoretical estimation models; and
 - (ii) explain the procedures to be used where no transaction data exist;
- (f) criteria for timeliness of contributions of input data and the means for such contributions of input data whether electronically, by telephone or otherwise;
- (g) criteria and procedures that-
 - (i) address assessment periods where one or more benchmark contributors submit input data that constitute a significant proportion of the total input data for that benchmark
 - (ii) define what constitutes a significant proportion for each benchmark calculation;
- (h) criteria according to which transaction data may be excluded from a benchmark calculation.

25. Transparency of methodology

- (1) A benchmark administrator must develop and administer the benchmark and methodology in a clear and transparent manner.
- (2) For purposes of subparagraph (1), a benchmark administrator must publish on its website at least the following information, as applicable to the relevant benchmark and input data used:
 - (a) A definition and description of the benchmark and of the market or economic reality it is intended to measure;
 - (b) the currency or other unit of measurement of the benchmark;
 - (c) the criteria used by the benchmark administrator for selecting the sources of input data;
 - (d) types of input data used and the priority given to each type;
 - (e) the composition of any panel of benchmark contributors and the criteria determining eligibility for panel membership;
 - (f) a description of the constituent elements of a benchmark and the criteria used for their selection and for assigning weights to them;
 - (g) any minimum liquidity requirements for the constituent elements of the benchmark;
 - (h) any minimum requirements for the quantity of input data and minimum standards for the quality of input data;
 - (i) rules identifying how and when discretion may be exercised in the determination of the benchmark;
 - (j) whether the benchmark takes into account any reinvestment of dividends and coupons paid by its constituent elements;
 - (k) where the methodology is changed periodically to remain representative, any criteria used to-
 - (i) determine when such a change is necessary;
 - (ii) determine the frequency of such a change; and
 - (iii) rebalance the constituent elements of the benchmark in the process of such a change;
 - (l) limitations of the methodology and details of the applicable methodology in exceptional circumstances such as in illiquid markets or in periods of stress or where transaction data sources may be insufficient, inaccurate or unreliable;
 - (m) details of the roles of any third parties involved in data collection for, or the computation or dissemination of, the benchmark; and
 - (n) the method used for the extrapolation and any interpolation of data.
- (3) A benchmark administrator of significant benchmarks may choose not to disclose the detail in subparagraph (2)(m) and (n).

- (4) In addition to subparagraph (2), a benchmark administrator must, where the methodology is changed periodically to remain representative of the market or economy which the designated benchmarks is intended to record, make publicly available and readily accessible to interested parties any criteria used to-
 - (a) determine when such a change is necessary;
 - (b) determine the frequency of such a change; and
 - (c) re-balance the constituent elements of the benchmark in the process of such a change.
- (5) The benchmark administrator of a commodity benchmark must-
 - (a) adopt and make public the rationale of any proposed material change in its methodology; and
 - (b) have in place explicit procedures to comply with item (a), which must be consistent with the overriding objective that the benchmark administrator must ensure the continued integrity of its benchmark calculations and implement changes for good order of the particular market to which such changes relate.
- (6) The procedures referred to in subparagraph (5)(b) must provide for-
 - (a) advance notice in a clear time frame that gives benchmark users sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the benchmark administrator's calculation of the overall circumstances;
 - (b) benchmark users' comments, and the benchmark administrator's response to those comments, to be published on the benchmark administrator's website after any given consultation period, except where the commentator has requested confidentiality;
 - (c) regularly examination of its methodologies for the purpose of ensuring that it reliably reflects the physical market under assessment;
 - (d) a process for taking into account the views of relevant benchmark users;
 - (e) criteria that define the physical commodity that is the subject of a particular methodology;
 - (f) formalisation, documentation, and the publication of any methodology that the benchmark administrator uses for a benchmark calculation, including –
 - (i) the rationale for adopting a particular methodology, and any price adjustment techniques and a justification of why the time period or window within which input data is accepted is a reliable indicator of physical market values;
 - (ii) the procedure for internal review and approval of a given methodology, as well as the frequency of such review; and
 - (iii) the procedure for external review of a given methodology, including the procedures to gain market acceptance of the methodology through consultation with benchmark users on important changes to their benchmark calculation processes;
 - (g) the publication on its website of the key elements of the methodology that the benchmark administrator uses for each commodity benchmark provided or, when applicable, for each family of benchmarks provided;
 - (h) the criteria that define the physical commodity that is the subject of a particular methodology.

26. Elements of the internal review of the methodology to be published

- (1) A benchmark administrator must publish on its website the following information regarding the internal review and approval of the methodology of a benchmark:
 - (a) Any policies and procedures relating to the internal review or approval;
 - (b) details of any specific events that may give rise to an internal review including details of any mechanism used by the benchmark administrator to determine whether the methodology is traceable and verifiable;
 - (c) the bodies or functions within the benchmark administrator's organisational structure that are involved in reviewing and approving the methodology;
 - (d) the roles performed by any persons involved in reviewing and approving the methodology; and
 - (e) a description of the procedure for the nomination and removal of the persons involved in reviewing and approving the methodology.
- (2) A benchmark administrator of a significant benchmark may choose not to publish the information described in subparagraphs (1)(d) and (e).

27. Significant changes to methodology

- (1) A benchmark administrator must establish, document, maintain and apply procedures that provide for all of the following:
 - (a) public notice of a proposed significant change to the methodology of a benchmark;
 - (b) definition of what constitutes a material change to the benchmark methodology;

- (c) the provision of comments by benchmark users and other members of the public on the proposed significant change and its effect on the designated benchmark;
 - (d) the publication of any comments received on the website of the benchmark administrator, unless the commentator has requested that their comments be confidential, and the designated benchmark administrator's response to the comments that are published on its website; and
 - (e) advance public notice in a clear time frame of an implemented significant change to the methodology of the designated benchmark.
- (2) For the purposes of subparagraph (1),
- (a) the procedures in relation to the public notice under subparagraph (1)(a) must provide that notice of the proposed change be published on the website of the benchmark administrator on or before a date that provides benchmark users and other members of the public with reasonable time to consider and comment on the proposed change;
 - (b) the procedures in relation to the publication of comments under subparagraph (1)(c) may permit a part of a written comment to be excluded from publication if -
 - (i) the benchmark administrator considers that disclosure of that part of the comment would be seriously prejudicial to the interests of the benchmark administrator or would contravene privacy laws; and
 - (ii) the benchmark administrator includes, with the publication, a description of the nature of the comment; and
 - (c) the procedures in relation to the public notice subparagraph (1)(a) must provide that notice of the implemented change be published on or before an effective date that provides benchmark users and other members of the public with reasonable time to consider the implemented change.

28. Reporting requirements

- (1) A benchmark administrator must establish adequate systems and effective controls to ensure the integrity of input data to be able to identify and report to the Authority any conduct that may involve manipulation or attempted manipulation of a benchmark.
- (2) A benchmark administrator must monitor input data and benchmark contributors to be able to notify the Authority and provide all relevant information where the benchmark administrator suspects that, in relation to a benchmark, any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark.
- (3) A benchmark administrator must report any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark to the Authority;
- (4) For purposes of subparagraph (3), the Authority may determine the form, manner and content of the notification by notice on its website.
- (5) A benchmark administrator must have policies and procedures in place for its employees and any other natural persons whose services are placed at its disposal or under its control to report to the governing body on any matter of which the constitutes a contravention of this Conduct Standard.

29. False, misleading or deceptive statements in relation to benchmarks

- (1) A benchmark administrator may not-
 - (a) make a false, misleading or deceptive statement in the course of arrangements for the setting of a relevant benchmark;
 - (b) perform any act or engage in any course of conduct which creates a false or misleading impression as to the price or value of any investment or as to the interest rate appropriate to any transaction which may affect the setting of a relevant benchmark;
 - (c) directly or indirectly, make or publish on its website in respect of a benchmark traded on a regulated market, or in respect of the past or future performance of a benchmark traded on a regulated market—
 - (i) any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the benchmark administrator knows, or ought reasonably to know, is false, misleading or deceptive; or
 - (ii) any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the benchmark administrator knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.
- (2) A benchmark administrator must report any instances of false or misleading information being provided by a benchmark contributor to the Authority as prescribed in paragraph 28.

CHAPTER 9
Requirements relating to benchmark contributors

30. Code of conduct

- (1)
 - (a) Where a benchmark is based on input data from benchmark contributors, the benchmark administrator must develop a code of conduct for each benchmark or family of benchmarks clearly specifying benchmark contributors' responsibilities with respect to the contribution of input data.
 - (b) A benchmark administrator must be satisfied that benchmark contributors adhere to the code of conduct on a continuous basis and assess compliance at least annually or when there are changes made to it.
- (2) The code of conduct referred to in subparagraph (1)(a) must comply with this Conduct Standard and include at least the following elements:
 - (a) A clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with paragraphs 20 and 24;
 - (b) identification of the persons that may contribute input data to the benchmark administrator and procedures to verify the identity of a benchmark contributor and any submitters, as well as authorisation of any submitters that contribute input data on behalf of a benchmark contributor;
 - (c) the systems and controls that a benchmark contributor is required to establish, including:
 - (i) procedures for contributing input data, including requirements for the benchmark contributor to specify whether input data is transaction data and whether input data conforms to the benchmark administrator's requirements;
 - (ii) policies to ensure that a benchmark contributor provides all relevant input data;
 - (iii) policies on the use of discretion in contributing input data;
 - (iv) any requirement for the validation of input data before it is provided to the benchmark administrator;
 - (v) record-keeping policies;
 - (vi) reporting requirements concerning suspicious input data;
 - (vii) requirements concerning the management of conflicts of interest;
 - (d) measures to avoid the provision of –
 - (i) any false or misleading information in connection with input data by a benchmark contributor; and
 - (ii) any information that a benchmark contributor knew or believed, or ought reasonably to have known or believed, to be false or misleading.
- (3) The benchmark administrator of a critical benchmark must –
 - (a) ensure that the code of conduct makes provision for the continued contribution of input data in the event that a critical benchmark is to be ceased to be provided, and ensure that each benchmark contributor to that critical benchmark must continue to contribute input data for an appropriate period of time and until –
 - (i) the provision of the critical benchmark has been transitioned to another licensed benchmark administrator or to an alternative benchmark;
 - (ii) the critical benchmark can be ceased to be provided in an appropriate and orderly manner.
 - (b) submit the code of conduct referred to in subparagraph (1)(a) to the Authority for approval at least 30 days prior to the adoption thereof by the benchmark administrator and the benchmark contributor to the critical benchmark.
- (4) The Authority may require the benchmark administrator to adjust the code of conduct submitted to it in terms of subparagraph (3)(b) and ensure that it complies with the requirements as may be stipulated by the Authority during its assessment of the code of conduct.

31. Governance requirements of the benchmark contributor

- (1) A benchmark administrator must ensure that a benchmark contributor from whom it receives input data, apply appropriate governance requirements including measures to ensure –
 - (a) that the provision of input data is not affected by any existing or potential conflict of interest; and
 - (b) where any discretion is required, it is independently and honestly exercised based on relevant information, and in accordance with the code of conduct referred to in paragraph 30.

32. Requirements for benchmark contributors to interest rate benchmarks

- (1) A benchmark administrator that provides an interest rate benchmark must ensure that the benchmark contributor complies with the following requirements, in addition to the requirements set out in paragraph 14:
 - (a) A benchmark contributor's submitter and the supervisor responsible for the oversight of the activities of that submitter must acknowledge in writing that they have read the code of conduct and that they will comply with it;
 - (b) a benchmark contributor's systems and controls must include-
 - (i) an outline of responsibilities within each institution, including internal reporting lines and accountability, the location of submitters and managers and the names of relevant individuals and alternates;
 - (ii) internal procedures for sign-off of contributions of input data;
 - (iii) disciplinary procedures in respect of attempts to manipulate, or any failure to report, actual or attempted manipulation by parties external to the contribution process;
 - (iv) effective conflicts of interest management procedures and communication controls, both within contributors and between contributors and other third parties, to avoid any inappropriate external influence over those responsible for submitting rates;
 - (v) measures to ensure submitters work in locations physically separated from interest rate derivatives traders;
 - (vi) effective procedures to prevent or control the sharing of information between persons engaged in activities involving a risk of conflict of interest where the sharing of that information may affect the benchmark data contributed;
 - (vii) rules to avoid collusion among contributors, and between contributors and the benchmark administrators;
 - (viii) measures to prevent, or limit, any person from exercising inappropriate influence over the way in which persons involved in the provision of input data carries out those activities;
 - (ix) the removal of any direct link between the remuneration of employees involved in the provision of input data and the remuneration of, or revenues generated by, persons engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (x) controls to identify any reverse transaction subsequent to the provision of input data.
- (2) A benchmark administrator must ensure that a benchmark contributor to an interest rate benchmark keeps detailed records of-
 - (a) all relevant aspects of contributions of input data;
 - (b) the process governing input data determination and the sign-off of input data;
 - (c) the names of submitters and their responsibilities;
 - (d) any communications between the submitters and other persons, including internal and external traders and brokers, in relation to the determination or contribution of input data;
 - (e) any interaction of submitters with the benchmark administrator or any calculation agent;
 - (f) any queries regarding the input data and their outcome of those queries;
 - (g) sensitivity reports for interest rate swap trading books and any other derivative trading book with a significant exposure to interest rate fixings in respect of input data.
- (3) The records referred to in subparagraph (2), must be kept on a durable medium that allows the storage of information to be accessible for future reference with a documented audit trail.
- (4) A benchmark administrator must ensure that-
 - (a) the compliance function of the benchmark contributor to an interest rate benchmark is so positioned that it may report any findings, including reverse transactions, to management on a regular basis;
 - (b) input data and procedures are subject to regular internal reviews.
- (5) A benchmark administrator must ensure that a regular external audit be conducted of the input data of a benchmark contributor to an interest rate benchmark to measure compliance with the code of conduct and the provisions of this Conduct Standard.
- (6) For purposes of subparagraph (5), the external audit must be carried out within 6 months after the benchmark administrator is granted a license, and on a regular basis thereafter, at least every 24 months.

33. Internal oversight and verification procedures of a benchmark contributor

- (1) Where input data is contributed from a front office function, a benchmark administrator must ensure that the benchmark contributor has an internal oversight procedure in place that describes-
 - (a) the respective roles of the three levels of control functions;
 - (b) regular reporting of the operations of the three levels of control functions to the senior management of the benchmark contributor; and

- (c) communication to the benchmark administrator, upon request, of information requested by the benchmark administrator relating to the benchmark contributor's internal oversight and verification procedures.
- (2) A benchmark administrator must ensure that the first level of control function of the benchmark contributor is responsible for -
 - (a) effective verification of input data prior to contribution in accordance with any requirement for the validation of input data to which it is subject pursuant to paragraph 23(1)(c);
 - (b) the review of input data prior to contribution to verify its integrity and accuracy;
 - (c) verifying that the submitter is authorised to contribute input data on behalf of the benchmark contributor;
 - (d) the restriction of contributed input data to persons involved in the contribution process, except where access is justified under the rules and procedures of the benchmark contributor, such as for persons involved in audits related to the contribution of input data or persons involved in investigations relating to suspicious input data or errors.
- (3) A benchmark administrator must ensure that the second level of control function of the benchmark contributor is responsible for-
 - (a) the review of input data after contribution, that is independent from the first level control function, in relation to the integrity and accuracy of the contributions;
 - (b) the maintenance of a whistleblowing procedure that includes appropriate safeguards for whistleblowers;
 - (c) the maintenance of procedures for the internal reporting of any attempted or actual manipulation of input data;
 - (d) monitoring and identification of any failure to comply with the benchmark contributor's benchmark-related policies and procedures as well as for the investigation of such events as soon as they become apparent;
 - (e) the maintenance of internal reporting procedures for any operational problems in the contribution process, as soon as they arise;
 - (f) the maintenance of a physical presence of a staff member from the second level control function in the front office;
 - (g) surveillance of communications between front office function staff directly involved in contributions and between front office function directly involved in contributions and other internal functions or external bodies.
 - (h) the establishment and maintenance of a conflicts of interest policy that covers at least the following matters:
 - (i) the identification and disclosure to the benchmark administrator of actual or potential conflicts of interesting relation to the contributor's front office staff who are involved in the contribution process;
 - (ii) the separation of the remuneration of a submitter from the value of the benchmark, the specific values of the submissions made and any performance of an activity of the benchmark contributor that might give rise to a conflict of interest related to the contribution to the benchmark;
 - (iii) a clear segregation of duties between front office staff involved in contributing input data and other front office staff;
 - (iv) a physical separation between front office staff involved in contributing input data and other front office staff;
 - (v) effective procedures to control the sharing of information between front office staff and other staff of the contributor involved in activities that may create a risk of conflicts of interest, where that information may affect the input data contributed;
 - (vi) contingency provisions in case of temporary disruption of the controls regarding the sharing of information referred to in *sub-item(v)*; and
 - (vii) measures to prevent any person from exercising inappropriate influence over the way in which front office staff involved in contributing input data carry out their activities.
- (2) A benchmark administrator must ensure that the third level of control function of the benchmark contributor is independent from the first two levels of control and responsible for performing checks, on a regular basis on the controls exercised by the first two levels of control.

34. Submitters

- (1) The code of conduct referred to in paragraph 30 must provide that a person may only act as a submitter of input data on behalf of a benchmark contributor when a benchmark contributor is satisfied that the person has the necessary skills, knowledge, training and experience for the role.
- (2) The code of conduct referred to in paragraph 30 must describe the due diligence process that a benchmark contributor must undertake before being satisfied that a person has the necessary skills, knowledge, training and experience to submit input data on its behalf.
- (3) The due diligence process referred to in subparagraph (2) must include verification of -

- (a) the identity of the potential submitter;
 - (b) the qualifications of the potential submitter; and
 - (c) the reputation of the potential submitter, including whether the potential submitter has previously been excluded by any benchmark contributor from submitting input data to a benchmark for reasons of misconduct.
- (4) The code of conduct referred to in paragraph 30 must state the method by which a benchmark contributor is to notify the benchmark administrator of the identity of its submitters.

35. Policies to ensure that a benchmark contributor provides all relevant input data

- (1) The code of conduct referred to in paragraph 30 must require that a benchmark contributor has at least the following policies in place to ensure that a benchmark contributor provides all relevant input data:
 - (a) An input data policy that includes at least a description of:
 - (i) the data to be taken into account in determining the input data contribution; and
 - (ii) the data that a benchmark contributor may exclude from a contribution of input data and any reason that might justify such an exclusion;
 - (b) A policy on the transmission of data to the benchmark administrator that includes -
 - (i) details of the method to be used for the secure transfer of data; and
 - (ii) contingency plans for submitting input data that address, at least, the following elements:
 - (aa) technical and operational difficulties,
 - (bb) the temporary absence of a submitter, and
 - (cc) a lack of input data required by the methodology.
- (2) Where input data relies on expert judgement, a benchmark contributor must establish, in addition to the systems and controls referred to in paragraph 23, policies guiding any use of judgement or exercise of discretion and must retain records of the rationale for any such judgement or discretion.
- (3) A benchmark administrator must ensure that the benchmark contributor fully cooperates with the benchmark administrator and the Authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with paragraph 38.

36. Systems and controls over input data

- (1) The code of conduct must specify that the effective systems and controls that a benchmark contributor must have in place provide for at least the following:
 - (a) Pre-contribution checks to identify suspicious input data, including effective verification processes in the form of a review of the data by a second person, and unusual data values;
 - (b) post-contribution checks to verify the input data has been contributed in accordance with the requirements of the code of conduct and to identify suspicious input data; and
 - (c) monitoring of the transfer of input data to the benchmark administrator in accordance with the applicable policies.
- (2) A code of conduct referred to in paragraph 30 may allow the use of an automated system for the contribution of input data, in which natural persons are not able to modify the contribution of input data, on condition that the benchmark contributor using an automated system-
 - (a) is able to monitor the proper functioning of the automated system on a continuous basis; and
 - (b) checks the automated system following any update or change to its software, before new input data is contributed.
- (3) The code of conduct referred to in paragraph 30 must define the procedures that a benchmark contributor must have in place to address any errors in the contributed input data.
- (4) The code of conduct referred to in paragraph 30 must require that a benchmark contributor regularly reviews, at least annually, the systems and controls established in relation to the contribution of input data.

37. Policies on the use of discretion when contributing input data

Where the code of conduct referred to in paragraph 30 allows the benchmark contributor to use discretion in contributing input data, it must require the benchmark contributor to establish policies on the use of discretion that specify at least the following:

- (a) The circumstances in which the benchmark contributor may exercise discretion;
- (b) the persons within the benchmark contributor that are permitted to exercise discretion;
- (c) any internal controls that govern the exercise of the benchmark contributor's discretion in accordance with its policies;

- (d) any persons within the benchmark contributor that may evaluate ex-post the exercise of discretion.

38. Record-keeping

- (1) The code of conduct referred to in paragraph 30 must require a benchmark contributor to keep a record of all relevant information necessary to check the benchmark contributor's adherence to the code of conduct, including a record of at least the following information:
 - (a) Policies and procedures governing the contribution of input data and any relevant changes;
 - (b) the register of conflicts of interest established;
 - (c) any disciplinary action taken against any of the benchmark contributor's staff in respect of benchmark-related activities;
 - (d) a list of submitters and persons performing checks in respect of contributions, including their names and roles within the benchmark contributor, and the dates when the submission-related roles were authorised and exited;
 - (e) in respect of each contribution of input data:
 - (i) The contribution of input data;
 - (ii) the data taken into account in determining the input data contribution, and any data that was excluded;
 - (iii) any use of discretion when contributing input data;
 - (iv) any input data checks undertaken by the benchmark contributor;
 - (v) communications in relation to the contribution of input data between the submitter and any persons within the benchmark contributor performing checks in respect of contributions, including the contributions made by and the names of the submitters.
 - (f) records of all internal and external audits, including the audit brief, the audit report, and a record of actions taken in response to each audit;
 - (g) the benchmark contributor's exposure to financial instruments that use the benchmark as a reference, including the type of activity of the benchmark contributor that gives rise to the exposure, provided that this subparagraph does not apply in the case of contributions to significant benchmarks.
- (2) The code of conduct referred to in paragraph 30 must require the record-keeping policies to provide that information be kept in a safe place for a minimum of five years, on a durable medium that allows the storage of information to be accessible for future reference.

39. Reporting of suspicious input data

- (1) The code of conduct referred to in paragraph 30 must require a benchmark contributor to establish documented internal procedures that provide for its staff to report any suspicious input data to the benchmark contributor's compliance function, if any, or to the benchmark contributor's governing body.
- (2) The code of conduct referred to in paragraph 30 must specify the conditions under which a benchmark contributor must report suspicious input data to the benchmark administrator and must specify the method in which the benchmark contributor must contact the benchmark administrator.
- (3) A benchmark administrator must inform the Authority within 48 hours of reports received in terms of subparagraph (2).

40. Control framework for submitters

- (1) A benchmark administrator must ensure that -
 - (a) the systems and controls of a benchmark contributor include a documented and effective process for contributing input data, and including at least:
 - (i) A process for the designation of submitters and procedures for making contributions when a submitter is unexpectedly unavailable, including the designation of alternates; and
 - (ii) procedures and systems for monitoring the data used for the contributions, and the contributions, which should be capable of producing alerts in line with predefined parameters;
 - (b) the controls of a benchmark contributor include a process for approval of a contribution by a natural person senior to the submitter-
 - (i) when it is required by the applicable code of conduct; or
 - (ii) when the benchmark contributor that it a supervised entity considers such a sign-off appropriate on the basis of consideration of the following elements:
 - (aa) The level of discretion involved in the process of contribution;
 - (bb) the nature, scale and complexity of the supervised contributor's activities;

- (cc) whether conflicts of interest may rise between the contribution of input data to the benchmark and trading or other activities performed by the benchmark contributor;
- (c) where the controls of a benchmark contributor include a process for approval by a natural person senior to the submitter as contemplated in item (b), the procedures of a contributor must include clear rules about the timing of the sign-off;
- (d) if the rules referred to in item (c) include the possibility of approval after submission of the input data, the procedures must include the circumstances in which it is permitted and the maximum time-period within which it should occur.

41. Training for submitters

- (1) A benchmark administrator must ensure that the systems and controls of a benchmark contributor include training programmes to ensure that each submitter has-
 - (a) adequate knowledge and experience of how the benchmark is intended to measure the underlying market or economic reality; and
 - (b) adequate knowledge of all the elements of the applicable code of conduct.
- (2) A benchmark administrator must periodically re-assess the submitters referred to in subparagraph (1), at least annually, to verify that it is still appropriate that they act as submitters.
- (3) Subparagraph (2) does not apply in the case of benchmark contributors to significant benchmarks.

CHAPTER 10 **Requirements for different types of benchmarks**

42. Critical benchmarks

- (1) A benchmark may be determined by the Authority to be a critical benchmark if one or more of the following applies:
 - (a) The benchmark is used directly or indirectly with a combination of benchmarks -
 - (i) as a reference for financial instruments or financial contracts; or
 - (ii) for measuring the performance of investment funds, having a total value as determined by the Authority, from time to time, on the basis of all the range of maturities or tenors of the benchmark, where applicable;
 - (b) the benchmark is deemed critical by the Authority based on the submissions by benchmark contributors;
 - (c) the benchmark fulfils all of the following criteria:
 - (i) The benchmark has no, or very few, appropriate market-led substitutes; or
 - (ii) in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data it would lead to a systemic event.
- (2) A determination in accordance with paragraph (1) will be made by the Authority by notice on its official website.

43. Requirements relating to critical benchmarks

- (1) When providing a critical benchmark, a benchmark administrator must take adequate steps to ensure that licences of and information relating to, the benchmark is provided to all benchmark users on a fair, reasonable, transparent and non-discriminatory basis.
- (2) A benchmark administrator of one or more critical benchmarks must, every 2 years, submit to the Authority an assessment of the capability of each critical benchmark it provides to measure the underlying market or economic reality.
- (3) Where a benchmark administrator of a critical benchmark notifies the Authority that it intends to cease providing that critical benchmark, the Authority may require the benchmark administrator to, prior to ceasing to provide the critical benchmark, undertake an assessment of how the critical benchmark—
 - (a) will be transitioned appropriately to a new benchmark administrator; or
 - (b) will be ceased to be provided.
- (4) The benchmark administrator referred to in subparagraph (3) may be required by the Authority to continue to publish the critical benchmark for period of up to 24 months, until—
 - (a) the provision of the critical benchmark has been transitioned to another licensed benchmark administrator;
 - (b) the provision of the critical benchmark has been transitioned to an alternative benchmark that is created and implemented by the benchmark administrator;

- (c) the critical benchmark can be ceased to be provided in an appropriate and orderly manner; or
 - (d) the benchmark is no longer determined by the Authority as a critical benchmark.
- (5) A benchmark administrator must -
 - (a) inform the Authority within 24 hours if a benchmark contributor to a critical benchmark intends to cease contributing input data, and
 - (b) within 14 days after the notification referred to in subparagraph (a) submit an assessment to the Authority of the implications on the capability of the benchmark to measure the underlying market or economic reality.
- (6) From the date on which the Authority is notified of the intention of a benchmark contributor to cease contributing input data and until such time as the assessment referred to in subparagraph (5)(b) is complete, a benchmark administrator must ensure that the benchmark contributor, referred to in subparagraph (5)(a), will be required to continue contributing input data for a period of at least 4 weeks.
- (7) In the event that the Authority, after the period specified in subparagraph (6), considers that the representativeness of a critical benchmark is put at risk, the Authority may -
 - (a) require the benchmark administrator to source appropriate input data and alternative benchmark contributors to provide input data in accordance with the benchmark administrator's methodology and code of conduct within an appropriate period of time;
 - (b) extend the period of mandatory contribution by an appropriate period of time not exceeding 24 months, following a review under subparagraph (8) of any measures adopted pursuant to item (a);
 - (c) determine the form in which, and the time by which, any input data is to be contributed without imposing an obligation on licensed financial institutions to either trade or commit to trade;
 - (d) require the benchmark administrator to change the methodology or the code of conduct referred to in paragraph 30 in relation to the critical benchmark.
- (8) The Authority may review the measures adopted under subparagraph (7) and may revoke any of them if it determines that-
 - (a) the benchmark contributors are likely to continue contributing input data for at least one year if the measure were revoked, which must be evidenced by at least:
 - (i) A written commitment by the benchmark contributors to the benchmark administrator and the Authority to continue contributing input data to the critical benchmark for at least one year if the measure were revoked;
 - (ii) a written report by the benchmark administrator to the Authority providing evidence for its assessment that the critical benchmark's continued viability can be assured once mandatory contribution has been revoked;
 - (b) the provision of the benchmark is able to continue once the benchmark contributors mandated to contribute input data have ceased contributing;
 - (c) an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs which must be evidenced by at least a written report by the benchmark administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transitioning to this benchmark; or
 - (d) no appropriate alternative benchmark contributors can be identified and the cessation of contributions from the relevant supervised entities would weaken the benchmark to such an extent to require the cessation of the benchmark.
- (9) A benchmark administrator must notify the Authority in the event that any benchmark contributors breach the requirements set out in this paragraph as soon as reasonably possible.

44. Significant benchmarks

- (1) A benchmark is considered significant when:
 - (a) It is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value as determined by the Authority, from time to time, on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months; or
 - (b) it has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, it would lead to a significant event in the Republic.
- (2) The calculation method used to determine the threshold referred to in subparagraph (1)(a) may be determined by the Authority in the light of market, price and regulatory developments as well as the appropriateness of the classification

of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold at least every two years.

- (3) A benchmark administrator must within 24 hours notify the Authority when its significant benchmark falls below the threshold mentioned in subparagraph (1)(a).

45. Proportional application of requirements for significant benchmarks

- (1) The Authority may determine that the benchmark administrator of a significant benchmark must, apply the requirements in paragraph 43(6) despite not being determined by the Authority to be a critical benchmark if the Authority considers that it would be appropriate, taking into account the nature or the impact of the benchmark or the size of the benchmark administrator.
- (2) In making a determination in terms of sub paragraph (1) the Authority will consider the following criteria-
 - (a) the vulnerability of the benchmark to manipulation;
 - (b) the nature of the input data;
 - (c) the level of conflicts of interest;
 - (d) the degree of discretion of the benchmark administrator;
 - (e) the impact of the benchmark on markets;
 - (f) the nature, scale and complexity of the provision of the benchmark;
 - (g) the value of financial instruments, financial contracts or investment funds that reference the benchmark;
 - (h) the benchmark administrator's size, organisational form or structure.
- (3) Where a benchmark administrator of a significant benchmark is unable to comply with a determination referred to in subparagraph (1), it must publish and maintain a compliance statement that clearly states why it is appropriate for that benchmark administrator not to comply with those provisions.

46. Proportional application of requirements for non-significant benchmarks

- (1) A benchmark administrator must within 24 hours or as soon as reasonably possible notify the Authority when the benchmark administrator's non-significant benchmark exceeds the threshold a determined by the Authority as a significant benchmark in accordance with paragraph 44(1)(a).
- (2) Where a benchmark administrator's non-significant benchmark exceeds the threshold determined by the Authority, the benchmark administrator must comply with the requirements applicable to significant benchmarks within three months of the date of notification.

47. Regulated-data benchmarks

- (1) Subparagraph 20(2)(b) and 20(3), subparagraphs 23(1) and 23(2), subparagraphs 28(1) and 28(2), and paragraph 30 and do not apply to the provision of and the contribution to regulated-data benchmarks.
- (2) Paragraphs 44 and 45 or paragraph 46, as applicable, applies to the provision of, and the contribution to, regulated- data benchmarks that are used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value as determined by the Authority, from time to time, on the basis of all the range of maturities or tenors of the benchmark, where applicable.

CHAPTER 11

Equivalence, recognition and endorsement

48. Equivalence recognition of foreign jurisdictions

- (1) In order for a benchmark or a combination of benchmarks provided by a foreign benchmark administrator to be used in the Republic, the regulatory framework of that jurisdiction must be equivalent to the regulatory framework established for the provision of a benchmarks in the Republic.
- (2) On application by an interested party, the Authority may determine that the regulatory framework of a specified foreign country is equivalent (an "equivalent jurisdiction") to the regulatory framework established in terms of the Regulations and this Conduct Standard, if the legislative and regulatory framework established in that foreign country meets the objectives of the Regulations and this Conduct Standard;

- (3) When assessing the equivalence of the regulatory framework of a foreign country, the Authority may take into account-
 - (a) the nature and intensity of the supervisory authority's oversight processes, including direct comparison with the regime applied by the Authority, as the case may be;
 - (b) alignment of the foreign country's regulatory framework with relevant principles developed by international standard setting bodies applicable to benchmark administrators;
 - (c) observed outcomes of the foreign regulatory framework relative to those in the Republic; and
 - (d) the need to prevent regulatory arbitrage.

49. Withdrawal of recognition

- (1) The Authority may, withdraw recognition where the criteria set out in paragraph 48 are no longer met.
- (2) A withdrawal referred to in subparagraph (1) must be published by notice on the Authority's website.

50. Recognition of a benchmark administrator located in a foreign country

- (1) Until such time as an equivalence determination in accordance with paragraph 42 is made, a foreign benchmark administrator may apply to the Authority for recognition and approval for a benchmark provided by such a foreign benchmark administrator to be used in the Republic.
- (2) As part of the application referred to in subparagraph (1), a foreign benchmark administrator must be able to demonstrate that it complies with the requirements in this Conduct Standard.
- (3) For purposes of demonstrating compliance with the requirements in this Conduct Standard as referred to in subparagraph (2) the foreign benchmark administrator may rely on evidence of compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for Price Reporting Agencies, as applicable.
- (4) For the purposes of determining whether the condition referred to in subparagraphs (2) and (3), as applicable, is fulfilled, the foreign benchmark administrator must, as part of its application in terms of subparagraph (1) -
 - (a) submit a report of an assessment undertaken by an independent external auditor of its compliance in terms of subparagraphs (2) and (3); and
 - (b) where the foreign benchmark administrator is subject to supervision in another jurisdiction, provide evidence of its certification by the competent authority of the country where the benchmark administrator is domiciled.
- (5) If, and to the extent that, a foreign benchmark administrator is able to demonstrate that a benchmark it provides is a regulated-data benchmark that is not based on submissions, the foreign benchmark administrator will not need to comply with paragraphs and subparagraph as referred to in paragraph 47(1).
- (6) A foreign benchmark administrator intending to obtain recognition as referred to in subparagraph (1) must appoint and at all times have a representative that is permanently residing in the Republic, to act on behalf of such benchmark administrator with regard to the foreign benchmark administrator's obligations under this Conduct Standard.
- (7) The representative referred to in subparagraph (6) is responsible for the oversight over any activities relating to the provision of benchmarks used in the Republic.

51. Endorsement of benchmarks provided in a foreign country

- (1) A licenced benchmark administrator may apply to the Authority for approval to endorse a benchmark or a family of benchmarks provided in a foreign country for use in the Republic.
- (2) As part of an application referred to in subparagraph (1), the endorsing benchmark administrator must provide evidence that -
 - (a) the endorsing benchmark administrator has a clear and well-defined role within the control or accountability framework of the foreign benchmark administrator that provides the benchmark or a family of benchmarks in a foreign country, and can demonstrate that it will be able to effectively monitor the provision of such benchmark or family of benchmarks;
 - (b) the endorsing benchmark administrator has verified and is able to demonstrate on an on-going basis to the Authority that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or

- on a voluntary basis, requirements which are at least as stringent as the requirements of this Conduct Standard;
- (c) the endorsing benchmark administrator has the necessary expertise to effectively monitor the activity of the provision of a benchmark in a foreign country and to manage the associated risks;
 - (d) there is an objective reason to provide the benchmark or family of benchmarks in a foreign country, and for said benchmark or family of benchmarks to be endorsed for their use in the Republic.
- (3) For purposes of demonstrating compliance with subparagraph (2)(b), the endorsing benchmark administrator may rely on evidence of compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for Price Reporting Agencies, as applicable.
 - (4) A benchmark or family of benchmarks endorsed in terms of this paragraph will be considered to be a benchmark or family of benchmarks provided by the endorsing benchmark administrator and the endorsing benchmark administrator is fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Conduct Standard.
 - (5) The Authority may withdraw any approval for endorsement granted in terms of this paragraph where it reasonably believes that any of the requirements in subparagraph (2)(a) to (d) are no longer being met.
 - (6) If the Authority withdraws an approval as referred to in subparagraph (5) the endorsing benchmark administrator must ensure that the requirements of paragraph 18 of this Conduct Standard are complied with.

CHAPTER 12

Short title and commencement

52. Short title and commencement

- (1) This Conduct Standard is called the Requirements for Benchmark Administrators, 2022 and comes into effect on date of publication.
- (2) Despite subparagraph (1), Chapter 11 takes effect 6 months after the effective date of this Conduct Standard.