

FSCA COMMUNICATION 5 OF 2022 (FM)

Publication of draft Conduct Standard – Requirements relating to the provision of a benchmark

1. Purpose

- 1.1 The purpose of this communication is to inform stakeholders that today the Financial Sector Conduct Authority (FSCA) published the following documents for public comment:
- (a) Draft Conduct Standard [-] of 2022 (FM): Requirements relating to the provision of a benchmark - for public consultation (the draft Conduct Standard);
 - (b) Statement of need, expected impact, and intended operation of the Conduct Standard;
 - (c) Comments Template to be used for submitting comments on the draft Conduct Standard.

2. Background and discussion

- 2.1 Concerns surrounding the integrity and reliability of benchmarks have prompted various regulatory reforms globally. In July 2013 the International Organization of Securities Commissions (IOSCO) issued the Principles for Financial Benchmarks (IOSCO benchmarks principles)¹. Jurisdictions such as the European Union (EU) have put in place regulations for indices to ensure that a common framework for benchmarks exists.
- 2.2 In terms of the EU's Benchmark Regulations (BMR), non-EU benchmarks can only be used in the EU if the benchmark is qualified under the third country regime. Although BMR came into effect on 1 January 2018, transitional arrangements have been put in place, in terms of which third-country administrators and users of benchmarks can continue to use any non-EU benchmarks until the end of 2023. Beyond that date, non-EU benchmarks will need to be covered by an equivalence determination, by recognition of the administrator or endorsement of the benchmark.
- 2.3 In order to apply for equivalence in terms of the BMR, the FSCA needs to establish a regulatory framework for benchmarks. Details around the need for South Africa to be recognised as an equivalent jurisdiction by the EU is explained in more detail in the "Statement of need, expected impact, and intended operation" (the statement), published alongside the draft Conduct Standard.
- 2.4 Accordingly, on 11 December 2019, the FSCA requested the Minister of Finance to designate the provision of a benchmark as a financial service in terms of section 3(3)(a)(iii) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) ("FSR Act"). The National Treasury (NT) published draft Regulations to this effect for public consultation on 1 September 2021². The draft Regulations propose to designate the "provision of a benchmark" as a financial service in accordance with section 3(3) of the FSR Act, and to

¹ Available at: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>

² Available at: <http://www.treasury.gov.za/public%20comments/DraftBenchmark/>

specify that the FSCA is the responsible authority for its regulation, supervision and oversight, in accordance with section 3(5) of the FSR Act.

- 2.5 Once the Regulations in terms of section 3(3) of the FSR Act come into effect, section 111(2) of the FSR Act will find application. In terms of section 111(2) of the FSR Act, a person may not provide, as a business or part of a business, a financial product designated in terms of section 2, or a financial service designated in terms of section 3, except in accordance with a licence in terms of Chapter 8 of the FSR Act. Accordingly, new and existing benchmark administrators will be required to apply for a licence in terms of the FSR Act and evidence compliance with the requirements in the draft Conduct Standard, in order to qualify to be licensed as such. The licence application will need to comply with requirements of Chapter 8 of the FSR Act, and the FSCA may in accordance with section 124 of the FSR Act, in writing, determine procedures and requirements for such licence applications.
- 2.6 It is therefore necessary that a regulatory framework for relevant benchmarks be developed that is fit for purpose and aligns to international standards and practices, in order to ensure efficiency and integrity in the development, use and provision of benchmarks, as per the FSCA's statutory mandate but also to facilitate the regulation and supervision of the provision of a benchmark, and ultimately enable equivalence in terms of the BMR.
- 2.7 It is for the above reasons that the FSCA has today published the documents mentioned in paragraph 1 above, for public comment. Further details regarding the rationale underpinning the need for the Conduct Standard is contained in the statement supporting the draft Conduct Standard.

3. Availability of information and enquiries

- 3.1 The draft Conduct Standard, together with the listed supporting documents referred to in paragraph 1, is available on the FSCA's website at www.fsca.co.za under *Regulatory Frameworks > Documents for Consultation > Capital Markets*.
- 3.2 Interested parties are invited to, in writing, submit comments on the draft Conduct Standard and supporting documents, using the comments template published alongside the draft Conduct Standard, on or before 12 April 2022 to FSCA.RFDStandards@fsca.co.za.
- 3.3 For more information regarding the draft Conduct Standard and/or this Communication, please contact the Regulatory Frameworks Department of the FSCA at Roslynne.Vanwyk@fsca.co.za.



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