

NATIONAL TREASURY

DRAFT REGULATIONS IN TERMS OF SECTIONS 3(3) AND (5) AND 288 OF FINANCIAL SECTOR REGULATION ACT, 2017

Draft Regulations (“the draft Regulations”) that are proposed to be made in terms of sections 3(3) and (5) and 288 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“FSRA”) are set out in the Schedule, and are published for public comment.

The draft Regulations propose to designate the “provision of a benchmark” as a financial service in accordance with section 3(3) of the FSRA, and to specify that the Financial Sector Conduct Authority is the responsible authority for the regulation, supervision and oversight of the financial service of the “provision of a benchmark” in accordance with section 3(5) of the FSRA. In terms of section 288(1)(b) of the FSRA, which empowers regulations to provide for procedural and administrative matters that are necessary to implement the provisions of this Act, some specific powers and duties are provided to the Financial Sector Conduct Authority in relation to the provision of benchmarks to enable the effective regulation and supervision of the financial service of the “provision of a benchmark”.

Written comments on the draft amendment to the Financial Sector Regulations should be submitted to commentdraftlegislation@treasury.gov.za by close of business on **13 October 2021**. Any clarification questions can be emailed to Jeannine Bednar-Giyose at: Jeannine.Bednar-Giyose@treasury.gov.za.

SCHEDULE

Interpretation

1. In these Regulations, “the Act” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in section 1 or 289 of the Act has that meaning, and—

“**Authority**” means the Financial Sector Conduct Authority;

“**benchmark administrator**” means a person that provide a benchmark;

“**input data**” means the data in respect of the value of one or more underlying assets, prices including estimated prices, interests or elements that is used by a benchmark administrator to determine a benchmark; and

“**insolvency proceeding**” has the meaning assigned to it in the Financial Markets Act, 2012. (Act No. 19 of 2012).

Designation of financial service

2. In terms of section 3(3) of the Act, the “provision of a benchmark” is designated as a financial service.

Designation of responsible authority

3. In terms of section 3(5) of the Act, the Authority is designated as the responsible authority that is responsible for the regulation, supervision and oversight of the financial service of the provision of a benchmark.

Licensing

4. (1) In accordance with section 111(2) of the Act, and subject to subregulation (2), a person may not provide a benchmark, as a business or a part of a business, unless the person is licensed by the Authority as a benchmark administrator in accordance with Chapter 8 of the Act.

(2) The Authority may exclude specified persons who provide a benchmark from the requirement to be licensed in subregulation (1).

Powers and duties of responsible authority

5. (1) The Authority may, in relation to the regulation, supervision and oversight of the provision of a benchmark—

- (a) determine conditions in respect of equivalence, including—
 - (i) specify in respect of which foreign benchmarks approval is required for those benchmarks to be used in the Republic; and
 - (ii) the manner in which the regulatory framework in the foreign jurisdictions must be recognised as equivalent to the regulatory framework of the Republic; and
- (b) grant approval for foreign benchmarks to be used in the Republic and the manner in which foreign benchmarks must be endorsed by licensed benchmark administrators.

(2) The Authority must establish and maintain a public register that contains the following information:

- (a) A list of licensed benchmark administrators;
- (b) a list of foreign benchmark administrators that comply with the conditions in respect of equivalence; and
- (c) a list of foreign benchmarks in respect of which approval was given to be used in the Republic and the third country competent authorities responsible for the supervision of those benchmarks.

Critical benchmarks

6. (1)(a) The Authority must establish a list of benchmarks provided by benchmark administrators located within the Republic which are determined to be critical benchmarks.

(b) The list referred to in paragraph (a) must be reviewed at least every two years to assess whether the benchmarks comply with the criteria for listing as a critical benchmark.

(2) 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.

(3) The Authority may require the benchmark administrator referred to in subsection (2) to continue to publish the critical benchmark 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 to be a critical benchmark.
- (4) The period during which the Authority may require a benchmark administrator to continue to publish the critical benchmark referred to in subregulation (3) may not exceed 24 months.
- (5) The Authority may assess whether the cessation of the publication of a benchmark is appropriate where—
 - (a) the input data or the panel of contributors are no longer representative of the underlying market or economic reality; or
 - (b) the benchmark has a potential adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the Republic.
- (6) The Authority may require the mandatory administration of a critical benchmark, in order to ensure the continued provision of the benchmark, if the cessation of the administration of the benchmark could —
 - (a) render financial contracts or financial instruments invalid;
 - (b) cause losses to consumers or investors; or
 - (c) impact financial stability.
- (7) If an insolvency proceeding commences in respect of a benchmark administrator, the Authority may undertake a review of whether and how the critical benchmark could be transitioned to a new administrator, or alternatively could cease to be provided in an orderly and appropriate manner.

Commencement and short title

7. These Regulations are called the Designation of Benchmarks Regulations, 2021, and come into effect on the date of publication in the Gazette.