

ATTACHMENT 1 to CP 292: Draft ASIC Financial Benchmark (Administration) Rules



ASIC

Australian Securities & Investments Commission

ASIC Financial Benchmark (Administration) Rules

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These draft rules reflect the proposals in Consultation Paper 292
Implementing the financial benchmark regulatory regime (CP 292).

Contents

Chapter 1: Introduction	3
Part 1.1 Preliminary	3
Part 1.2 Interpretation	3
Chapter 2: Licensed Benchmark integrity, reliability and effectiveness.....	5
Part 2.1 Governance, management and resources.....	5
Part 2.2 Licensed Benchmark design, data and method.....	8
Part 2.3 Business continuity and risk management.....	11
Part 2.4 Cessation of a Licensed Benchmark.....	11
Part 2.5 Benchmark administrator licensee's guidelines for Contributors	12
Part 2.6 Transparency of, and access to, Licensed Benchmarks	13
Part 2.7 Accountability	14
Part 2.8 Cooperation with ASIC	15

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Chapter 1: Introduction

Part 1.1 Preliminary

1.1.1 Enabling legislation

ASIC makes this instrument under section 908CA of the Act.

1.1.2 Title

This instrument is the *ASIC Financial Benchmark (Administration) Rules 2017*.

1.1.3 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

1.1.4 Entities that must comply with these Rules

These Rules apply to benchmark administrator licensees and Contributors.

Note: Section 908CF of the Act provides that a person (whether a benchmark administrator licensee or otherwise) must comply with the provisions of the financial benchmark rules that apply to the person.

1.1.5 Penalty amounts for each rule

(1) For paragraph 908CO(b) of the Act, the penalty amount specified under a Rule is the penalty amount for that Rule.

(2) If no penalty amount is specified under a Rule, there is no penalty for that Rule.

Part 1.2 Interpretation

1.2.1 Words and expressions defined in the Corporations Act

Words and expressions defined in the *Corporations Act 2001* (Cth) for that purposes of that Act and for the purposes of Chapter 7 of that Act, will, unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules.

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1.2.2 Definitions

In these Rules, unless the contrary intention appears:

Contributor means an entity whose activities result in the provision of data or information to a holder of a benchmark administrator licence for the generation or administration of a financial benchmark specified in that licence.

Note: Paragraph 908CB(h) provides that the rules may deal with the responsibilities of such entities.

Interest, in relation to a Licensed Benchmark, refers to the transactions, instruments, currencies, prices, estimates, rates, indices, values, financial products, bank accepted bills or negotiable certificates of deposit, or other interests or goods (whether tangible or intangible) which is intended to be measured by the Licensed Benchmark.

Licensed Benchmark means a financial benchmark specified in a benchmark administrator licence.

Regulations means the *Corporations Regulations 2001*.

Relevant Persons means officers, managers, employees and representatives of the benchmark administrator licensee.

Rules means these rules.

Service Provider has the meaning given by subrule 2.1.3(1).

Chapter 2: Licensed Benchmark integrity, reliability and effectiveness

Part 2.1 Governance, management and resources

2.1.1 Guiding obligations

A benchmark administrator licensee must, in generating and administering each Licensed Benchmark specified in the licensee's benchmark administrator licence:

- (a) act efficiently, honestly and fairly;
- (b) to the extent that it is reasonably practicable to do so, generate and administer the Licensed Benchmark in a way that:
 - (i) is appropriate for the nature, complexity and intended use of the Licensed Benchmark;
 - (ii) maintains the quality, integrity, availability, reliability and credibility of the Licensed Benchmark;
 - (iii) does not adversely affect the integrity of the market;
 - (iv) has regard to contractual certainty for the financial products or other contracts which reference or otherwise use the Licensed Benchmark.

Maximum penalty: 5,550 penalty units.

2.1.2 Governance

(1) A benchmark administrator licensee must have adequate arrangements for:

- (a) the governance and management of the licensee; and
- (b) the oversight and control of internal and external parties who have a role in the generation and administration of each Licensed Benchmark specified in the licensee's benchmark administrator licence.

(2) Without limiting subrule (1), the arrangements referred to in that subrule must:

- (a) ensure the licensee remains responsible for all of the functions involved in generating or administering each Licensed Benchmark specified in the licensee's licence, including, without limitation:
 - (i) the design of the Licensed Benchmark;
 - (ii) the method for generating the Licensed Benchmark;
 - (iii) the acceptance, retention and use of financial benchmark data for generating the Licensed Benchmark;
 - (iv) generating the Licensed Benchmark; and
 - (v) making the Licensed Benchmark available to users.

- (b) be designed to ensure the licensee's compliance with the Act, including the conditions of the licensee's licence, these Rules and the Regulations, in generating and administering each of the Licensed Benchmarks specified in the licensee's licence; and
 - (c) provide for:
 - (i) to the extent appropriate, transparency of decision-making processes in the generation or administration of each of the Licensed Benchmarks specified in the licensee's licence, including transparency of the contingency arrangements referred to in subparagraph 2.2.3(2)(d)(iii) and the business continuity arrangements referred to in rule 2.3.2; and
 - (ii) clearly defined roles and responsibilities in, and accountability for, the governance and management of the licensee and the oversight and control of all of the functions involved in the generation and administration of each of the Licensed Benchmarks specified in the licensee's licence.
- (3) A licensee must ensure that the arrangements referred to in subrule (1) are:
- (a) reviewed, audited and tested periodically; and
 - (b) appropriately updated after significant changes to the licensee's business of generating and administering Licensed Benchmarks.

Maximum penalty: 5,550 penalty units.

2.1.3 Outsourcing

If a benchmark administrator licensee outsources any of the functions involved in generating or administering a Licensed Benchmark to another person (the *Service Provider*), the licensee must:

- (a) ensure that the outsourcing arrangements are covered by a contract with the Service Provider that is in writing;
- (b) have adequate arrangements to ensure that:
 - (i) the licensee continues to comply with its obligations under the Act, including under the conditions of the licensee's benchmark administrator licence, these Rules and the Regulations, in relation to the outsourced functions; and
 - (ii) the Service Provider is complying with its obligations under the outsourcing arrangement; and
- (c) ensure that the outsourcing arrangement does not impair ASIC's ability to supervise the Licensed Benchmark, including by ensuring:
 - (i) the licensee is able to access the books, records and other information of the Service Provider which relate to the outsourced functions within a reasonable time; and
 - (ii) that ASIC has the same access to all books, records and other information relating to the outsourced functions and maintained by the Service Provider, that ASIC would have had if not for the outsourcing arrangements.

Maximum penalty: 5,550 penalty units.

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2.1.4 Conflicts of interest

(1) A benchmark administrator licensee must have adequate arrangements for the handling of conflicts of interest in relation to the generation and administration of each Licensed Benchmark specified in the licensee's licence, designed to ensure that conflicts of interest do not adversely affect the integrity, reliability or credibility of the Licensed Benchmark.

(2) Without limiting subrule (1), the arrangements referred to in that subrule must address any conflicts of interest between the licensee's business in generating and administering Licensed Benchmarks and each of the following:

- (a) a Relevant Person;
- (b) any related entity of a Relevant Person;
- (c) any Service Provider;
- (d) Contributors;
- (e) users of the Licensed Benchmark;
- (f) other parts of the licensee's business;
- (g) the business of any related entity of the licensee.

(3) The licensee must ensure that the arrangements referred to in subrule (1) are:

- (a) reviewed, audited and tested periodically; and
- (b) appropriately updated after significant changes to the licensee's business of generating and administering Licensed Benchmarks.

Maximum penalty: 5,550 penalty units.

2.1.5 Resources

A benchmark administrator licensee must at all times have sufficient human, technological and financial resources to ensure that the licensee is able, to the extent that it is reasonably practicable to do so, to generate and administer each Licensed Benchmark specified in its licence in a way that maintains the quality, integrity, availability, reliability and credibility of the Licensed Benchmark.

Maximum penalty: 5,550 penalty units.

2.1.6 Human resources

Without limiting Rule 2.1.5, a benchmark administrator licensee must ensure its officers, managers, employees and representatives are:

- (a) fit for office, having regard to matters such as the person's fame, character and integrity;
- (b) have the experience, qualifications and skills needed to perform their respective roles and responsibilities in the governance and management of the licensee and oversight

and control of the functions involved in the generation and administration of the Licensed Benchmarks specified in the licensee's benchmark administrator licence.

Maximum penalty: 5,550 penalty units.

2.1.7 Financial resources

Without limiting Rule 2.1.5, a benchmark administrator licensee must at all times hold or have legally certain access to net assets funded by equity (such as shares, disclosed reserves or other retained earnings) that, at a minimum, are equal to an amount that would enable the licensee to cover at least six months of current operating expenses for the generation and administration of Licensed Benchmarks specified in its licence, calculated on a rolling basis at the end of each month.

Maximum penalty: 5,550 penalty units.

Part 2.2 Licensed Benchmark design, data and method

2.2.1 Benchmark design

A benchmark administrator licensee must ensure that each Licensed Benchmark specified in the licensee's benchmark administrator licence is designed, to the extent reasonably practicable, to be an accurate and reliable representation of the Interest.

Maximum penalty: 5,550 penalty units.

2.2.2 Input data

A benchmark administrator licensee must take all reasonable steps to ensure that the financial benchmark data that is used to generate each Licensed Benchmark specified in the licensee's benchmark administrator licence is:

- (a) sufficient to accurately and reliably represent the Interest; and
- (b) based on an active market involving arms-length transactions between buyers and sellers that reflects the competitive forces of supply and demand, where that financial benchmark data is available and meets the requirement in paragraph (a).

Maximum penalty: 5,550 penalty units.

2.2.3 Methodology

(1) A benchmark administrator licensee must use a method for generating each Licensed Benchmark specified in the licensee's benchmark administrator licence that is designed to ensure the quality, integrity, availability, reliability and credibility of the Licensed Benchmark.

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- (2) Without limiting subrule (1), the method referred to in that subrule must:
- (a) be designed to generate, in the widest range of market conditions, a Licensed Benchmark that is an accurate and reliable representation of the Interest;
 - (b) establish the criteria for the financial benchmark data that is used to generate the Licensed Benchmark;
 - (c) where more than one kind of financial benchmark data may be used to generate the Licensed Benchmark:
 - (i) establish the hierarchy for the order in which the financial benchmark data will be used to generate the Licensed Benchmark; and
 - (ii) require the use of financial benchmark data referred to in paragraph 2.2.2(b) in priority to other financial benchmark data in generating the Licensed Benchmark;
 - (d) establish the:
 - (i) minimum quantity and quality of financial benchmark data required to generate the Licensed Benchmark;
 - (ii) manner in which the financial benchmark data will be used to generate the Licensed Benchmark; and
 - (iii) contingency arrangements that apply where the quantity or quality of the financial benchmark data is inadequate to generate the Licensed Benchmark;
 - (e) where the licensee or Relevant Persons may exercise expert judgment or discretion in generating the Licensed Benchmark, establish guidelines, rules or other controls designed to govern and promote transparency and consistency in the exercise of the expert judgement or discretion;
 - (f) establish procedures for:
 - (i) checking the completeness and accuracy of financial benchmark data used to generate the Licensed Benchmark; and
 - (ii) handling errors, discrepancies or reports of suspicious activity in relation to the financial benchmark data used to generate the Licensed Benchmark;
 - (g) establish the frequency of review, audit and testing in accordance with subrule (3); and
 - (h) establish the procedures for consulting on a proposed material change to the method in accordance with Rule 2.2.4.
- (3) The licensee must ensure that the method and the licensee's use of the method is:
- (a) reviewed, audited and tested periodically; and
 - (b) updated as appropriate.

Maximum penalty: 5,550 penalty units.

2.2.4 Changes to the method

(1) A benchmark administrator licensee must, in relation to any proposed material change to the method for generating a Licensed Benchmark, other than a material change referred to in subrule (2):

- (a) take such steps as are reasonable in the circumstances to:
 - (i) consult with users about the proposed material change, before deciding whether to make the material change; and
 - (ii) notify users about the proposed material change, a reasonable time before the change is implemented; and
- (b) notify ASIC in writing about the proposed material change, within a reasonable time before the change is implemented.

(2) Subrule (1) does not apply to a change where ASIC has given the licensee a written notice requiring the licensee to make that change, in accordance with the *ASIC Financial Benchmark (Compelled) Rules 2017*.

Note: Under those Rules, ASIC may give the benchmark administrator licensee a notice requiring the licensee to generate or administer the benchmark in a particular way, including by changing the method used to generate the Licensed Benchmark. The notice may also specify requirements relating to the change, including requirements to consult with, or inform users about the change.

Maximum penalty: 5,550 penalty units.

2.2.5 BBSW Benchmark administrator licensee to maintain Final Stage Method

(1) A benchmark administrator licensee whose benchmark administrator licence specifies the BBSW must maintain a method (*Final Stage Method*) for generating and administering the BBSW that is designed, to the extent reasonably practicable, to allow the licensee to generate and administer the BBSW when other methods that the licensee would normally use to generate and administer the BBSW have failed or are likely to fail.

(2) The Final Stage Method must require Contributors to provide financial benchmark data to be used in generating and administering the BBSW that is based on the exercise of expert judgement by the Contributors.

(3) The licensee must comply with Rule 2.2.4 in relation to any proposed material change to the Final Stage Method.

(4) In this Rule, **BBSW** means the bank bill swap rate, a short-term money market benchmark interest rate, as specified in the licence granted to the licensee under section 908CB of the Act.

Note: Under the *ASIC Financial Benchmark (Compelled) Rules 2017*, ASIC may give the licensee a notice requiring the licensee to generate or administer the benchmark in a particular way, including by changing this Final Stage Method.

Maximum penalty: 5,550 penalty units.

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2.2.6 Controls over acceptance, retention and use of input data

A benchmark administrator licensee must have adequate arrangements to control the acceptance, retention and use of the financial benchmark data used to generate or administer each Licensed Benchmark specified in the licensee's benchmark administrator licence, including arrangements reasonably designed to ensure that:

- (a) the licensee accepts and retains financial benchmark data in a manner that maintains the security and integrity of that data; and
- (b) the financial benchmark data used by the licensee is accurate and complete.

Maximum penalty: 5,550 penalty units.

Part 2.3 Business continuity and risk management

2.3.1 Risk management

A benchmark administrator licensee must have adequate arrangements to manage risks to the licensee's ability to generate or administer each Licensed Benchmark specified in the licensee's benchmark administrator licence, in a way that maintains the quality, integrity, availability, reliability and credibility of the Licensed Benchmarks, including legal, operational and business risks.

Maximum penalty: 5,550 penalty units.

2.3.2 Business continuity

A benchmark administrator licensee must have business continuity, backup and data recovery plans designed to:

- (a) address events that pose a significant risk of disruption to the availability or integrity of each Licensed Benchmark specified in the licensee's benchmark administrator licence;
- (b) in the event of any disruption to the availability or integrity of Licensed Benchmark specified in the licensee's licence, enable the timely restoration of the availability and integrity of the Licensed Benchmark.

Maximum penalty: 5,550 penalty units.

Part 2.4 Cessation of a Licensed Benchmark

2.4.1 Transition arrangements

(1) Where a benchmark administrator licensee intends to cease generating or administering a Licensed Benchmark, the licensee must, subject to the requirements of any notice given to the licensee under the *ASIC Financial Benchmark (Compelled) Rules 2017*:

- (a) have adequate arrangements for ensuring, as applicable:
 - (i) the orderly transition of the Licensed Benchmark to another benchmark administrator licensee; or
 - (ii) orderly cessation of the generation and administration of the Licensed Benchmark;
- (b) notify ASIC:
 - (i) that the licensee intends to cease generating or administering the Licensed Benchmark, as soon as reasonably practicable;
 - (ii) of the arrangements referred to in paragraph (a), at least 4 weeks before ceasing to generate or administer the Licensed Benchmark; and
 - (iii) of any changes to the arrangements referred to in paragraph (a) following the notification in subparagraph (ii), as soon as reasonably practicable after making those changes.

(2) Without limiting paragraph (1)(a), the arrangements referred to in that subparagraph must take into account whether the financial products or other contracts that reference or otherwise use the Licensed Benchmarks can be amended to reference or otherwise use another financial benchmark before the proposed cessation date.

Note: A licensee whose licence specifies a significant financial benchmark must also comply with the rules contained in the *ASIC Financial Benchmark (Compelled) Rules 2017* including any notice given under those Rules.

Maximum penalty: 5,550 penalty units.

Part 2.5 Benchmark administrator licensee's guidelines for Contributors

2.5.1 Requirement to have written guidelines

- (1) A benchmark administrator licensee must have written guidelines governing the obligations of Contributors in connection with the licensee's generation or administration of each Licensed Benchmark specified in the licensee's benchmark administrator licence.
- (2) Without limiting subrule (1), the guidelines referred to in that subrule must deal with:
 - (a) the provision of financial benchmark data to the licensee for use in generating the Licensed Benchmark, including:
 - (i) the financial benchmark data to be provided;
 - (ii) the form and manner in which the financial benchmark data is to be provided; and
 - (iii) where applicable, the persons who are authorised to provide financial benchmark data; and

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- (b) the arrangements a Contributor must have for:
 - (i) where applicable, ensuring only authorised persons provide financial benchmark data to the licensee;
 - (ii) providing financial benchmark data in accordance with the guidelines or other requirements of the licensee;
 - (iii) managing conflicts of interest in connection with the provision of financial benchmark data to the licensee;
 - (iv) governing the exercise of expert judgement or discretion (if any) in connection with the provision of financial benchmark data to the licensee, including by ensuring that persons who exercise expert judgement are adequately trained and supervised;
 - (v) reporting to the licensee any errors, discrepancies or suspicious activity in relation to the financial benchmark data provided to the licensee; and
 - (vi) keeping records that demonstrate compliance with the guidelines.

(3) The licensee must monitor compliance by each Contributor with the guidelines referred to in subrule (1).

(4) The licensee must ensure the guidelines referred to in subrule (1) require the Contributor to notify the licensee within a reasonable time of any breaches of the guidelines by a Contributor, its officers, managers, employees or representatives.

Maximum penalty: 5,550 penalty units.

Part 2.6 Transparency of, and access to, Licensed Benchmarks

2.6.1 Transparency of Licensed Benchmarks

A benchmark administrator licensee must publicly disclose adequate information about:

- (a) the Interest; and
- (b) the method for generating the Licensed Benchmark specified in its licence, including the matters set out in subrule 2.2.3(2),

to enable users of the Licensed Benchmark to understand how the Licensed Benchmark is generated and its intended use.

Maximum penalty: 5,550 penalty units.

2.6.2 Fair, reasonable and non-discriminatory access to Licensed Benchmarks

A benchmark administrator licensee must have fair, reasonable, non-discriminatory and objective conditions for access to the Licensed Benchmark specified in its licence, including

fair, reasonable and non-discriminatory pricing where charges apply for access to the Licensed Benchmark.

Maximum penalty: 5,550 penalty units.

Part 2.7 Accountability

2.7.1 Record-keeping

(1) A benchmark administrator licensee must create and maintain records that enable the licensee to demonstrate that it has complied with the requirements of these Rules.

(2) To the extent not required by subrule (1), a licensee must maintain records, for each occasion on which the Licensed Benchmark specified in the licensee's benchmark administrator licence is generated by the licensee, of:

- (a) financial benchmark data provided to the licensee in connection with the generation of the Licensed Benchmark on that occasion, including any financial benchmark data the licensee did not use in generating the Licensed Benchmark on that occasion;
- (b) the Contributors that provided the financial benchmark data referred to in paragraph (a) on that occasion;
- (c) the method used to generate each Licensed Benchmark on that occasion;
- (d) if applicable to the method referred to in paragraph (c):
 - (i) the Relevant Persons who exercised expert judgement or discretion in generating the Licensed Benchmark on that occasion;
 - (ii) the manner in which the expert judgement or discretion was exercised on that occasion;
- (e) on that occasion, any use of a different kind of financial benchmark data or use of financial benchmark data in a different manner;
- (f) any complaints received in connection with the generation of the Licensed Benchmark on that occasion; and
- (g) any audits, reviews or investigations of errors, discrepancies or suspicious activity in connection with the generation of the Licensed Benchmark on that occasion.

(3) A licensee must keep the records referred to in subrules (1) and (2) for a period of seven years from the date the record is made or amended.

(4) A licensee must ensure the records referred to in subrules (1) and (2) are, for the period of time that the records must be retained under subrule (3), accessible within a reasonable time.

Maximum penalty: 5,550 penalty units.

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2.7.2 Complaints

(1) A benchmark administrator licensee must maintain and make publicly available appropriate documented procedures for investigating complaints made in relation to each Licensed Benchmark, including about the licensee's conduct in relation to the generation or administration of the Licensed Benchmark.

(2) A licensee must ensure:

- (a) complaints are investigated in a timely and fair manner; and
- (b) the outcome of an investigation is communicated to the complainant as soon as practicable.

Maximum penalty: 5,550 penalty units.

2.7.3 Language of records

(1) All records required to be kept by these Rules must be kept in writing in the English language, or in a manner that enables them to be readily accessible and readily converted into writing in the English language.

(2) If any of the records are not kept in writing in the English language, the benchmark administrator licensee must, if required by ASIC, convert the records into writing in the English language within a reasonable time.

Maximum penalty: 5,550 penalty units.

Part 2.8 Cooperation with ASIC

2.8.1 Reporting of infringements to ASIC

(1) A benchmark administrator licensee that breaches or is likely to breach any of its obligations under the Act, including under the conditions of the licensee's benchmark administrator licence, the Regulations or these Rules, must notify ASIC in writing as soon as practicable, and in any case within 10 business days after becoming aware of the breach or likely breach.

Maximum penalty: 5,550 penalty units.

2.8.2 Provision of records or other information

(1) A benchmark administrator licensee must, on request by ASIC, provide ASIC with reasonable assistance, books or information which:

- (a) relate to compliance with these Rules or Part 7.5B of Act ; and
- (b) relate to ASIC ascertaining compliance with these Rules or Part 7.5B of the Act.

(2) A request by ASIC under subrule (1) must be in writing and give the licensee a reasonable time to comply.

(3) A licensee must comply with a request under subrule (1) within the time specified in the request or, if no time is specified, within a reasonable time.

Maximum penalty: 5,550 penalty units.

2.8.3 Provision of records or other information

(1) A Contributor must, on request by ASIC, provide ASIC with reasonable assistance, books or information which:

- (a) relate to compliance with these Rules or Part 7.5B of the Act; or
- (b) relate to ASIC ascertaining compliance with these Rules or Part 7.5B of the Act.

(2) A request by ASIC under subrule (1) must be in writing and give the Contributor a reasonable time to comply.

(3) A Contributor must comply with a request under subrule (1) within the time specified in the request or, if no time is specified, within a reasonable time.

Maximum penalty: 5,500 penalty units.