

# ATTACHMENT 2 to CP 292: Draft regulatory guide



**ASIC**

Australian Securities & Investments Commission

REGULATORY GUIDE 000

## **Financial benchmarks: Licensing and other obligations**

July 2017

### **About this guide**

This guide explains how we administer the financial benchmark licensing regime and how licensed financial benchmark administrators may comply with their obligations under the *ASIC Financial Benchmark (Administration) Rules 2017*. This guide also explains when we may use our compulsion powers in relation to significant benchmarks.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This draft guide was issued on 17 July 2017 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Financial benchmarks that are declared by ASIC to be significant benchmarks must hold a benchmark administrator licence, or be exempt from the licensing requirement. Other entities may apply for a licence.

Licensed administrators must comply with obligations imposed by the *Corporations Act 2001* (Corporations Act), the *ASIC Financial Benchmark (Administration) Rules 2017* (administration rules) and any directions issued by ASIC. Some of the administration rules also apply to contributors.

If ASIC issues a notice under the *ASIC Financial Benchmark (Compelled) Rules 2017* (compelled rules), administrators and contributors named in the notice must comply with the notice.

The obligations of licensees reflect relevant international regimes and principles, particularly the [Principles for financial benchmarks \(PDF 388 KB\)](#), issued by the International Organization of Securities Commissions (IOSCO) in 2013 (IOSCO benchmarks principles). The obligations also reflect the benchmark regulatory regimes in key overseas jurisdictions.

## Background

- RG 000.1 Financial benchmarks are indices or indicators used to:
- (a) determine the interest payable, or other sums due, under loan agreements or under other financial contracts or instruments;
  - (b) determine the price at which a financial instrument may be dealt, or the value of a financial instrument; or
  - (c) measure the performance of a financial instrument.

Note: Section 908AB of the Corporations Act defines *financial benchmark*.

- RG 000.2 In 2013, IOSCO issued the IOSCO benchmarks principles in response to regulatory concerns about the integrity and reliability of financial benchmarks, and the potential impact on market integrity and investor confidence. IOSCO has also issued the [Principles for oil price reporting agencies \(PDF 423 KB\)](#) (IOSCO PRA principles) focusing on the impact for oil derivative contracts.

- RG 000.3 Together these reports set out principles and policy guidance on financial benchmark administration activities and identify requirements for the following key areas of financial benchmark administration:

- (a) governance and oversight arrangements;

- (b) the quality of the financial benchmark, including the design of the financial benchmark and the use of data in determining the financial benchmark;
- (c) the quality of the method or methods for determining the financial benchmark; and
- (d) accountability, including audit and cooperation with regulatory authorities.

RG 000.4 A number of jurisdictions, including the United Kingdom, the European Union, Japan, Singapore and Canada, have worked to align their regulatory regimes with these principles.

## Regulation in Australia

- RG 000.5 In July 2015, we published [Report 440](#) *Financial benchmarks* (REP 440). The report highlighted the importance of financial benchmarks and the need for financial benchmarks to be robust and reliable. It also addressed the potential manipulation of financial benchmarks and related conduct issues.
- RG 000.6 In August 2016, the Council of Financial Regulators (CFR) provided advice to the Treasurer recommending the implementation of regulatory reform for financial benchmarks in Australia.
- RG 000.7 The advice identified the market integrity and investor confidence benefits of a robust regulatory regime for financial benchmark administration. It also identified the significant benefits that can accrue where the Australian regulatory regime is recognised as being equivalent to the regulatory regimes in key overseas markets.
- RG 000.8 Relevantly, the CFR recommended that administrators of significant benchmarks must be licensed. The CFR also recommended that the licensing regime be supported by ASIC powers to write rules imposing obligations, and rules to compel submission to a significant benchmark.

### Australian legislative framework

RG 000.9 Part 7.5B of the Corporations Act provides the regulatory regime for financial benchmarks. The regime includes a licensing regime, and confers rule-making powers on ASIC. It also provides that ASIC has the function of supervising financial benchmarks that are specified in licences.

Note: In this document, references to chapters (Chs), parts (Pts), divisions (Divs) or sections (s) are to the Corporations Act, unless otherwise specified.

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- RG 000.10 Under s908AC, we may declare, by legislative instrument, a financial benchmark to be a significant benchmark. We may do so if we are satisfied that:
- (a) the benchmark is systemically important to the Australian financial system; or
  - (b) there would be a material risk of financial contagion, or systemic instability, in Australia if the availability or integrity of the benchmark were disrupted; or
  - (c) there would be a material impact on retail or wholesale investors in Australia if the availability or integrity of the benchmark were disrupted.
- RG 000.11 A person commits an offence if the person administers a significant benchmark, or holds out that the person does so, if the person does not hold a benchmark administrator licence specifying the financial benchmark: see s908BA.
- RG 000.12 An administrator of a financial benchmark that is not a significant benchmark may also apply for a licence.
- RG 000.13 We must consider the factors set out in s908BO(2) when deciding whether to grant a licence application; impose, vary or revoke conditions on a licence; or suspend or cancel a licence.
- RG 000.14 We are responsible for supervising financial benchmarks specified in a benchmark administrator licence. We may conduct an assessment of how well a licensee is complying with any or all of its licence obligations. In doing the assessment, we may take into account any information and reports that we consider appropriate: s908BW.
- RG 000.15 If a licensed benchmark is wholly or partly generated or administered from a foreign country, we may perform the function of supervising the licensed benchmark by satisfying ourselves that:
- (a) the regulatory regime in the foreign jurisdiction provides for adequate supervision of the licensed benchmark; or
  - (b) there are adequate cooperation arrangements in place with the foreign regulator to ensure that the licensed benchmark is adequately supervised.

Note: See s908AD.

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## ASIC financial benchmark rules

- RG 000.16 We have made the following rules under the financial benchmark regime in the Corporations Act:
- (a) administration rules under s908CA. Sections B–D of this regulatory guide provide guidance about compliance with the administration rules;
  - (b) compelled rules under s908CD. Section G of this regulatory guide provides guidance about the compelled rules.
- RG 000.17 This regulatory guide explains how we administer this regime.
- Note: In this document, unless otherwise specified, references to ‘Rule 1.2.5’, ‘Part 2.4’ or ‘Schedule 2’ (for example) are references to a particular rule, part or schedule of the administration rules.
- RG 000.18 Sections B–D of this regulatory guide explain how licensees may comply with particular administration rules, including:
- (a) governance, outsourcing and managing conflicts of interest;
  - (b) having adequate resources to operate the licensed benchmark;
  - (c) the design of a licensed benchmark, changes to the licensed benchmark and requirements for a code of conduct;
  - (d) transparency of, and access to, a licensed benchmark;
  - (e) cessation of a licensed benchmark, accountability and audit; and
  - (f) the obligation to assist ASIC.
- RG 000.19 Section G of this regulatory guide explains when we expect to use the powers in the compelled rules to compel the administration or generation of a significant benchmark, or to compel a contributor to provide data or information to the administrator of a significant benchmark.

## B Governance, management and resources

### Key points

This section explains how we expect licensees to comply with rules for governance, oversight and managing conflicts of interest, and how licensees can meet the requirement to have adequate resources.

### Guiding obligations

- RG 000.20 Rule 2.1.1 requires a licensee to act efficiently, honestly and fairly in generating and administering each benchmark specified in its licence.
- RG 000.21 A licensee's arrangements for a licensed benchmark must be appropriate for the nature, complexity and intended use of the licensed benchmark. Consideration of what is appropriate for a particular licensed benchmark should take into account the intended, expected or known usage of the licensed benchmark, and the nature of conflicts of interest arising in the generation and administration of the licensed benchmark.
- RG 000.22 Intended, expected or known use of the licensed benchmark could take into account the types of users that have direct access to the licensed benchmark (i.e. through a subscription service from the administrator), the types of contracts or other functions that typically reference the licensed benchmark and, where the information is readily available, the significance of the licensed benchmark to the market.
- RG 000.23 A licensee must also maintain the quality, integrity, availability, reliability and credibility of the licensed benchmark, and generate and administer the licensed benchmark in a way that has regard to contractual certainty for contracts which reference it and which does not adversely affect the integrity of the market.

### Governance, management and oversight

- RG 000.24 Rule 2.1.2 requires a licensee to have adequate arrangements for the governance and management of the licensee.
- RG 000.25 The licensee must also have adequate arrangements for the oversight and control of internal and external parties who have a role in the generation and administration of a licensed benchmark. Oversight arrangements must ensure the licensee remains responsible for all of the functions involved in generating or administering a licensed benchmark.



- RG 000.26 Consistent with the IOSCO benchmarks principles, the concept of generation and administration of a financial benchmark should be interpreted broadly to include:
- (a) development—defining the financial benchmark and financial benchmark method;
  - (b) determination and dissemination—accurate and timely determination and distribution of the financial benchmark;
  - (c) disclosure—providing appropriate transparency over significant decisions affecting the determination of the financial benchmark, such as contingency measures if there is insufficient financial benchmark data or failure of critical infrastructure; and
  - (d) governance and oversight—establishing robust governance, oversight and accountability arrangements to administer the financial benchmark, including its development, determination and distribution.

### **Oversight arrangements**

- RG 000.27 Depending on the nature, complexity and intended use of a licensed benchmark, an effective oversight arrangement might consist of an oversight committee or another mechanism to review and challenge how all aspects of the licensed benchmark are administered.
- RG 000.28 The oversight function should involve reviewing and monitoring the operational aspects of benchmark administration, including:
- (a) benchmark design, including periodic reviews of benchmark design;
  - (b) changes to the benchmark's method;
  - (c) risk monitoring, including risks to the integrity, reliability and effectiveness of the licensed benchmark; and
  - (d) procedures for the cessation of the benchmark.
- RG 000.29 The oversight function should apply to the governance of benchmark administration, including:
- (a) reviewing the guidelines, policies and conventions that support the administration of the licensed benchmark;
  - (b) oversight of outsourcing to third parties;
  - (c) assessing the need for audits and external reviews and, where applicable, implementing the outcomes of audits and reviews;
  - (d) monitoring any use of discretion by the licensee; and
  - (e) for submission-based benchmarks, ensuring more robust oversight of monitoring of submissions and inputs.

## Audits and breaches

- RG 000.30 Rule 2.1.2(3) requires a licensee's governance arrangements to be reviewed, audited and tested periodically. The frequency of the audit, and whether it should be an internal or external audit, should be determined taking into account the nature, complexity and intended use of the licensed benchmark and how it is determined.
- RG 000.31 Effective governance, management and oversight arrangements should include a robust mechanism to identify conduct that may undermine the integrity, reliability and effectiveness of the licensed benchmark. This may include a whistleblower policy.

## Outsourcing

- RG 000.32 Rule 2.1.3 requires a licensee that outsources any of the functions involved in generating or administering a licensed benchmark to have documented arrangements with its service providers. A licensee must have adequate arrangements designed to ensure the licensee is complying with its obligations under Pt 7.5B in relation to the outsourced functions, and the service provider is complying with its obligations under the outsourcing arrangement.
- RG 000.33 Consistent with the IOSCO benchmarks principles, this rule is particularly important for functions relating to the determination of the licensed benchmark.
- RG 000.34 A licensee may comply with Rule 2.1.3 by:
- (a) ensuring that the service provider has the ability, capacity and any authorisation required by law to perform the outsourced functions reliably and professionally;
  - (b) appropriately supervising the service provider in carrying out the outsourced functions;
  - (c) being able to terminate the outsourcing arrangements where necessary; and
  - (d) requiring the service provider to disclose to the licensee any development that may have a material impact on the service provider's ability to provide the outsourced functions.
- RG 000.35 We also consider that the licensee should retain the necessary expertise to supervise the outsourced functions effectively.

## Conflicts of interest

- RG 000.36 Rule 2.1.4 requires a licensee to have adequate arrangements for handling conflicts of interest in relation to generating and administering each of its licensed benchmarks.
- RG 000.37 This rule is intended to ensure that actual or potential conflicts of interest do not inappropriately influence benchmark determination, thereby ensuring that the integrity, reliability and credibility of the licensed benchmark are protected.
- RG 000.38 In some cases it may be sufficient for a conflict of interest to be disclosed to stakeholders, including users and contributors. In other cases the rule may require additional arrangements for managing or avoiding conflicts of interest, for example:
- (a) where a conflict is created by the licensee's ownership structure or controlling interests, it may be necessary to manage the conflicts by having an independent oversight function. This function should be comprised of a balanced representation of stakeholders, including users and contributors;
  - (b) where the licensee, its affiliate or, in some cases, outsourced service providers also provide non-benchmark administration services, this may give rise to conflicts of interest. These must be subject to robust oversight and should be disclosed to stakeholders, including contributors and users;
  - (c) where discretion may be used in the benchmark determination process, it must be free from the influence of conflicts of interest, be independently and honestly exercised, and be subject to adequate review and signoff before the determined benchmark is disseminated; and
  - (d) conflicts of interest for the staff of the licensee should be specifically considered and managed (e.g. ensuring their remuneration structure does not create incentives based on the outcomes of benchmark determination).

## Adequate resources

- RG 000.39 Rule 2.1.5 requires a licensee to have sufficient human, technological and financial resources. In complying with this requirement, a licensee should undertake:
- (a) a qualitative assessment as to whether the resources are appropriate for the tasks they are required to do; and

- (b) a quantitative assessment as to whether enough of those resources are applied towards the task.

RG 000.40 Rule 2.1.6 requires a licensee to ensure that its officers, managers, employees and representatives who are involved in the generation or administration of the licensed benchmark are fit for office and have the necessary experience, qualifications and skills to perform their roles.

RG 000.41 In addition, licensees should maintain policies dealing with:

- (a) staff training;
- (b) periodic reviews for competence; and
- (c) continuity and succession planning.

RG 000.42 Rule 2.1.7 requires a licensee to hold or have legally certain access to financial resources to cover at least six months of current operating expenses. For some licensees, it may be appropriate to have a plan for raising additional equity, which should be approved by the board.

## C Licensed benchmark design, data and method

### Key points

This section explains how licensees may comply with rules dealing with the design of a licensed benchmark, including:

- selecting and using financial benchmark data;
- the method for determining the licensed benchmark; and
- changes to the method.

It also explains how licensees are expected to comply with rules about:

- the cessation of the licensed benchmark; and
- maintaining written guidelines or a code of conduct for submitters.

### Benchmark design and method

RG 000.43 Rule 2.2.1 requires a licensee to ensure a licensed benchmark is designed, to the extent reasonably practicable, to be an accurate and reliable representation of the interest which is intended to be measured by the financial benchmark. Rule 2.2.1 should be read in conjunction with Rule 2.2.3 about the method for generating a licensed benchmark.

RG 000.44 Together, we consider these rules require the method to specify or refer to:

- (a) definitions of key terms used in the method;
- (b) the criteria and procedures used to develop the licensed benchmark, including:
  - (i) how financial benchmark data is selected; and
  - (ii) the mix of financial benchmark data that may be used to determine the licensed benchmark and the priority given to each type of financial benchmark data;
- (c) the minimum data needed to determine a licensed benchmark, and whether and when a model or extrapolation may be used;
- (d) if the generation of the licensed benchmark involves the exercise of expert judgement or discretion:
  - (i) the guidelines, rules and other controls that govern the exercise of expert judgement; and
  - (ii) procedures and practices designed to promote consistency in how expert judgement is exercised;

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- (e) the procedures for validating data. This means having procedures for dealing with errors in financial benchmark data or in the benchmark determination, and when the licensed benchmark will be re-determined;
- (f) the frequency for internal reviews and approvals of the method;
- (g) when the licensee may consult on a proposed material change to the licensed benchmark;
- (h) how the licensed benchmark is determined when financial benchmark data might be unreliable or absent, for example in periods of market stress or disruption; and
- (i) the potential limitations of the benchmark, including when financial benchmark data may be unreliable or absent.

RG 000.45 The design of a licensed benchmark also needs to be sufficiently flexible so that it can be applied in a range of market conditions, but not so wide a range that the licensed benchmark would not be representative of the interest it is intended to measure.

RG 000.46 Rule 2.2.3(2)(d)(iii) requires licensees to use a method for generating a licensed benchmark that establishes contingency arrangements applicable where the quantity or quality of financial benchmark data is inadequate to generate the licensed benchmark. We think this includes where circumstances such as market stress or disruption or failure of critical infrastructure interfere with the generation of a licensed benchmark.

RG 000.47 The licensee should also review and change the mix of financial benchmark data as appropriate.

## Input data, including internal controls

RG 000.48 Rule 2.2.2 requires a licensee to take all reasonable steps to ensure the financial benchmark data that is used to generate a licensed benchmark is sufficient to accurately and reliably represent the interest it is designed to measure.

RG 000.49 Financial benchmark data includes a wide range of data or information that may be used to determine a financial benchmark. Licensees should have a process for selecting the types of financial benchmark data to use and determining who may contribute financial benchmark data.

RG 000.50 Rule 2.2.6 requires a licensee to have appropriate internal controls over its data collection and transmission processes. It also requires a licensee to have adequate arrangements to control the acceptance, retention and use of financial benchmark data.

- RG 000.51 These arrangements must include arrangements reasonably designed to ensure that the licensee accepts financial benchmark data only from authorised persons (where applicable), and to ensure that the retention of financial benchmark data maintains the security and integrity of that data. The arrangements must also be reasonably designed to ensure that the licensee uses only accurate and complete financial benchmark data.
- RG 000.52 Rule 2.2.3(2)(f) requires licensees to have procedures to monitor or review the completeness and accuracy of financial benchmark data. This should include, where reasonably practicable, undertaking statistical or other analysis of financial benchmark data against other relevant data or information (such as data from the underlying market) to identify and follow up on irregularities or potential errors.
- RG 000.53 The monitoring and review arrangements should reflect the nature of financial benchmark data used. For example:
- (a) if a licensed benchmark uses submissions (particularly submissions that involve use of expert judgement), it would be important to have robust internal controls to identify non-compliance with the submission guidelines and the applicable code of conduct; and
  - (b) if a licensed benchmark uses market data, it may be appropriate to review the completeness and accuracy of data when end-of-day market information becomes available.
- RG 000.54 Licensees should also have arrangements designed to enforce compliance with the requirements for financial benchmark data as set out in the method for calculating the licensed benchmark, guidelines or code of conduct. For example, where financial benchmark data is obtained from commercial vendors, there should be contractual provisions dealing with these matters which provide sufficient commercial recourse if there is a breach of contract.

### **Hierarchy of financial benchmark data**

- RG 000.55 Rule 2.2.3(2)(c) requires the method to set out the hierarchy for the order in which financial benchmark data will be used, though transaction data should be used where it is available and sufficient. This requirement will assist the licensee and other stakeholders to assess whether the method is reliable and generates an accurate representation of the interest the licensed benchmark is intended to measure. Rule 2.2.2 requires that, where data from an active market involving arms-length transactions is available and that data is sufficient to accurately measure the interest, the rule requires that data to be used.

- RG 000.56 To meet these requirements, the licensee should ensure that the method:
- (a) prioritises the use of transaction data. However, other data (such as executable quotes or data sourced from commercial vendors) can be used if it provides a more accurate representation of the interest, market or economic reality the licensed benchmark is intended to measure; and
  - (b) identifies the minimum quantity or quality required of each type of financial benchmark data, and how the data will be used.
- RG 000.57 Rule 2.2.3(3) requires a licensee to ensure the method and its use of the method is reviewed and tested periodically, and updated as appropriate.

## Changes to the method

- RG 000.58 Rule 2.2.4 requires a licensee to take steps to consult and notify users before making a proposed material change to the method, including a final stage method (see RG 000.60 and RG 000.61). The requirement to consult and notify is a requirement to take such steps as are reasonable to take in the circumstances. A licensee must also notify ASIC in writing about the proposed change within a reasonable time before the change is implemented.
- RG 000.59 Where a licensee has procedures to consult on proposed changes to the method, this can be done through advisory committees rather than public consultation. We consider good practice consultation would involve:
- (a) giving relevant stakeholders sufficient time to consider and provide feedback; and
  - (b) providing information to stakeholders on consultation feedback where practicable.

## BBSW administrator must maintain final stage method

- RG 000.60 Rule 2.2.5 requires that a licensee whose licence specifies the BBSW must maintain a method (a final stage method) for generating and administering the BBSW that will allow the BBSW to be generated when normal methods have failed or are likely to fail.
- RG 000.61 A final stage method must require contributors to provide financial benchmark data based on the exercise of expert judgement by the contributors.

Note: BBSW means the bank bill swap rate, a short-term money market benchmark interest rate, as specified in a benchmark administrator licence under s908CB.



## Cessation of a licensed benchmark

- RG 000.62 Rule 2.4.1 provides that, where a licensee intends to cease administering or generating a licensed benchmark, the licensee must give ASIC reasonable notice and have arrangements for ensuring the orderly transition of the licensed benchmark to another administrator, or to ensure the orderly cessation of the generation and administration of the licensed benchmark.
- RG 000.63 This rule is intended to give ASIC reasonable time to consider the likely impact of the transfer or cessation of a licensed benchmark, and to consult with other regulators, such as the Reserve Bank of Australia (RBA), where appropriate. As such, we expect the licensee to informally discuss any consideration of cessation with ASIC as early in the process as possible. We also expect licensees to provide formal notice as soon as practicable after forming the intention or making the decision to cease or transfer administration and generation of the licensed benchmark.
- RG 000.64 Orderly transition or cessation of generation or administration of a licensed benchmark requires a licensee to consider the impact on financial contracts or products that reference the licensed benchmark, at least where these contracts or products are within scope of the intended use of the licensed benchmark. The transition arrangements plan should address:
- (a) whether the contracts or products can be amended to refer to another financial benchmark and whether the other financial benchmark is a viable alternative; and
  - (b) whether there is enough time for the contracts or products to be amended before the proposed cessation date.

## Guidelines or code of conduct on the responsibilities of contributors

- RG 000.65 Rule 2.5.1 requires a licensee to have written guidelines that govern the obligations of contributors to the licensed benchmark. This requirement may be met using two or more guidelines.
- RG 000.66 For a submissions-based benchmark, where the submitters can exercise discretion or expert judgement, the written guidelines must govern the way in which submitters exercise expert judgement or discretion.

### Content of written guidelines for all licensed benchmarks

- RG 000.67 Written guidelines for all licensed benchmarks, not just submissions-based benchmarks, should meet a number of minimum requirements. They must:
- (a) apply to all hierarchies of financial benchmark data and data contribution, including submission;

- (b) provide a clear description of the financial benchmark data to be provided and how it is required to be provided;
- (c) identify the entities, and where necessary the persons or roles, that may contribute financial benchmark data;
- (d) set out procedures and controls to reasonably verify:
  - (i) the identity of the contributor; and
  - (ii) the accuracy and completeness of financial benchmark data from a contributor; and
- (e) set out the controls a contributor is required to establish, including:
  - (i) procedures for contributing financial benchmark data, including requirements to identify whether financial benchmark data meets the licensee's requirements;
  - (ii) any requirement to validate financial benchmark data before it is provided to the licensee;
  - (iii) record-keeping policies;
  - (iv) requirements to manage conflicts of interest;
  - (v) requirements to report erroneous or suspicious financial benchmark data; and
  - (vi) where discretion may be used in contributing financial benchmark data, policies on the use of discretion.

### **Content of code of conduct for submission-based benchmarks**

RG 000.68 For submission-based benchmarks, where the submitters can exercise discretion or expert judgement, the code of conduct for submitters required by this rule should address:

- (a) the selection of inputs;
- (b) who may submit data and information to the licensee;
- (c) quality control procedures to verify the identity of a submitter;
- (d) for employees or officers that report data or information to the licensee:
  - (i) procedures to verify the authorisation of the employees; and
  - (ii) the criteria applied to the employees;
- (e) policies to encourage submitters to submit all relevant data and not to withdraw from surveys or panels;
- (f) submitters' internal systems and controls, which should include:
  - (i) procedures for determining eligible inputs, validating inputs, internal review and signoff of inputs, and submitting inputs;

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- (ii) procedures to detect, evaluate and report suspicious inputs or transactions. This includes for intergroup transactions, and to ensure the bona fide nature of such inputs;
- (iii) policies detailing the use of expert judgement;
- (iv) record-keeping policies, including for use of expert judgement;
- (v) training, including on applicable laws and regulations;
- (vi) suspicious submission reporting;
- (vii) roles and responsibilities of key personnel and accountability lines;
- (viii) whistleblower policies; and
- (ix) policies and procedures for managing conflicts of interest; and
- (g) requirements for submitters such as banks to manage conflicts of interest through:
  - (i) policies and procedures to prohibit or otherwise impose robust controls on when front office staff may be permitted to submit inputs to the licensee;
  - (ii) physical separation of staff and reporting lines;
  - (iii) the identification, mitigation or avoidance of potential incentives to manipulate or otherwise influence financial benchmark data; and
  - (iv) the identification, mitigation or avoidance of conflicts of interest arising from any other business of the submitter or its affiliates.

### **Certain commodity benchmarks**

RG 000.69 If a commodity benchmark is within the intended scope of the IOSCO PRA principles, the licensed administrator of that benchmark may elect to comply with the requirements set out in those principles instead of the requirements for a code of conduct in RG 000.68. The relevant principles relate to:

- (a) the integrity of the reporting process;
- (b) assessors; and
- (c) supervision of assessors.

## D Transparency, access and accountability

### Key points

This section explains the licensee's obligations relating to:

- the disclosure that must be provided by a licensee;
- fair, reasonable and non-discriminatory access to the licensed benchmark, including pricing; and
- complaints and record-keeping.

### Disclosure about licensed benchmarks

RG 000.70 Rule 2.6.1 requires a licensee to publicly disclose adequate information to enable its users and contributors to understand the interest, market or economic reality that the licensed benchmark is intended to measure, and the method for generating the licensed benchmark.

RG 000.71 This rule is intended to provide sufficient information about the licensed benchmark, and the key elements of its method, to allow users and contributors to:

- (a) understand how the licensed benchmark is determined;
- (b) assess how well the licensed benchmark measures the relevant interest, market or economic reality it is intended to measure; and
- (c) assess whether it is appropriate to be used as a reference for a particular financial contract or product.

RG 000.72 Licensees may provide disclosure by issuing a public benchmark statement. Alternatively, licensees can provide disclosure by making documents (including guidelines, a code of conduct, rules and key procedures) available and easily accessible to users and contributors.

RG 000.73 To comply with this rule, licensees should ensure the information disclosure provides a clear explanation of:

- (a) the interest, market or economic reality the licensed benchmark is intended to measure;
- (b) the rationale for adopting the benchmark method and procedures for reviewing and approving the method;
- (c) how the licensed benchmark is determined, including:
  - (i) if two or more methods of benchmark determination may be used, when and in what circumstances each method will be used; and

- (ii) the types of financial benchmark data that may be used, the priority given to each type of financial benchmark data, the minimum data needed to determine the licensed benchmark, and when a model or extrapolation may be used;
- (d) for an index benchmark, the procedure for rebalancing the constituents of the index;
- (e) how errors in financial benchmark data or in the benchmark determination will be dealt with, including when the licensed benchmark will be re-determined;
- (f) the process for review and approval of a method; and
- (g) when the licensee may consult on a proposed material change to the licensed benchmark and how users will be informed of the change.

RG 000.74 Where discretion may be used in determining the licensed benchmark, the licensee should ensure published information:

- (a) identifies in what circumstances and by whom discretion may be exercised in the benchmark determination process; and
- (b) sets out the criteria or rules, and controls, that apply to the exercise of discretion, including how an exercise of discretion may be evaluated.

RG 000.75 Information disclosure should also, to the extent appropriate:

- (a) address the circumstances in which the licensed benchmark may become unreliable in measuring the relevant interest, market or economic reality;
- (b) outline the procedures that may be used to determine the licensed benchmark when financial benchmark data identified in the method may be insufficient, inaccurate or unreliable (for example in stressed, illiquid or fragmented markets);
- (c) identify the potential limitations of the licensed benchmark in such periods; and
- (d) inform users that events or factors may require changes to or the cessation of the licensed benchmark, which may have an impact on financial products and contracts that reference the licensed benchmark.

RG 000.76 To ensure the information disclosed remains current, a licensee must:

- (a) review the information disclosure when material changes are made to the administration of the licensed benchmark; and
- (b) update the information disclosure as necessary.

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## Fair, reasonable and non-discriminatory access

- RG 000.77 Rule 2.6.2 requires a licensee to have fair, reasonable, non-discriminatory and objective conditions for access to the licensed benchmark, including pricing.
- RG 000.78 In relation to pricing, this rule is intended to ensure that the price that may be charged for access to a licensed benchmark is non-discriminatory, not anti-competitive, and not manifestly unreasonable.
- RG 000.79 If charges apply for access to the licensed benchmark, we expect licensees to have policies and procedures covering:
- (a) the factors that the licensee would consider when reviewing pricing and pricing structure;
  - (b) a mechanism for users to seek a review and/or to make a complaint about pricing, which is clearly communicated to users; and
  - (c) a robust process for reviewing and setting prices, and identifying and resolving issues, including pricing structure.

## Record-keeping

- RG 000.80 Rule 2.7.1(1) requires a licensee to create and maintain records that enable it to demonstrate compliance with the requirements of the administration rules.
- RG 000.81 Rule 2.7.1(2) specifies other records that must be kept for each occasion a licensed benchmark is generated. We think this includes:
- (a) changes to the method;
  - (b) any use of financial benchmark data that is a change or deviation from standard procedures;
  - (c) queries about financial benchmark data, and the licensee's responses; and
  - (d) any audits, reviews or investigations, and any follow-up actions.

## Complaints

- RG 000.82 Rule 2.7.2 requires a licensee to maintain and publish appropriate written procedures for investigating complaints, and to investigate complaints in a timely manner and respond to complaints as soon as practicable.

- RG 000.83 The written procedures should allow complaints to be raised in a user-friendly manner, and should include an escalation process.
- RG 000.84 We also expect the written procedures to ensure that the investigation of a complaint should be independent of any personnel who may be, or may have been, involved in the subject matter.

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## E Overseas licensees

### Key points

This section explains our approach to licensing overseas benchmark administrators.

In particular, we explain when we may permit an overseas licensee to comply with its Australian licence obligations by continuing to comply with applicable overseas benchmark regulation.

### Our approach to overseas licensees

- RG 000.85 Overseas benchmark administrators may need, or may choose to seek, a benchmark administrator licence under the Corporations Act. In some cases, an overseas administrator that is required to hold a benchmark administrator licence may already be complying with the requirements of a substantially equivalent overseas regulatory regime.
- RG 000.86 In relation to these overseas licensees, we may consider:
- (a) accepting reliance (in whole or in part) on compliance with overseas regulation, for example in lieu of direct compliance with specific Australian obligations; and
  - (b) where appropriate, also exempting the licensee from specified obligations under the Australian regime.
- RG 000.87 We will adopt the approach that is most appropriate to the circumstances of the particular case.

### Reliance on regulation under an overseas regime

- RG 000.88 Section 908AD provides that, if a licensed benchmark is wholly or partly generated or administered in a foreign country, we may, to the extent we consider appropriate, perform the function of supervising the licensed benchmark by satisfying ourselves that:
- (a) the regulatory regime that applies to the licensed benchmark in the foreign country provides for adequate regulation of the licensed benchmark; or



- (b) adequate cooperative arrangements are in place with an appropriate authority of the foreign country to ensure that the licensed benchmark will be adequately supervised by that authority.

RG 000.89 We may not require a cooperative arrangement with an overseas regulator if specific reporting arrangements with the overseas licensee give ASIC access to information that is substantially similar to what we would have under a regulatory cooperation arrangement with an overseas regulator.

RG 000.90 This means we may decide that the licensee's compliance with overseas regulatory obligations could be considered to partially or wholly meet obligations under the Australian licence. This does not affect the legal obligations of the licensee under the Australian regime but does affect how we administer the regime.

### **Substantially equivalent regulatory regime**

RG 000.91 To assess whether the regulatory regime that applies to the administration of the licensed benchmark in the foreign country provides adequate regulation, we will consider whether the overseas regulatory regime is sufficiently equivalent to the Australian regulatory regime.

RG 000.92 We will apply the approach set out in [Regulatory Guide 54](#) *Principles for cross-border financial regulation* (RG 54), and consider the extent to which the overseas regulatory regime, as it applies to the administration of the licensed benchmark:

- (a) is clear, transparent and certain;
- (b) is adequately enforced;
- (c) is consistent with relevant international principles (see RG 000.95); and
- (d) achieves outcomes equivalent to the outcomes of the Australian regulatory regime for financial benchmarks (see RG 000.98).

RG 000.93 The relevant international principles are:

- (a) the IOSCO benchmarks principles; and
- (b) for some commodity benchmarks, the IOSCO PRA principles.

RG 000.94 We may also consider whether the overseas regime provides for adequate review and reporting on regulatory compliance, such as an annual external audit of the licensee's compliance with relevant international principles in a way that meets the requirements of the overseas regime.

**Consistent with international principles**

- RG 000.95 To determine whether there is sufficient regulatory equivalence between the overseas regime and Australia's regulatory regime, we will consider whether an overseas regulatory regime is designed to achieve the policy outcomes of relevant international principles.
- RG 000.96 This may be demonstrated in a number of ways, for example:
- (a) where the overseas regime applies the IOSCO benchmarks principles in its regulations;
  - (b) where the overseas regime uses the IOSCO benchmarks principles as a standard for assessing compliance with the overseas regime; or
  - (c) by reference to an assessment by IOSCO that the jurisdiction has fully or broadly implemented the IOSCO benchmarks principles.
- RG 000.97 We will take into account any revised or newly established principles or recommendations on financial benchmarks published by IOSCO, or other relevant international standard-setting body or forum, from time to time.

**Equivalent outcomes to the Australian regulatory regime**

- RG 000.98 Consistent with the relevant international principles, we consider the relevant outcomes are:
- (a) robust governance and oversight arrangements;
  - (b) requirements to ensure the quality of the licensed benchmark, including the design of the licensed benchmark and the use of data in determining the licensed benchmark;
  - (c) requirements to ensure the quality of the licensed benchmark's method; and
  - (d) requirements to ensure a high level of accountability, including audit and cooperation with regulatory authorities.
- RG 000.99 To determine whether the overseas regulatory regime achieves the key outcomes, we will focus on whether the outcomes are achieved from the perspective of the stability of the Australian financial system, and the protection and confidence of Australian investors.
- RG 000.100 The regulatory mechanisms used in each country may differ. This means we need to review and understand, in detail, the regulatory mechanisms used in an overseas regime to achieve these regulatory outcomes, especially if they are not the same as the Australian regulatory mechanisms.

## **Adequate cooperative arrangements**

- RG 000.101 We will normally expect that adequate cooperative arrangements with an overseas regulator will provide for:
- (a) prompt sharing of information by the home regulatory authority; and
  - (b) effective cooperation on supervision, investigation and enforcement.
- RG 000.102 Adequate cooperative arrangements would enable prompt and adequate exchanges of information needed to perform our supervisory functions. This would usually involve direct and continuing contact with the relevant officers of the overseas regulator.
- RG 000.103 In some circumstances, it may be more appropriate for us to establish information access arrangements directly with the overseas licensee. This may be the case where the licensee is complying with an overseas regime that has greater reliance on regulatory mechanisms such as external audits undertaken by the licensee.

## **Extent of reliance on overseas regime**

- RG 000.104 In these scenarios, we will work with the licensee to clarify:
- (a) the extent to which we may rely on compliance with an overseas regime's requirements as meeting Australian requirements; and
  - (b) whether we will rely on regulatory cooperation arrangements with an overseas regulator or require direct information access arrangements with the licensee.
- RG 000.105 These expectations will also be relevant in our supervision of the licensee, including any assessments and reporting under the Australian regime.

Note: See also Section F as it applies to overseas licensees.

## F Applications and exemptions

### Key points

This section explains our approach to assessing licence and exemption applications.

### Applying for a licence and conditions on a licence

- RG 000.106 Under s908BD, a body corporate may, by lodging an application with ASIC, apply for a benchmark administrator licence authorising it to administer the financial benchmark specified in the licence.
- RG 000.107 Section 908BC provides that we may grant an applicant a benchmark administrator licence if we are satisfied that:
- (a) the application has been made in accordance with s908BD;
  - (b) the applicant will comply with its obligations if the licence is granted; and
  - (c) no disqualified individual appears to be involved in the applicant.
- RG 000.108 We must not grant an applicant a benchmark administrator licence unless:
- (a) the applicant is registered under Div 2 of Pt 5B.2, where the applicant is a foreign body corporate (s908BC(2)); and
  - (b) 42 days have passed since the application was made and we have not given a notice under s853D(2) to the applicant within that time (s908BC(3)).
- Note: A notice under s853D(2) is a notice that we propose to make a declaration under s853C that an individual who is involved in the licence applicant is disqualified for the purposes of Div 2 of Pt 7.4.
- RG 000.109 Under s908BG we may impose conditions, or additional conditions, on a benchmark administrator licence.
- RG 000.110 We will make publicly available the list of licensees and their licence conditions.

### Exemptions

- RG 000.111 Under s908EB, we may exempt a person or class of persons, or a financial benchmark or class of financial benchmarks, from all or specified provisions of Pt 7.5B, the Corporations Regulations or a provision of the ASIC rules made under Pt 7.5B.

Note: Under s908EB, exemptions may also be provided by regulations.

- RG 000.112 We may exempt a person from the need to be licensed under Pt 7.5B, or the specific obligations that will apply once a person is licensed. An exemption may be subject to specified conditions.
- RG 000.113 Generally, we will only exempt a person from the need to be licensed under Pt 7.5B in rare circumstances, including:
- (a) where regulatory outcomes for financial benchmarks are not relevant to the specific financial benchmark;
  - (b) where regulatory outcomes are achieved without regulation under Pt 7.5B. This may be relevant if an entity is subject to other forms of regulation that already achieve all of the regulatory outcomes and benefits under Pt 7.5B;
  - (c) if the cost of regulation required to achieve the regulatory outcomes for a financial benchmark significantly outweighs the benefits of those outcomes; or
  - (d) if granting an exemption will harmonise with the intended scope of relevant international principles.
- RG 000.114 For overseas licensees, in some cases we may grant an exemption from specified provisions of the Australian regime, with appropriate conditions, where we are satisfied that the criteria outlined in s908AD have been met. In other cases, we may determine that the licensee should remain subject to the requirements of the Australian regime if that helps to maintain Australian financial system stability or Australian investor confidence.

## How we assess applications

- RG 000.115 Section 908BO lists matters we must take into account when deciding whether to grant a licence, impose a licence condition or make other licensing decisions, including whether to grant exemptions. These matters are:
- (a) how the financial benchmark is, or is to be, administered;
  - (b) the nature and purpose of the financial benchmark;
  - (c) the manner in which the financial benchmark is, or is to be, used;
  - (d) the persons who are, or may be, required to report data or other information to the licensee for the purposes of generating or administering the financial benchmark;

- (e) for an entity that is authorised to administer the same or a similar financial benchmark in the foreign country in which its principal place of business is located:
  - (i) the criteria that the entity satisfied to obtain an authorisation to administer that financial benchmark in that country;
  - (ii) the obligations the entity must continue to comply with to keep the authorisation;
  - (iii) the level of supervision to which the administration of that financial benchmark in that country is subject; and
  - (iv) whether adequate arrangements exist for cooperation between ASIC and the authority that is responsible for that supervision; and
- (f) whether it would be in the public interest to take the licensing or regulatory action.

RG 000.116 We may also take into account any other matter that we consider relevant.

RG 000.117 Our experience in dealing with applications by market licensees, trade repository licensees and clearing and settlement facility licensees has shown that it is desirable for applicants to submit a draft application before their formal application. This helps us to review the draft application for completeness so we have sufficient information to make a decision.

## G Compulsion powers

### Key points

This section explains how ASIC may use its compulsion powers provided under the compelled rules.

RG 000.118 Rules 2.1.1 and 3.1.1 of the compelled rules respectively provide that ASIC may, by written notice, compel:

- (a) a licensed administrator of a significant benchmark to:
  - (i) continue to generate or administer the significant benchmark;
  - (ii) to generate or administer the significant benchmark in a particular way;
  - (iii) change the method used to generate or administer the significant benchmark; or
  - (iv) specify other requirements the licensee must comply with; and
- (b) a contributor to contribute data or information to:
  - (i) the licensed administrator for the generation or administration of a significant benchmark; or
  - (ii) ASIC for purposes related to the generation or administration of the significant benchmark.

RG 000.119 We may only use these compulsion powers by issuing a notice if we reasonably believe it is in the public interest to do so. We consider the public interest test is only likely to be satisfied for licensed administrators of significant benchmarks and for contributors to significant benchmarks in specific circumstances. This section sets out when we may consider it is in the public interest to utilise our compulsion powers.

### Requirement to continue administering a significant benchmark

RG 000.120 Consistent with key overseas regimes, including the EU benchmark regulatory regime, we consider the public interest test may be satisfied where the licensee intends to cease administering the significant benchmark, and we consider that it is necessary to require the licensee to continue administering a significant benchmark to help to mitigate material market disruption.

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- RG 000.121 This may be the case if we consider that requiring the licensee to continue to administer the benchmark will help to achieve:
- (a) an orderly transition to another benchmark administrator, without disrupting the operation of the significant benchmark; or
  - (b) an orderly cessation of the significant benchmark, including giving reasonable time for users to amend financial contracts that reference the significant benchmark.
- RG 000.122 A trigger for ASIC considering whether to impose this requirement may be where a licensee notifies ASIC that it intends to cease administration of a significant benchmark under Rule 2.4.1 of the administration rules.

## Requirement to provide submissions to the administrator of the BBSW

- RG 000.123 We may consider imposing a requirement for BBSW contributors to provide information or data to the administrator of the BBSW using the administrator's final stage method. We envisage that we would do this in consultation with the RBA, and only if it were necessary to support market functioning.
- RG 000.124 The public interest test for giving a notice under the compelled benchmark rules in relation to the BBSW may be satisfied if we believe the BBSW will not be able to be determined. Specifically, the public interest test may be satisfied if:
- (a) ASIC and the RBA consider it is likely the BBSW will not be able to be determined using the calculation mechanisms set out in the BBSW method (other than the final stage method); or
  - (b) the administrator of the BBSW informs ASIC or the RBA that it is likely to be unable to continue to administer the BBSW (this could be the case where the administrator is using a calculation method that can only be used for two days); or
  - (c) ASIC and the RBA consider that it is likely the BBSW will not be able to be generated and published without ASIC issuing a written notice.
- RG 000.125 The public interest test, as detailed, would only be likely to be met in circumstances where market-based incentives have failed. There are competing policy reasons for requiring a narrower or wider group of contributors to provide submissions to the BBSW. On balance, we consider it would be appropriate for this requirement to be imposed on BBSW contributors that are appointed or are eligible to be appointed as prime banks.

Note: A prime bank means an entity appointed by, or eligible to be appointed by, the administrator of the BBSW as a prime bank in accordance with the administrator's prime bank conventions.

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RG 000.126 We would balance the need to support market functioning and mitigate material market disruption with the need to enhance the likelihood that the prime banks would be able to comply with a requirement to provide submissions to the BBSW. We think this balance may be struck by requiring the provision of submissions using the final stage method that the administrator of the BBSW is required to maintain.

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## Key terms

Term	Meaning in this document
CFR	Council of Financial Regulators
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
expert judgement, discretion	The use of judgement in relation to the use of data or information in determining a benchmark. Includes extrapolating from previous or related transactions, adjusting values for specified factors, or adjusting the weighting given to particular data or information
IOSCO	International Organization of Securities Commissions
IOSCO benchmarks principles	<i>IOSCO Principles for financial benchmarks</i>
IOSCO PRA principles	<i>IOSCO Principles for oil price reporting agencies</i>
licensee	A holder of a benchmark administrator licence granted under s908BC(1)
RBA	Reserve Bank of Australia

## Related information

### Headnotes

application, benchmark administrator licence, code of conduct, compulsion, conflict of interest, controls, exemption, financial benchmark, governance, IOSCO Principles, method, outsourcing, relief, resources, significant financial benchmark

### Regulatory guides

[RG 54](#) *Principles for cross-border financial regulation*

### Legislation

Corporations Act, Pts 5B.2, 7.4, 7.5B; s853D, 908AC, 908AD, 908BA, 908BD, 908BC, 908BD, 908BO, 908BP, 908BQ, 908BR, 908BS, 908BT, 908BV, 908BW, 908CA, 908CD, 908CF, 908EB

Corporations Amendment (Financial Benchmarks) Bill 2017

Corporations Regulations 2001

### Consultation papers and reports

[REP 440](#) *Financial benchmarks*

### Other documents

IOSCO, [Principles for financial benchmarks](#)

IOSCO, [Principles for oil price reporting agencies](#)