

ATTACHMENT 3 to CP 292: Draft ASIC Financial Benchmark (Compelled) Rules



ASIC

Australian Securities & Investments Commission

ASIC Financial Benchmark (Compelled) Rules

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

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Chapter 1: Introduction

Part 1.1 Preliminary

1.1.1 Enabling legislation

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

1.1.2 Title

This instrument is the *ASIC Financial Benchmark (Compelled) 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 compelled 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 the 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.

Note: For convenience, some words and expressions defined in the Act may be cross-referenced in Rule 1.2.2.

1.2.2 Definitions

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 the financial benchmarks specified in that licence.

Note: Paragraph 908CE(1)(a) provides that the powers conferred by these rules may allow ASIC to impose requirements on such entities by written notice.

Rules means these rules.

Chapter 2: Mandatory generation or administration of a significant financial benchmark

2.1.1 Notice to benchmark administrator licensee

(1) ASIC may, by written notice, require the holder of a benchmark administrator licence that specifies a significant financial benchmark:

- (a) to continue to generate or administer the significant financial benchmark; or
- (b) to generate or administer the significant financial benchmark in a particular way.

(2) The licensee must comply with the notice.

(3) Without limiting subrule (1), a notice under that subrule may:

- (a) specify the period during which the licensee must comply with the notice, including by reference to the occurrence of one or more events; and
- (b) specify requirements the licensee must comply with in generating or administering the significant financial benchmark, including:
 - (i) requirements relating to changes to the method the licensee uses to generate or administer the significant financial benchmark; and
 - (ii) where licensee intends to cease generating or administering the significant financial benchmark, requirements relating to the:
 - (A) orderly transition of the significant financial benchmark to another holder of a benchmark administrator licence; or
 - (B) orderly cessation of the generation and administration of the significant financial benchmark.

Note 1: Under section 908CE of the Act, ASIC may only require a holder of the benchmark administrator licence to do something under subrule (1) if ASIC reasonably believes it is in the public interest to do so.

Note 2: ASIC may amend or revoke a written notice under subrule (1) in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).

Penalty: 5,550 penalty units.

Chapter 3: Mandatory submissions to a significant financial benchmark

3.1.1 Notice to Contributor

- (1) ASIC may require, by written notice, a Contributor:
- (a) to provide data or information to the holder of a benchmark administrator licence for the generation or administration of a significant financial benchmark specified in that licence; or
 - (b) to provide ASIC with some or all of that data or information for purposes relating to the generation or administration of that significant financial benchmark.
- (2) The Contributor must comply with the notice.
- (3) Without limiting subrule (1), a notice under that subrule may:
- (a) specify the period during which the Contributor must comply with the notice, including by reference to the occurrence of one or more events; and
 - (b) specify requirements the Contributor must comply with in providing the data or information, including:
 - (i) requirements relating to the manner and form in which the Contributor must provide the data or information; and
 - (ii) other requirements imposed by the holder of the benchmark administrator licence, ASIC, the Act or the *ASIC Financial Benchmark (Administration) Rules 2017*.

Note 1: Under section 908CE of the Act, ASIC may only require a Contributor to do something under subrule (1) if ASIC reasonably believes it is in the public interest to do so.

Note 2: ASIC may amend or revoke a written notice under subrule (1) in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).

Penalty: 5,550 penalty units.

**EXAMPLE OF A WRITTEN NOTICE UNDER SUBRULE 2.1.1(1) OF THE ASIC
FINANCIAL BENCHMARK (COMPELLED) RULES 2017**

Notice

(1) This notice is issued under subrule 2.1.1(1) of the *ASIC Financial Benchmark (Compelled) Rules 2017*.

Definitions

(2) In this notice:

Act means the *Corporations Act 2001* (Cth).

BBSW means the Bank Bill Swap Rate, a short-term money market benchmark interest rate, as specified in the benchmark administrator licence granted to the Current Administrator under section 908CB of the Act.

BBSW Methodology means the method, a copy of which is annexed to this notice, for generating and administering the BBSW, published by the Current Administrator as the ‘BBSW Calculation Methodology’ as at the date of this notice.

Current Administrator means the holder, as at the date of this notice, of the benchmark administrator licence that specifies the BBSW.

New Administrator means another holder of a benchmark administrator licence that specifies the BBSW.

Requirement to generate or administer the significant financial benchmark

(3) The Current Administrator must continue to generate and administer the BBSW until responsibility for generating and administering the BBSW is transitioned to the New Administrator.

Other requirements

(4) The Current Administrator must generate and administer the BBSW during the period specified in paragraph (3) in accordance with the BBSW Methodology and the *ASIC Financial Benchmark (Administrator) Rules 2017*.

(5) The Current Administrator must by [insert date] have adequate arrangements for the orderly transition of the BBSW to a New Administrator.

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- (6) Without limiting paragraph (5), the arrangements referred to in that paragraph must:
- (a) be designed to ensure that the New Administrator will have at the time of transition of the BBSW to the New Administrator:
 - (i) adequate arrangements for the acceptance of financial benchmark data to be used in the generation of the BBSW;
 - (ii) adequate arrangements for generating the BBSW;
 - (iii) adequate arrangements for making the BBSW available to users;
 - (iv) guidelines as required by Rule 2.4.5 of the *ASIC Financial Benchmark (Administration) Rules 2017* in connection with the New Administrator's generation or administration of the BBSW (including where such guidelines are to be adapted from those administered by the Current Administrator);
 - (b) take into account the impact of the transition on users of the financial products or other contracts that reference or otherwise use the BBSW, including the time required for users to amend their contractual documentation, update their internal systems and processes and enter into arrangements with the New Administrator relating to the use of the BBSW as required; and
 - (c) provide for the Current Administrator and the New Administrator to engage in appropriate consultation with users, and keep users appropriately informed, about the transition arrangements.
- (7) The Current Administrator must:
- (a) by [*insert date*] provide ASIC with details of the arrangements referred to in paragraph (5);
 - (b) following the notification in subparagraph (a), provide ASIC with details of any changes to the arrangements, as soon as practicable after making those changes; and
 - (c) on [*insert date(s)*] provide ASIC with details of its progress in implementing the arrangements.

Note: Under Rule 2.1.1(2) of the *ASIC Financial Benchmark (Compelled) Rules 2017*, the Current Administrator must comply with this notice. Failure to comply with this notice attracts a maximum penalty of 5,500 penalty units.

**EXAMPLE OF A WRITTEN NOTICE UNDER PARAGRAPH 3.1.1(1)(A) OF THE
ASIC FINANCIAL BENCHMARK (COMPELLED) RULES 2017**

Notice

(1) This notice is issued under paragraph 3.1.1(1)(a) of the *ASIC Financial Benchmark (Compelled) Rules 2017*.

Definitions

(2) In this notice:

Act means the *Corporations Act 2001* (Cth).

Current Administrator means the holder, as at the date of this notice, of the benchmark administrator licence that specifies the BBSW.

BBSW means the Bank Bill Swap Rate, a short-term money market benchmark interest rate, as specified in the benchmark administrator licence granted to the Current Administrator under section 908CB of the Act.

BBSW Code of Conduct means the written guidelines, a copy of which is attached to this notice, setting out the obligations of Contributors in connection with generation and administration of the BBSW, published by the Current Administrator as the 'BBSW Final Stage Methodology Code of Conduct' as at the date of this notice.

Final Stage Method means the Final Stage Method maintained by the Current Administrator in accordance with Rule 2.2.5 of the *ASIC Financial Benchmark (Administration) Rules 2017*.

Prime Bank means an entity appointed by, or eligible to be appointed by, the Current Administrator as a Prime Bank in accordance with the Prime Bank Conventions.

Prime Bank Conventions means the protocols governing the appointment of Prime Banks and obligations that Prime Banks must comply with in order to maintain Prime Bank status, published by the Current Administrator as the 'Prime Bank Conventions'.

Requirement

(3) Each entity that is a Prime Bank as at the date of this notice is required to:

- (a) provide financial benchmark data to the Current Administrator as required by the Current Administrator for the generation or administration of the BBSW, until [*insert date or event*]; and
- (b) provide the data or information to the Current Administrator in compliance with:
 - (i) the Final Stage Methodology;
 - (ii) the BBSW Code of Conduct; and

- (iii) all rules applicable to the Prime Bank under the *ASIC Financial Benchmark (Administration) Rules 2017*.

Note: Under Rule 3.1.1(2) of the *ASIC Financial Benchmark (Compelled) Rules 2017*, the Prime Bank must comply with this notice. Failure to comply with this notice attracts a maximum penalty of 5,500 penalty units.