STATEMENT OF NEED AND IMPACT OF THE DRAFT CONDUCT STANDARD – REQUIREMENTS RELATING TO THE PROVISION OF A BENCHMARK

DATE OF ISSUE: 6 March 2026

*This third version incorporates changes that were made to the original version of the statement that was published in February 2022 and the subsequent iteration that was published in November 2022.

FSCA

Financial Sector
Conduct Authority

1 PURPOSE OF THE STATEMENT

1.1 This statement relates to the publication of the draft Conduct Standard to be made in terms of section 106(1)(a), read with sections 106(2)(b) and 108(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), setting out requirements relating to the provision of a benchmark[1].

1.2 This statement is published in terms of section 98 of the FSRA which requires that before a regulator makes a regulatory instrument, it must publish the following documents:
(a) A draft of the regulatory instrument;
(b) a statement explaining the need for and the intended operation of the regulatory instrument;
(c) a statement of the expected impact of the regulatory instrument; and
(d) a notice inviting submissions in relation to the regulatory instrument, stating where, how, and by when submissions are to be made.

1.3 In fulfilment of the abovementioned requirements, the Financial Sector Conduct Authority (FSCA) has prepared this document to explain the need for, expected impact, and intended operation of the draft Conduct Standard – *Requirements relating to the provision of a benchmark* (conduct standard).

2. STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

2.1 The lack of a formal regulatory framework for the provision of a benchmark in South Africa

2.1.1 In South Africa, gaps remain in the regulation, supervision and oversight of the provision of a benchmark as a financial service. The provision of a benchmark is currently not directly regulated in South Africa in terms of any financial sector law. A number of policy considerations have highlighted the need for the regulation, supervision, and oversight of the provision of a benchmark as a financial service in South Africa; this in parallel and to compliment South African Reserve Bank (SARB) led to reforms relating to the Johannesburg Interbank Average Rate (JIBAR).[2]

2.1.2 Past cases of manipulation of interest rate benchmarks such as the London Interbank Offered Rate (LIBOR) and the Euro Interbank Offered Rate (EURIBOR), combined with allegations of manipulation of commodity and foreign exchange benchmarks, have highlighted the shortcomings in the regulatory framework for benchmarks in South Africa. The pricing of many financial instruments and financial contracts depend on the accuracy and integrity of

[1] The FSRA defines a "benchmark to mean any index—
(a) by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined; or
(b) that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees."
and "provision of a benchmark" includes:-
(a) administering the arrangements for determining a benchmark;
(b) collecting, analysing or processing input data for the purpose of determining a benchmark; and
(c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose;

[2] The SARB acts as the benchmark administrator for JIBAR. The SARB oversees the publication of JIBAR and is leading reforms in the form of a transition from JIBAR to ZARONIA (South African Rand Overnight Index Average) due to structural weaknesses and declining underlying market activity. However, JIBAR and ZARONIA are two of many reference rates used in the South African markets and an extended scope of regulation relating to the provision of benchmarks is therefore lacking. This framework will not apply to the SARB as the central bank, but it relevant to note that the development of this framework is complementary to the SARB led reforms.

benchmarks which can be subject to potential risks associated with conflicts of interest, the use of discretion and weak governance and oversight arrangements.

2.1.3 The potential manipulation of financial benchmarks has highlighted both the importance of indices and their vulnerabilities. The integrity of benchmarks is critical to the pricing of many financial instruments, such as interest rate swaps and forward rate agreements, and commercial and non-commercial contracts. Benchmarks also play an important role in the management of financial risk.

2.1.4 Doubts about the accuracy and integrity of indices may undermine market confidence, which can lead to significant losses to financial customers and investors and distort the financial markets. It is therefore essential that regulatory steps are taken to ensure the integrity of benchmarks and oversight over the process of determining and provision of a benchmark[3].

2.2 International Standard Setting Bodies and International Best Practice

- *IOSCO Principles for Financial Benchmarks*

2.2.1 Concerns surrounding the integrity and reliability of benchmarks have prompted regulatory reforms globally. The International Organization of Securities Commissions (IOSCO) issued the Principles for Financial Benchmarks (IOSCO benchmarks principles) in July 2013[4]. The IOSCO benchmark principles set a global standard of 19 principles that call on benchmark administrators and submitters to follow robust, proportionate practices so benchmark determinations are reliable and free from conflicts of interest. They group requirements into four pillars: governance (independent oversight, conflicts management), quality of the benchmark (sound design and data sufficiency), quality and transparency of the methodology (clear, published methods and controlled changes), and accountability (complaints handling, record-keeping and periodic audit/review). The IOSCO benchmarks principles are proportionate meaning that there is no one-size-fits-all, were endorsed by the G20 / Financial Stability Board (FSB) and envisage public statements of compliance and supervisory reviews to evidence implementation.

2.2.2 The FSB has also undertaken work on globally significant interest rate and foreign exchange benchmarks (FX benchmarks). The FSB established a working group to undertake analysis of the foreign exchange market structure and incentives that may promote particular types of trading activity around the benchmark fixings. The group published recommendations in September 2014[5] to address these adverse incentives and improve the construction of benchmarks. Jurisdictions such as the European Union (EU) have put in place regulations for indices to ensure that a common framework for benchmarks exists.

- *EU Benchmark Regulations*

2.2.3 The EU adopted the EU Benchmark Regulations (BMR) as part of its efforts towards reducing the risk of systemic harm that may arise from manipulated or unreliable benchmarks. After the discovery of manipulation in key interest-rate benchmarks (notably LIBOR and EURIBOR),

[3] Per the definition in section 1 of the FSRA "provision of a benchmark" includes:-
(a) administering the arrangements for determining a benchmark;
(b) collecting, analysing or processing input data for the purpose of determining a benchmark; and
(c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose;

[4] Available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf

[5] Available at https://www.fsb.org/2014/09/r_140930/

and allegations around energy and FX benchmarks, the EU concluded that benchmarks were vulnerable to conflicts of interest and weak governance, posing risks to market integrity, consumers, and the real economy. This led to a legislative push to ensure accuracy, robustness and integrity of benchmarks and of the determination process. The core framework—Regulation (EU) 2016/1011—was adopted on 8 June 2016. It set uniform rules for (i) benchmark administrators, (ii) contributors of input data, and (iii) supervised "users" across the EU. Most requirements applied from 1 January 2018. The BMR also mapped benchmarks into categories (critical, significant, non-significant) with proportionate obligations and embedded the global IOSCO Principles into EU law. The BMR imposed regulatory requirements on benchmark administrators by subjecting them to authorisation, supervision, and governance standards. These regulations further established comprehensive obligations around the quality of benchmark data and methodologies, the mitigation of conflicts of interest and the implementation of robust controls. The BMR went beyond just regulating the administrators and also imposed duties on the users of the benchmarks, such as banks, asset managers and insurers, by requiring them to ensure that the benchmarks they rely on are administered by authorised entities and included in the European Securities and Markets Authority ("ESMA") register.

2.2.4 Overall, the BMR represented a foundational shift in how the EU conceptualised and regulated financial benchmarks, and a number of reforms were undertaken since adoption in 2016, most recent by way of Regulation EU 2015914, which entered into force on 8 June 2025 (the 2025 EU BMR reforms). The amendments apply from 1 January 2026.

2.2.5 The 2025 EU BMR reforms were driven by evidence that the original BMR cast too wide a net, imposing detailed obligations on all benchmark administrators—even those running small, low-impact indices—creating a disproportionate compliance burden relative to the BMR's financial-stability objectives. The Commission also faced a looming cut-off date at the end of the third-country transitional period: many non-EU administrators had not completed recognition/endorsement/equivalence, threatening EU users' access to widely used global benchmarks, prompting a redesign to focus EU oversight on critical and significant benchmarks while smoothing third-country use for the rest. At the same time, policymakers wanted to preserve integrity in climate and ESG-labelled benchmarks (to *inter alia* curb greenwashing) so they kept EU CTB/PAB benchmarks in scope and extended targeted ESG transparency duties.

2.2.6 The 2025 EU BMR reforms aim to—

(a) reduce the regulatory burden on administrators of smaller benchmarks by focusing on benchmarks with the greatest economic relevance for the EU market.
(b) provide clarity and improve the regulatory approach on third-country benchmarks; and
(c) provide for enhanced transparency and disclosure requirements for ESG-related benchmarks.

- *Need for South Africa to be recognised as an equivalent jurisdiction by the EU in terms of the BMR*

2.2.7 Prior to the 2025 EU BMR reforms, non-EU benchmarks could only be used in the EU if the benchmark is qualified under the third country regime. Accordingly, access to the EU market for third-country benchmark administrators was possible through the following three methods—

(a) Equivalence, where the EU declares the third country's regulatory regime equivalent; or
(b) Recognition by being granted temporary access by a so-called National Competent Authority; or

(c) Endorsement, where an EU based benchmark administrator takes responsibility for that third-country benchmark.

2.2.8 In earlier stages of the FSCA's project to develop a regulatory framework for the regulation and supervision of financial benchmarks (as elaborated on in section 3 below) had at its core the need for South Africa to be recognised as an equivalent jurisdiction by the EU. The 2025 EU BMR reforms have dissipated this need. From 1 January 2026, the BMR's core obligations no longer apply to non-significant benchmarks. As a result, EU-supervised users may continue to use many third-country benchmarks without going through equivalence/recognition /endorsement, materially reducing the original cut-off date risk when the transitional period ended on 31 December 2025. This is a deliberate shift by the EU to focus supervision on benchmarks that matter most for EU stability and policy. Third-country benchmarks remain in scope if they are: critical or significant[6], EU climate benchmarks, or certain commodity benchmarks (Article 19) based on contributed input data. For these, third-country administrators still need to be brought onto the ESMA register via equivalence, recognition or endorsement, and must meet the updated procedural rules.

2.2.9 The amended BMRs[7] now provide for a permanent access mechanism for third-country benchmarks. Recital 19 of the amended BMRs states that "given the very limited number of third country benchmarks covered by equivalence decisions, such recognition should become a permanent means of access to the union market". Amendments to Article 32 resulted in ESMA being the sole authority responsible for recognition. Third-country administrators applying for recognition must comply with the BMR requirements (with limited exceptions), and they must, amongst others, also comply with the IOSCO principles for financial benchmarks.

2.2.10 By implication, given the change in the EU framework, South Africa no longer has an immediate need to be recognised as an equivalent jurisdiction by the EU, as this will only be relevant if there are South African benchmark providers that provide benchmark that exceed the thresholds of 50 Billion Euro and fall within the BMRs new scope as referred to in paragraph 2.2.7.[8]

2.3 The FSCA's mandate and policy objectives to deliver on its mandate

2.3.1 With the implementation of the Twin Peaks model of regulation, the FSCA has been mandated through the FSRA to, amongst other things, enhance and support efficiency and integrity of the financial markets. A number of policy considerations have informed the need for the regulation, supervision, and oversight of the provision of a benchmark as a financial service in South Africa.

2.3.2 Despite the need for equivalence recognition to the EU BMRs having dissipated (as explained in paragraph 2.2.10 above), the following policy rationales remains. Addressing these imperatives will support the FSCA's fulfilling its mandate to enhance and support efficiency and integrity of the financial markets:

(a) Systemic importance and financial stability risk:

[6] Per the BMRs a benchmark becomes "significant" if EU "use" reaches €50 bn, or if authorities designate it based on systemic importance and lack of viable substitutes. Administrators can also opt in (notably when EU-use exceeds €20 bn) to signal oversight.

[7] Amended BMRS available at: https://eur-lex.europa.eu/eli/reg/2025/914

[8] At publication date of this Statement the FSCA is unaware of a South African benchmark administrator that provides a benchmark that exceeds the €50 bn usage threshold.

Benchmarks are embedded in pricing, valuation and risk transfer across loans, bonds, investment funds and derivatives and doubts about their integrity can undermine confidence and transmit shocks economy wide, hence the need for an explicit supervisory perimeter.

(b) Market integrity and conduct risk:
The global experience (e.g., LIBOR/EURIBOR) showed how weak governance and discretion in benchmark setting can lead to manipulation. A proportionate domestic framework should address conflicts, oversight, whistle blowing, surveillance of input data and manipulation controls, in line with international best practice.

(c) Consumer and investor protection:
Inaccurate or non-representative benchmarks can misprice retail and institutional products, causing losses and unfair outcomes for financial customers. A regulatory framework that ensures accuracy, robustness and reliable methodologies directly support the FSCA's statutory objectives to enhance market efficiency and integrity and protect financial customers.

(d) International alignment and cross border market access:
Aligning with IOSCO's Principles for Financial Benchmarks (2013) and cognate regimes (e.g., the EU BMR) will help ensure South African benchmarks remain usable by global counterparties and investors. The FSCA aims to do this to the extent relevant within the South African market's unique context.

(e) Operational resilience and continuity:
Given the economy wide reliance on benchmarks, there is a need to ensure that benchmark administrators have robust systems, data governance, business continuity measures in place. This can be enabled through requiring contingency and cessation plans by benchmark users and relevant benchmark administrators alike in support of operational resilience and continuity.

(f) Role clarity for central bank administered benchmarks:
The framework under development will not apply to the SARB in its role as benchmark administrator of official rates (including JIBAR and ZARONIA). It will focus the FSCA's conduct remit on non-central bank administrators of critical and significant benchmarks (as determined by the FSCA), thereby providing certainty on scope and inter regulatory coordination.

(g) Proportionality and competitiveness:
A tiered approach (e.g., focussing on critical and significant benchmarks only by way of a designation 'per benchmark' approach) will avoid over burdening low impact benchmark administrators while focusing supervisory effort where market risk is greatest.

(h) Approach to foreign benchmarks used in South Africa:
There is a need for a framework for the use of foreign benchmarks (e.g., by way of recognition of relevant foreign benchmark administrators and benchmarks) so that cross border products can safely reference non-SA benchmarks without undermining conduct or stability objectives.

3. REGULATORY DEVELOPMENTS TO DATE

3.1 In line with its statutory mandate the FSCA has undertaken a multi-year project to develop a framework for the regulation and supervision of financial benchmarks to ensure the accuracy, robustness and integrity of benchmarks and the way benchmarks are determined. The project hinges on the Minister of Finance designating the "provision of a benchmark" as a financial service in accordance with section 3(3) of FSRA, and to specify that the FSCA is the

responsible authority for the regulation, supervision, and oversight of the financial service of the "provision of a benchmark," in accordance with section 3(5) of the FSRA.

3.2 On 11 December 2019, the FSCA requested the Minister of Finance to designate the provision of a benchmark as a financial service in terms of section 3(3)(a)(iii) of the FSRA. The National Treasury published draft Regulations to this effect for public consultation on 1 September 2021[9]. In terms of section 288(1)(b) of the FSRA, which empowers regulations to provide for procedural and administrative matters that are necessary to implement the provisions of this Act, some specific powers and duties are provided for and imposed on the FSCA through these Regulations to enable the effective regulation and supervision of the financial service of providing a benchmark.

3.3 In support of the designation of the provision of a benchmark as a financial service, the FSCA developed a draft Conduct Standard setting out requirements relating to the provision of a benchmark (draft Conduct Standard). The draft Conduct Standard proposes the regulatory framework in terms of which benchmark administrators will be supervised and whereby the provision of a benchmark will be regulated once the Regulations in terms of section 3(3) FSR Act come into effect.

3.4 The first draft of the Conduct Standard was published for public consultation on 28 February 2022, with comments due on 12 April 2022[10]. The comments received from this consultation warranted that the draft Conduct Standard be revised and the draft Conduct Standard was published for a further round of public consultation in accordance with section 99 of the FSRA,[11] as the changes proposed to the draft Conduct Standard were considered significant. The second draft Conduct Standard was published on 25 November 2022[12] with inputs due by 6 February 2023. At the close of the second public consultation period, the FSCA received in excess of 160 comments from 15 industry stakeholders.

3.5 Following the second round of public consultation while considering the inputs received from stakeholders, the FSCA established that in order to ensure a structured, methodical and coherent approach to ultimately regulating and supervising activities related to the provision of a benchmark, it would require further research into the usage and practices in relation to indices and benchmarks by financial institutions in South Africa.
Additionally, information was required to inform the determination of an "index" in terms of the FSRA. By way of legal interpretation for an index to constitute a benchmark as defined in the FSRA, it must have been determined as an index by the FSCA[13].
The draft Conduct Standard further enables the FSCA to determine the monetary threshold for the designation of a benchmark as a "critical benchmark" and as a "significant benchmark".

[9] Publication available on https://www.treasury.gov.za/public%20comments/DraftBenchmark/2021%2008%2030%20Draft%20Benchmark%20Regulations%20(for%20publication%20for%20comment).pdf

[10] Available at https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Draft%20Conduct%20Standard_Requirements%20relating%20to%20provision%20of%20a%20benchmark.zip

[11] Section 99 of the FSRA requires that if the FSCA intends, whether or not as a result of a consultation process, to make a conduct standard in a materially different form from the draft conduct standard published for public comment, then the FSCA must again publish the revised draft conduct standard for further public consultation in accordance with section 98 of the FSRA.

[12] Available at https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Revised%20draft%20Conduct%20Standard_Requirements%20relating%20to%20provision%20of%20a%20benchmark.zip

[13] See paragraph (c) of the definition of 'index' in section 1 of the FSRA. Any such a determination will be done through the publication of a notice on the websites of the FSCA

The FSCA required information to inform the quantitative thresholds to be determined for the designation of a "critical benchmark" and a "significant benchmark".

3.6 This prompted the publication on 2 November 2023 of a discussion document on *The development of a framework for the regulation and supervision of financial benchmarks* (2023 Discussion Document) which included a voluntary questionnaire[14]. Findings from the analysis of responses to the questionnaire in the 2023 Discussion Document assisted in shaping the two draft determinations which were consulted on by way of FSCA *Discussion Document – Determination of an index and thresholds for critical and significant benchmarks*[15] (2024 Discussion Document) published on 30 July 2024. The aim of the 2024 Discussion document was to publicly consult on—

(a) the proposed determination of an "index" in terms of the FSRA; and

(b) the proposed thresholds for critical benchmarks and significant benchmarks, as enabled through the Draft Conduct Standard (under development).

3.8 From comments[16] received during the consultation on the 2024 Discussion Document, the following main themes and prominent concerns were raised by industry stakeholders:

(a) The proposed thresholds were too low in the global context and in comparison, to EU BMR and United Kingdom (UK) benchmark regulations;

(b) the revised scope of the EU BMR would result in misalignment between the South African framework and the EU BMR. As elaborated on paragraph 2.2.4 – 2.2.6 above, the EU has revised the scope of the EU BMR. The revised EU BMR have been significantly reduced in terms of the regulatory scope by only setting requirements on critical benchmarks and significant benchmarks. Non-significant benchmarks have been excluded from the framework altogether;

(c) the implications of the changes in the EU BMR for the South African market and its impact on SA's qualification for a third county equivalence assessment;

(d) the need for an equivalence / recognition framework for foreign benchmark administrators that administers benchmarks used by South African benchmark users; and

(e) guidance on calculation of thresholds and reporting by benchmark users on the assets under management (AUM) for purposes of usage value calculations.

3.9 Taking heed of the concerns raised by industry stakeholders culminated in the version of the draft Conduct Standard published alongside this statement of need and impact.

4. SUMMARY OF THE DRAFT CONDUCT STANDARD

4.1 The draft Conduct Standard proposes the regulatory framework in terms of which benchmark administrators will be supervised and whereby the provision of a benchmark will be regulated,

[14] Available at: https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Discussion%20Document-Development%20of%20framework%20for%20regulation_supervision%20of%20financial%20benchmarks.zip

[15] Available at https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/FSCA%20Discussion%20document%20-%20Determination%20of%20index%20and%20thresholds%20for%20critical%20and%20significant%20benchmarks.zip

[16] The FSCA received a total of 10 comments from 4 industry commentators.

once the Regulations in terms of section 3(3) FSRA come into effect. In terms of section 111(2) of the FSRA, a person may not provide, as a business or part of a business, a financial product designated in terms of section 2, or a financial service designated in terms of section 3, except in accordance with a licence in terms of Chapter 8 of the FSRA. Accordingly, once the Regulation referred to in paragraph 3.2 takes effect, and the FSCA designates a particular benchmark as either critical or significant, the benchmark administrator of that benchmark will be required to apply for a license in terms of the FSRA and evidence compliance with the requirements in the Conduct standard, in order to qualify to be licensed as such. The license application will need to comply with requirements of Chapter 8 of the FSRA. The FSCA may, in accordance with section 124 and in writing, determine procedures and requirements for such license applications. The draft determination of license application and the related forms are published for consultation alongside this statement of need and impact, and the third version of the draft Conduct Standard for public consultation.

4.2 The main objective of the draft Conduct Standard is to ensure the accuracy, robustness and integrity of benchmarks and the way benchmarks are determined, while also seeking to circumvent the harm that could be caused in terms of potential losses to financial customers and investors and distortions in the real economy, if failures in, or doubts surrounding, the accuracy or integrity of benchmarks were to undermine market confidence. It seeks to achieve this by setting out requirements for benchmark administrators of significant and critical benchmarks that promote reliability of benchmark determinations, and to address benchmark governance, quality and accountability mechanisms.

4.3 The changes proposed to the draft Conduct Standard are potentially significant in impact in the view of the FSCA. In accordance with section 99 of the FSRA, the revised Conduct Standard is published alongside this document for a further round of public consultation. This Statement of Need has accordingly been adapted to reflect the changes. The changes introduced since the previously consulted draft of the Conduct standard are elaborated on in paragraphs 4.4. to 4.12 below.

4.4 Application of the Conduct Standard

4.4.1 The draft Conduct Standard will apply to benchmark administrators of significant and critical benchmarks and benchmark users within the Republic. The scope of the draft Conduct Standard has been narrowed to lessen the potential regulatory burden for smaller benchmark administrators. The Conduct Standard now applies only to: (i) benchmark administrators that provide a critical or a significant benchmark (determined by FSCA notice), and (ii) benchmark users operating in South Africa. Non-significant benchmarks are out of scope[17].

4.4.2 The FSCA intends to, by way of a general exemption in terms of section 281(1) of the FSRA, exempt benchmark administrators, other than benchmark administrators that provides a critical benchmark or a significant benchmark (as referred to in section 2 of the draft Conduct Standard) from the provisions of section 111(2) of the FSRA. Accordingly, only benchmark administrators that provide a critical benchmark or a significant benchmark determined by the FSCA will be required to apply for a license.

4.4.3 By implication, the draft Conduct Standard will still *not* be applicable to specific entities outlined in the previous draft Conduct Standard, being—

(a) the SARB;
(b) public entities or a national department of the Government of South Africa providing or controlling benchmarks for public-policy purposes;

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(c) a licensed central counterparty (as contemplated in section 1 of the Financial Markets Act) providing reference or settlement prices;
(d) licensed exchanges providing a single reference price for a listed security;
(e) media or journalists who only publish or reference a benchmark as part of their journalistic activities;
(f) commodity benchmarks where contributors are mostly non-supervised entities, the benchmark is referenced by a listed (or listing-pending) instrument, and its total notional value remains below the Authority's threshold;
(g) provider of an index where that person is unaware and could not reasonably have been aware that the index is used as a benchmark, of unintentionally used as a benchmark;
(h) a person that grants or promises to grant credit in the normal course of its business and publishes its own variable or fixed borrowing rates d applicable only to financial contracts entered into by that person or a company within the same group and
(h) spot FX benchmarks for non-convertible currencies used for non-deliverable derivative payouts.

4.4.3 However, these entities are no longer specifically exempted in the application section, as the Conduct standard will going forward *only* apply to benchmarks and benchmark administrators explicitly scoped in by way of a determination of a benchmark as significant or critical. In terms of the "per-benchmark designation model" the FSCA will designate benchmarks as critical or significant by notice, using quantitative thresholds (set by FSCA notice and reviewed periodically) and qualitative criteria (e.g., vulnerability to manipulation, discretion, conflicts, market impact, lack of substitutes).

4.5 Determination of "critical" and "significant" benchmarks

4.5.1 For critical benchmarks, these may be designated if widely used in instruments, contracts or fund or it meets the threshold to be set by FSCA, or on supervisory recommendation, and has no, or very few, appropriate market-led substitutes and its cessation / non-representativeness would have significant adverse impacts on financial stability, market orderliness, customers, or the real economy. Determinations will be made by publication of a notice on the FSCA website.

4.5.2 The determination of significant benchmarks will follow a similar structure with a lower materiality bar, still focusing on total use, lack of viable substitutes, and potential for adverse market / customer impacts if ceased/non-representative.

4.5.3 Shared criteria for such determinations include manipulation risk, nature of inputs, discretion, conflicts, market impact, scale, complexity, and value of referencing products when designating.

4.6 Definitions and alignment with the FSRA

4.6.1 The definitions have been updated and refined (e.g., benchmark contributor, benchmark user, determining a benchmark, regulated data benchmark, country representative, assessor), with drafting adjusted to avoid duplication with the FSR Act definition of "provision of a benchmark" (administering, collecting/processing inputs, determining) and to ensure alignment with the future framework under the Conduct of Financial Institution (CoFi) Bill (under development).

4.6.2 Stakeholders are also advised to note the preamble to the definitions section confirms that for purposes of interpretation of the Conduct standard, "the Act" means the FSRA and "the Regulations" means the Designation of Benchmarks Regulations, 2026, published under

sections 3(3)(a)(iii), (5) and 288 of the Act, and any word or expression to which a meaning has been assigned in the Act or the Regulations bears the meaning so assigned to it, and unless the context otherwise indicates. Accordingly, terms that are defined in the FSRA and the Regulations are not defined in the definitions section of the conduct standard but must be read to take on the meaning as defined in that legislation.

4.7 Business Principles, Culture and Governance Requirements for Benchmark Administrators

4.7.1 The Conduct Standard is intended to ensure that benchmark administrators of significant and critical benchmarks will have a suitable culture that supports ethical behaviour and that the relevant obligations be placed on the governing body of the benchmark administrator. The governing body must operate transparently and ensure accountability through overseeing the establishment, implementation, subsequent review of, and continued compliance with, the governance arrangements. The governance arrangements are, amongst other matters, aimed at protecting the integrity of the benchmark determination process and to avoid conflicts of interest. These requirements include fit and proper requirements for key persons, establishment of an oversight committee, financial soundness requirements and requirements relating to risk management and internal control functions. It also prescribes specific operational requirements, requirements for governance of the oversight function and related oversight committee and business continuity measures.

4.7.2 The draft Conduct Standard is aimed at improving the quality of input data and methodologies used by benchmark administrators of critical or significant benchmarks. This is to be achieved by ensuring the proper management of risks, complaints and conflicts of interest, through imposing specific governance and control requirements over the benchmark determination process. These requirements will need to be complied with at license application stage and as an ongoing obligation for licenced benchmark administrators.

4.8 Requirements related to critical and significant benchmarks

4.8.1 The draft Conduct Standard prescribes that the benchmark administrator must publish a benchmark statement on each benchmark and each family of benchmarks that is provided for use on its website. The benchmark statement is essentially an explanatory description of the benchmark available to benchmark users and the public, and must at a minimum contain the requirements prescribed in the draft Conduct Standard, including *inter alia* -

(a) definitions for all key terms relating to the benchmark;
(b) rationale for adopting the benchmark methodology and procedures for the review and approval of the methodology;
(c) criteria and procedures used to determine the benchmark;
(d) a description of the input data and the priority given to different types of input data;
(e) methodology of extrapolation and for rebalancing the constituents of a benchmark's index;
(f) controls and rules that govern any exercise of judgment or discretion by the benchmark administrator or any benchmark contributors; and
(g) identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.

4.8.2 The benchmark statements must be regularly reviewed and updated when any of the information prescribed changes.

4.8.3 The draft Conduct Standard also prescribes the necessary requirements with regard to the cessation of a benchmark, especially the cessation of a critical benchmark. A benchmark

administrator must publish on its website, together with the benchmark statement, a procedure for the actions to be taken by the benchmark administrator in the event of changes to or the cessation of a benchmark, which may be used in South Africa.

4.9 Requirements for benchmark users

4.9.1 There are requirements that relate to the use of a benchmark, in terms of which a benchmark user (which is by definition a licensed financial institution) must maintain robust written contingency plans setting out the actions that they would take to substitute the benchmark in the event that it materially changes or ceases to be provided. The benchmark user must also, where feasible, nominate one or more alternative benchmarks that could substitute the benchmark no longer provided and indicate why such benchmarks would be a suitable alternative. Benchmark users must implement changes in good time before final cessation and reflect plans contractually with financial customers. It furthermore limits benchmark users to only use a critical benchmark or significant benchmark if provided by a licensed benchmark administrator, or foreign benchmark administrator that has been approved by the FSCA in accordance with the Conduct Standard.

4.9.2 The Conduct standard now requires usage reporting by benchmark users to all benchmark administrators (not only administrators of critical or significant benchmarks). Benchmark users must report AUM/usage and related information in the form/time required by the benchmark administrator. The FSCA may issue standardised templates for such reporting if the need arises. This will support usage value threshold calculations for designation decisions.

4.10 Input data, methodology and reporting requirements

4.10.1 The draft Conduct Standard is intended to promote the quality and integrity of methodologies by setting minimum requirements that should be addressed within a methodology, which should be published so that users of the benchmark may understand and make their own judgments concerning the overall credibility of a specific benchmark. The methodology should also address the need for procedures that control when material changes are planned or made to the methodologies, as a means of alerting users of the benchmarks to these changes that might affect their positions, financial instruments or contracts. The requirements around controls and control framework in respect of input data also reflect proportional application in that certain requirement does not apply to regulated data benchmarks.

4.10.2 Benchmark administrators should have credible policies in place in the instance where a benchmark ceases to exist, or users of such benchmark need to transition to another benchmark. These policies are intended to encourage benchmark administrators and users to plan prospectively for the possible cessation of a benchmark. These policies should also address vulnerabilities in the submission process (e.g. conflicts of interest or improper communication between a submitter and a benchmark administrator) by outlining the benchmark administrator's responsibilities to have internal controls over the collection of data from regulated sources.

4.10.3 The draft Conduct Standard also requires that the benchmark administrator must establish adequate systems and effective controls to ensure the integrity of input data to be able to identify and report to the FSCA any conduct that may involve manipulation or attempted manipulation of a benchmark. A benchmark administrator must monitor input data and benchmark contributors to be able to notify the FSCA and provide all relevant information where the administrator suspects that, in relation to a benchmark, any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark.

4.10.4 Lastly, a benchmark administrator must have policies and procedures in place for its employees and any other natural persons, whose services are placed at its disposal or under its control, to report to the governing body on any matter which constitutes a contravention of the draft Conduct Standard.

4.10.5 The draft Conduct Standard aims to minimise instances where the benchmark administrator uses false or misleading information in the course of providing a benchmark. It prohibits any person from making any false, misleading or deceptive statements in the course of arrangements for the setting of a relevant benchmark and stipulates related reporting requirements on benchmark administrators.

4.11 Requirements for benchmark contributors

4.11.1 The draft Conduct Standard places a requirement on the benchmark administrator to develop a Code of Conduct to manage the relationship between the benchmark administrator and the benchmark contributor, in respect of the submission of input data to the benchmark administrator. The benchmark administrator will be required to satisfy itself that benchmark contributors adhere to the Code of Conduct on a continuous basis and will need to review the Code of Conduct annually. The benchmark administrator will have to formally assess compliance by the benchmark contributor with the Code of Conduct at least annually. The Conduct of Conduct must be available to the FSCA and to stakeholders. The Code of Conduct of a critical benchmark must be submitted to the FSCA for approval.

4.11.2 The draft Conduct Standard also requires that when a benchmark administrator collects data from any external source, the benchmark administrator should ensure that there are appropriate internal controls over its data collection and transmission processes. These controls should address the process for selecting the source, collecting the data, and protecting the integrity and confidentiality of the data.

4.11.3 The draft Conduct Standard further requires the benchmark administrator to keep all relevant records related to the provision of the benchmark in accordance with set requirements, and the Code of Conduct requires a benchmark contributor to keep a record of all relevant information that is necessary to check the benchmark contributor's adherence to the code of conduct.

4.12 Application for approval of foreign benchmarks

4.12.1 In order for a benchmark or a combination of benchmarks provided by a foreign benchmark administrator to be used in the Republic, the draft Conduct Standard under Chapter 11 prescribes that a foreign benchmark administrator may apply for approval of a benchmark for use in the Republic. Approvals will be publicised on the FSCA's website. The draft Conduct Standard also sets out what requirements will be considered when assessing the application for approval of a foreign benchmark administrator, including demonstrating compliance with the Conduct Standard. Evidence may include IOSCO alignment and independent external audit, requiring the appointment of a country representative, and undergoing home authority certification where applicable.

4.12.2 Its acknowledge that the proposed approach in the Conduct standard in relation to foreign benchmark administrators and foreign benchmark deviates from the EU BMR approach. To reflect the revised 'per-benchmark' regulatory model under which a benchmark only falls within scope once expressly designated by the FSCA as critical or significant, the distinction between "equivalence", "recognition" and "endorsement" as found in the BMRs is not necessary in the South African context and has been removed from the Conduct Standard.

4.12.3 Instead, where a foreign benchmark is designated as critical or significant for the South African market, the benchmark itself would be eligible for approval for domestic use, with the foreign administrator being able to apply for targeted exemptions from specified requirements in the Conduct standard, or from the requirement to obtain a South African administrator license. This streamlined, per-benchmark pathway simplifies the framework, avoids duplicative approval routes, and is proportionate to systemic relevance. It also addresses the risk of duplication in the legal architecture by avoiding the placement of "equivalence/endorsement" constructs in the Conduct Standard as this will in future be dealt with at a cross-cutting level in the future framework under the CoFI Bill.

5. STATEMENT OF IMPACT OF THE CONDUCT STANDARD

5.1 The proposed regulatory reform is expected to strengthen the market integrity framework surrounding benchmarks in South Africa, minimising the risk of conflicts of interest and poor governance impairing the robustness and reliability of benchmarks; and promote investor trust and confidence in benchmarks and financial institutions by aligning with applicable IOSCO principles.

5.2 The revised draft Conduct Standard will deliver a significantly narrower and more risk based supervisory framework for benchmarks in comparison to the previous versions of the Conduct Standard. By focusing regulation on benchmarks formally designated as critical or significant (via a 'per benchmark' designation), the framework will reduce unnecessary regulatory burden on low impact activities while concentrating supervisory intensity where the potential for market harm, financial stability transmission, and customer detriment is greatest. This targeted approach will improve legal certainty, streamline compliance, and enhance supervisory effectiveness.

5.3 Only benchmarks expressly designated as critical or significant will fall within scope, ensuring that obligations will be calibrated to actual systemic relevance and market dependence. The move away from a universal "all administrator" perimeter will simplify the framework, will reduce duplicative approvals, and will support efficient resource allocation by both industry and the FSCA.

5.4 The Conduct Standard will embed global good practice in governance, conflicts management, whistle blowing, surveillance of input data, and manipulation controls. It will strengthen oversight independence and capability and will clarify accountability for methodology quality, change control and error management—reducing manipulation risk, improving benchmark representativeness, and enhancing market confidence.

5.5 By focusing the perimeter on designated benchmarks, the framework will avoid over burdening low impact administrators and will help contain compliance costs, thereby supporting innovation and competition. Supervisory resources will be prioritised toward activities that pose the greatest market risk, enhancing the cost effectiveness of oversight.

5.6 It is expected that the Conduct Standard will advance the FSCA's mandate to enhance and support the efficiency and integrity of financial markets, will strengthen customer protection, and will promote a more resilient, competitive and well governed benchmark ecosystem in South Africa.

6 STATEMENT OF INTENDED OPERATION OF THE DRAFT CONDUCT STANDARD

6.1 The draft Conduct Standard is consistent with the objective of the FSRA, and specifically the mandate of the FSCA, to maintain a stable financial system that works in the interests of

financial customers and supports balanced and sustainable economic growth. The draft Conduct Standard will come into operation on the date of publication.

6.2 The FSCA will take a proactive approach to the oversight over benchmarks, whereby the first step will be the designation of a specific benchmark as either critical or significant, in accordance with the criteria set out in the Conduct Standard. Once an existing benchmark has been identified by the FSCA as potentially critical or significant, the FSCA will engage the benchmark administrator of such benchmark on the expected designation, and the benchmark administrator will be required to bring an application for a licence (if not already licensed as a benchmark administrator). Under these circumstances, the provision of the benchmark may continue until such time as the licence application has been considered by the FSCA and either granted or refused.

6.3 The revised draft Conduct Standard is published together with accompanying documents, as required under section 98(1)(a) of the FSRA, and the FSCA invites submissions in relation to the draft Conduct Standard in accordance with section 98(1)(a)(iv) of FSRA.

The following documents are published as part of the third public consultation process:

(a) The revised draft Conduct Standard - *Requirements relating to Requirements relating to the provision of a benchmark*;
(b) the revised Statement of need, expected impact, and intended operation of the Conduct Standard; (this statement)
(c) draft notice A: Determination of an index in terms of paragraph (c) of the definition of "index" in the FSRA;
(d) draft notice B: Determination of values for critical and significant benchmarks;
(e) draft notice C: Determination of procedures and requirements for licence applications of benchmark administrators (and the related licensing forms); and
(f) draft notice D: Draft FSCA FM Notice - of 2026 - Exemption of certain benchmark administrators from S111(2) of FSR Act; and
(g) a comments template for the use of stakeholders to provide comments on the framework

6.4 Regarding the threshold criteria for critical and significant benchmarks, the revised draft notice setting out the proposed determination of the values of investment funds in accordance with section 3(1) and 4(1) of Conduct Standard, is also published as part of public consultation on the Conduct Standard and related documents. The Conduct Standard is enabling in its construct and sufficiently flexible to allow the FSCA to change the thresholds from time to time as necessary. Any such, changes will be subject to consultation with the industry prior to final determination thereof in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

6.5 It is envisaged that once the statutory consultation process and any targeted engagements with key industry stakeholder concludes that the draft Conduct Standard and all supporting documents will be submitted to Parliament in accordance with statutory prescripts.

6.6 The final determinations will be published at the same time as the effective date of the Conduct Standard and the Regulations. The process will be coordinated with National Treasury to ensure a consistent and coherent approach to the effective making of the framework for the regulation and supervision of financial benchmarks.

6.7 Following the implementation of the Conduct Standard, the FSCA will assess and evaluate the effect of the Conduct Standard on a continuous basis, as part of its' supervisory

responsibility, to ensure that any unintended consequences of the Conduct Standard on industry participants are suitably considered and responded to.