

FSCA COMMUNICATION 2 OF 2026 (FM)

Draft Conduct Standard – Requirements relating to the provision of a benchmark, for 3rd round of public consultation

1. PURPOSE

The purpose of this communication is to inform stakeholders that the Financial Sector Conduct Authority (FSCA) today published the following documents for public consultation:

- (a) the revised draft Conduct Standard - *Requirements relating to the provision of a benchmark* 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)
- (b) the revised version of the Statement of need and expected impact of the Conduct Standard, as required in terms of section 98(1)(a)(ii) and (iii) of the FSRA ;
- (c) draft Notice - Determination of an index in terms of paragraph (c) of the definition of “index” in the FSRA;
- (d) draft Notice - Determination of values for critical and significant benchmarks;
- (e) draft Notice - Determination of procedures and requirements for licence applications of benchmark administrators (and related forms);
- (f) draft Notice - Exemption of certain benchmark administrators from S111(2) of FSR Act; and
- (g) a comments template to utilise for purposes of submission by interested stakeholders.

2. BACKGROUND

- 2.1 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. 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 the 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. The National Treasury published draft Regulations to this effect for public consultation on 1 September 2021¹. 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, certain 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.

¹ Publication available on [https://www.treasury.gov.za/public%20comments/DraftBenchmark/2021%2008%2030%20Draft%20Benchmark%20Regulations%20for%20publication%20for%20comment\).pdf](https://www.treasury.gov.za/public%20comments/DraftBenchmark/2021%2008%2030%20Draft%20Benchmark%20Regulations%20for%20publication%20for%20comment).pdf)

- 2.2 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 issued in terms of section 3(3) of the FSR Act come into effect.
- 2.3 The first draft of the Conduct Standard was published for public consultation on 28 February 2022, with comments due on 12 April 2022². The comments received from this consultation warranted a further round of public consultation in accordance with section 99 of the FSRA,³ as the changes proposed to the draft Conduct Standard were considered significant. The second draft Conduct Standard was consulted on between November 2022 and March 2023.
- 2.4 Following the second round of public consultation while considering the inputs received from stakeholders, the FSCA established that it would require further research into the usage and practices in relation to indices and benchmarks by financial institutions. The draft Conduct Standard enables the FSCA to determine the monetary threshold for the designation of a benchmark as a “critical benchmark” and as a “significant benchmark”. The FSCA required information to inform the quantitative thresholds to be determined for the designation of a “critical benchmark” and a “significant benchmark”. Additionally, information was required to inform the determination of an “index” in terms of the FSRA⁴.
- 2.5 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 questionnaire⁵. Findings from the analysis of responses to this questionnaire 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*⁶ (2024 Discussion Document) published on 30 July 2024. The aim of the 2024 Discussion document was to seek public comments 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).
- 2.6 From comments⁷ 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, with European Union (EU)’s Benchmark Regulation (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. The revised EU BMR has 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;

² Available at

https://www.fsc.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Draft%20Conduct%20Standard_Requirements%20relating%20to%20provision%20of%20a%20benchmark.zip

³ 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.

⁴ 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. 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

⁵ Available at: https://www.fsc.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Discussion%20Document-Development%20of%20framework%20for%20regulation_supervision%20of%20financial%20benchmarks.zip

⁶ Available at

<https://www.fsc.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/FSCA%20Discussion%20document%20-%20Determination%20of%20index%20and%20thresholds%20for%20critical%20and%20significant%20benchmarks.zip>

⁷ The FSCA received a total of 10 comments from 4 industry commentators.

- (c) the implications of the changes in the EU BMR for the South African market and their impact on SA's qualification for a third country equivalence assessment;
 - (d) the need for an equivalence / recognition framework for foreign benchmark administrators that administer benchmarks used by South African benchmark users; and
 - (e) guidance on the calculation of thresholds and reporting by benchmark users on the assets under management (AUM) for purposes of usage value calculations.
- 2.7 Taking heed of the concerns raised by industry stakeholders, the FSCA undertook an extensive review and redrafting of the framework under development and proposed a significant reduction in the scope of the framework. The changes proposed to the draft Conduct Standard are potentially significant in their impact, in the view of the FSCA. In accordance with section 99 of the FSRA, the revised Conduct Standard is published alongside this communication for a further round of public consultation. This Statement of Need has accordingly been adapted to reflect the changes.

3. KEY REVISIONS TO THE DRAFT CONDUCT STANDARD

- 3.1 The draft Conduct Standard will apply only to benchmark administrators that provide critical or significant benchmarks, as formally designated by the FSCA, and to benchmark users operating within South Africa. This narrowed scope is intended to reduce the regulatory burden for smaller administrators, with non-significant benchmarks now fully excluded from the scope of the framework.
- 3.2 Under a new 'per-benchmark' designation model, the FSCA will classify benchmarks as significant or critical through a notice on its website, using both quantitative thresholds and qualitative criteria such as market impact, susceptibility to manipulation, reliance on discretion, conflicts of interest, and the availability of substitutes.
- 3.3 In addition, the FSCA plans to issue a general exemption under section 281(1) of the FSRA as explained below. As a result, only benchmark administrators of FSCA-designated significant or critical benchmarks will be required to apply for a licence under section 111(2). All other benchmark administrators will be exempt from these licensing requirements.
- 3.4 Other key updates to draft Conduct Standard include:
- (a) A more flexible equivalence framework for foreign benchmark administrators, based on IOSCO compliance rather than jurisdictional similarity;
 - (b) enhanced requirements for governance, benchmark statements, data integrity, contributor conduct, and usage reporting;
 - (c) drafting refinements to clarify definitions to ensure consistent interpretation and alignment with the future framework under the Conduct of Financial Institutions (CoFi) Bill (under development); and
 - (d) specific and clear requirements for benchmark users (i.e. licensed financial institutions that use benchmarks) to report usage to benchmark administrators and maintain contingency plans and transition arrangements.

4. WHAT THE NEW REQUIREMENTS MEAN FOR FINANCIAL INSTITUTIONS THAT ARE BENCHMARK USERS

- 4.1 It is important to note that the Conduct Standard applies to benchmark users which, by definition, is a financial institution licensed in terms of a financial sector law that uses the benchmark as set out in the definition.⁸

⁸ For purposes of the framework a "benchmark user" is defined to mean a **financial institution licensed in terms of a financial sector law** that -

- (a) issues a financial instrument that references an index or a combination of indices;
- (b) determines the amount payable under a financial instrument or a consumer credit contract by referencing an index;

- 4.2 The clause applicable to benchmark users introduces measures to make sure financial institutions are prepared if an important benchmark they use changes or stops being published. Financial institutions that use benchmarks must have clear, written plans explaining what they will do if a benchmark is significantly updated or discontinued.
- 4.3 To protect customers and ensure strong oversight, benchmark users may only use critical or significant benchmarks that are provided by:
- (a) A licensed South African benchmark administrator,
 - (b) a foreign administrator that has been specifically approved by the FSCA, or
 - (c) a person excluded from the application of the Conduct Standard.

- *Important New Reporting Responsibilities*

- 4.4 Benchmark users will now be required to share information about how they use benchmarks with the relevant benchmark administrator. This includes the amount of AUM, that reference the benchmark, and other usage details requested by the benchmark administrator. This information will have to be submitted in the format and timeframe specified by that benchmark administrator.
- 4.5 The reporting requirement for benchmarks users is not limited to significant and critical benchmarks only, and is required regardless of whether the benchmark is regulated in terms of the Conduct Standard. The FSCA may issue standardised reporting templates in the future. This information will help the FSCA determine whether a benchmark should be classified as significant or critical, ensuring that important benchmarks receive the right level of oversight.

5. DRAFT NOTICES WITH VARIOUS DETERMINATIONS SUPPORTING THE CONDUCT STANDARD

- 5.1 For completeness' sake and to afford impacted stakeholders an opportunity to have a holistic view of the proposed framework under development, all the related determinations as empowered in terms of the draft Conduct Standard and the FSRA, have been published alongside the draft Conduct Standard for public consultation.

- 5.2 These draft notices are as follows:

(a) **Draft Notice - Determination of an index in terms of paragraph (c) of the definition of "index" in the FSRA**

By way of legal interpretation of the definition of "index" in section 1 of the FSRA, for an index to constitute a benchmark as defined in the FSRA, it must have been determined as an index by the FSCA. The FSCA proposed such a determination in accordance with paragraph (c), which was publicly consulted on in 2024. Since the first round of consultation, the FSCA have proposed a slight refinement to the wording of the determination to clarify that an index will be any figure that meets the description in paragraph (a) and (b) of the definition of an index in the FSRA, and is ordinarily used in the financial sector and financial markets in the Republic.

Stakeholders are specifically invited to consider the revised wording alongside the definition of a benchmark user in the Conduct Standard.

(c) is a party to a mortgage or consumer credit contract that references an index or a combination of indices (e.g. as a lender);
(d) provides a borrowing rate calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a consumer credit contract to which the creditor is a party; or
(e) measures the performance of an investment fund through an index either to track the return of the fund or to define its asset allocation;

(b) Draft Notice – Thresholds for Critical & Significant Benchmarks

This draft Notice proposes the determination of values (i.e. thresholds) for critical and significant benchmarks. These quantitative thresholds will inform any benchmark designations by the FSCA. The quantitative threshold for a significant benchmark is proposed at a total average value of between ZAR 10 billion and ZAR 16 billion measured over a period of six months, and for critical benchmarks at a total value of ZAR 16 billion or more.

(c) Draft Notice – Licensing requirement for Benchmark Administrators

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 Benchmark Regulations take 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 licence in terms of the FSRA and to evidence compliance with the requirements in the Conduct Standard, in order to qualify to be licensed as such. The licence application will need to comply with the requirements of Chapter 8 of the FSRA.

The FSCA may, in accordance with section 124 and in writing, determine procedures and requirements for such licence applications. The FSCA in 2024 consulted on a Draft Determination of procedures and requirements for licence applications of benchmark administrators, and no significant changes were made to the notice and the forms following the public consultation. However, for completeness and for the benefit of the public, the draft Notice – *Determination of procedures and requirements for licence applications of benchmark administrators (and related forms/ annexures)* is also published with this communication.

(d) Draft Notice – Exemption of certain benchmark administrators from Section 111(2) of the FSR Act

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, and only the benchmark administrators of critical and significant benchmarks will be licensed and regulated in terms of the framework.

Due to the legal architecture and the definition of “benchmark administrator” in the Benchmark Regulations, it is necessary to carve out benchmark administrators, other than those that provide critical benchmarks, or significant benchmarks, from the requirement to be licensed in terms of section 111(2) of the FSRA. To give effect to this the FSCA proposes to issue a general exemption in terms of section 281(1) of the FSRA to this effect.

Stakeholders are specifically invited to consider the implications of this exemption alongside the suite of documents published for consultation.

6. INVITATION TO COMMENT

6.1 The draft Conduct Standard, together with the listed supporting documents referred to in paragraph 1, is available on the FSCA’s website at www.fsca.co.za.

6.2 Interested parties are invited to, in writing, submit comments on the draft Conduct Standard

and supporting documents, using the comments template published alongside the draft Conduct Standard to the FSCA via email to FSCA.RFDStandards@fsc.co.za by no later than **6 May 2026**.

- 6.3 For more information regarding the draft Conduct Standard, the supporting documents or this Communication, please contact the Regulatory Frameworks Department of the FSCA at Roslynne.Vanwyk@fsc.co.za.



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