



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

PUBLICATION OF DRAFT REGULATIONS DESIGNATING PROVISION OF BENCHMARKS AS FINANCIAL SERVICE FOR PUBLIC COMMENT

The Minister of Finance has published draft regulations in Notice No. 787 in Gazette No. 45071 in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act No.9 of 2017 (FSR Act). The draft Regulations designate the “provision of a benchmark” as a financial service, and are in accordance with sections 3(3) and (5) and 288 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“FSRA”).

A copy of the draft Regulations and a comprehensive impact report on the FSRA are available on the National Treasury website: www.treasury.gov.za and www.treasury.gov.za/twinpeaks.

The draft Regulations specify that the Financial Sector Conduct Authority (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. 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 to the Financial Sector Conduct Authority in relation to the provision of benchmarks to enable the effective regulation and supervision by the FSCA of the financial service of the “provision of a benchmark”.

Statement of the necessity for and the purpose of the draft Regulations

Benchmarks play a key role in the financial system’s core functions of pricing and allocating capital and risk. “Benchmark” and “provision of a benchmark” are defined in section 1(1) of the FSRA. The provision of a benchmark is not currently regulated in terms of any financial sector law.

Instances of the manipulation of benchmarks have highlighted their importance and vulnerabilities. The integrity of benchmarks is critical for the pricing of many financial instruments, and the management of financial risk. Doubts regarding the accuracy and integrity of benchmarks may undermine financial confidence, cause significant losses to financial customers, and distort the economy. It is, therefore, essential to ensure the integrity of benchmarks and the benchmark setting process.

In terms of section 57(a) of the FSRA, the FSCA has been mandated to enhance and support the efficiency and integrity of financial markets. A regulatory framework relating to the provision of benchmarks that is aligned with international standards, and is implemented through conduct standards, is, therefore, required.

Concerns about the integrity and reliability of benchmarks have prompted a number of regulatory reform initiatives internationally, including the IOSCO Principles for benchmarks in



financial markets of 2013, work by the Financial Stability Board on globally significant interest rate and foreign exchange benchmarks, and the EU benchmark regulations (“BMR”).

In terms of the BMR, non-EU benchmarks may only be used in the EU if the benchmark is qualified under an equivalent third-country regime. The BMR came into operation on 1 January 2018, and benchmark administrators domiciled in non-EU jurisdictions must be compliant with the BMR by 1 January 2022. In order for South Africa to qualify as an equivalent third-country regime, a regulatory framework for the provision of benchmarks must be established.

It is, therefore, necessary that the provision of benchmarks is designated as a financial service in terms of the FSRA as provided for in the draft Regulations, to enable benchmarks to be appropriately regulated and supervised by the FSCA, in alignment with international standards.

Statement of expected impact of the draft Regulations

It is expected that the draft Regulations will enable the FSCA to appropriately supervise and regulate the provision of benchmarks, in terms of a regulatory framework that is aligned with international standards. This would promote the reliability and integrity of benchmarks, which play such an important role in the financial system.

The intention of the draft Regulations is not to directly regulate the South African Reserve Bank in relation to its role as benchmark administrator of two key benchmarks, the South African Overnight Banking Rate and the Johannesburg Interbank Average Rate as international standards set by the EU’s Benchmark Regulations do not typically extend to central banks. It is intended that the regulation would focus on other benchmarks used in the South African markets.

Written comments on the draft amendment to the Financial Sector Regulations should be submitted to commentdraftlegislation@treasury.gov.za by close of business on 13 October 2021. Any clarification questions can be emailed to Jeannine Bednar-Giyose at: Jeannine.Bednar-Giyose@treasury.gov.za.

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