ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 292

Implementing the financial benchmark regulatory regime

July 2017

About this paper

This consultation paper seeks feedback on draft rules proposed to apply to the administration of licensed financial benchmarks and proposed regulatory guidance on how we would administer the financial benchmark administrator licensing regime.

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 paper was issued on 17 July 2017 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on regulating licensed financial benchmark administrators. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a regulation impact statement: see Section E 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 21 August 2017 to:

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What will happen next?

Stage 1	17 July 2017	Consultation paper released
Stage 2	21 August 2017	Comments due on the consultation paper
Stage 3	Q4 2017	Revision of draft rules and regulatory guide
Stage 4	After passage of legislation	Final rules and regulatory guide released

A Introduction

Key points

The Government is consulting on a regulatory regime for financial benchmarks.

Among other things, the regime would enable ASIC to write financial benchmark administration rules (administration rules) and compelled financial benchmark rules (compelled rules).

Regulatory reform for benchmarks is also occurring in overseas jurisdictions, and equivalence assessments between jurisdictions will need to occur soon.

Background

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.

2 As benchmarks affect the pricing of key financial products, a number of benchmarks have become critical to a wide range of users in financial markets and throughout the broader economy. This means there is a risk of financial contagion or instability, or of undermining investor confidence, if the availability or integrity of key benchmarks is disrupted.

3 These risks were highlighted in a number of concluded and current enforcement cases relating to poor or manipulative conduct. Many of these cases reflected a failure by the benchmark administrator and contributors to financial benchmarks to manage conflicts of interest.

4 Concerns about the integrity and reliability of financial benchmarks have prompted a number of regulatory reform initiatives. The International Organization of Securities Commissions (IOSCO) issued the *Principles for financial benchmarks* (PDF 388 KB) (IOSCO benchmarks principles) in July 2013. The Financial Stability Board (FSB) has also undertaken work on globally significant interest rate and foreign exchange benchmarks.

5 A number of overseas jurisdictions (including the United Kingdom, the European Union, Canada, Japan and Singapore) have completed or are completing regulatory reforms to strengthen the integrity of benchmark

administration, including by making benchmark manipulation a specific offence.

6 In Australia, the Council of Financial Regulators (CFR) provided advice to the Treasurer on implementing financial benchmarks regulatory reform in Australia, which was published in October 2016.

7 Based on the CFR's advice, Treasury is consulting on amendments to the *Corporations Act 2001* (Corporations Act) to implement financial benchmarks regulatory reform: see the Corporations Amendment (Financial Benchmarks) Bill 2017 (proposed legislation).

Proposed legislative framework in Australia

8 This consultation paper is about the licensing regime for administrators of significant benchmarks and ASIC's rulemaking powers. Under the proposed legislation, we would be given the power to declare a financial benchmark to be a significant benchmark if we are satisfied:

(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 Australian retail or wholesale investors if the availability or integrity of the benchmark were disrupted.

9 A new licensing regime would be established requiring administrators of significant benchmarks to obtain a new benchmark administrator licence from ASIC. We may impose conditions in granting a licence.

10 Licensees would be required to comply with any conditions on the licence as well as a range of obligations imposed in the legislation.

11 We would also be able to write rules. These rules may set out specific obligations for licensed benchmark administrators as well as contributors, and requirements relating to compelled administration and submission to a significant benchmark.

ASIC's consultation

12 We are undertaking consultation at this time on:

(a) proposed administration rules (see Attachment 1);

(b) proposed regulatory guidance on how we would administer the licensing regime and our expectations about compliance with the administration rules (see Attachment 2); and

(c) proposed compelled rules (see Attachment 3), including examples of notices we may issue under the rules.

13 The timing of our consultation is intended to facilitate an expedient implementation of Australia's regulatory regime if the amendments to the Corporations Act are passed by Parliament.

14 Currently, the administrator of the bank bill swap rate (BBSW), ASX Benchmarks Pty Ltd, is implementing a revised BBSW determination methodology. Consulting on proposed ASIC rules will provide more certainty to market participants about the nature and extent of their regulatory obligations under the proposed legislation.

15 Implementing Australia's regulatory regime in an expeditious manner can also help to ensure that there is adequate time for equivalence assessments with relevant overseas regulators, including the EU regulators.

B Establishing Australia's benchmark regulatory regime

Key points

We propose to take a principles-based approach to the administration rules, with detailed expectations set out in regulatory guidance.

The principles we propose to implement are the IOSCO benchmarks principles. We also propose to take into account the benchmarks regulatory regimes of key overseas jurisdictions, such as the European Union's Regulation (EU) 2016/1011 (EU BMR).

We also seek comments on whether we should specifically implement some or all of the IOSCO *Principles for oil price reporting agencies* (PDF 423 KB) (IOSCO PRA principles).

16 This section sets out our approach to establishing the obligations of licensed benchmark administrators under the proposed administration rules.

17 In doing so, we have aligned the obligations with the IOSCO benchmarks principles, considered the IOSCO PRA principles where necessary, as well as the details of key overseas regulatory regimes.

Consistency with international and overseas requirements

Proposal

B1 The proposed administration rules and regulatory guide seek to maintain international and cross-border consistency by being aligned with the IOSCO benchmarks principles, as well as the IOSCO PRA principles and regulatory obligations under key overseas regimes.

Your feedback

B1Q1 Do you agree with our approach to maintaining international and cross-border regulatory consistency?

B2 To align with core requirements of other licensing regimes established under the Corporations Act as well as the UK regime, we are proposing to impose five additional requirements that licensees:

(a) have sufficient resources, including financial resources (see Rules 2.1.5–2.1.7);

(b) have adequate risk management arrangements (see Rule 2.4.2);

(c) have business continuity plans (see Rule 2.4.3);

(d) maintain records in a form that is readily converted to English (see Rule 2.5.3); and

(e) maintain a final stage method for generating and administering the BBSW, if the licensee is the administrator of the BBSW (see Rule 2.2.5).

Your feedback

B2Q1 Do you have feedback on the five proposed additional requirements set out under proposal B2?

Rationale

18 We consider that aligning the proposed ASIC rules with applicable international standards and key overseas regimes will help to ensure regulatory harmonisation.

19 Harmonisation between Australian domestic regulation and overseas regulation significantly benefits regulators, benchmark administrators and entities that contribute to or use financial benchmarks by:

(a) reducing unnecessary regulatory duplication or inconsistent regulation; and

(b) expediting any equivalence assessments that we may undertake with overseas regulators.

20 We see strong policy reasons for seeking to ensure that administrators of significant benchmarks have an adequate level of human, financial and technological resources, have adequate risk management arrangements and undertake business continuity planning. This is because inadequate resources may impact on a benchmark's availability or integrity, which could increase the risk of financial contagion or undermine investor confidence. We think it is likely that administrators who may be required to hold a licence may already meet these requirements. We also note that the requirement for adequate financial resources is found in the UK regime.

21 We see strong practical benefits in ensuring that, when we request records, the records would be available in English or in a form that is readily converted to English.

22 Our proposal to require the BBSW administrator to maintain a final stage method for generating and administering the BBSW complements the compelled rules. Requiring the BBSW administrator to maintain a final stage method can help to provide certainty to contributors to the BBSW about what they may be required to do: see Section D.

Content of administration rules and regulatory guide

Proposal

B3 We are proposing to:

(a) make administration rules that can be applied in a way that reflects the nature, complexity and intended use of a licensed benchmark; and

(b) set out more specific guidance and our regulatory expectations in regulatory guidance, which is also intended to align with the approach taken in international standards and overseas regimes.

Your feedback

B3Q1 Do you agree with our proposed approach to rulemaking and regulatory guidance?

B3Q2 Does the alignment between the proposed administration rules and regulatory guidance, and international or overseas regulatory requirements need to be adjusted? If so, please provide details in your response.

B3Q3 Do you have other feedback on the split between the proposed administration rules and regulatory guidance?

B4 We propose, in general, *not* to write rules for specific types of benchmarks (for example, index benchmarks). The regulatory guidance distinguishes between different types of benchmarks where needed (see, for example, RG 000.66 which explains the requirements for submissions-based benchmarks to have a code of conduct).

Your feedback

B4Q1 Do you think we need to more clearly distinguish between types of benchmarks? If so, please give your reasons why.

Rationale

23 We have proposed administration rules that focus on the regulatory outcomes that the rules are intended to achieve, while allowing scope for the rules to be applied to each licensed benchmark in a way that is appropriate for the nature, complexity and intended use of the benchmark. This is intended to allow the rules to be applied to a range of benchmarks (including submissions-based benchmarks, index benchmarks and commodity benchmarks), now and as they may develop in the future.

24 Having detailed regulatory guidance to supplement the rules will help licensees to understand how the rules should be applied in specific circumstances or to types of benchmarks. It will also facilitate regulatory harmonisation. The more detailed regulatory guidance will also help to explain how the Australian regime achieves a regulatory outcome comparable to the relevant IOSCO principles or, for example, the EU BMR.

IOSCO principles for oil price reporting agencies

25 We believe that the proposed administration rules can accommodate a range of financial benchmarks. However, we seek feedback on whether further clarification or refinement is needed for certain commodity benchmarks.

Proposal

B5 We consider the proposed administration rules are sufficiently flexible to accommodate commodity benchmarks that may be complying with the IOSCO PRA principles. Therefore, no specific rules are needed.

Note: The proposed regulatory guidance specifically provides that administrators of commodity benchmarks may comply with the IOSCO PRA principles in relation to the oversight of submitters: see RG 000.67.

Your feedback

B5Q1 Are there specific issues or rules that need to be refined to reflect the IOSCO PRA principles?

Rationale

26 The IOSCO PRA principles apply to certain commodity benchmarks. Some overseas regimes, such as the EU BMR, specifically permit administrators of relevant benchmarks to comply with the requirements under the IOSCO PRA principles, instead of the IOSCO benchmarks principles.

27 We have sought to achieve a similar outcome in the proposed administration rules and regulatory guide, as explained in proposals B3–B4 and in this proposal.

28 While we do not currently expect commodity financial benchmarks to be nominated as significant benchmarks (see proposal C1), we would like to ensure our regime is well placed for potential future developments. We therefore seek feedback on whether refinements or changes need to be made to better accommodate certain commodity benchmarks.

C Licensing and exemptions for benchmark administrators

Key points

Five financial benchmarks are likely to be considered significant benchmarks, based on proposed legislative criteria. Administrators of non-significant benchmarks may also choose to apply for a licence.

Under the proposed legislation, administrators of significant benchmarks must hold a financial benchmark licence. We may exempt administrators from all or some aspects of the licensing regime. We will bear in mind the intended scope of applicable international standards in considering exemptions.

We have the function of supervising licensed benchmarks. Where a significant benchmark is administered wholly or partly in an overseas country, we will consider the extent to which we can rely on the administrator's compliance with an equivalent overseas regulatory regime to perform our supervision of the financial benchmark.

29 This section sets out our proposed approach to the regulation, licensing and supervision of benchmarks that may be declared significant benchmarks or otherwise hold a benchmark administrator licence.

Identifying significant benchmarks

Proposal

C1 Initially and consistent with CFR advice, we consider that the following five benchmarks are likely to meet the criteria for significant benchmarks set out in s908AC(2) of the proposed legislation:

(a) the BBSW;

(b) Standard & Poor's (S&P)/ASX 200 index;

(c) the ASX bond futures settlement price;

(d) the cash rate (including the total return index derived from the cash rate); and

(e) the consumer price index.

Your feedback

C1Q1 Do you have feedback on the list of potential significant benchmarks based on the criteria in the draft legislation?

Rationale

30 The five benchmarks in proposal C1 above were identified in the CFR's consultation in March 2016, and in the CFR's final advice to the Treasurer. A small number of other benchmarks, including the WM/Reuters Australian dollar foreign exchange benchmark, were identified by respondents as potentially significant, but we have not included them in the initial list because we have not identified sufficient evidence that these benchmarks meet the criteria in the proposed legislation.

31 We will continue to monitor the benchmarks identified by respondents to the CFR consultation against the criteria for significant benchmarks. We will undertake consultation, as appropriate, before declaring any other benchmarks as significant.

Requirement to hold a licence and exemptions

32 The proposed legislation requires administrators of significant benchmarks to hold a financial benchmark administrator licence, unless they are exempt from the requirement to hold a licence.

Proposal

C2 We propose to consider granting exemptions to align with relevant international principles. We think exemptions from the requirement to hold a licence would be rare.

Your feedback

C2Q1 Do you have feedback on our proposed approach to licensing and exemptions?

Rationale

33 The proposed legislation requires administrators of significant benchmarks to be licensed. We think exemptions would only be granted rarely.

34 One such rare circumstance could be exempting public sector entities from the requirement to hold a licence. This was envisaged in the CFR advice, and would be consistent with the IOSCO benchmarks principles which do not apply to benchmark administration by a national authority used for public policy purposes. We would still declare these benchmarks to be significant benchmarks because the extended geographical scope of the offence provisions applies to misconduct affecting significant benchmarks.

Administrators of non-significant benchmarks

35 The proposed legislation allows administrators of non-significant benchmarks to apply for a licence.

Proposal

C3 Before deciding to grant a licence to an administrator of a non-significant benchmark, we propose to consider whether the benchmark has some connection to Australia.

Your feedback

C3Q1 Do you agree with the proposal that we consider whether a benchmark has some connection to Australia before granting a licence to an administrator of a non-significant benchmark?

Rationale

36 Administrators of benchmarks that are not significant benchmarks may obtain a licence. Holding a licence would require ASIC to allocate resources to supervise that licensee. Consistent with the intention of the proposed legislation, we will consider whether the benchmark has some connection with Australia, or whether there is a potential benefit for the Australian financial system or Australian investors, before granting a licence to the applicant.

Financial benchmarks administered in a foreign country

37 The proposed legislation allows ASIC to supervise an overseas-administered benchmark by relying on an overseas regulatory regime and/or cooperating with an overseas regulator.

Proposal

C4 We propose to consider whether we can place reliance on an overseas regime if we assess that:

(a) the administrator is complying with the overseas regime; and

(b) the regime is sufficiently equivalent to the Australian regime, which could include an assessment of whether the overseas regime has implemented the IOSCO benchmarks principles or (where applicable) the IOSCO PRA principles.

Your feedback

C4Q1 Do you agree with our proposed approach to assessing overseas regulatory regimes?

C5 We also propose to consider whether there are direct information access arrangements with the administrator.

Your feedback

C5Q1 Do you agree with our proposal to consider direct information access arrangements with an overseas benchmark administrator?

Rationale

38 Certain administrators of benchmarks (including significant benchmarks) may already be complying with the benchmarks regulatory regime in an overseas jurisdiction. The concept of supervising an overseas benchmark by relying on a sufficiently equivalent overseas regulatory regime is contemplated by the proposed legislation and is also used in the regulation of Australian financial markets, and clearing and settlement facilities. It is in line with global regulatory harmonisation and creates efficiency in regulation, reducing the burden on both licensees and regulators.

D Compelled rules

Key points

We propose to write compelled rules. This section sets out when we are likely to consider it would be in the public interest to impose requirements on administrators of licensed significant benchmarks and to require contributors to provide submissions to a licensed significant benchmark. Currently we think the notices requiring submissions would likely only be given in relation to the BBSW.

The compelled rules also build on the requirement for the BBSW benchmark administrator to maintain a final stage method for generating and administering the BBSW.

39 The proposed legislation enables ASIC to write compelled rules. This section sets out our proposed approach to making these rules, and explains the circumstances in which we would use the powers conferred by those rules.

40 The proposed legislation allows ASIC to make compelled rules that confer on ASIC the power to issue a written notice requiring:

(a) a contributor to a significant benchmark to provide data or information to the licensed administrator, or to provide some or all of that data or information to ASIC for purposes related to the generation or administration of the significant benchmark; and

(b) a licensed administrator of a significant benchmark to continue to generate or administer the significant benchmark, or to administer or generate the significant benchmark in a particular way.

41 Under s908CE(2) of the Corporations Act, we may only issue a notice under the compelled rules if we reasonably believe it is in the public interest to do so.

42 Currently, we think the public interest test is only likely to be satisfied for licensed administrators of significant benchmarks and for contributors to the BBSW in specific circumstances.

Requirement to continue to administer a significant benchmark

43 Consistent with key overseas regimes, including the EU BMR, the public interest test may be satisfied where the licensed administrator intends to cease administering a benchmark and we consider it is necessary to require the administrator to continue administering the significant benchmark to help mitigate material market disruption.

44 This may be the case where requiring the administrator 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 benchmark, including giving reasonable time for users to amend financial contracts that reference the significant benchmark.

45 A trigger for ASIC considering whether to impose this requirement may be where a licensed administrator notifies ASIC that it intends to cease administration of a significant benchmark under Rule 2.4.1 of the draft administration rules.

Requiring submissions to the administrator of the BBSW

46 We propose administration rules to require the administrator of the BBSW to:

(a) maintain a submissions-based last stage methodology for calculating the BBSW that is designed, to the extent reasonably practicable, to allow the BBSW to be determined when other methods that the administrator would normally use to determine the BBSW have, or are likely to have, failed; and

(b) notify ASIC in writing about all proposed material changes to the final stage methodology, within a reasonable time before the change is implemented (see proposal B2).

47 We may consider imposing a requirement for BBSW contributors to provide information or data to the BBSW administrator using the administrator's final stage methodology. We propose to do this in consultation with the RBA, and envisage it may be necessary to do so as a last resort when necessary to support market functioning.

48 The public interest test for giving a notice under the compelled rules in relation to the BBSW may be satisfied if we believe the BBSW will not be able to be determined, specifically:

(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 methodology (other than the final stage methodology); 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 methodology 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.

49 The public interest test, as detailed, would only be likely to be met in circumstances where there has been substantial failure of market-based incentives, and regulatory intervention is necessary to support market functioning. 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.

50 To maximise the likelihood that the prime banks would be able to comply with the requirement, they would need to provide submissions using the last stage methodology that the BBSW administrator would be required to maintain.

Proposal for writing compelled rules

51 We propose to write the compelled rules to confer the powers to give notices in relation to significant benchmarks, as contemplated by the proposed legislation. These rules provide the foundation for us to give notices compelling generation, administration and contributions, if the public interest test is met.

52 The circumstances in which ASIC would give a notice under the compelled rules would be set out in regulatory guidance. We recognise that writing specific circumstances into the compelled rules may provide greater certainty to administrators and contributors about when the rules may apply to them.

53 However, the option of writing specific rules about when we may give a notice would be less flexible and would limit ASIC's ability to quickly respond to future events. We think the structure of the rule-making powers in the proposed legislation indicates a legislative intention that the power to give notices be flexible.

54 To facilitate detailed and informed consultation feedback, we have published draft compelled financial benchmark rules as proposed. We have also published draft notices that reflect some of the circumstances described in paragraphs 43–50.

Proposal

D1 We propose to write compelled rules conferring on ASIC the power to give notices compelling administration, generation and contributions to significant benchmarks, which may be applied by ASIC in extreme circumstances, including where market-based incentives for benchmark administration or contribution have failed.

Your feedback

D1Q1 Do you have feedback on the circumstances and related policy considerations about when we may issue notices under the compelled rules?

D1Q2 Do you agree with our proposal to write rules conferring the power to give notices? Please provide detailed reasons.

D1Q3 Do you believe the rules should be more specific about the circumstances in which we may issue a notice? Please provide detailed reasons.

E Regulatory and financial impact

55 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

(a) having robust regulation of significant benchmarks and other licensed benchmarks; and

(b) maintaining consistency with relevant international principles and key overseas regimes.

56 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

(a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;

(b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and

(c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a regulation impact statement (RIS).

57 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

58 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
BBSW	Bank bill swap rate
CFR	Council of Financial Regulators
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
EU BMR	Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (amends Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014)
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
FSB	Financial Stability Board
IOSCO	International Organization of Securities Commissions
IOSCO benchmarks principles	IOSCO *Principles for financial benchmarks*
IOSCO PRA principles	IOSCO *Principles for oil price reporting agencies*
RBA	Reserve Bank of Australia

List of proposals and questions

Proposal	Your feedback
B1 The proposed administration rules and regulatory guide seek to maintain international and cross-border consistency by being aligned with the IOSCO benchmarks principles, as well as the IOSCO PRA principles and regulatory obligations under key overseas regimes.	B1Q1 Do you agree with our approach to maintaining international and cross-border regulatory consistency?
B2 To align with core requirements of other licensing regimes established under the Corporations Act as well as the UK regime, we are proposing to impose five additional requirements that licensees: (a) have sufficient resources, including financial resources (see Rules 2.1.5–2.1.7); (b) have adequate risk management arrangements (see Rule 2.4.2); (c) have business continuity plans (see Rule 2.4.3); (d) maintain records in a form that is readily converted to English (see Rule 2.5.3); and (e) maintain a final stage method for generating and administering the BBSW, if the licensee is the administrator of the BBSW (see Rule 2.2.5).	B2Q1 Do you have feedback on the five proposed additional requirements set out under proposal B2?
B3 We are proposing to: (a) make administration rules that can be applied in a way that reflects the nature, complexity and intended use of a licensed benchmark; and (b) set out more specific guidance and our regulatory expectations in regulatory guidance, which is also intended to align with the approach taken in international standards and overseas regimes.	B3Q1 Do you agree with our proposed approach to rulemaking and regulatory guidance? B3Q2 Does the alignment between the proposed administration rules and regulatory guidance, and international or overseas regulatory requirements need to be adjusted? If so, please provide details in your response. B3Q3 Do you have other feedback on the split between the proposed administration rules and regulatory guidance?
B4 We propose, in general, not to write rules for specific types of benchmarks (for example, index benchmarks). The regulatory guidance distinguishes between different types of benchmarks where needed (see, for example, RG 000.66 which explains the requirements for submissions-based benchmarks to have a code of conduct).	B4Q1 Do you think we need to more clearly distinguish between types of benchmarks? If so, please give your reasons why.

Proposal	Your feedback
B5 We consider the proposed administration rules are sufficiently flexible to accommodate commodity benchmarks that may be complying with the IOSCO PRA principles. Therefore, no specific rules are needed. Note: The proposed regulatory guidance specifically provides that administrators of commodity benchmarks may comply with the IOSCO PRA principles in relation to the oversight of submitters: see RG 000.67.	B5Q1 Are there specific issues or rules that need to be refined to reflect the IOSCO PRA principles?
C1 Initially and consistent with CFR advice, we consider that the following five benchmarks are likely to meet the criteria for significant benchmarks set out in s908AC(2) of the proposed legislation: (a) the BBSW; (b) Standard & Poor's (S&P)/ASX 200 index; (c) the ASX bond futures settlement price; (d) the cash rate (including the total return index derived from the cash rate); and (e) the consumer price index.	C1Q1 Do you have feedback on the list of potential significant benchmarks based on the criteria in the draft legislation?
C2 We propose to consider granting exemptions to align with relevant international principles. We think exemptions from the requirement to hold a licence would be rare.	C2Q1 Do you have feedback on our proposed approach to licensing and exemptions?
C3 Before deciding to grant a licence to an administrator of a non-significant benchmark, we propose to consider whether the benchmark has some connection to Australia.	C3Q1 Do you agree with the proposal that we consider whether a benchmark has some connection to Australia before granting a licence to an administrator of a non-significant benchmark?
C4 We propose to consider whether we can place reliance on an overseas regime if we assess that: (a) the administrator is complying with the overseas regime; and (b) the regime is sufficiently equivalent to the Australian regime, which could include an assessment of whether the overseas regime has implemented the IOSCO benchmarks principles or (where applicable) the IOSCO PRA principles.	C4Q1 Do you agree with our proposed approach to assessing overseas regulatory regimes?

Proposal		Your feedback	
C5	We also propose to consider whether there are direct information access arrangements with the administrator.	C5Q1	Do you agree with our proposal to consider direct information access arrangements with an overseas benchmark administrator?
D1	We propose to write compelled rules conferring on ASIC the power to give notices compelling administration, generation and contributions to significant benchmarks, which may be applied by ASIC in extreme circumstances, including where market-based incentives for benchmark administration or contribution have failed.	D1Q1	Do you have feedback on the circumstances and related policy considerations about when we may issue notices under the compelled rules?
		D1Q2	Do you agree with our proposal to write rules conferring the power to give notices? Please provide detailed reasons.
		D1Q3	Do you believe the rules should be more specific about the circumstances in which we may issue a notice? Please provide detailed reasons.