



Financial Markets Conduct (Licensing of Administrators of Financial Benchmarks) Amendment Regulations 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 14th day of December 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 546 of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 549 of that Act.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 New regulation 187A inserted (Additional eligibility criteria for service of acting as administrator of financial benchmark)	2
187A Additional eligibility criteria for service of acting as administrator of financial benchmark	2
5 New regulation 197B inserted (Conditions for service of acting as administrator of financial benchmark)	2
197B Conditions for service of acting as administrator of financial benchmark	2
6 Regulation 198 amended (Conditions are Part 6 services provisions)	2

7	New Schedule 28 inserted	3
	Schedule	3
	New Schedule 28 inserted	

Regulations

1 Title

These regulations are the Financial Markets Conduct (Licensing of Administrators of Financial Benchmarks) Amendment Regulations 2020.

2 Commencement

These regulations come into force on 15 March 2021.

3 Principal regulations

These regulations amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

4 New regulation 187A inserted (Additional eligibility criteria for service of acting as administrator of financial benchmark)

After regulation 187, insert:

187A Additional eligibility criteria for service of acting as administrator of financial benchmark

The eligibility criteria for licences for the service of acting as an administrator of a financial benchmark under section 396(a) of the Act are set out in Part 2 of Schedule 28.

5 New regulation 197B inserted (Conditions for service of acting as administrator of financial benchmark)

After regulation 197A, insert:

197B Conditions for service of acting as administrator of financial benchmark

A market services licence for the service of acting as an administrator of a financial benchmark is subject to the conditions set out in Part 3 of Schedule 28.

6 Regulation 198 amended (Conditions are Part 6 services provisions)

In regulation 198, insert as subclause (2):

- (2) In addition, the conditions imposed under clauses 15(2)(a), 22 to 25, 26(1) and (2), 27, and 31(1) to (5)(a) of Schedule 28 are Part 6 services provisions that give rise to civil liability under section 449(4) of the Act.

7 New Schedule 28 inserted

After Schedule 27, insert the Schedule 28 set out in the Schedule of these regulations.

**Schedule
New Schedule 28 inserted**

r 7

Schedule 28		
Market services licence for service of acting as administrator of financial benchmark		
		rr 187A, 197B
Contents		
		Page
	Part 1	
	Interpretation	
1	Interpretation	4
	Part 2	
	Eligibility criteria	
	<i>Governance and management criteria</i>	
2	Governance and oversight of benchmark activities	5
3	Conflicts of interest	6
4	Resources	6
5	Outsourcing arrangements	7
6	Independent oversight committee for interest rate benchmark	7
	<i>Generation and operation criteria</i>	
7	Design of financial benchmark	8
8	Financial benchmark data	8
9	Methodology for generating financial benchmark	8
10	Business continuity and management of risk	9
	<i>Other eligibility criteria</i>	
11	Contributor conduct rules	10
12	Investigation of complaints	11
13	Transfer or cessation of generation or operation of financial benchmark	11

**Part 3
Conditions of licence**

Governance and management conditions

14	Review and update of governance and conflict of interest systems and procedures	11
15	Outsourcing arrangements	12
16	Governance requirements in relation to independent oversight committee	12

Generation and operation conditions

17	Manner of generation and operation of financial benchmark	13
18	Financial benchmark data	13
19	Use, review, and update of methodology for generating financial benchmark	13
20	Final stage methodology for interest rate benchmark	14
21	Information that must be publicly available	14

Reporting conditions

22	Licensee must notify FMA of material change to financial benchmark methodology	15
23	Licensee must notify FMA of material change to contributor conduct rules	15
24	Licensee must report significant contraventions of Part 2 of Act	15
25	Notification of intention to cease generation or operation of financial benchmark	16

Other conditions

26	Compliance records	16
27	Licensee must give information to FMA	17
28	Monitoring compliance with contributor conduct rules	17
29	Investigation of complaints	17
30	Transfer or cessation of generation or operation of financial benchmark	18
31	Assurance engagement	18

**Part 1
Interpretation**

1 Interpretation

In this schedule,—

active market data means information or data that is based on an active market that—

- (a) involves arm's length transactions between buyers and sellers; and

- (b) reflects the competitive forces of supply and demand
- administrator** means an administrator of a financial benchmark (as defined in section 6(1) of the Act)
- assurance report** means a report prepared in accordance with clause 31
- complaint** means an expression of dissatisfaction relating to the administrator's service to which a response or a resolution is explicitly or implicitly expected
- contributor conduct rules** means the rules required under clause 11
- final stage methodology** means the methodology required under clause 20(2)
- financial benchmark data** means information or data that is used to generate a financial benchmark
- financial benchmark methodology** means a methodology for generating a financial benchmark
- independent oversight committee** means the committee required under clause 6
- interest rate benchmark** means a financial benchmark that is generated from the rate at which banks may lend to, or borrow from, other banks or persons, in the money market
- operate**, in relation to a financial benchmark, includes administering and applying the rules or procedures by which a financial benchmark is generated
- outsourcing arrangement** means an arrangement for 1 or more activities relating to the generation or operation of a specified financial benchmark to be carried out by a person other than the administrator of that financial benchmark
- specified financial benchmark** means a financial benchmark that is specified, or to be specified, in a market services licence for the service of acting as an administrator.

Part 2

Eligibility criteria

Governance and management criteria

2 Governance and oversight of benchmark activities

- (1) The administrator has adequate systems and procedures for—
- (a) governance and management of its business; and
 - (b) oversight and control of all activities relating to the generation and operation of the specified financial benchmark.
- (2) The systems and procedures must, at a minimum,—

- (a) specify decision-making processes in relation to the generation and operation of the specified financial benchmark; and
- (b) provide for clearly defined roles and responsibilities in, and accountability for, the governance and management of the administrator's business and the oversight and control of all activities relating to the generation and operation of the specified financial benchmark; and
- (c) ensure that, regardless of who carries out a particular activity, the administrator retains adequate control of all of the activities relating to the generation and operation of the specified financial benchmark.

3 Conflicts of interest

- (1) The administrator has adequate systems and procedures for handling conflicts of interest in relation to the generation and operation of the specified financial benchmark.
- (2) The systems and procedures must, at a minimum,—
 - (a) be designed to ensure that conflicts of interest do not adversely affect the accuracy, integrity, reliability, or continued availability of the specified financial benchmark; and
 - (b) address any conflicts of interest between—
 - (i) the administrator's interests that relate to the activities to be covered by the market services licence; and
 - (ii) the interests of any 1 or more of the persons specified in subclause (3); and
 - (c) address any conflicts of interest between—
 - (i) the administrator's interests that relate to the activities to be covered by the market services licence; and
 - (ii) the administrator's interests that relate to activities other than the activities that are to be covered by the market services licence.
- (3) The persons are as follows:
 - (a) a director, an employee, or an agent of the administrator;
 - (b) a person associated with a person described in paragraph (a);
 - (c) a person who carries out an activity under an outsourcing arrangement;
 - (d) a contributor;
 - (e) a user of the specified financial benchmark.

4 Resources

- The administrator has sufficient resources (including human, technological, and financial resources) to ensure that the administrator is able to generate and operate the specified financial benchmark in a manner that—
- (a) maintains its accuracy, integrity, and reliability; and

- (b) provides for its continued availability.

5 Outsourcing arrangements

- (1) If the administrator outsources any activity relating to a specified financial benchmark to another person (the **nominee**), the criteria in subclauses (2) and (3) are met.
- (2) The administrator has adequate systems and procedures to—
 - (a) ensure that the activity is performed by the nominee in the same manner and subject to the same duties and restrictions as if the administrator were performing it directly; and
 - (b) monitor the performance of that activity.
- (3) The terms of the outsourcing arrangement do not materially limit or restrict—
 - (a) the administrator’s control over the specified financial benchmark; or
 - (b) the FMA’s ability to—
 - (i) monitor compliance with the market services licensee obligations; or
 - (ii) investigate conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of the market services licensee obligations; or
 - (iii) enforce the market services licensee obligations.

6 Independent oversight committee for interest rate benchmark

- (1) If a specified financial benchmark is an interest rate benchmark, the criteria in subclauses (2) and (3) are met.
- (2) A committee that is sufficiently independent of the administrator (an **independent oversight committee**) has responsibility for—
 - (a) monitoring and reviewing the design of the specified financial benchmark and any changes to the design; and
 - (b) monitoring the management and operation of the administrator’s business and the activities relating to the generation and operation of the specified financial benchmark (including, for example, the contributor conduct rules and any outsourcing arrangements); and
 - (c) reviewing and approving arrangements for cessation of the generation or operation of the financial benchmark; and
 - (d) considering any assurance report; and
 - (e) monitoring the actions that are taken to remedy or otherwise address any deficiencies that are identified in any assurance report; and
 - (f) notifying the FMA if the committee knows or suspects that, in connection with the service covered by the licence,—

- (i) the licensee or an authorised body has contravened, may have contravened, or is likely to contravene a market services licensee obligation; or
 - (ii) a contributor has contravened, may have contravened, or is likely to contravene an obligation imposed by or under the Act; and
 - (g) making recommendations to the administrator regarding the matters set out in paragraphs (a) to (e).
- (3) The administrator has procedures to ensure that it can comply with the condition in clause 16(1) (which relates to comments and recommendations of the independent oversight committee).
- (4) In this regulation, **sufficiently independent** means the composition of members—
- (a) adequately balances representation of users and contributors of the specified financial benchmark; and
 - (b) provides a counterbalance to any relevant conflicts of interest that may arise in relation to the generation or operation of the specified financial benchmark.

Generation and operation criteria

7 Design of financial benchmark

To the extent reasonably practicable, the specified financial benchmark is designed to be an accurate and reliable representation of the state of affairs that it is intended to represent.

8 Financial benchmark data

The administrator has adequate systems and procedures to control the obtaining, retention, and use of financial benchmark data, including systems and procedures reasonably designed to ensure that—

- (a) the administrator obtains, retains, and uses the data in a manner that maintains its security and integrity; and
- (b) the data is accurate and complete.

9 Methodology for generating financial benchmark

The financial benchmark methodology—

- (a) is designed to ensure, in the widest range of market circumstances, the accuracy, integrity, reliability, and continued availability of the benchmark; and
- (b) establishes the criteria for the information or data that is used to generate the benchmark; and

- (c) if more than 1 type of financial benchmark data may be used to generate the benchmark,—
 - (i) establishes the hierarchy for the order in which the financial benchmark data will be used; and
 - (ii) requires that active market data is used first if suitable active market data is available; and
- (d) establishes the minimum quantity and quality of the financial benchmark data; and
- (e) establishes the manner in which the financial benchmark data will be used to generate the benchmark; and
- (f) establishes the contingency arrangements that apply if the quantity or quality of the financial benchmark data is insufficient or inadequate to generate the benchmark; and
- (g) if expert judgement or discretion may be exercised in the generation of the benchmark, has clear rules identifying how and when that expert judgement or discretion may be exercised; and
- (h) establishes adequate systems or procedures for handling errors, discrepancies, or reports of suspicious activity in relation to the financial benchmark data; and
- (i) establishes the frequency of review and testing of the methodology and the administrator's use of the methodology; and
- (j) establishes the procedures for consulting on a proposed material change to the methodology under clause 19(3).

10 Business continuity and management of risk

- (1) The administrator has adequate systems and procedures to manage risks to the administrator's ability to generate or operate the specified financial benchmark in a manner that maintains the accuracy, integrity, reliability, and continued availability of the benchmark.
- (2) The administrator has adequate business continuity, backup, and data recovery plans designed to—
 - (a) address events that pose a significant risk of disruption to the accuracy, integrity, reliability, or continued availability of the specified financial benchmark; and
 - (b) if any disruption occurs, enable the timely restoration of the accuracy, integrity, reliability, and continued availability of the financial benchmark.

Other eligibility criteria

11 Contributor conduct rules

- (1) The administrator has adequate written rules for contributors in connection with the provision or making available of financial benchmark data and the generation or operation of the specified financial benchmark (**contributor conduct rules**).
- (2) The contributor conduct rules must, at a minimum,—
 - (a) deal with a contributor providing or making available financial benchmark data to the administrator or a person authorised in accordance with the rules, including—
 - (i) the information or data to be provided or made available; and
 - (ii) the form and manner in which the information or data is to be provided or made available; and
 - (iii) the persons who are authorised to provide the information or data or make it available; and
 - (b) specify the systems and procedures that a contributor must have for—
 - (i) ensuring only persons authorised in accordance with the rules provide information or data to the administrator; and
 - (ii) providing, or making available, information or data in accordance with the requirements of the administrator; and
 - (iii) managing conflicts of interest in connection with the provision, or making available, of information or data to the administrator; and
 - (iv) governing the exercise of expert judgement or discretion (if any) in connection with the provision, or making available, of information or data to the administrator, including by ensuring that persons who exercise expert judgement or discretion are adequately trained and supervised; and
 - (v) notifying the administrator of any errors, discrepancies, or suspicious activities; and
 - (vi) keeping records that demonstrate compliance with the contributor conduct rules; and
 - (c) require the contributor to notify the administrator within a reasonable time if the contributor (or any director, employee, or agent of the contributor) has contravened, may have contravened, or is likely to contravene the contributor conduct rules; and
 - (d) specify the steps that the administrator will take in response to the following:
 - (i) the contributor reporting an error, a discrepancy, or a suspicious activity:

- (ii) the contributor notifying the administrator of a contravention of the contributor conduct rules.

12 Investigation of complaints

- (1) The administrator has appropriate documented procedures for investigating complaints from any person in relation to the specified financial benchmark, including complaints about the administrator's conduct in relation to the generation or operation of the benchmark.
- (2) The documentation of the procedures is available, free of charge, on an Internet site maintained by, or on behalf of, the administrator in a way that ensures that members of the public can easily access the documentation at all reasonable times.

13 Transfer or cessation of generation or operation of financial benchmark

- (1) The administrator has adequate arrangements for ensuring—
 - (a) the orderly transfer of the generation or operation of the specified financial benchmark to another person; and
 - (b) the orderly cessation of the generation or operation of the specified financial benchmark.
- (2) The arrangements must take into account whether the financial products, other securities, or agreements that reference or otherwise use the specified financial benchmark can be amended to reference or otherwise use another financial benchmark before the proposed date of cessation.

Part 3
Conditions of licence

Governance and management conditions

14 Review and update of governance and conflict of interest systems and procedures

- (1) The licensee must—
 - (a) regularly review, and systematically identify deficiencies in,—
 - (i) the governance and oversight systems and procedures referred to in clause 2; and
 - (ii) the conflict of interest systems and procedures referred to in clause 3; and
 - (b) ensure that any deficiencies are promptly remedied.
- (2) Any systems and procedures that are changed must continue to comply with clauses 2 and 3.

15 Outsourcing arrangements

- (1) Subclauses (2) and (3) apply if the licensee or an authorised body outsources any activity relating to a specified financial benchmark to another person (the **nominee**).
- (2) The licensee or authorised body (as applicable) must—
 - (a) ensure that all outsourcing arrangements are in a written contract; and
 - (b) ensure that the activity is performed by the nominee in the same manner and subject to the same duties and restrictions as if the administrator were performing it directly; and
 - (c) monitor the performance of that activity.
- (3) The terms of the outsourcing arrangement must not materially limit or restrict—
 - (a) the licensee's, or any authorised body's, control over the benchmark; or
 - (b) the FMA's ability to—
 - (i) monitor compliance with the market services licensee obligations; or
 - (ii) investigate conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of the market services licensee obligations; or
 - (iii) enforce the market services licensee obligations.

16 Governance requirements in relation to independent oversight committee

- (1) The licensee must ensure that the board—
 - (a) provides the independent oversight committee with an opportunity to provide comment, and to make recommendations, on any matter within the committee's responsibility; and
 - (b) has regard to each recommendation of the committee; and
 - (c) notifies the committee in writing of—
 - (i) what steps have been, or will be, taken in response to the recommendation; or
 - (ii) if the board declines to adopt the recommendation, its reasons for doing so.
- (2) The licensee must permit the independent oversight committee to notify the FMA if it knows or suspects that, in connection with the service covered by the licence,—
 - (a) the licensee or an authorised body has contravened, may have contravened, or is likely to contravene a market services licensee obligation; or
 - (b) a contributor has contravened, may have contravened, or is likely to contravene an obligation imposed by or under the Act.

- (3) In this clause, **board** means—
- (a) the board or any other governing body of the licensee; or
 - (b) the licensee, if it does not have a governing body.

Generation and operation conditions

17 Manner of generation and operation of financial benchmark

- (1) The licensee and every authorised body must, in generating and operating the specified financial benchmark, act in a fair, orderly, and transparent manner.
- (2) The licensee and every authorised body must, to the extent that it is reasonably practicable to do so, generate and operate the specified financial benchmark in a manner that—
 - (a) is appropriate for the nature, complexity, and intended use of the benchmark; and
 - (b) maintains the accuracy, integrity, reliability, and continued availability of the benchmark; and
 - (c) does not adversely affect the integrity of any market connected with the benchmark.

18 Financial benchmark data

The licensee and every authorised body must take all reasonable steps to ensure that the financial benchmark data—

- (a) is sufficient to accurately and reliably represent the state of affairs the specified financial benchmark is intended to represent; and
- (b) is based on active market data if suitable active market data is available.

19 Use, review, and update of methodology for generating financial benchmark

- (1) The licensee and every authorised body must continue to use a financial benchmark methodology that complies with clause 9.
- (2) The licensee or an authorised body must—
 - (a) ensure that there are in place methods to regularly review, test, and systematically identify deficiencies in—
 - (i) the methodology; and
 - (ii) the use of that methodology by the licensee and any authorised body; and
 - (b) ensure that any deficiencies are promptly remedied.
- (3) Before a material change is made to the specified financial benchmark (other than a change made to comply with a direction from the FMA), the licensee or an authorised body must take reasonable steps to consult about the proposed change with those users of the benchmark, or representatives of those users,

that the licensee or authorised body (as applicable) considers will be substantially affected by the change.

- (4) If, after consultation under subclause (3), the licensee or authorised body decides to make the change, the licensee or authorised body (as applicable) must notify the users of the benchmark of the change a reasonable time before it is implemented.
- (5) Any methodology that is changed must continue to meet the requirements set out in clause 9.

20 Final stage methodology for interest rate benchmark

- (1) This condition applies if the specified financial benchmark is an interest rate benchmark.
- (2) The licensee or an authorised body must maintain a methodology (**final stage methodology**) for generating and operating the benchmark that is designed, to the extent reasonably practicable, to allow the licensee or an authorised body to generate and operate the benchmark when other methodologies that would normally be used to generate and operate the benchmark have failed or are likely to fail.
- (3) The final stage methodology must, to the extent that is reasonably practicable, include generating and operating the benchmark by using information or data that is based on the exercise of expert judgement by the contributors.
- (4) The licensee and every authorised body must comply with clause 19(3) and (4) in relation to any proposed material change to the final stage methodology.

21 Information that must be publicly available

- (1) The licensee or an authorised body must make publicly available the information set out in subclause (2) to the extent necessary to ensure that users of a specified financial benchmark have sufficient information to understand—
 - (a) how the benchmark is generated; and
 - (b) the intended use of the benchmark.
- (2) The information is—
 - (a) an explanation of the state of affairs the benchmark is intended to represent; and
 - (b) a description of the financial benchmark methodology, including the matters set out in clause 9.
- (3) In subclause (1), **publicly available** means available, free of charge, on an Internet site maintained by, or on behalf of, the licensee or authorised body in a way that ensures that members of the public can easily access the information at all reasonable times.

Reporting conditions

22 Licensee must notify FMA of material change to financial benchmark methodology

- (1) The licensee or an authorised body must notify the FMA if the licensee or authorised body (as applicable) proposes to make a material change to the financial benchmark methodology or final stage methodology for the specified financial benchmark.
- (2) The notice must include a description of—
 - (a) the proposed change; and
 - (b) the steps taken by the licensee or authorised body (as applicable) in accordance with the condition in clause 19(3).
- (3) The notice must be given—
 - (a) in writing; and
 - (b) after the condition in clause 19(3) has been complied with but a reasonable time before the change is implemented.
- (4) In this clause and in clause 23, **reasonable time** means a period of time that, in the circumstances, is sufficient to allow the FMA to properly consider the effect of the proposed change on—
 - (a) the accuracy, integrity, reliability, and continued availability of the benchmark; and
 - (b) users of the benchmark.

23 Licensee must notify FMA of material change to contributor conduct rules

- (1) The licensee or an authorised body must notify the FMA if the licensee or authorised body (as applicable) proposes to make a material change to the contributor conduct rules.
- (2) The notice must include a description of the proposed change.
- (3) The notice must be given—
 - (a) in writing; and
 - (b) a reasonable time before the change is implemented (*see* clause 22(4)).

24 Licensee must report significant contraventions of Part 2 of Act

- (1) The licensee or an authorised body (as applicable) must notify the FMA, in accordance with subclauses (2) and (3), if the licensee or authorised body knows or suspects that a contributor has committed, is committing, or is likely to commit a significant contravention of Part 2 of the Act (which relates to fair dealing) in connection with the service covered by the licence.

- (2) The licensee or authorised body (as applicable) must give the notice immediately after knowing or suspecting that the contravention has been committed, is being committed, or is likely to be committed.
- (3) The notice must include—
 - (a) the contributor’s name and contact details; and
 - (b) the obligation to which the contravention or suspected contravention relates; and
 - (c) the facts supporting the licensee’s, or the authorised body’s, view (as applicable) in relation to the contravention or suspected contravention; and
 - (d) any supporting evidence for that view.
- (4) *See also* section 412 of the Act (which provides that material contraventions of market services licensee obligations by the licensee or authorised bodies must be reported to the FMA).

25 Notification of intention to cease generation or operation of financial benchmark

A licensee or an authorised body that intends to cease generating or operating the specified financial benchmark must,—

- (a) as soon as is reasonably practicable, notify the FMA of that intention; and
- (b) at least 4 weeks before ceasing to generate or operate the benchmark, notify the FMA of the arrangements for ensuring—
 - (i) the orderly transfer of the generation or operation of the benchmark to another person; or
 - (ii) the orderly cessation of the generation or operation of the benchmark; and
- (c) notify the FMA of any changes to those arrangements that are made after the notification under paragraph (b), as soon as is reasonably practicable after making those changes.

Other conditions

26 Compliance records

- (1) The licensee and every authorised body must—
 - (a) create and maintain records that enable the licensee and the authorised body to demonstrate compliance with the market services licensee obligations; and
 - (b) create and maintain records of any matters notified by the contributor under the contributor conduct rules; and

- (c) keep all other information or data provided or made available by each contributor.
- (2) The licensee and every authorised body must keep a copy of the records, information, and data for a period of at least 7 years after the date on which the record, information, or data comes into the possession of the licensee.
- (3) The licensee and every authorised body must ensure that the records, information, and data can be made available under clause 27 within a reasonable time if required.

27 Licensee must give information to FMA

- (1) The licensee and every authorised body must, on written notice from the FMA,—
 - (a) give to the FMA any records, information, or data or class of records, information, or data specified in the notice; and
 - (b) give the FMA any reasonable assistance that it requires to access, or reproduce in usable form, any records, information, or data or class of records, information, or data specified in the notice.
- (2) In this clause, **records, information, or data** means records, information, or data referred to in clause 26.
- (3) The licensee or authorised body (as applicable) must comply with the notice within the time (which must be a reasonable time) and in the manner specified in the notice.

28 Monitoring compliance with contributor conduct rules

The licensee or an authorised body must—

- (a) monitor each contributor’s compliance with the contributor conduct rules; and
- (b) take the steps specified in those rules if either of the following occurs:
 - (i) the contributor reports an error, a discrepancy, or a suspicious activity;
 - (ii) the contributor notifies the administrator of a breach of the contributor conduct rules.

29 Investigation of complaints

The licensee or an authorised body must ensure that—

- (a) complaints are investigated in a timely and fair manner; and
- (b) the outcome of an investigation is communicated to the complainant as soon as practicable.

30 Transfer or cessation of generation or operation of financial benchmark

If the licensee intends to cease generating or operating a specified financial benchmark, the licensee must (subject to the requirements of any direction under section 448C or 448D of the Act) implement the arrangements described in clause 13 for ensuring—

- (a) the orderly transfer of the generation or operation of the benchmark to another person; or
- (b) the orderly cessation of the generation or operation of the benchmark.

31 Assurance engagement

- (1) The licensee must obtain an assurance engagement with a qualified auditor (including obtaining the assurance report within that period)—
 - (a) within 4 months after the relevant date; or
 - (b) by any alternative date specified in a notice given by the FMA.
- (2) The assurance engagement must be done in accordance with applicable auditing and assurance standards.
- (3) An assurance report must cover—
 - (a) the 2-year period ending on the relevant date; or
 - (b) any alternative period specified in a notice given by the FMA.
- (4) An assurance report must determine whether, in the auditor's opinion, there is reasonable assurance that the licensee's, and every authorised body's, systems and procedures—
 - (a) were suitably designed to meet the market services licensee obligations; and
 - (b) operated effectively throughout the relevant period.
- (5) The licensee must, within 20 working days after obtaining an assurance report, provide a copy of the report to—
 - (a) the FMA; and
 - (b) the independent oversight committee.
- (6) In this clause, **relevant date** means—
 - (a) the licensee's balance date that is closest to the date that is 2 years after the date on which the licence was issued; and
 - (b) every second balance date after the date described in paragraph (a).

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are made under the Financial Markets Conduct Act 2013 (the **FMC Act**) and amend the Financial Markets Conduct Regulations 2014. These regulations relate to amendments being made to the FMC Act by the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (the **2019 Act**).

These regulations come into force on 15 March 2021.

The 2019 Act amends the FMC Act to allow administrators of financial benchmarks to apply for a market services licence for the service of acting as an administrator of a financial benchmark. These regulations provide for—

- additional eligibility criteria that administrators must meet in order to be eligible for a market services licence (*see new regulation 187A and Part 2 of new Schedule 28*); and
- additional conditions that apply to a market services licence for the service of acting as an administrator of a financial benchmark (*see new regulation 197B and Part 3 of new Schedule 28*).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 December 2020.

These regulations are administered by the Ministry of Business, Innovation, and Employment.