

**[MEMORANDUM CIRCULAR NO. 11, S. 2018,
August 23, 2018]**

**RULES ON THE ADMINISTRATION OF GOVERNMENT SECURITIES
BENCHMARKS**

*Adopted: 22 August 2018
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PREAMBLE

WHEREAS, Section 2 of the Securities Regulation Code (SRC) declares that it is the policy of the State to promote the development of the capital market and protect the investors;

WHEREAS, Section 5 of the Securities Regulation Code (SRC) provides the Commission the power to formulate policies and recommendations on issues concerning securities market;

WHEREAS, the reference rates for the Philippine Peso-denominated government securities are being calculated regularly for use as benchmark rates for financial transactions and for market valuation purposes;

WHEREAS, there is a need to continue to deliberate on the calculation of credible GS reference rates to enhance transparency and pricing, in line with recent global benchmark reform initiatives and the IOSCO Principles for interest rate benchmark design;

WHEREAS, there is a need to promulgate these rules to govern the administration of the Philippine Peso-denominated government securities benchmarks to ensure that the objectives of the SRC are met;

WHEREAS, the SRC authorizes the Commission to issue rules and regulations to make effective the provisions of the SRC;

NOW, THEREFORE, the Commission hereby issues and promulgate the following rules governing the administration of the Philippine Peso-denominated government securities benchmarks.

CHAPTER I. GENERAL PROVISIONS

Section 1. Title and Applicability – These rules shall be known as the “Rules on the Administration of Government Securities Benchmarks”. These rules shall apply to a legal person which intends to generate an index in relation to Government Securities (“GS”) and which, under these rules, shall obtain the license to perform GS Benchmark Administration.

Section 2. Definition of Terms – For purposes of these Rules, the following definition of terms shall apply unless the context otherwise requires:^[1]

a. **Arm's-length transaction** refers to a transaction between two parties that is concluded on terms that are not influenced by a conflict of interest (e.g., conflicts of interest that arise from a relationship such as a transaction between affiliates).

b. **Audit trail** (in relation to the benchmark-setting process) refers to the documentation and retention of all relevant data, submissions, and other information, judgments (including the rationale for any exclusions of data), analyses and identities of contributors used in the benchmark-setting process for an appropriate period.

c. Benchmark Administration refers to all stages and processes involved in the production and dissemination of a Benchmark, including:

i. Collecting, analyzing, and/or processing information or expressions of opinion for the purpose of the determination of a benchmark;

ii. Determining a benchmark through the application of a formula or another method of calculating the information or expressions of opinions provided for that purpose; and

iii. Dissemination to users, including any review, adjustment and modification to this process.

d. **Benchmark Administrator** refers to a legal person that controls the creation and operation of the Benchmark Administration process, whether or not it owns the intellectual property relating to the Benchmark. In particular, it has responsibility for all stages of the Benchmark Administration process, including:

i. The calculation of the Benchmark;

ii. Determining and applying the Benchmark Methodology; and

iii. Disseminating the Benchmark.

e. **Benchmark**, for purposes of this rule, refers to GS Benchmark which includes prices, estimates, rates, indices or values that are:

i. Made available to users, whether free of charge or for a fee;

ii. Calculated periodically, entirely or partially by the application of a formula

or another method of calculation of, or an assessment of, the value of one or more underlying interests;

iii. Used for reference for purposes that include one or more of the following:

- determining the interest payable, or other sums due, under loan agreements or under other financial contracts or instruments;

- determining the price at which a financial instrument may be bought or

sold or traded or redeemed, or the value of a financial instrument; and/or

- measuring the performance of a financial instrument.

f. **Benchmark Publisher** refers to a legal entity publishing the benchmark values, which includes making available such values to subscribers, on the internet or by any other means, whether free of charge or not.

g. **Calculating Agent** refers to a legal entity with delegated responsibility for determining a Benchmark through the application of a formula or other method of calculating the information or expressions of opinions provided for that purpose, in accordance with the methodology set out by the Administrator.

h. **Commission** refers to the Securities and Exchange Commission.

i. **Contributor** refers to a legal person contributing data inputs, and/or submissions to the benchmark determination process.

j. **Expert Judgment** refers to the exercise of discretion by an Administrator or Contributor with respect to the use of data in determining a Benchmark. Expert Judgment includes extrapolating values from prior or related transactions, adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, or weighting firm bids or offers greater than a particular concluded transaction.

k. **Front Office Function** refers to any department, division, group, or personnel of Contributor or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, marketing, advertising, solicitation, structuring, brokering activities on behalf of a third party or for proprietary purposes.

l. **Interest** refers to the underlying interest the benchmark is trying to measure, and for purposes of this rule, the Philippine Peso-denominated Government Securities.

m. **Market Participants** refers to legal entities involved in the production, structuring, use or trading of financial contracts or financial instruments which form as the bases of the Benchmark, or which reference the Benchmark.

n. **Methodology** refers to written rules and procedures under which information is collected and the Benchmark is determined.

o. **National Authority** refers to a relevant governmental authority, which may not be a market or regulatory authority, but which has the responsibility for or a governmental interest in Benchmark policies.

p. **Organized Market**, as defined under Rule 3.1.14 of the SRC.

q. **Philippine Peso-denominated Government Securities ("GS")** are "treasury bills" and "treasury bonds" issued by the Philippine Government. Treasury Bills are government securities which mature in less than a year. Treasury Bonds are

government securities which mature beyond one year.

r. ***Publish or Make Available*** refers to the act of a party such as an Administrator of providing a document or notice to Stakeholders, and/or the Commission. The means by which such notice is made shall be proportionate to the breadth and depth of Benchmark used by Stakeholders, as determined by the Administrator on a "best efforts" basis. Ordinarily, posting a document or notice on the Administrator's website will meet this definition.

s. ***Stakeholder*** refers to subscribers and other persons or entities who own contracts or financial instruments that reference a benchmark.

t. ***Submission(s)*** refer to prices, estimates, values, rates, or other information that is provided by a Contributor to an Administrator for the purposes of determining a Benchmark. This excludes data sourced from Organized Market/s.

u. ***Subscriber*** refers to a person or entity that purchases Benchmark determination services from an Administrator.

v. ***Submitter*** a natural person employed by the contributor for the purpose of contributing inputs/submissions to the Benchmark Administrator.

The Commission shall, if necessary, issue further definition of terms to specify other technical elements of the terms laid down in this Chapter.

CHAPTER II. AUTHORIZATION, REGISTRATION AND SUPERVISION OF ADMINISTRATORS AND CONTRIBUTORS

Section 1. Registration/ Licensing of an Administrator

A. A legal person located in the Philippines that intends to act as an Administrator may, by filing an application using SEC Form 1A-GS-BA with the Commission, apply for an Administrator license authorizing it to administer the GS Benchmark. The applicant shall file the application with the prescribed filing fee.

B. The Commission may grant the Administrator license if the following conditions are satisfied:

(a) the applicant undertakes to comply with its obligations and with the requirements imposed upon an authorized Administrator;

(b) the applicant engages individuals who do not suffer any of the disqualifications enumerated in Section 2 of this Chapter;

(c) The applicant submits a fair procedure on the denial of access to the contributors or submitters; and

(d) The applicant submits the process by which the benchmark information will be made available and accessed by the stakeholders.

C. The fees to be assessed and collected by the Administrator, if any, shall be subject to the approval by the Commission. The Commission may impose

conditions, or additional conditions, on an Administrator license.

D. The Commission may limit the number of registered Administrators if it deems it necessary or appropriate for the protection of investors and the public interest.

E. A Central Trade Reporting System (CTRS) is not precluded to apply as an Administrator.

Section 2. Disqualifications of Individuals Involved with the Applicant

Registration/ licensing may be refused, or any registration granted thereunder may be revoked, suspended, or limitations placed thereon, by the Commission if, after due notice and hearing, the Commission determines that an individual that appears to be involved in the applicant and is directly responsible in the administration of the benchmark:

A. Has been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, estafa, misappropriation, forgery, bribery, false oath, or perjury, or of a violation of securities, commodities, banking, real estate or insurance laws;

B. Is enjoined or restrained by a competent judicial or administrative body from engaging in securities, commodities, banking, real estate or insurance activities or from willfully violating laws governing such activities;

C. Is subject to an order of a competent judicial or administrative body refusing, revoking or suspending any registration, license, or other permit under any law or rules and regulations administered by the Commission;

D. Is subject to an order of a self-regulatory organization suspending or expelling him from membership or participation therein or from association with a member or participant thereof;

E. Has been found by a competent judicial or administrative body to have willfully violated any provisions of securities, commodities, banking, real estate or insurance laws, or has willfully aided, abetted, counseled, commanded, induced or procured such violation; or

F. Has been judicially declared insolvent.

Section 3. Supervision and Continuing Reporting Requirements

A. Administrators shall formally reconfirm to the Commission in writing, at least annually, that all systems and procedures set forth in their approved applications are in place.

B. In instances where material changes have to be made, Administrators shall seek in writing the approval of the Commission of such changes. The Administrators shall furnish the Commission with the updated documentation of systems and/or procedures that have been changed.