

S&P Global Inc.
Response to the Council of Financial Regulators' Consultation Paper:
Financial Benchmarks Regulatory Reform

S&P Global Inc. (f/k/a McGraw Hill Financial, hereinafter "SPGI") is a leading US-headquartered financial intelligence company providing the capital and commodity markets with independent benchmarks, credit ratings, portfolio and enterprise risk solutions, and analytics. We are pleased to have the opportunity to provide our feedback on the issues raised by the Council of Financial Regulators in its Consultation Paper: Financial Benchmarks Regulatory Reform (the "CP").

Two of the core businesses of SPGI, S&P Dow Jones Indices (S&P DJI) and S&P Global Platts (Platts), are producers and distributors of benchmarks used by the global financial and commodity markets. S&P DJI is a leading, global provider of financial market benchmarks formed in 2012 by combining the S&P Indices business of SPGI and the Dow Jones Indexes business of the CME Group. Platts is a leading global provider of energy, petrochemicals, metals and agriculture information, and a premier source of benchmark price assessments for those commodity markets. Both Platts and S&P DJI are independent and separate from market participants, product providers and government entities. These businesses do not participate in the markets which their benchmarks measure and have no vested interest in the value of any of their benchmarks or price assessments.

As independent benchmark providers whose benchmarks are used as the basis for financial products, both S&P DJI and Platts are fully supportive of the IOSCO Principles for Financial Benchmarks and the IOSCO Principles for Oil Price Reporting Agencies (collectively the "IOSCO Principles") and the objective of fostering integrity, transparency and efficiency of financial and commodity benchmarks. The IOSCO Principles are very much in line with how both S&P DJI and Platts transparently and independently govern our benchmarks. Indeed, we had many of the practices called for by the IOSCO Principles in place before they were disseminated by IOSCO. S&P DJI and Platts are proud to be at the forefront of the industry with a comprehensive set of policies and practices in place that seek to achieve these concepts and align with the IOSCO Principles. On July 21, 2015, S&P DJI announced the completion of our second annual review of our alignment with the IOSCO Principles for Financial Benchmarks. S&P DJI engaged an internationally recognized audit firm to assess our governance, operations and transparency against such principles (as recommended under paragraph 156 of Report 440) and we received an unqualified reasonable assurance. Similarly, Platts successfully completed its second annual review of its oil benchmarks and its first annual review of its non-oil benchmarks in 2015.

1. Do you have any comment on the proposed definition and scope of significant financial benchmarks?

As the CFR notes in Paragraph 3.1 of the CP, one factor in determining whether a benchmark is significant should be whether the benchmark is systemically important or presents a material risk of financial contagion or systemic instability if disrupted. However, we strongly believe that the latter should not be the sole determining factor. Substitutability is another appropriate criterion for deeming a benchmark significant because a market participant's ability to change benchmarks mitigates some concerns which may arise in connection with the failure of a significant benchmark. For example, despite the S&P/ASX 200's benchmark leadership position in the marketplace, we operate in a very competitive environment and market participants do have multiple substitute benchmarks offered by a variety of competitors who have access to the necessary input data and have been producing

benchmarks for years that may be used as a substitute for the S&P/ASX 200. If S&P DJI or any other benchmark administrator does not produce and publish a robust and reliable benchmark, market participants have options to use a substitute benchmark currently in the market and our understanding is that most licensing regimes provide licensees with this right.

In addition, another important factor in determining whether to treat a benchmark as significant should be whether there are conflicts of interest in the benchmark administration process, including, for example, the independence of the benchmark provider which by its own nature excludes any incentives for manipulation. We believe that the lack of conflict of interests needs to be included in any assessment to meet the regulatory objective of ensuring that benchmarks are sound and robust. For example, equity benchmarks using regulated data such as the S&P/ASX 200, produced by an independent benchmark provider, do not suffer from the same types of conflicts of interest as other types of benchmarks and should not be deemed a significant benchmark. The latter is also in line with the IOSCO Principles for Financial Benchmarks which expressly provide for a preferential regime to regulated data benchmarks. Furthermore, at the EU level the final text of the EU Regulation on Benchmarks exclude regulated data benchmarks from being captured by the so called “critical” category and grant them a preferential regime in the Regulation.

2. Do you have a view on whether major equity indices such as the ASX200 should be subject to regulation as significant benchmarks?

Equity benchmarks using regulated data such as the S&P/ASX 200, produced by an independent benchmark provider, do not suffer from the same types of conflicts of interest and direct trading behavior concerns as other types of benchmarks (such as the ‘ibors) and should not be deemed a significant benchmark or subject to regulation as significant benchmarks.

The S&P/ASX 200 is administered and published by S&P DJI using several underlying practices that make it fundamentally different from the other benchmarks listed in Paragraph 3.1 of the CP. A major catalyst for the regulatory activity regarding benchmarks was concerns with those benchmarks which rely on submissions in relatively opaque, sometimes illiquid markets (e.g. LIBOR, EURIBOR, FX, and BBSW). Submissions to such benchmarks are more prone to manipulation than those using data from regulated trading venue and exchanges, which are transparent and the subject of specific regulation and oversight and supervision by regulators. Benchmarks that utilize data sourced from regulated trading venue or exchanges need not be subject to extra scrutiny due to the nature of checks and monitoring of such data in place at the regulated trading venue or exchanges, as well as a regulator’s authority over rules governing the listing and trading of financial instruments referencing these benchmarks such as the ASX. In addition, manipulation of the data would likely be detected by a variety of market participants who continually monitor the S&P/ASX 200 for their own investment purposes, often in real time. The proportional implementation of the IOSCO Principles allows for consideration of such important differences.

The IOSCO Principles for Financial Benchmarks focus on benchmarks based on submissions and/or those developed by benchmark providers with ownership structures or governance regimes that could lead to increased conflicts of interest. As previously noted, S&P DJI and Platts do not participate in the markets our benchmarks measure and we have no vested interest in the value of any of our benchmarks. In addition, as an independent benchmark provider we maintain a robust governance regime that

separates commercial aspects of our business from editorial/analytical governance of our benchmarks, mitigating any potential or actual conflicts of interest. Our independent editorial/analytical staff is responsible for the development and governance of our benchmarks and their corresponding methodologies. They seek to ensure that existing benchmarks continue to achieve their stated objectives and are fit for purpose.

For these reasons, SPGI strongly believes that the CFR is correct in its consideration that the S&P/ASX 200 index need not be brought within the scope of administration and submission regulation as stated in Paragraph 3.1.

As noted above, S&P DJI has already taken sufficient steps, including adherence to the IOSCO Financial Principles, to ensure it employs a sound governance regime, mitigates conflicts of interest, operates its business using a robust infrastructure and maintains transparent methodologies. The use of constituent prices obtained from regulated exchanges, a sound governance regime, and a transparent benchmark determination process produces a benchmark such as the S&P/ASX 200 which is not prone to manipulation.

3. Are there any other financial benchmarks that you consider should be subject to regulation as significant benchmarks?

We do not have any other financial benchmarks to suggest for consideration to be regulated as a significant benchmark. The following are the criteria we consider are appropriate to take into account when determining whether any other financial benchmark is designated a significant benchmark:

- (a) Systemic importance: whether the benchmark is systemically important or presents a material risk of financial contagion or systemic instability if the availability or integrity of the benchmark is disrupted as set forth in Paragraph 3.1 of the CP;
- (b) Substitutability: whether market participants have the ability to change benchmarks if concerns emerge with the benchmark (see our response above to Question 1 of the CP);
- (c) Input Data: whether the benchmark uses input data sourced from a regulated trading venue or exchange or a data vendor that does not create or publish such input data for the sole purpose of calculating the benchmark.

Note that (a) is an inclusionary rule whereas (b) and (c) are exclusionary rules. For example, a benchmark that may be systemically important should not be considered as a significant benchmark if there are substitute benchmarks that can be used by market participants or if such benchmark is calculated using input data from a regulated exchange.

Systematic importance is a designation designed to bring extra levels of regulation to a particular benchmark. The most important consideration is whether extra regulation is appropriate for the benchmark in question. This drives our rationale that the above guidelines are most appropriate for designating a significant benchmark in need of extra regulatory treatment. Many of the additional rules for systemically important indices address risks which the benchmarks excluded above do not have – submission-based data, front-office involvement in price formation, and no ability for the market to compare the benchmark to other points of reference.

4. Do you have any comment on the proposed mechanism for designating the scope of regulation?

Please refer to answers to Questions 1 – 3 for our comments on the scope of the regulation and the criteria for designating significant benchmarks. In addition, it is important to ensure that any mechanism includes clearly defined, transparent criteria. Each of the three options include an ability for the Government or ASIC to designate significant benchmark, whether it is the Government’s ability to amend the list under option (a) or ASIC’s ability to apply the criteria under option (b). For any option, market participants, benchmark administrators and data submitters should understand the criteria and the rationale supporting the criteria.

5. Which means of imposing the IOSCO Principles as a requirement of benchmark administration would you favour among the options identified, and why?

With respect to any imposition of the IOSCO Principles, it is essential that the guiding proportionality standard and comply or explain approach referred to throughout the IOSCO Principles are included in any such requirement. The IOSCO Principles account for the diverse universe of both benchmarks themselves and benchmark administrators. In applying the proportionality standard and comply or explain approach, adherence to the IOSCO Principles therefore does not adversely impact the availability of a diverse benchmark offering for the market place.

We do not feel there is a need to impose the IOSCO Principles on benchmark administrators directly. Rather, we support the concept that investment/financial product providers should utilize benchmarks produced and published by entities that adhere to the IOSCO Principles. A requirement on investment/financial product providers to use benchmarks provided by benchmark administrators that adopt and implement policies and procedures to adhere to the IOSCO Principles provided proportionality is applied when assessing such adherence would be a less complicated and more beneficial approach. It is more practical to regulate the product providers as they are already under ASIC jurisdiction.

6. Is there another option you prefer?

Please refer to our answer to Question 5.

7. Among the options presented, which option do you prefer for regulating benchmark submission, and why?

As a benchmark administrator, we do not support indirect regulation via requirements imposed by the benchmark administrator. This is a significant burden for benchmark administrators and one that the benchmark administrator may not have the legal or commercial leverage to enforce. It is important to note that S&P DJI and Platts are proud to be at the forefront of the industry with a comprehensive set of policies and practices in place that seek to align with the IOSCO Principles for Financial Benchmarks including Principle 14. However, we feel the guiding proportionality standard and comply or explain approach included throughout the IOSCO Principles are essential to ensure adherence does not adversely impact the availability of a diverse benchmark offering for the market place. A better method of regulating the benchmark submission would be through direct regulation of investment products as we feel others involved in this assessment process are better placed to express a more informed view about options to directly regulate benchmark submissions.

8. Do you consider that benchmark administrators would be able to effectively regulate submitters via a Submitter Code of Conduct?

Benchmark administrators have the ability to monitor and assess the quality of data they use in their benchmark determination processes and to implement a non-binding Submitter Code of Conduct in some markets with appropriate checks and balances to protect the benchmark's integrity and quality. An issue arises when the implementation of a Submitter Code of Conduct becomes prescribed through regulatory requirements as this could have an adverse effect on a benchmark administrator's access to voluntary submissions necessary to produce the indices. Furthermore, the IOSCO Principle on the Submitter code of conduct is also to be applied proportionally and through a comply/explain approach. It is important to ensure that any Submitter Code of Conduct applies only to data that is not sourced from a regulated trading venue or exchange or data vendor that created such data for the purposes other than calculating or determining a benchmark.

9. Do you agree that it is appropriate to develop a reserve power to compel benchmarks submissions for significant benchmarks, including to official sector significant benchmarks?

No. We do not feel it is appropriate to compel any entity to be involved in the creation of financial benchmarks.

10. If so, who should be able to exercise such a power?

Please refer to our response to Question 9.

11. Which option do you prefer for compelling submission, and why?

Please refer to our response to Question 9.

12. Do you have any comments on the suggested cohort of entities that could be made subject to such a power?

Please refer to our response to Question 9.

13. Do you have any other suggestions for how to compel submissions?

Please refer to our response to Question 9.

14. Do you have any comment on the proposal to introduce a specific offence of benchmark manipulation?

Jurisdictions currently have tools to address such offences ranging from general market abuse statutes to specific financial product regulation. With any approach the components of the offence and the penalties arising from such offence need to be clearly defined. In addition, the penalties should be proportional to the amount of harm and degree of maleficence demonstrated. Benchmark administrators and all other market participants should understand the rules and the consequences. Also, intentional conduct should not be treated similarly to unintentional conduct. Good faith efforts to

comply or adhere to a benchmark regulation should be considered when determining whether penalties are appropriate and their magnitude.

15. Do you agree that the proposed offence should cover all financial benchmarks rather than just significant benchmarks?

Yes, please refer to answer to Questions 14.

16. Do you have any comment on:

- a. the physical elements of the proposed offence,**
- b. the fault elements of the proposed offence,**
- c. the proposed civil liability provision; or**
- d. the proposed jurisdictional reach of the proposed offence? Are there other factors that should be considered in defining the jurisdictional reach of the proposed offence?**

Please refer to answer to Questions 14.

17. Do you have any comment on the separate proposal to expressly provide that BABs and NCDs are financial products for the purposes of Part 7.10 of the Corporations Act?

No.

18. Do you have any other comments?

As previously discussed, both S&P DJI and Platts are fully supportive of the IOSCO Principles and the objective of fostering integrity, transparency and efficiency of financial and commodity benchmarks. The IOSCO Principles are very much in line with how both S&P DJI and Platts transparently and independently govern our benchmarks.

ASIC's encouragement to adopt and implement policies and procedures that align with the IOSCO Principles is appropriate provided proportionality is applied when assessing such alignment. It is important to note that the IOSCO Principles are principles that include a proportionality standard and comply or explain approach. The benchmark industry is a very diverse one, and only through a set of principles, can it continue to deliver high quality benchmarks in a professional, high-integrity manner. We support the concept that investment/financial product providers should utilize benchmarks produced and published by entities that adhere to the IOSCO Principles. Benchmark administrators should avoid actual and potential conflicts of interest and demonstrate proper governance, sound controls and a robust operating infrastructure, all of which benefit the markets as a whole and various stakeholders including market participants. Further, utilizing an independent third party auditor to provide an independent assessment of a benchmark administrator's achievement of aligning with or adhering to the IOSCO principles is an appropriate and practical approach to ensure such benchmark administrators publish robust and reliable benchmarks.

As discussed in our response to Question 5 of this CP, we feel it is more practical to regulate the product providers as they are already under ASIC jurisdiction. Trying to directly regulate benchmark providers, many of whom operate globally with a diverse benchmark offering cutting across various asset classes creates an extra-territorial problem and could lead to an overly complex and at times unenforceable

regulatory regime. In addition, as S&P DJI is a partner with ASX, an exchange over which ASIC has regulatory authority, ASIC has indirect influence on S&P DJI as the benchmark administrator for the S&P/ASX 200.

19. Do you have any comments on the benefits and costs of reform?