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Financial Markets Infrastructure
Australian Securities and Investments Commission
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COUNCIL OF FINANCIAL REGULATORS - FINANCIAL BENCHMARKS REGULATORY REFORM – CONSULTATION PAPER

The Stockbrokers Association of Australia Limited (“the Stockbrokers Association”) appreciates the opportunity to provide these comments to the Council of Financial Regulators (“CFR”) on the Consultation Paper on Financial Benchmarks Regulatory Reform (“the Consultation Paper”).

The Stockbrokers Association is the peak industry body representing institutional and retail stockbrokers and investment banks in Australia. Our membership includes stockbroking firms across the spectrum, ranging from the largest wholesale investment banks to medium-sized firms and down to the smallest retail firms.

The Association has a strong commitment to the growth of Australia’s markets, particularly the Cash Equities Market, and to fostering Australia’s role as a regional financial centre. In this regard, it is critical in our view that a robust regulatory framework is maintained that fosters innovation and competition whilst at the same time maintaining the integrity and high standing of Australia’s securities market.

The Association supports the conclusion reached by the CFR, namely, that there is a clear need for reform of the framework surrounding financial benchmarks in the Australian Market. We set out the Association’s feedback below on the issues raised in the Consultation Paper, preferring to do so on a general basis rather than addressing our comments to the specific questions set out in the Paper.

IMPORTANCE OF INTEGRITY OF FINANCIAL BENCHMARKS TO AUSTRALIA’S MARKETS

The Association believes that it is self-evident that ensuring the accuracy and integrity of financial benchmarks employed in Australia’s markets is a matter of utmost importance to our markets.

The issues that have arisen in various jurisdictions in recent years have had the potential to damage investor confidence and investor participation, both in the markets generally, and in specific financial products that are referable to the benchmarks.

The growth in recent years in financial products, the price or value of which is referenced to benchmarks, such as stock market indices and reference rates, has been significant. The products are often the result of financial product innovation, and are important in terms of the growth of Australia’s markets, and also in terms of providing important product diversification to investors.

In particular, certain classes of derivative and Exchange Traded Fund (ETF) products, designed with reference to financial benchmarks, represent major product innovation, and have met the needs of investors to obtain exposure to sectors of the market which could not previously be easily obtained through direct investment.

Therefore, the Association endorses the CFR’s conclusions as to the impact that poor conduct in relation to financial benchmarks, and insufficient regulation of benchmarks, could have on Australia’s markets in general, and on investors individually.

OFFICIALLY ADMINISTERED FINANCIAL BENCHMARKS

The Association supports the conclusion that official benchmarks administered by a national authority, such as the Consumer Price Index (CPI) and RBA Cash Rate, are appropriately excluded from the proposed reforms. The Association does not support unnecessary regulation, and considers that the framework for oversight of those benchmarks is adequate.

Aside from this, we do not express any views on which of the three options for designating regulated benchmarks is preferred.

IMPOSING OBLIGATIONS ON BENCHMARK ADMINISTRATORS

The Association considers that it is imperative that there be appropriate regulatory oversight of benchmark administrators, and that regulatory standards be raised in relation to them.

The Association does not express a preference as to whether the standards should be set out in express regulation, or whether they be imposed by way of conditions attached to mandatory Australian Financial Services Licences to be obtained by benchmark administrators. We note that the latter is the CFR's preference, and the Association considers that this option would be a sensible one.

IMPOSING OBLIGATIONS ON BENCHMARK SUBMITTERS

The Association supports the imposition of obligations to regulate the conduct of benchmark submitters.

Without expressing a concluded opinion on each of the four options set out in the Consultation Paper, our general thoughts are that, if Market Integrity Rules are accepted as the appropriate way of regulating participants in the listed equities and derivatives markets, then this would favour ASIC Rule Making power as being the logical choice for regulating the conduct of benchmark submitters.

The Association considers that expecting benchmark administrators to regulate the conduct of submitters through a code of conduct is not likely to be an effective or practical outcome, or one that would attract sufficient confidence amongst investors.

STRENGTHENING OFFENCES RELATING TO BENCHMARK MANIPULATION

The Association believes that it makes sense for there to be new offences specifically drafted to apply to benchmark manipulation added to the Corporations Act. We also agree that such provisions should be drafted sufficiently widely so as to apply to all financial benchmarks, not just regulated benchmarks.

We acknowledge that the existing market manipulation provisions are very broad, and are sufficiently flexible to capture many, or even most, cases of benchmark manipulation. On that basis, it could be argued that new offences might not be necessary.

The existing market manipulation offences apply in relation to financial products traded on a market, and hence, do not apply to manipulation of over the counter markets. However, as we noted earlier, there is a large and increasing number of financial products that have been designed with reference to the various financial products, such as ETFs, and which are traded on a market. Hence, it will probably not be a difficult matter for ASIC to be able to identify a market for a product which has been manipulated as a consequence of manipulation of the underlying benchmark.

Nevertheless, having to establish the connection with a tradeable market is one extra complication to an investigation or prosecution which should not really be required. There is the potential that in some cases, such a connection might not be able to be made. In the Association's submission, the manipulation of a benchmark is an act which is deserving of its own specific offence, and the vagaries and complications of applying the existing market manipulation provisions should be dispensed with.

We would be happy to discuss any issues arising from our submissions on this issue. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email psteppek@stockbrokers.org.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Green', with a stylized flourish at the end.

Andrew Green
Chief Executive