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4 April 2012

Ms. Yukako Fujioka
General Secretariat
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain
Via email: price-reporting@iosco.org

Re: Public Comment on Functioning and Oversight of Oil Price Reporting Agencies

Dear Ms. Fujioka:

The members of the Commodities Working Group of the Global Financial Markets Association (GFMA)¹ welcome the opportunity to provide comments to the International Organization of Securities Commission's (IOSCO) Consultation Paper on the Functioning and Oversight of Oil Price Reporting Agencies. Our members are keen to maintain an active dialogue with IOSCO throughout the process of consultation, and would therefore like to offer some constructive comments that we hope will serve as part of that ongoing dialogue.

1. Are you or your company currently subscribers to the services of PRA(s)? If so, how would you rate the overall quality of the work being carried out by the PRA(s)?

Relevant GFMA members are subscribers to PRAs.

¹The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.

2. Please provide information on the impact of PRAs on physical oil and oil derivatives markets. Please support your comments with data on the volume and value of the related physical oil and oil derivatives business you are aware of, which is dependent on PRA benchmark prices (where possible broken down into the following categories: OTC; OTC cleared; or exchange-traded)

It is important to distinguish the key roles PRAs play in this context:

- a. undertaking research and reporting on market news
- b. gathering price information with a view to forming an opinion about market prices (price formation) and publishing resultant prices
- c. providing trade execution services, normally via trading platforms, in respect of transactions whose underlying may be physical or financial.

In this response, we have focused on roles b and c. We note however that not all PRAs provide the services referred to in c above.

We would like to emphasise that PRAs have a significant impact on derivatives and physical oil worldwide as they play an important price discovery role in oil markets. In fact, we believe the price formation role of some PRAs is analogous to that performed by an exchange.

Consequently, where PRAs are providing significant price discovery and their published prices have a material impact on price formation in a market which includes financial activity, we firmly advocate the need for a clear and transparent regulatory framework² that provides consistent treatment with similar price formation services or providers in other product areas.

Moreover, if PRAs are providing material execution services in a market and those services are financial in nature, then regardless of whether the transaction or the underlying is financial or physical, there needs to be a regulatory framework that is consistent with those applied to other like services.

3. What are the impacts of PRA processes on oil trading markets, physical and/or derivatives? In your answer please comment on the quality of PRA processes, their strengths, as well as the potential impacts of any perceived weaknesses.

² "Framework" in this context is used broadly to extend to the manner and ground upon which judgment or discretion is exercised.

The PRAs' processes, given the dominance of certain PRA-assessed benchmark oil prices, have a substantial impact in the market. In this response, we consider the impacts of the PRA processes from three perspectives:

- a. the relationship between the PRAs and market participants
- b. the relationship between the PRAs and trading venues/derivative contracts and
- c. the relationship between the PRAs' methodologies and the market.

Relationship between PRAs and market participants.

PRAs are extensively used by all market participants, including consumers and producers of physical oil. The PRAs' price assessments are used as a reference point to price purchases and sales with the intention of effectively buying and selling at the prevailing market prices during the pricing period so limiting risk to the premium/discount of the quality and delivery terms of the oil. This pricing mechanism is common from upstream oil production through the refining system to wholesale pricing of refined products across the globe.

There are a limited number of PRAs in the market, with Platts used by market participants for pricing the majority of transactions. Argus is the second largest provider of pricing assessments and to a lesser degree OPIS and ICIS-LOR also provide services. However, we would highlight that Argus, OPIS and ICIS-LOR are generally used in very specific regions for specific products e.g. Argus is used in the gasoline barge market and in the Arab Gulf as pricing mechanisms.

Relationship between PRAs and trading venues/derivative contracts.

PRAs produce prices which frequently reflect prices of exchange traded futures, directly or indirectly, such as Nymex RB, HO, CL and ICE Brent, Gasoil. The following two examples illustrate the direct and indirect linkages between PRAs and trading venues:

- a. **Direct linkage:** Where the physical markets that are assessed by the PRAs customarily trade as an (Exchange of Futures for Physical) EFP against an exchange futures contract. An EFP occurs when a physical is traded as a fixed differential to a future which is floating until the process of 'posting' the EFP. Posting involves both fixing the price of the physical and exchanging the futures contract as a hedge with a counterpart resulting in no net change in price exposure for both parties. Platts assess EFP premia/discounts in their assessment mechanism. Moreover, because of this direct linkage and the underlying complexities, the different components of the physical and futures legs must efficiently relate to each other and, in that sense, be co-ordinated.

By way of example: Jet Fuel is purchased at April Gasoil + 65 usd/mt in the market and this trade is to be used to form the PRA's assessment. The assessment is formed by taking a price from the exchange of the April Gasoil contract at a specified time and adding the 65 usd/mt premium observed to form the PRA's price publication. This published assessment then forms the settlement mechanism for Jet Fuel physical contracts priced using the assessment on that day.

- b. **Indirect Linkage:** In other markets, where OTC swaps markets rather than exchange traded futures function as a hedging mechanism for buyers and sellers, the relationship with exchanges is often through either that swap being customarily traded as an (Exchange of Futures for Swap) EFS to a futures contract (e.g. Singapore gasoil swaps and ICE Gasoil Futures customarily trade as a spread relationship in this way) or through the relationship between the product and crude (the crack spread). A futures contract is not explicitly referenced because the OTC swap replaces the future as a reference price and hedging instrument. However, the OTC swap is, itself, linked to the futures market as it customarily trades as a spread to ICE Gasoil, so indirectly the PRA assessment for Singapore Gasoil reflects ICE Gasoil prices.

The direct and indirect relationships result in PRA assessments having a very high correlation with futures prices for a large proportion of oil products. This allows the effective hedging of PRA indexed oil purchases and sales on exchanges and is part of the mechanism whereby physical oil consumption and production fundamentals translate to exchange prices. Regardless of whether the PRA establishes the market price, or where the exchange does so, using the PRA relative values, there is a strong and complex relationship between the two.

Relationship between PRAs' methodologies and the market

Following from the above discussion, the methodologies used by PRAs necessarily have an impact on the physical oil and oil derivative markets as traders must deal in a manner and time stipulated by the PRA methodology if they want their trades to be included in the price assessment.

PRAs have a substantial amount of discretion in applying their methodologies e.g. they can decide to exclude trades from their price assessments. Further, they do not have to account for the basis on which they exercised their discretion. We provide below a recent example where a PRA's methodology significantly impacted the market.

Recent example of a PRA's process impacting the market

Platts implemented a methodology change for the forward BFOE market from a 21 day to a 25 day basis which took effect in January 2012. However, the Brent crude contracts trade on ICE which was constructed to reflect a 15 day BFOE forward basis.

These are physically delivered contracts and the 10 day difference has resulted in up to 40% of the BFOE assessed programme not being available to be traded on the ICE Brent futures expiry day. This discrepancy between the original futures construction and expiry with the BFOE forward increases the potential for price distortions at expiry. To address this ICE has launched a new ICE Brent contract to run in parallel to the current one with the first delivery date being December 2012.

The industry raised concerns around the timing of this methodology change; however, the PRA was able to implement the change unilaterally rather than reaching agreement, as preferred by market participants, with the exchange and subscribers.

4. Do you consider PRAs to have potential systemic impact on the financial system? Please give reasons for your answers.

The fact that the prices PRAs report are used for the pricing of physical, cash and derivatives contracts in both the financial and physical markets, and the volumes of business and numbers of participants affected by their operations across global markets, all point to systemic impact.

5. What are your views regarding PRA price methodologies, including your ability to identify methodological errors? Do you consider that mechanisms or procedures exist to address any such concerns and are they adequate? Have PRAs demonstrated responsiveness in updating their methodologies to reflect market development?

See responses to Q 2 and Q 3 which cover some of these points, especially as regards having a broad framework which addresses all issues concerning price formation including exercise of discretion or judgment.

We see the need for a more objective and transparent forum than exists today for consultation on methodologies, as we do not think that currently there are adequate mechanisms or procedures to address procedural weaknesses in PRAs methodologies. A PRA methodology needs to be transparent especially in relation to the substantial discretion exercised in its implementation; there is not a formal complaints process, nor an adequate compliance function. Today price assessments essentially operate under very opaque governance procedures which result in a largely subjective approach, where there is no appeals process in respect of subscriber's price contributions (see also Q 3).

There have been instances where mathematical errors in the published prices were clearly evident to subscribers who can see the trades on the screen and calculate that the prices published are outside the range. Where these discrepancies are noted, subscribers may not have open to them a formal, objective route at the respective PRA to lodge complaints or concerns over errors, PRAs in general lack a formal complaints process, and visible control processes which results in a largely subjective approach where there is no appeals process in respect of subscribers' price contributions.

The PRAs may listen to subscribers' proposals for amendments required to their methodologies however the evaluation of any proposed amendments is not always clear and transparent. Absent an equitable framework for agreeing amendments, the risk of apparent undue influence by one class of producers or consumers exists.

We therefore strongly advocate that PRAs must establish a clear and unambiguous framework, including methodology and formulas, all of which are transparent to the subscribers and objectively applied. Such a framework should extend to establishing principles and guidance where formulas are not appropriate and judgment needs to be used by the PRA e.g. in times of limited liquidity. PRA practices must be capable of being monitored internally or externally, including by market participants. (See Q 8 et seq.) Furthermore, there must be procedures in place which will govern any changes to the methodology. These procedures must allow for practitioner consultation and input.

6. Does the voluntary reporting of transactions used in certain PRA assessments pose risks to the price assessment process? If so, how should these risks be mitigated? Would it be beneficial if reporting of transactions to PRAs were mandated (contractually or by legislation)?

We believe that where a PRA is providing significant price reporting in a market, market participants should be required to report all concluded transactions to PRAs. We believe mandating reporting of transactions to PRAs would aid consistency and robustness in the price formation process. However, we recognize that there may need to be a mechanism to protect confidentiality, price stability and liquidity for commercially large transactions by approved limitations on transparency. We consider that this practice would reinforce an overall framework and an underlying price methodology process which is clear, accurate and transparent.

7. Do low numbers of transactions used in certain PRA assessments pose risks to the price assessment process? If so, what crude grades and markets do you see affected by this? What is considered to be a 'low' number? How should any such risks be mitigated?

Where there is limited liquidity in the underlying physical markets to form assessments, e.g. (Liquid Petroleum Gas) LPGs such as Butane and Propane, there is the possibility that the assessment process can lead to unrepresentative price formation, especially given the substantial commitment required to engage in window mechanisms³ such as Platts' MOC process for smaller participants.

Where there is low liquidity, PRAs will use:

- a. the differential between the OTC physical and OTC swaps markets; or
- b. 'survey the market'.

We are supportive of the differential method used, providing the methodology is subject to the balance and checks noted above but we are not supportive of the 'survey the market' approach which lacks transparency and is subjective. However, where possible, our preference would always be to use quotes from a liquid market and apply basis differentials.

8. Taking account of existing PRA procedures to obtain information on which to base their assessment when no transactions have been submitted, are there any other approaches that may produce their benchmark prices in the absence of liquidity?

As noted in our response to Q 7, where no transactions have been submitted, we support PRAs producing a benchmark based on the differential between the OTC physical and OTC swaps market.

9. Are there any issues regarding PRAs that concern you from a public accountability perspective?

As we discussed above, PRAs provide an essential price discovery function for global oil markets however; they have no independent governance standards or oversight in respect of that function. Further, in so far as a PRA may also provide material trade execution services, to the extent that these are analogous to activities which in other markets attract regulation, they should be subject to equivalent regimes.

10. Do you consider the function performed by PRAs to require a form of public oversight of PRAs? If so, which PRA activities should be subject to a form of public oversight and why?

³ For further information see:

<http://new.platts.com/IM.Platts.Content/MethodologyReferences/MethodologySpecs/europeanoilproductspecs.pdf>
<http://russia.platts.com/IM.Platts.Content/InsightAnalysis/IndustrySolutionPapers/moc.pdf>

Where a PRA has a significant price discovery role and its published prices have a material impact on price formation in a market which includes financial activity, we think that it should be held accountable to a set of governance and oversight standards consistent with those applied to price formation services/providers in other markets e.g. the financial industry.

The direct and indirect impacts of PRAs upon exchange and derivative contract prices, and their systemic prevalence in setting prices used by all market participants, including producers, refiners and consumers at the wholesale level in physicals, makes the regulatory oversight of aspects of the PRAs' activity necessary, on a basis consistent with other companies engaged in analogous activities. We consider key areas that need addressing are:

- a. Management controls and oversight
- b. Conflict management processes
- c. Record-keeping procedures
- d. Risk management processes
- e. Compliance
- f. Business resilience
- g. Inducements
- h. Complaints and dispute resolution

Further, as noted above, over time some PRAs have evolved from being price reporters to becoming a trading forum where buyers and sellers interact under rules determined by the PRA (eg. the Platts eWindow) and these prices form a settlement mechanism for physical and financial contracts that reference the index. As such, these PRAs provide services that have the characteristics of regulated execution facilities, however the PRAs have their own self-determined mechanisms and rules and lack independent oversight. PRAs providing such services are not captured under the current regulatory structure.

Given the PRAs' importance in price discovery, we believe that once PRAs are established as providing a material transaction execution function in a market, it is logical to require relevant aspects of their activity to be subject to a regime analogous to that applying to regulated execution facilities. We recognize that there may be physical contracts involved in such execution function; however, we do not believe that this aspect precludes the function from being regulated.

Recognizing the unique nature of the PRA market, it is likely that no one current scheme of regulation would fit it exactly: rather, the appropriate elements of conduct controls applying to regulated firms, together with relevant elements of price formation controls applying to regulated execution facilities should be applied.

Such a scheme of regulation need not and should not require the duplication of regulation across different jurisdictions. Under criteria set by IOSCO, a PRA meeting the regulatory requirements in one state should be recognized for those purposes in other states in which it offers services.

11. Please detail any concerns you may have about current ownership of PRAs in particular with regard to possible conflicts of interest

While the absence of any appropriate schemes of oversight and internal control can raise questions about undue influence by proprietary interests in PRAs over their activities, ownership *per se* is not the core issue here. Many other complex and systematically important institutions handle complex ownership and other conflict relationships which might *prima facie* comprise conflicts. If PRAs were to be required to have appropriate controls over conflicts of interest, dispute resolution and the giving and receiving of benefits and inducements, the issue of their ownership would be of far less significance.

The absence of binding, robust governance applicable to PRAs today does mean, however, that the current ownership structure is problematic because subscribers have no assurance that conflicts of interest will be managed or how responsibilities are apportioned. This is in contrast to financial firms which are subject to rigorous governance frameworks to manage and mitigate the risk that their clients' interests become secondary to the firms'.

As we have highlighted in our responses to Q 3, there is a lack of appropriate governance around PRAs' roles in price formation and their methodologies. If these issues were addressed as we suggest, then ownership of PRAs would be a lesser concern as the subscribers would have comfort over the fairness, transparency and consistency of the process.

Nonetheless we also advocate that PRAs be subject to appropriate controls around ownership to manage conflicts of interests e.g. disclosure of significant shareholders or owners in the PRA, close links etc. to the regulator.

12. Do you have any concerns regarding the current corporate governance standards of PRAs? If so, what are the improvements that you believe are needed?

We do have concerns regarding the corporate governance standards applied by PRAs largely due to lack of transparency and external accountability. We believe PRAs must operate in a transparent manner and be accountable for their actions.

13. Do PRAs need to be subject to standards of corporate governance that are equivalent to the standards to which regulated financial entities are subject? Please elaborate.

Given that PRAs have substantial influence over the markets, we believe that they should be subject to best practice standards of corporate governance for example, members of the management body should be of sufficiently good reputation and have sufficient experience to ensure prudent management of this type of business.

As with all corporate governance standards, we believe all firms (including financial institutions and PRAs) should be able to apply corporate governance principles in a way which takes into account the size, structure and requirements of individual entities.

14. Do you have any concerns as to the robustness of the systems and controls in place at PRAs as they relate to the integrity of the processes used to construct price series or indices? Please explain.

The application of the PRAs' methodologies often lacks clarity given that the PRAs have substantial discretion and there is a lack of transparency concerning the actual processes followed by a decision maker (see also Q 3).

The PRAs' senior management has substantial control over what happens in the window. This raises two concerns:

- a. dependency on those managers; as for certain products one individual may manage them with one back-up person and it is not clear how PRAs address this 'key man risk' given it would be difficult to replace that knowledge; and
- b. subjectivity permitted within a process which impacts global markets.

Where PRA's are used to settle financial and physical trades, they should be required to have appropriate and transparent policies and processes to manage conflicts. Conflicts occur whenever judgment is required in determining a price and this is often the case in physical oil markets where discretion is used to accept or reject a particular bid or offer or the assessment methodology is unclear. There should also be appropriate policy and oversight concerning gift and entertainment policies, inducements etc. which are consistent with industry prevailing best practice. (See also Q 11)

15. Which authority, if any, should establish a set of principles for the appropriate level of systems and controls within a PRA and in particular as they relate to PRA benchmark methodologies? Would this sufficiently address any concerns you may have and, if so, how?

Given PRAs are global firms and impact global markets, we believe there is merit in setting the underlying principles on systems and controls for PRAs at global level e.g. through

IOSCO, and that these are then interpreted at a national level by the appropriate oversight (e.g. government department, regulator).

16. Should PRAs as a general matter be subject to a specified external audit of individual operations or processes, the results of which could be published demonstrating standards of compliance with relevant rules? Would PRAs need to be held to account for such an audit and, if so, which organisations would be best placed to carry out such an audit? What are the benefits and risks?

In their capacity as corporations, PRAs will generally be subject to the external audit requirements of corporate law in their home jurisdiction. We understand this question therefore as addressing a further requirement for external review or inspection as is commonly required and mandated for regulated firms and regulated execution facilities in most jurisdictions.

On this basis, PRAs should be subject to the requirement to perform risk assessments against applicable agreed regulatory principles. This risk oversight/assessment could be apportioned as between the internal services (e.g. audit, compliance, legal) of the PRA itself, and an external audit firm producing specific work in accordance with the standards, or pursuant to the instruction, of a governmental body or regulator, as appropriate. Finally, there should be scope for PRAs to be subject to direct regulator scrutiny on an appropriate basis e.g. failure to comply with governance principles.

17. Should PRAs be required to incorporate into their rules, if absent, a formal complaints procedure. If so, please explain what would be your preference in terms of procedure or process?

We believe it is important that subscribers have an appropriate escalation point where complaints will be analysed in an objective, transparent and fair manner.

We believe the London Metals Exchange provides a good model. Under the UK FSA rules, all recognised investment exchanges and recognised clearing houses are required to appoint an independent complaints commissioner as part of their complaints procedures.

The LME has appointed a LME Complaints Commissioner and the LME rules provide that a formal complaint will first be investigated by the LME. If dissatisfied with the way a complaint is handled, a claimant may refer the complaint to the LME Complaints Commissioner.

However, the existence of a clear and objective complaints procedure should not detract in any way from imperative need for greater transparency of pricing methodologies, including robust publishing procedures.

18. Should disputes be resolved by an appropriate third party as a matter of course? Please explain the benefits and risks.

As noted above in Q 17, we believe the LME provides a good model whereby an independent complaints commissioner is appointed.

PRA's should be required to have a transparent complaints procedure in place for the reasons provided in our response to Q 3 and 5.

19. Should such a formal complaints procedure necessitate greater transparency in the handling and resolution of complaints by PRA's, for example by requiring transparency of the complaints process and publication of decisions and the rationale for them?

We believe that information related to complaints decisions should be published insofar as they can inform best practices of PRA's whether the information is provided via industry notices or specified guidance. As a general principle, the level of information provided by the PRA on the complaint should be sufficiently anonymised so that the firm(s) concerned is not identifiable.

20. Please describe concerns you may have relating to potential conflicts of interests affecting PRA's arising from revenue generation, media reporting, internal staff management or any other source. Has this had any impact on the price reporting function of PRA's and if so how?

There is potential for conflicts of interest to arise where PRA's engage in revenue generation, price reporting and news services on oil markets, as incentives may arise to favor those who pay greater subscriber fees or provide greater access to market information.

Where PRA's offer these services, they should be required to manage conflicts through information barriers/fire walls to minimize contamination risk of information which could be considered inside, commercially confidential or privileged.

21. Are there any undue obstacles that prevent market participants from adopting different sources for price references? Please explain.

Within the oil market there is limited competition among the PRA's e.g. Platts is the main price reporter used for physical contracts globally.

Where a firm's clients are exposed to a PRA's price benchmark, the firm is tied to the PRA and practically has limited influence or ability to negotiate.

By way of example, PRAs' prices are used as reference prices in a significant number of physical supply contracts both short term and sometimes long term (over many years). There are significant practical barriers to changing the PRA used in a new contract from the customary one. It could involve multi-lateral agreement across a supply chain which includes a number of parties involved in taking oil to market in order for one or many parties to avoid having basis risk to the pricing differential between different PRAs. From a competition law perspective, reaching a multilateral agreement on pricing is not acceptable. As a result, changing the PRA in most circumstances will incur basis risk and cost. This barrier to entry reduces competition and gives established PRAs a potentially dominant pricing position for their service.

Market participants are further constrained from adopting different sources for price references, for instance, by the following mutual interdependencies:

- a. Hedgers are tied to the same PRA as the physical contracts being hedged
- b. Market-makers are required to use the same PRA as their hedging customers require
- c. Speculators require liquidity which is often provided by hedgers and market makers.

As a result, all of these categories become ultimately tied to the established PRAs with significant barriers to change.

Furthermore, the linkage between contracts (see Q 3) add to these complexities as PRAs make unilateral decisions which effect contracts who prices PRAs do not determine.

22. If so, does this constitute a competitive concern for either individual PRA benchmarks or the PRA sector as a whole? Where appropriate, please refer to specific benchmarks.

See Q 24.

23. If you have concerns about competition relating either to individual PRAs or to the PRA sector or around individual benchmarks, please comment on how you think these could be addressed.

For discussion of some competition issues see Q 21.

24. Is there a need for structural reforms that would provide a process or mechanism for increased stakeholder representation or input of views? Given the use of PRAs by the oil industry, what mechanism would be needed to alleviate concerns of collusion?

We believe that if PRAs have an objective and transparent framework and are subject to the systems and controls and regulatory oversight we propose above, such changes would address many members' concerns.

25. What should be included in the terms of reference or objectives of any such process? What are the benefits and risks?

See Q 24.

26. Who, if any one, should provide any oversight for such a process?

See Q 24.

27. If required, what would be appropriate models for oversight of PRAs, covering the options described above and potentially others you may consider appropriate? What are the potential benefits and risks, if any? What economic impact, if any, would there be?

Although there may be a bespoke solution for PRAs who perform significant price formation services only, there are some precedents which may be relevant: in the EU, MTFs and in the US, Derivatives Transaction Execution Facility (*DTEF*⁴).

We believe the fact that PRAs function in significant price discovery and formation is not subject to any independently set standards and associated oversight is an anomaly, especially given the role of the resulting benchmarks in the global oil markets.

The economic impact is likely to be an increase in cost for PRAs in meeting new standards which is likely to be passed on to the subscribers. However, this may be offset by the increased transparency and information to the market.

⁴ Derivatives Transaction Execution Facility (DTEF) definition: A board of trade that is registered with the CFTC as a DTEF. A DTEF is subject to fewer regulatory requirements than a contract market. To qualify as a DTEF, an exchange can only trade certain commodities (including excluded commodities and other commodities with very high levels of deliverable supply) and generally must exclude retail participants (retail participants may trade on DTEFs through futures commission merchants with adjusted net capital of at least \$20 million or registered commodity trading advisors that direct trading for accounts containing total assets of at least \$25 million).

28. Do you believe that a self-regulated PRA Code of Conduct could appropriately mitigate any risks or concerns you have about PRA governance? Please explain any concerns or identified risks and give reasons for your answer.

We believe that where the PRA performs a substantial role in price formation in the market, it must be subject to a framework with clear unambiguous and transparent standards of operation. For such standards to be meaningful there must be some form of independent assurance or regulatory back stop.

The trend over recent years has been a move away from self regulation to more formal regulation, recognizing the benefits of independence however always recognizing that regulation needs to be appropriate to the market and that supervision must be conducted by knowledgeable staff. This is the case in financial markets and increasingly, in the EU, over commodity markets e.g. proposals in MiFID, the introduction of a market abuse regime specific to the energy market, the regulation on Energy market Integrity and Transparency (REMIT) adopted in December 2011.

If the self regulation route is adopted, we would like to make the following additional observations.

Specifically, it is extremely difficult for third parties through a committee to have sufficient influence, power or control to meaningfully modify behaviour inside PRAs without becoming shadow directors for the purposes of company law.

Structuring practitioner committees themselves so that they are not dominated by those with the most significant commercial interests is also extremely challenging.

We believe a committee itself would require some independent oversight to make sure it was performing its function appropriately.

29. Would your view of the application of a Code of Conduct change if the PRAs were held to account for its application by a public authority? Please explain and, if appropriate, state which authority or authorities would be best placed to hold the PRAs to account. What, if any, are the potential benefits and risks?

We believe a Code of Conduct should be binding, reflect standards set by IOSCO and be subject to some appropriate oversight.

Given that the impact of PRAs spans both the physical and financial markets, we believe local financial and energy regulators will need to liaise closely regarding any oversight of PRA standards.

30. Should greater attention be focused by all market authorities, namely exchanges, their governmental regulators and relevant SROs, on the reliability of price series and indexes that are constructed by oil PRAs? If “yes”, please comment on the objectives of and mechanisms for such greater involvement by these market authorities. If possible, please provide examples of financial instruments that raise price series/index reliability concerns.

We believe that if PRAs are subject to a regulatory framework, including appropriate systems and controls and are mandated to establish clear and unambiguous methodologies, including formulas which are transparent and objectively applied, this would negate the need to set such criteria.

31. Should IOSCO and any other relevant authorities develop for regulated markets and other trading facilities which use PRA benchmark prices in their derivatives contracts a set of specific criteria against which the suitability of PRA benchmarks should be assessed? If so, which criteria do you think should be included

As for Q 30, we believe that if PRAs are subject to a regulatory framework, including appropriate systems and controls and are mandated to establish clear and unambiguous methodologies, including formulas, which are transparent and objectively applied this would negate the need for to set such criteria.

The members of the Commodities Working Group welcome the opportunity to respond to the Consultation Paper and look forward to developing an ongoing dialogue with IOSCO on these and other issues of importance to the wholesale energy markets.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Simon Lewis". The signature is fluid and cursive, with the first name "Simon" and the last name "Lewis" clearly distinguishable.

Simon Lewis
CEO
GFMA