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15 February 2013

European Securities Markets Authority
European Banking Authority

For online submission at www.esma.europa.eu

Re: Consultation Paper: Principles for Benchmarks-Setting Processes in the EU

Dear Sir,

The Global Financial Markets Association¹ (“GFMA”) is pleased to provide comment on ESMA/EBA’s Consultation Paper on Principles for Financial Benchmarks-Setting Processes in the EU (the “Consultation”). GFMA supports the work of both ESMA and the EBA in developing a framework of principles for benchmarks used extensively in financial markets.

The large volume of benchmark producers, the multiplicity of benchmark types, and the diversity of benchmark users make this a very complex topic. That complexity is compounded by the frequency of benchmark calculations and the regional or global nature of a large number of benchmarks. GFMA supports the development of principles that would be supported by a regulatory framework, and agrees with a substantial majority of the proposed principles in the Consultation. In addition to ESMA/EBA’s Consultation, GFMA notes and welcomes the Wheatley Review, the work of the European Parliament, the European Commission, IOSCO and the discussions at the FSB on benchmarks. We strongly encourage a coordinated, global approach to any new policies in this area due to the global nature of the provision and use of many financial benchmarks.

In light of the market significance of benchmark practices, GFMA initiated and introduced the attached Principles for Financial Benchmarks (“Principles”), a set of best practice standards for conducting benchmark price assessments. Our initiative aims to enhance confidence in such

¹ The 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. For more information, visit <http://www.gfma.org>.

assessments and, more generally, promote both the integrity and efficiency of the global financial markets. GFMA issued these Principles in order to draw attention to the need for international standards in this area, and to offer the Principles as a basis for crafting such standards.² In developing the Principles, GFMA took extensive input from its affiliate regional organizations, their members, major index sponsors across a range of asset classes, index calculation agents, financial data publishers and other trade associations. We hope that ESMA and EBA find these Principles helpful in undertaking this Consultation.

GFMA's Principles are based on our view that the overall responsibility for any benchmark process lies ultimately with the sponsor (broadly equivalent to the "Administrator" in ESMA/EBA's Consultation). The Principles embody many general concepts, such as the need for clear governance, sound methodologies, and practical control standards. In addition to offering the Principles as a possible international framework, we are urging the adoption of the Principles by organizations responsible for developing and issuing benchmarks, and have held numerous industry meetings to promote the GFMA Principles.

GFMA's detailed response to the Consultation is set forth in Annex A, and includes the GFMA Principles in Annex B. GFMA appreciates the opportunity to provide comment on the Consultation and would be happy to discuss our response as well as the attached Principles with you.

Sincerely,



Vickie Alvo
Executive Director
GFMA

² We note that both the Wheatley Review of LIBOR and the announcement of the IOSCO Board Level Task Force on Financial Market Benchmarks referenced the preliminary version of the GFMA Principles published in September 2012. A refinement of the Principles was published in November 2012.

Annex A

Consultation Questions

Question 1: Definition of the activities of benchmark settings. Do you agree with the definitions provided in this section? Is the list of activities complete and accurate?

Response:

The GFMA Principles define benchmark as a commercial or published price assessment, distributed regularly to third parties and extensively used as a reference in determining the pricing of, or the amount payable pursuant to, a financial instrument or contract. GFMA supports the definitions that the Consultation has set forth, with two exceptions.

First, because the proposed definition of benchmark could be interpreted as overly broad, GFMA supports identifying some exemptions. We suggest that the exemptions include indices that are primarily used for purposes other than pricing financial instruments or contracts as well as customized indices used for pricing bespoke bilateral or similar transactions among a limited number of counterparties are excluded. Additionally, GFMA believes that indices issued by public sector entities should be out of scope. Examples of each of these types of exceptions are outlined in GFMA's attached Principles. More broadly, GFMA believes that the application of the Principles should be proportionate and adapted to the specifics of each benchmark, including its significance in the marketplace.

Second, GFMA agrees with the specific definition of "benchmark users." The definition aligns well with GFMA's key criterion for bringing a benchmark within the scope of the Principles, which is its use in determining the price of or payments under financial contracts. However, the Consultation also considers users to be among the participants covered by the proposed principles, a concept with which GFMA disagrees. Our view is that industry principles should apply to those entities that participate in the production or distribution of benchmarks; for that reason, GFMA's Principles only apply to benchmark sponsors (broadly equivalent to the "Administrator" in the Consultation), contributors, calculation agents, and publishers. This scope aligns with the premise that the overall responsibility for any benchmark process lies ultimately with the sponsor. Nonetheless, it is important that the sponsors encourage input from stakeholders, including benchmark users, and develop governance structures and processes for receiving and evaluating such input.

Question 2: Principles for benchmarks: Would you consider a set of principles a useful framework for guiding benchmark setting activities until a possible formal regulatory framework has been established in the EU?

Response:

Yes, GFMA supports the implementation of a set of principles to guide the practice and processes associated with the setting of benchmarks. A broadly accepted set of best practice standards for conducting benchmark price assessment processes would serve to enhance confidence in such assessments and, more generally, promote both the integrity and efficiency of the global financial markets. For this very reason, GFMA took the lead in both developing a robust set of *Principles for Financial Benchmarks* (see Annex B). More specifically, GFMA's three objectives in issuing the Principles were:

- To draw attention to the need for international standards that apply to the issuance of financial benchmarks;
- To offer the Principles as a basis for crafting such international standards; and
- To urge the adoption of the Principles by organizations responsible for developing and issuing benchmarks.

Moreover, GFMA strongly supports the global adoption of the GFMA or other internationally coordinated set of principles as the basis to guide the development of a regulatory regime. Accordingly, we welcome the work of ESMA and EBA and support the general framework that the Consultation sets forth in the areas of methodology, governance structure, supervision, transparency, and continuity. We would underscore, however, that ultimately it is important to have a single, globally-accepted set of principles.

Question 3: General principles for benchmarks: Do you agree with the principles cited in this section? Would you add or change any of the principles?

Response:

GFMA agrees with many of the principles proposed in Section A regarding a general framework for benchmark setting in the areas of methodology, governance structure, supervision, transparency, and continuity. Before commenting on these specific areas, however, we have two observations on the application of the general framework. First, as noted earlier, GFMA does not support including users of benchmarks within the scope of industry benchmark principles. We do, however, support the inclusion of principles such as those relating to transparency and governance that would provide users the means to make informed decisions regarding benchmarks.

Regarding methodology, GFMA believes that a benchmark sponsor is ultimately responsible for ensuring that the methodology for a benchmark price assessment relies on sound data and accurately reflects market conditions. Similarly to the Consultation's proposed principles,

GFMA believes that a sound methodology should, among other things, define clearly the technical specifications for the benchmark, be clearly documented, and use sound and transparent data. GFMA agrees with the Consultation's assertion that actual market prices should be given preference, wherever possible and appropriate. GFMA believes that benchmark design should be sufficiently resilient to allow for a benchmark price assessment in the event of limited liquidity in the underlying market or market segment. Under such circumstances of limited liquidity, the sponsor should have particular regard to transparency obligations in identifying how the benchmark assessment is reached.

GFMA agrees with the Consultation's emphasis on the importance of a governance structure with well-defined roles and responsibilities. GFMA believes that the sponsor should appoint a governance body to oversee the management responsible for operation of the benchmark, take appropriate measures to ensure management remains informed about material issues and risks related to the benchmark, and commission periodic independent internal or external reviews to oversee that the benchmark continues to operate in accordance with the principles to which it ascribes. GFMA agrees that a governance structure plays an essential role in mitigating the risk of conflicts of interest and in ensuring that the sponsor takes measures to reduce such risks.

Regarding supervision, GFMA concurs that appropriately scaled and targeted regulation and oversight would serve to enhance public confidence in benchmarks, thereby promoting both the integrity and efficiency of the global financial markets. GFMA believes that all systemically significant financial benchmarks should be subject to regulatory oversight. Where a benchmark sponsor or other participant is already regulated by a financial regulator, that regulator should oversee the implementation of agreed-upon standards within the entity, in a manner that reflects the significance of the benchmark being regulated. Where no financial regulator has jurisdiction over a sponsor or other benchmark participant, GFMA recommends that appropriate administrative or legislative steps should be taken to ensure application of the standards to all participants in the benchmark process, also in a manner that reflects the significance of the benchmark.

GFMA agrees with the Consultation's emphasis on transparency. GFMA believes that a benchmark sponsor should operate with transparency with respect to benchmark development and changes, taking due account of any potential impacts on process participants and anticipated end users. Specifically, the sponsor should make the methodology for determining a benchmark available to those parties, including users, that the sponsor can identify as being affected by the benchmark, provide such parties with notice of any proposed amendments to the methodology for determining a benchmark price assessment and ensure that there is a process for receiving and responding to any comments on these proposed amendments.

GFMA concurs that continuity is also a key standard for the soundness of benchmark structure, particularly for extensively used benchmarks. Such benchmarks should have strong contingency provisions for conducting the benchmark price assessment in the event of the absence of data from the normal market data sources, market disruptions, failure of critical infrastructure, or other factors. The contingency plan should be operationally distinct from the normal determination process.

Question 4: Principles for firms involved in benchmark data submissions. Do you agree with the principles cited in this section? Would you add or change any of the principles?

Response:

GFMA supports many of the principles set out in Section B regarding firms involved in the benchmark data submissions process. We believe that ESMA and EBA have captured the approach to the controls—including record keeping, audit trails, conflicts of interest, and escalation procedures—that is described in the GFMA Principles. There is considerable overlap between the Consultation’s proposed principles and the GFMA Principles, which call for a Contributor Code of Conduct to be set and enforced by the sponsors. The Contributor Code of Conduct should include policies and procedures covering the following:

- An internal governance structure and control framework at the contributor that promotes the integrity of the data submission process and conformity with the methodology specified by the sponsor
- Clearly defined roles and responsibilities for all staff associated with the data submission process
- Identification and management of conflicts of interest, with protections against insider dealing, segregation of responsibilities where practical, and information firewalls
- Prohibition of collusion with other data contributors
- Selection and training of individuals involved in the data submission process
- Reviewing adherence to the sponsor’s methodology, and procedures for identifying violations
- Receiving and managing complaints
- Protection of confidential information
- Maintaining a resilient infrastructure for submitting data including contingency planning
- Appropriate notice period for withdrawal of the contributor
- Records retention
- Periodic independent review of data submissions and control framework

GFMA believes that two areas of the proposed principles are unnecessary. First, a whistleblower policy as suggested in B.10 and elsewhere in the Consultation can be an appropriate tool in an internal control framework and reflects the spirit of a zero-tolerance policy, but the same

objectives may also be achieved through robust policies and procedures to receive, investigate, and document violations of internal policies (and also complaints about the submission process). These procedures should include reporting mechanisms to the contributor's governance body. Second, the requirement in B.11 for a contributing firm to publicly disclose a confirmation of compliance is unnecessary as long as there is appropriate sponsor oversight including an independent review process.

These controls are further elaborated upon in GFMA Principle IX in Annex B.

Question 5: Principles for benchmark administrators. Do you agree with the principles cited in this section? Would you add or change any of the principles?

Response:

GFMA agrees with many of the 14 principles cited in Section C regarding benchmark administrators, a number of which overlap with the GFMA Principles as they pertain to sponsors. These principles appropriately cover the responsibilities of the administrator, including strong governance, sound benchmark methodology, internal controls, and transparency. In particular, we strongly support principles C.4, C.5, and C.6 which hold the benchmark administrator accountable for the continuity and transparency of a benchmark; the regular review of benchmark design; and the disclosure of methodology, wherever appropriate, respectively. We believe, however, that disclosure obligations should be directed at each specific benchmark's stakeholders, and that this would mean public disclosure would be expected only in widely-used benchmarks.

GFMA also strongly agrees with many elements of the Section C principles that concern the responsibilities of the benchmark administrator for sound governance and oversight. Like EBA and ESMA, GFMA believes that a sponsor should empower appropriate governance mechanisms with clearly defined roles and responsibilities. Though GFMA does not explicitly call for governance structures to include non-contributing members, we recognize that this requirement, listed in C.2, may be appropriate for certain benchmarks. Likewise, GFMA does not specify the need for administrators to record and post meeting minutes (as listed in C.8), though we appreciate this may also be a valuable means of ensuring transparency in situations where the calculation agent is a third party or where multiple firms contribute to a benchmark. Again, we believe the disclosure should be directed at stakeholders, not necessarily the entire public unless the benchmark in question is widely used.

Similarly, GFMA notes that principles C.12 and C.13 provide specific measures for enhancing third party oversight and appropriate internal issue escalation. These measures are in general alignment with the GFMA Principles, although as noted under our response to Question 5, we do not consider a whistleblower policy necessary as long as there is a robust compliance process

and a complaint escalation framework. Regarding the requirement in C.14 for a public certification of compliance, as we noted earlier, GFMA believes the principles related to governance and transparency are more than adequate to achieve the purpose promoting compliance with the principles and communicating it to stakeholders.

Question 6: Principles for benchmark calculation agents. Do you agree with the principles cited in this section? Would you add or change any of the principles?

Response:

GFMA agrees with the items outlined in Section D, which list calculation agents as one of the key participants in the benchmark process. GMFA concurs with the general principle that a calculation agent should ensure a robust calculation of the benchmark and the existence of appropriate internal control framework. Regarding principles D.4 on a whistleblowing policy and D.6 on compliance confirmation, please refer to our responses to Questions 4 and 5.

This principle aligns with the importance placed throughout the GFMA principles on accuracy of the benchmark process, robust transparency, and a strong framework of governance and controls. The Consultation's supporting principles for calculation agents addressing accountability, consistency, and controls, are important elements of any sound governance and controls framework. We believe however that it would be helpful to note where a proportionate approach is acceptable, for example regarding the D3 principle of pre- and post-submission controls. The proposed establishment of whistleblower channels in the context of the benchmark process reflects the spirit of GFMA Principle VI, which details the elements of a strong controls framework. Specifically, GFMA proposes that any controls framework include policies and procedures for receiving, investigating, reporting and documenting complaints or potential errors with the benchmark price assessment, including a process for escalating complaints. ESMA and EBA may want to consider such policies and procedures in developing principles as an alternative or complement to whistleblower channels.

Overall, GFMA believes the benchmark sponsor is ultimately responsible for oversight and governance of the benchmark process, including the activities of the participants. These participants include calculation agents, as well as submitters, third parties, and publishers. As outlined in the attached GFMA principles, the sponsor should:

- Outline clear roles and responsibilities for all participants in the process
- Operate with transparency, including making all methodologies and policies and procedures available
- Ensure that there is an appropriate control framework for conducting and maintaining the benchmark process and for distributing the benchmark prices assessment. GFMA Principle VI outlines extensive elements of a control framework that should address the very controls issues that ESMA is seeking to address.

- Ensure that there is a methodology for conducting price assessments based on sound data and accurate price conditions;
 - This includes a description of the methodology and any responsibilities of any calculation agents and other third parties
 - Permit the calculation agent to exercise judgment in respect of data analysts, modeling and calculation methods to promote the integrity of the assessment

Question 7: Principles for benchmark publishers. Do you agree with the principles cited in this section? Would you add or change any of the principles?

Response:

GFMA agrees with the principles regarding benchmark publishers. Specifically, GFMA agrees that publishers should ensure well-controlled publication of the benchmark, clear roles and responsibilities, and adequate systems to ensure a consistent and timely benchmark publication. As noted above in the answer to Question 6, GFMA believes that the benchmark sponsor is ultimately responsible for oversight of the process and the key participants, including the publishers.

Question 8: Principles for users of benchmarks. Do you agree with the principles cited in this section? Would you add or change any of the principles?

Response:

Users are key stakeholders in the benchmark process. However, it is GFMA's view that best practice principles should be focused on those participants involved in producing and distributing benchmarks. In GFMA's view, the ultimate responsibility for the benchmark process, including integrity, transparency and governance, rests with the sponsor. The sponsor should ensure that adequate disclosure is available to all stakeholders, including users, about its control framework and contingency plans in the event of the absence of data from the normal market data sources, market disruptions, failure of critical infrastructure, or other factors.

More generally, sponsors should encourage input from stakeholders, including benchmark users, and develop governance structures and processes for receiving and evaluating such input.

Question 9: Practical application of the principles. Are there any areas of benchmarks for which the above principles would be inadequate? If so, please provide details on the relevant benchmarks and the reasons of inadequacy.

Response:

We have not identified any areas for which the proposed principles would be inadequate. However, there are a number of areas where the proposed principles can be enhanced:

- GFMA would like to underscore the importance of adapting agreed principles to a benchmark's circumstances, including prioritization of application of the principles to more significant, widespread benchmarks, rather than the entire universe of benchmarks. In addition, as we noted in the response to Question 1, some benchmarks should be out of scope entirely.
- With regard to the Consultation's recommendation that key benchmark participants certify their compliance with the principles (i.e., B.6, C.14, and D.6), GFMA thinks that the goal of compliance can be alternatively achieved through a number of other means. A key starting point for ensuring compliance is the establishment of a strong governance structure by the Sponsor, with effective controls and oversight over the key participants in the process (contributors, publishers, etc.). Ensuring transparency over the benchmark process, including development and changes to the methodology, is another critical factor. Finally, an accountable governance body, a system of internal controls, independent review of the process and methodology, and appropriate documentation would all serve to increase the integrity of, and confidence in, the benchmark process. These measures are proposed in detail in the GFMA Principles.

Question 10: Continuity of benchmarks. What principles would you consider necessary to be established for the continuity of benchmarks in case of a change to the framework?

Response:

The GFMA Principles consider that the sponsor has a particular duty of transparency to stakeholders with regard to all aspects of the benchmark process, including changes in methodology or, if necessary, contingency measures. More specifically, as noted in GFMA Principle III, the sponsor should make the methodology for determining a benchmark available to those parties that the sponsor can identify as being affected by the benchmark, provide such parties with notice of any proposed amendments to the methodology for determining a benchmark price assessment and ensure that there is a process for receiving and responding to any comments on these proposed amendments.

In addition, GFMA's Principles require that a sponsor develop a contingency plan for conducting the benchmark determination in the absence of data from the normal market data sources, market disruptions, failure of critical infrastructure, or other factors. The contingency plan should be operationally distinct from the normal determination process. Data contributors, in turn, should also have contingency plans for submitting data in the case of a failure of infrastructure. These

contingency plans should be available to users, who structure products based on the benchmark, enabling them to include appropriate descriptions in product documentation.

In considering proposals on orderly benchmark transition, regulators should aim to minimize the impact on already issued financial instruments, particularly benchmarks that are extensively used. This could include international regulatory and industry cooperation, a preferably market-led transition protocol, and sufficient time for transitioning.

* * *

Annex B
GFMA Principles for Financial Benchmarks



Principles for Financial Benchmarks

November 2012

INTRODUCTION

Financial benchmarks are widely used as references for determining payments under a variety of financial instruments and many have a significant impact on market activity globally. The integrity of these benchmarks is critical to the effective functioning of markets and investor confidence.

Recent events have placed the integrity of some of the most significant benchmarks into question and have contributed to public distrust in the financial industry. These events have prompted policy-makers to study enhancements to the benchmark-setting process. For instance, the United Kingdom's Chancellor of the Exchequer commissioned *The Wheatley Review* to focus on the reforms to the framework for setting the London Interbank Offered Rate. The final report³ of this review was published on 28 September 2012. The International Organization of Securities Commissions (IOSCO) published its final Principles for Oil Reporting Agencies⁴ on 5 October 2012, in response to a G20 Leaders' request to enhance the reliability of oil price assessments. Both the European Union and IOSCO are currently conducting wide-ranging reviews of financial benchmarks in general.

A broadly accepted set of best practice standards for conducting benchmark price assessment processes ("benchmark process") would serve to enhance confidence in such assessments and, more generally, promote both the integrity and efficiency of the global financial markets.

³ http://cdn.hm-treasury.gov.uk/wheatley_review_libor_finalreport_280912.pdf

⁴ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf>

The Global Financial Markets Association⁵ (“GFMA”) has three objectives in issuing these *Principles for Financial Benchmarks* (the “Principles”):⁶

- To draw attention to the need for international standards that apply to the issuance of financial benchmarks;
- To offer the Principles as a basis for crafting such international standards; and
- To urge the adoption of the Principles by organizations responsible for developing and issuing benchmarks.

GFMA particularly welcomes the reviews of the regulatory framework for financial benchmarks by the global regulatory community. GFMA recommends that these reviews should be coordinated globally to ensure consistency and encourages the regulatory community to consider the enclosed Principles as a basis to guide the development of a regulatory regime. GFMA suggests that a regulatory regime should adopt the following concepts:

- All systemically significant financial benchmarks should be subject to regulatory oversight.
- To ensure that regulation is appropriately scaled and targeted, where a benchmark sponsor or other participant is already regulated by a financial regulator, then that regulator should oversee the implementation of the agreed-upon standards within the entity, in a manner that reflects the significance of the benchmark being regulated.
- Where no financial regulator has jurisdiction over a sponsor or other benchmark participant, GFMA recommends that appropriate administrative or legislative steps should be taken to ensure application of the standards to all participants in the benchmark process, also in a manner that reflects the significance of the benchmark.

⁵ The 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. For more information, visit <http://www.gfma.org>.

⁶ The Principles were issued in preliminary form in September 2012, based on input from GFMA affiliates and member institutions. The refinement of the Principles to their current form was based on feedback from a broad variety of benchmark industry participants and informed by the publication of a number of regulatory reports, including those from the Wheatley review and IOSCO.

- Finally, GFMA notes that any new regulation should be developed consistently across jurisdictions, avoiding duplication, and defining clear regulatory responsibilities for oversight of individual benchmarks.

DEFINITIONS

Benchmarks

The types of financial benchmarks vary widely, in terms of the participants involved in developing and issuing benchmarks, determination methods, and in the uses and significance of the benchmarks.

For the purposes of the Principles, a **benchmark** will be defined as a commercial or published price assessment, distributed regularly to third parties and extensively used as a reference in determining the pricing of, or the amount payable pursuant to, a financial instrument or contract. Benchmarks may be established from the market prices or rates for transactions in debt or equity securities, the foreign exchange, money and commodity markets, or derivatives of any of these.

Operating Models

Operating models for designing, operating and publishing benchmarks vary considerably across markets. The key roles are normally divided between functions undertaken by the sponsor or its agents, on the one hand, and the entities that provide market data to allow the determination of the benchmark, on the other. There is no standardization of terminology, but for the purposes of the Principles, the participants in a benchmark process will be taken to comprise:

- **Sponsor:** an entity or group that develops and directs the determination, publication and possibly licensing of a benchmark;
- **Licensing Agent:** an agent or division of the sponsor responsible for licensing the benchmark for use by financial product providers, trading venues or clearing organizations;
- **Publisher:** an agent or division of the sponsor, or third party licensed by the sponsor, responsible for the regular dissemination of the benchmark to subscribers and/or the general public;

- **Calculation Agent:** an agent or division of the sponsor responsible for collecting inputs from market data sources and for using this data to conduct a benchmark price determination;
- **Market Data Sources:** Benchmarks may be determined based on a spectrum of market inputs, including but not limited to prices at which market transactions occur, price estimates from market participants, price observations from related markets or consolidated price or transaction data from trading venues and clearing houses. Combinations of information from such sources may also be used to arrive at a final benchmark determination or for back-testing the quality of a benchmark. For the purposes of the Principles, two specific data sources are highlighted:
 1. **Contributor:** an individual market participant that provides data to the calculation agent for the purpose of conducting a benchmark price assessment. An individual bank providing price quotations for a survey-style benchmark would be an example.
 2. **Consolidator:** an entity that provides an aggregation of price or transaction data across multiple individual market participants to the calculation agent for the purpose of determining a benchmark. A stock exchange providing closing prices would be a typical example.

Single entities may play a number of the above roles. For example, a division of the sponsor may also act as a market data source, while many of the operational roles may be carried on within a sponsor entity. The Principles recognize such variation in operating models by allowing for various governance, control and conflict management mechanisms to be implemented as appropriate to the particular process or operating model.

SCOPE

The Principles are intended to apply broadly to benchmarks across asset classes and operating models. The key criterion for bringing a benchmark within the scope of the Principles is its use in determining the price of or payments under financial contracts. Benchmarks may evolve from a variety of sources, for example as market level indicators or analytic measures for assessing portfolio performance. Nonetheless, once a benchmark is used as a reference for contract pricing, it should be considered to fall within the scope of application of the Principles.

There are some exceptions to application of the Principles. First, indices that are primarily used

for purposes other than pricing financial instruments or contracts are excluded from scope. Examples include indices that are used primarily for the purpose of evaluating the returns or other performance characteristics of asset portfolios, and economic or market sentiment indices produced by private sector organizations. Second, customized indices used for pricing bespoke bilateral or similar transactions among a limited number of counterparties are excluded. Examples include customized or privately-negotiated indices, reference portfolios or baskets, defined in connection with issuances of structured notes, with bespoke transactions to effect investment strategies, or with similar bilateral or limited arrangements. Finally, indices issued by public sector entities are out of scope. Examples include economic indicators or other statistics published by government entities, even if some, such as inflation indices or weather data, are widely used in the pricing of financial instruments.

The Principles embody many general concepts, such as the need for clear governance, sound methodologies and practical control standards. Sponsors of benchmarks should evaluate their operations against the Principles and adapt the general governance and control provisions as appropriate to the specific design and significance of the benchmark.

PRINCIPLES FRAMEWORK

The overall responsibility for the benchmark process lies with the sponsor. The Principles are grounded in three fundamental sponsor obligations, which should be applied in a manner commensurate with the significance of the benchmark:

- **Governance:** A sponsor should ensure that there is an appropriate governance structure for oversight of the benchmark;
- **Benchmark Methodology and Quality:** A sponsor should employ sound design standards in devising the benchmark and ongoing processes related to its operations; and
- **Controls:** A sponsor should ensure that there is an appropriate system of controls promoting the efficient and sound operation of the benchmark process and should implement such a system of controls.

The Principles are grouped into three sections under the above headings accordingly.

THE PRINCIPLES

1. GOVERNANCE

PRINCIPLE I: OVERALL RESPONSIBILITY

A sponsor is ultimately responsible for the quality and integrity of a benchmark.

A sponsor should appoint and appropriately empower a governance body accountable for the development, issuance and operation of the benchmark. The nature of the governance body may vary depending on the benchmark and may comprise a formal board, a dedicated committee or an individual manager. In all instances, however, it is essential that there be a single identifiable authority with specific accountability for the sound operation of the benchmark.

The responsibilities of the governance body include overseeing the benchmark methodology, the control framework, and the relationships between the sponsor and any third parties. The governance body should oversee the management responsible for operation of the benchmark, take appropriate measures to remain informed about material issues and risks related to the benchmark, and commission periodic independent internal or external reviews to oversee that the benchmark continues to operate in accordance with the Principles.

While retaining ultimate authority for the benchmark, the sponsor should encourage input from stakeholders and should develop governance structures or processes for receiving and evaluating such input.

PRINCIPLE II: CLEAR ROLES AND RESPONSIBILITIES

A sponsor should define clearly the roles and responsibilities of the participants in the benchmark process.

A sponsor may enter into an agreement with a third party to act as its agent in calculating the price assessment, distributing the price assessment data, or licensing the benchmark. A sponsor should establish clear roles and responsibilities for any third party charged with acting on the sponsor's behalf.

In the case where the benchmark process relies upon individual contributors to provide the sponsor or sponsor's agent with market data or estimates, the sponsor should ensure that there

are clear standards for contribution of data or estimates and ensure transparency regarding the nature of such participation for the end users of the benchmark. Such standards for contributors should be specified by the sponsor in a documented contributor code of conduct, as described in Principle IX.

Where a benchmark relies upon data from a consolidator, the sponsor will typically be reliant on the consolidator's controls for the integrity of the data so sourced. The sponsor should take reasonable steps to ensure that the consolidator has implemented and operates an appropriate control environment. Where the sponsor has a contractual relationship with the consolidator, the roles of each party with respect to the maintenance of data integrity should be clearly articulated.

Where one or more of the functions in the benchmark process are carried out within a broader organization, the sponsor should ensure that there are policies and procedures to identify and manage conflicts of interest arising either between the various benchmark functions or between the benchmark functions and the activities of the broader organization.

PRINCIPLE III: TRANSPARENCY

A sponsor should operate with transparency with respect to benchmark development and changes, taking due account of impacts on process participants and anticipated end users.

Specifically, the sponsor should make the methodology for determining a benchmark available to those parties that the sponsor can identify as being affected by the benchmark, provide such parties with notice of any proposed amendments to the methodology for determining a benchmark price assessment and ensure that there is a process for receiving and responding to any comments on these proposed amendments.

The sponsor should also ensure that there are procedures for the communication, management and timely resolution of complaints related to the benchmark process. The sponsor should make available the complaint procedures to those parties that the sponsor can identify as being affected by the benchmark. In the case of benchmarks using contributor data, the sponsor should provide a contributor with appropriate notice if the sponsor determines that a contributor is violating the contributor code of conduct. Any disputes should be handled in accordance with an appropriate dispute resolution process.

The sponsor should also make available the policies and procedures, required under Principle VI, for identifying and managing conflicts of interests to those parties that the sponsor can identify as being affected by the benchmark.

2. BENCHMARK METHODOLOGY AND QUALITY

PRINCIPLE IV: METHODOLOGY

A sponsor should ensure that there is a methodology for conducting the benchmark price assessment that relies on sound data and accurately reflects market conditions.

This methodology should:

- Define clearly the technical specifications for the benchmark;
- Be clearly documented;
- Describe the manner in which the sponsor determines the benchmark, including the responsibilities of any third parties, such as calculation agents and contributors, as well as the procedures and criteria for the application of judgment by sponsor personnel in determining the benchmark price assessment and for addressing periods where the quantity or quality of data falls below the standards set by the methodology;
- Use sound and transparent data. Where feasible, a sponsor's methodology for determining a benchmark price assessment should give primacy to data reflecting either executed transactions into which unrelated counterparties acting at arm's length have entered in such sizes and upon such other terms as the sponsor may define, or executable bids and offers to enter into such transactions.

Where such information is sparse or unavailable, a sponsor may rely on other methods for assessing prices, including dealer quotes, mathematical models that predict prices based on the observed prices of other products, good faith estimates, contributor surveys, or other methods. The sponsor's benchmark process should not be overly reliant on data from a narrow range of contributors, and should be sufficiently resilient to allow for a benchmark price assessment in the event of limited liquidity in the underlying market or market segment. Under such circumstances of limited liquidity, the sponsor should have particular regard to transparency obligations in identifying how the benchmark assessment is reached.

- Permit the sponsor or the calculation agent to exercise appropriate judgment in respect of data analysis, modeling and calculation methods to promote the integrity of the assessment.

PRINCIPLE V: BENCHMARK QUALITY

To promote the quality of a benchmark over time, a sponsor should follow best practice design elements.

Those elements include the following:

- There should be sufficient trading activity in the underlying or closely-related markets on which the benchmark is based to allow a reasonable and regular price assessment to be made.
- The trading activity in the underlying market should be conducted in such a manner and among a sufficiently broad group of participants so as to allow for transparent price discovery.
- The terms of contracts and participants to the underlying transactions upon which the benchmark is based should share sufficiently similar characteristics to minimize idiosyncratic distortion to the benchmark over successive assessments.
- While the sponsor cannot control all of the uses for which a benchmark may be employed by third parties, the design of the benchmark should reflect the broad terms of financial instruments and contracts for which it is generally intended to be used as a reference rate.

The sponsor should periodically review the benchmark design and calculation methodology, as well as the nature of activities in the underlying market, to promote continued adherence to sound design elements and reflection of market conditions. The sponsor should make the results of these periodic technical reviews available to licensed users of the benchmark, or to the general public when a benchmark is used extensively.

3. CONTROLS

PRINCIPLE VI: CONTROL FRAMEWORK

A sponsor should ensure that there is an appropriate control framework for conducting and maintaining the benchmark process and for distributing the benchmark price assessment.

At a minimum, this framework should cover:

- The engagement of suitably qualified and experienced personnel to carry out the sponsor's responsibilities;
- Appropriate periodic training, including technical and ethics training;
- Policies and procedures relating to the identification and management of conflicts of interest (including through disclosure). Such policies and procedures should take into account conflicts arising from the other activities of the sponsor, the calculation agent, or contributors;
- Policies and procedures for safeguarding confidential information, including confidential information received from contributors, and controls to prevent the premature, unauthorized or preferential disclosure of information concerning a benchmark price assessment;
- Policies and procedures for receiving, investigating, reporting, and documenting complaints or potential errors with the sponsor's benchmark price assessment, including a process for escalating complaints, as appropriate, to the sponsor's governance body;
- Policies and procedures to ensure that emerging issues that may affect market integrity are brought promptly to the attention of the appropriate regulators;
- Policies and procedures applicable to violations of the sponsor's procedures by the sponsor's personnel or agents, or of the contributor code of conduct by individual contributors. Such procedures should include appropriate reporting mechanisms to the sponsor's governance body, and clarity on the process for adjudication for violations;
- Policies and procedures for identifying anomalous data received from market data sources, excluding such data from the benchmark process, and taking appropriate remedial actions to minimize the possibility of recurrence;
- Procedures to notify end users promptly of errors and corrections in a benchmark price assessment;
- An infrastructure, with appropriate resiliency, reflecting the significance and criticality of the benchmark to the marketplace, and a process for the periodic testing of this infrastructure; and

- A contingency plan for conducting the benchmark price assessment in the event of the absence of data from the normal market data sources, market disruptions, failure of critical infrastructure, or other factors. The contingency plan should be operationally distinct from the normal determination process.

PRINCIPLE VII: INDEPENDENT REVIEW AND RECORD-KEEPING

The sponsor should ensure that the benchmark process and methodology are subject to a periodic review of controls by an independent internal or external party. Appropriate documentation of the benchmark process should be maintained to support the review.

Such reviews, commissioned by the sponsor's governance body, may be conducted by a sponsor's independent internal control function, by the sponsor's external auditor or by an independent third party, as appropriate to the scope of the benchmark and organization structure of the sponsor. For benchmarks that are used extensively in the marketplace, the review should be conducted by a third party.

The independent review should assess the sponsor's adherence to the established methodology for determining the benchmark and the control framework relating to the benchmark in light of the Principles. The sponsor should be able to confirm that periodic independent reviews have been conducted, that any necessary remedial measures have been taken and that appropriate parties have been advised as needed of matters arising from the review.

A sponsor, or by delegation, the sponsor's calculation agent, should maintain documentation and keep records (for a period defined by the sponsor commensurate with the significance of the benchmark) showing all inputs to the benchmark price assessment, the application of these inputs to determine the final benchmark price assessment, and the methodology utilized, as appropriate.

Such documentation should include an explanation for the sponsor's or the calculation agent's exercise of judgment, the disregard, if any, of observed transaction or contributor data, and descriptions of any pricing models defined in the methodology.

PRINCIPLE VIII: DATA COLLECTION

A sponsor should ensure that there are appropriate controls over the process for collecting data for use in a benchmark price assessment.

Where a sponsor uses data collected directly from a market data source, either an individual contributor or a consolidator, these controls should include a process for selecting the source, collecting data from the source, protecting the confidentiality of the source's data, evaluating the source's data submission process, and removing or applying other sanctions for non-compliance against the source, where appropriate.

PRINCIPLE IX: CONTRIBUTOR CODE OF CONDUCT

Where the benchmark price assessment requires the submission of data by a third party individual contributor, a sponsor should ensure that there are standards for contributions, specified in a contributor code of conduct, and contributors should employ appropriate controls over data submissions.

The contributor code of conduct should cover, at a minimum, the following:

- The existence of a governance structure that promotes integrity among the contributor and its personnel and associated policies and procedures governing the data submission process;
- Policies and procedures relating to the identification and management of conflicts of interest (including through disclosure), including protections against insider trading, segregation of responsibilities where practicable, and informational firewalls, as appropriate;
- Policies and procedures prohibiting the coordination of, or sharing of information regarding, contributor data submissions with other contributors;
- The engagement of suitably qualified and experienced personnel, including supervisors, to carry out the contributor's responsibilities;
- The clear definition of roles and responsibilities for contributor personnel associated with the data submission process;
- Appropriate periodic training, including technical and ethics training;

- An appropriate monitoring and testing process for reviewing that data communicated to a sponsor or a calculation agent are consistent with the sponsor's methodology and the contributor's policies and procedures. In cases where transaction data are used to inform contributor quotes or are being submitted directly to the calculation agent, clear criteria should be established to ensure that there is no unjustified filtering of the transactions for which the data are provided.
- Policies and procedures for receiving, investigating, reporting, and documenting complaints relating to the contributor's data submissions;
- Policies and procedures applicable to violations of the contributor's policies and procedures relating to the contributor's role in the benchmark process. Such procedures should include appropriate reporting mechanisms to the contributor's governance body;
- Controls for the protection of confidential information;
- An infrastructure, with appropriate resiliency, to support the timeliness and accuracy of submissions, and periodic testing of this infrastructure;
- A contingency plan for submitting data due to a failure in the infrastructure or other factors, where practicable;
- An appropriate notice period to be given to the sponsor by the contributor before a withdrawal from the contribution process in order to avoid precipitate disruption to the benchmark determination;
- A process for retaining records relating to data provided to a sponsor, including documentation deemed the most relevant by a contributor in its assessment, in a form which facilitates subsequent review; and
- A periodic independent internal or external review of the contributor's data submissions and control framework.

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