

15 July 2013

Capital Markets Policy Division
Capital Markets Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117

Submitted to financialbenchmarks@mas.gov.sg

Re: **Proposed Regulatory Framework for Financial Benchmarks**

Dear Sir/Madam:

Markit¹ is pleased to submit the following comments to the Monetary Authority of Singapore (“**MAS**”) in response to its Consultation Paper on the *Proposed Regulatory Framework for Financial Benchmarks* (the “**Consultation Paper**” or the “**CP**”).²

Introduction

Markit is a provider of financial information services to the global financial markets, offering independent data, valuations, risk analytics, and related services across regions, asset classes and financial instruments. Our products and services are used by a large number of market participants to reduce risk, increase transparency, and improve the operational efficiency in their financial markets activities. Markit is an index provider for various index families across regions and asset classes, including bonds, credit default swaps and loans. We administer and publish the composition of all Markit indices and also calculate the levels of the Markit iBoxx suite of bond indices and other third-party indices.

Markit has a substantial local presence in Singapore with currently more than 110 employees. Our MarkitSERV platforms have supported a large and rising number of local market participants in Singapore with confirmation services for many years and we have actively worked with SGX and the relevant stakeholders in preparing for the introduction of central clearing of OTC derivatives in Singapore. While many local sell-side and buy-side market participants have been using our pricing and valuation services for many years we have also recently launched a local bond pricing service and a related index in Singapore.³

Markit has been actively and constructively engaged in the discussion regarding regulatory reform of the financial markets. We regularly provide regulatory authorities with our insights on current market practice, for example in relation to valuation methodologies, the provision of scenario analysis, and the use of reliable and secure means to provide daily marks. We have also advised regulatory bodies on potential approaches to enable the timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered phase-in or by providing participants with a choice of means for satisfying regulatory requirements. Over the last several years, we have submitted over 80 comment letters⁴ to regulatory authorities around the world and participated in numerous stakeholder meetings.

¹Markit is a financial information services company with over 3,000 employees in Asia Pacific, Europe, and North America. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.

² Monetary Authority of Singapore Consultation Paper: “Proposed Regulatory Framework for Financial Benchmarks.” June 2013.

³ See “Markit Launches iBoxx SGD Bond Indices” (19 June 2013) *available* [here](#).

⁴ This number includes responses submitted by MarkitSERV, a now fully-owned subsidiary of Markit Group.

In the context of the discussion about the regulation of benchmarks and indices, Markit has submitted comment letters to HMT's *Wheatley Review*,⁵ the FSA's *Consultation Paper on the regulation and supervision of benchmarks*,⁶ the European Commission's *Consultation Document on the Regulation of Indices*,⁷ IOSCO's *Consultation Report on Financial Benchmarks*⁸, ICAEW's *Exposure Draft and Interim Guidance for the Performance of Assurance Work on Benchmark and Indices*⁹ and IOSCO's *Consultation Report on Principles for Financial Benchmarks*.¹⁰

Executive Summary

Financial Benchmarks (“**BMs**”) and indices are products that have built a long established history of providing transparency and liquidity to the financial markets, including for less liquid market segments. These benefits have been recognized by market participants and also by various regulatory authorities that have approached index providers over the years with a desire to increase the transparency, liquidity, and tradability of their local markets by creating indices for them.¹¹ Indices and benchmarks have a history of providing many benefits to market participants and the public, they contribute to making financial markets more efficient and liquid, fostering a sound basis to provide financing that drives economic growth.

The recent Libor-related events have put BMs into the spotlight and caused the marketplace and regulators to re-examine these instruments. We agree that the underlying facts of any manipulation of the -IBORs and other, similar BMs must be investigated and failings of the existing mechanisms identified and addressed. To restore the integrity of the relevant BMs, robust, thorough and systematic procedures need to be put in place to ensure their data quality and accuracy. At the same time, given the multitude of products that could potentially be regarded as BMs, any regulatory approach must be proportionate to enable a timely implementation of trust-restoring requirements for the most exposed, -IBOR BMs while not causing potentially substantial harm to the broader universe of BMs and indices. Specifically, we believe that regulatory authorities should, when imposing any regulatory requirements, clearly distinguish between the -IBORs, other BMs, indices, and other products that might be in the scope of the BM definition used, given the significant differences that exist between them.

We commend MAS for publishing a comprehensive Consultation Paper on BMs in a timely manner. We believe that many commercial providers of BMs and indices are aware of most of the issues that are raised by MAS in the CP already today and, in many cases, address them through use of appropriate means. We appreciate the opportunity to provide MAS with our comments and responses. Specifically, we recommend that MAS (i) modify the definition of “financial benchmark” to ensure that only relevant instruments are captured; (ii) carefully calibrate the regulatory regime for Financial Benchmarks in Singapore taking into account several factors; and (iii) consider some further details of the proposed regime, including the responsibilities of a BM Administrator and the information it requires from the Submitters in order to properly perform its role.

Responses to MAS' questions

⁵ The Wheatley Review of LIBOR: initial discussion paper. Markit letter to HMT regarding the initial discussion paper (07 September 2012) [available here](#).

⁶ FSA Consultation Paper: The regulation and supervision of benchmarks. Markit letter to the FSA regarding consultation paper (16 January 2013) [available here](#).

⁷ Consultation Document on the Regulation of Indices: A Possible Framework for the Regulation of the Production and use of Indices serving as Benchmarks in Financial and other Contracts. Markit letter to the European Commission regarding the consultation document (29 November 2012) [available here](#).

⁸ IOSCO Consultation Report: Financial Benchmarks. January 2013. Markit letter to IOSCO regarding the consultation report (11 Feb. 2013) [available here](#).

⁹ ICAEW Technical Rules: Exposure Draft and Interim Guidance for the Performance of Assurance Work on Benchmarks and Indices. Markit letter to ICAEW regarding the Technical Rules (09 April 2012) [available here](#).

¹⁰ IOSCO Consultation Report: Principles for Financial Benchmarks. April 2013. Markit letter to IOSCO regarding the consultation report (16 May 2013) [available here](#).

¹¹ Notably, this has recently been the case in Singapore, see “Markit Launches iBoxx SGD Bond Indices” (19 June 2013) [available here](#).

Question 1: MAS seeks views on the proposed definition of “financial benchmark”.

We believe that any discussion about the scope of a regulatory regime for BMs must be seen in combination with whether and how it would be calibrated in order to be proportionate. We therefore comment on both of these aspects below.

a) Definition of “financial benchmark”

We understand MAS’ desire to use a definition of “financial benchmark” that is sufficiently broad as to be able to capture all of the various types of financial benchmarks that are referenced in the industry. We also appreciate that the definition proposed by MAS was created to be consistent with the proposed IOSCO principles.¹²

However, we note that the definition proposed by MAS¹³ is extremely wide and risks, probably unintentionally, capturing almost any number that has some relevance in financial markets. We believe that it would be beneficial to use a more tailored and specific definition of BM to avoid unintentionally capturing numbers and services that are not in any way related to benchmarking activities. Specifically, we recommend that MAS does not include references to “value” or “performance” in its definition of “financial benchmark”. This is for the following reasons:

- Indices that are used for performance measurement or performance attribution purposes do not carry any of the systemic risks of those BMs that are used as reference to determine the cash flows of financial products. Further, there are no real incentives for the Submitters to these indices to manipulate their submissions and, given the broad nature of most of these indices, the ability to manipulate them is very limited in any case.
- Including a reference to “value” would carry the risk that almost any number that market participants find relevant and decide to use to form a view on the current value of their position in a financial product might unintentionally be captured by the regime.¹⁴

We therefore recommend that MAS retain only the first prong of the proposed definition, i.e. used as reference “to determine the interest payable or other sums due” while deleting references to “price, value or performance”. However, if MAS decided to retain a reference to “value”, it should at least specify that the reference to determine the value of a financial product must be *embedded in the documentation* of such product.

b) Calibration

In case that MAS decided to use a rather wide definition of BM the regime would have to be properly calibrated to be proportionate and workable. We therefore strongly support MAS’ proposal that distinguishes between two major categories of benchmarks, namely “Designated Benchmarks” and “other” BMs. We also commend MAS for trying to align its proposal with the IOSCO approach in this aspect by making use of some of the factors that had been proposed by IOSCO to draw regulatory distinctions.

That said, we recommend for MAS to consider using a larger set of factors¹⁵ for this purpose, specifically:¹⁶

¹² MAS CP 2.1.

¹³ “(1) Any price, estimate, rate, index or value that is: (a) calculated periodically using a formula or other methodology; and (b) used for reference to determine: (i) the interest payable or other sums due on deposits or loan agreements; (ii) the price, value or performance of any capital markets products as defined under the SFA or investment product as defined under the Financial Advisers Act (“FAA”); or (iii) the price, value or performance of any product offered by any entities regulated by MAS; (2) Or such other price, estimate, index, or value as MAS may prescribe.

¹⁴ For example, many market participants might use the average temperature in a certain region by as input into determining the value of a financial contract referencing soft commodities.

- Systemic importance of the BM
 - The extent to which a BM is widely referenced in financial instruments¹⁷ and/or it has a significant economic impact through other channels.
- The BM's susceptibility to manipulation
 - The susceptibility of the BM to conflicts of interest; and the ability of and incentives for the various parties that are involved in the benchmarking process to manipulate the BM.
 - For example, given the large number of components that most indices are based upon, they will only to a much more limited degree be exposed to the risk of being manipulated in contrast to the -IBORs that only contain one single variable that is determined based on a handful of contributions.
- Availability of alternatives to the BM
 - The availability of other, competing BMs that serve as close substitutes and the ability of users to switch to those alternative BMs if they so desire.
- The BM's compliance with current standards
 - Whether the BM and the parties that are involved in the benchmarking process already comply with a Code of Conduct based on market forces.
 - Whether and to what extent the BM and the parties that are involved in the benchmarking process are already subject to regulatory oversight.¹⁸

We believe that, by applying all of the above factors to the various products that are in scope, MAS will be in a position to effectively differentiate between the –IBOR type BMs and other BMs that are not exposed to the same risks or of similar systemic importance, indices¹⁹ and other numbers that might otherwise unintentionally be captured by MAS' definition of Benchmark, and guide its policy decisions accordingly. We therefore recommend that MAS take *all* of the above factors into account when distinguishing between Designated Benchmarks and other benchmarks.

Q2: MAS seeks views on the proposal to amend the SFA to prohibit specifically the manipulation of financial benchmarks and to introduce criminal and civil sanctions for such misconduct.

MAS proposed that “the market conduct provisions under Part XII of the SFA be expanded to include a new division which prohibits specifically the manipulation of any financial benchmark” and allow for “criminal or civil penalty sanctions to be imposed on persons who manipulate financial benchmarks.”²⁰

Trust in the reliability of financial BMs needs to be restored as quickly as possible to ensure continued market functioning. Although it was the widespread manipulation of various -IBORs per se that damaged

¹⁵ “IOSCO members should encourage implementation of the principles including through regulatory action where appropriate ... The factors discussed in the January 2013 Consultation Report on drawing regulatory distinction are also pertinent to this inquiry.” IOSCO CR: Chapter 1, Implementation.

¹⁶ Most of these factors are based on those that were previously proposed by IOSCO. IOSCO Consultation Report: Financial Benchmarks. January 2013.

¹⁷ Regulators might want to assign specific attention to the fact whether and to what extent the BM is referenced in exchange-traded products.

¹⁸ Whilst we believe that MAS should consider this factor to some extent, e.g. for setting priorities, it should ultimately aim to treat all relevant BM producing entities equally, regardless of whether they are regulated entities or not. This view was also reflected by IOSCO, when it stated that “Although the submission and/or compilation of some of the Benchmarks considered by the Task Force is performed by regulated firms, the specific acts of submission and Benchmark compilation do not appear to be directly covered by the relevant regulatory framework.” and “IOSCO member jurisdictions generally have enforcement authority in relation to Benchmark setting where the misconduct is related to financial firms, products, and the provision of financial services or the trading of securities and derivatives, although Benchmark setting is not of itself a regulated activity.” IOSCO Consultation Report: Discussion of options for enhanced oversight of Benchmark activities.

¹⁹ The term “index” refers to a basket of instruments or constituents that is maintained by a set of rules. Of course, if such index serves as the basis for the calculation of a reference number that is a widely referenced BM, that calculation process may also be the subject of BM regulation.

²⁰ MAS CP 3.2.

their credibility, this was only possible because the underlying framework and structures around these BMs were generally not designed in a sufficiently robust manner to prevent erroneous submissions and manipulation. Specifically, we believe that the construction of many existing -IBORs contained the following major design flaws:

- A lack of a regulatory oversight of the process and the parties involved in the -IBOR setting;
- A lack of independence and personal accountability of individual -IBOR Submitters, and a lack of institutional accountability by the submitting firms;
- The use of an organisation as BM Administrator that was not suitably equipped to administer BMs;
- Insufficient scrutiny of the daily submitted rates and lack of corroboration of individual submissions with other data; and
- An ill-designed transparency regime where too much transparency was provided in some areas and too little in others.

To restore the credibility of systemically important BMs all of the above weaknesses will need to be addressed in a transparent manner and appropriately communicated to both institutional market participants and the wider retail public. We agree with MAS that making the activities of submitting to and administration of Designated BMs regulated activities will be an important and credible step to ensure that submitters to these BMs put sufficient effort into warranting the accuracy of their submissions and that the task of BM Administration is performed properly.²¹

We agree with MAS²² that BM Administrators will need to take on responsibility and accountability for the reliability and accuracy of the BMs they produce. This might often be in stark contrast to how some of these Administrators operated in the past, for example where they simply collected Submissions and calculated and published an average number on a purely mechanical basis after only rejecting Submissions that were obviously wrong. We believe that BM Administrators must play an active role in determining acceptable techniques and inputs to generate Submissions. They should also be responsible for checking all of the Submissions that they receive, both on the level of the individual Submitter and between Submitters. Only on that basis they can ensure that Submissions to BMs are indeed consistent and appropriate and any suspicious submissions are identified, ultimately resulting in the calculation of BMs that are accurate and reliable.

Q3: MAS seeks views on the proposal to regulate benchmark setting activities relating to “designated benchmarks”, where such benchmarks will be designated based on the consideration of the factors stated in paragraph 4.3.

Q4: MAS seeks views on the proposal for SIBOR, SOR and FX Benchmarks to be designated, thus subjecting the benchmark setting activities related to these benchmarks to regulation.

Q5: MAS seeks views on the proposal to issue best practice guidance to regulated financial institutions to only use a financial benchmark if it is satisfied that the benchmark administrator has effectively implemented the IOSCO principles.

When discussing various options for establishing enhanced oversight of BMs, we strongly agree with IOSCO that a “one-size-fits-all approach may not be appropriate” given the large variety of products that are likely to be covered by the regulations.²³ As stated above, we believe that it is important for MAS to draw regulatory distinctions to provide an informed basis to assign the overall universe of products to different categories and design appropriate regimes for them.

We believe that, in the interest of continued market functioning, trust in the reliability of financial BMs needs to be restored as quickly as possible. In general, making the activity of submitting to systemically important

²¹ “Relying on existing patchwork of laws may not be sufficient to deal with all possible cases of benchmark manipulation and ensure adequate deterrence against such conduct.” MAS CP 3.1.

²² MAS CP 5: Regulatory regime for administrators of designated benchmarks. Proposes licensing requirements, admission criteria and other ongoing requirements for benchmark administrators.

²³ IOSCO Consultation Report: Financial Benchmarks. January 2013

BMs a regulated activity can be a credible step to ensuring that Submitters put sufficient effort into warranting the accuracy of their submissions. However, a regulatory distinction needs to be applied based on the extent to which these products are already subject to scrutiny and largely comply with the relevant principles on the basis of market mechanisms as well as on the degree to which these instruments can be manipulated. On the basis of applying these regulatory distinctions many -IBOR BMs should be exposed to explicit regulatory oversight²⁴ while other relevant index/BM products would more appropriately be ruled by an industry Code of Conduct. This is, amongst other factors, because the scope of adoption and retention for these instruments is already largely determined by their relevance as well as the transparency, appropriateness and robustness of their methodologies, governance and control mechanisms, particularly if they are offered by competing commercial index providers. They are hence exposed to a significant degree of scrutiny by market participants today and MAS should expect them to be largely in line with the major principles already. Further in contrast to IBOR-type BMs, indices mostly consist of a large number of underlying components which, by definition, makes them less susceptible to any attempts to manipulation.

We therefore strongly support MAS' proposal to differentiate between different types of BMs by making Designated BMs subject to direct regulatory oversight while issuing best practice guidelines to various regulated entities to only use any "other" financial benchmark as long as they are satisfied that the BM Administrator has effectively implemented the IOSCO Principles.²⁵

Q6: MAS seeks views on the proposal to require entities carrying out the regulated activity of "administering a designated benchmark" to be licensed by MAS.

Q7: MAS seeks views on the proposed admission and ongoing requirements for Administrators.

MAS proposed to require entities carrying out the regulated activity of "administering a designated benchmark" to be licensed by MAS.²⁶ We agree that the licensing and regulation of the Administrators of Designated BMs will be a necessary step to restore trust in systemically important BMs. We also generally agree with MAS' proposed admission²⁷ and ongoing²⁸ requirements for Administrators. We believe that they are generally reasonable and appreciate that they were developed with reference to the proposed IOSCO Principles.

As explained in more detail above we believe that it is not only the Submitters to BMs that need to be held accountable and required to ensure that their Submissions are appropriate, but that BM Administrators will need to play an equally important role in this respect. Specifically, we believe that it should not be acceptable for BM Administrators to calculate BMs on a purely mechanical basis without actively questioning and challenging the Submissions they receive.

Q8: MAS seeks views on the proposed regulation of Submitters

We note that, as part of the requirements for BM Administrators, MAS highlighted the importance of the relevant underlying market data and would require the BMA to keep records of it.²⁹

Specifically, we believe that any Administrator of a Designated BM needs to be in a position to actively check and, where needed, challenge the accuracy of the individual Submissions it receives. The MAS

²⁴ For example, the UK FCA stated that "initially the only regulated benchmark in the UK will be LIBOR." FSA Consultation Paper, Section 1.10. The Wheatley Review of LIBOR "makes the case for regulation of activities related to LIBOR, and strengthening the sanctions regime."

Wheatley Review of LIBOR, Chapter 2.

²⁵ MAS CP 4.8.

²⁶ MAS CP 5.1.

²⁷ Requirements include: based in Singapore, fit and proper, financial resources to cover operating costs of administering a benchmark for at least six months. MAS CP 5.4.

²⁸ Requirements include: governance, oversight committee, disclosure, external audits, recordkeeping and transition protocols. MAS CP 5.5.

²⁹ BMA to "keep written records of relevant underlying market data, submissions received from Submitters, and published benchmark rates for a period of no less than five year." MAP CP 5.5(viii).

should therefore not only require Submitters to a Designated BM to retain records of their Submissions and all of the underlying data that they used to generate a submission but also to provide such data to the Administrator of the BM if so required. We believe that Administrators of BMs, to be able to validate individual submissions and herewith play a crucial part in ensuring the quality of the resulting BM, need to be able to obtain all of the relevant underlying data and information from Submitters.

Q10: MAS seeks views on the proposal to include powers to compel entities to be Submitters to designated benchmarks.

We believe that it is in the interest of all market participants to ensure the continued operation of major BMs. To achieve this objective the number of Submitters to a BM needs to be at least kept at current levels or, where appropriate, increased. However, recent experience has shown that current Submitters to BMs might have strong incentives to discontinue their submissions. We believe that this behaviour is largely caused by their realization of how significant the potential for fines and liabilities from submitting to a BM can be while often no significant consequences are attached to discontinuing submissions.

In this context, MAS should note that establishing excessive regulation and overly burdensome requirements on contributors to BMs is likely to *increase* the risk of Submitters deciding to discontinue their contributions. This would have the negative side effect of reducing not only the quality of available BMs but also potentially their number, and would hence reduce transparency in the marketplace. Any regulation of BMs should therefore not be unnecessarily burdensome and should not implicitly discourage participation in contributing to BMs that can provide transparency even in asset classes that are illiquid.

MAS should further note that professional BM Administrators that rely on voluntary Submissions for their services will often already employ a variety of mechanisms that incentivize their Submitters to contribute data on a regular basis and to ensure that these contributions are accurate. We encourage the MAS to further explore such existing mechanisms and ensure they are used to the extent possible in the context of Designated BMs before it might need to consider using its powers to compel entities to be Submitters. However, we generally agree that enhancing MAS' powers to "compel entities to be Submitters to designated benchmarks should the need arise..."³⁰ represents a useful tool as a backstop.

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Markit appreciates the opportunity to comment on MAS' Consultation Paper on the *Proposed Regulatory Framework for Financial Benchmarks*. We would be happy to elaborate or further discuss any of the points addressed above. In the event you may have any questions, please do not hesitate to contact the undersigned or Marcus Schüler at marcus.schueler@markit.com.

Yours sincerely,



Kevin Gould
President
Markit

³⁰ MAS CP 7.2.