

Council of Financial Regulators
c/o Financial Market Infrastructure
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001
Via email to: financial.benchmarks@asic.gov.au

25 April 2016

Dear Sir/Madam,

CFR Consultation — Financial benchmarks regulatory reform

I am writing on behalf of Argus Media (Argus) in response to this consultation.

About Argus

Argus is an independent media organisation serving global physical commodity industries. Its main activities comprise publishing market reports containing price assessments, market commentary and news, and business intelligence reports that analyse market and industry trends.

Argus has over 750 full time staff and offices in each of the world's principal commodity centres. This includes a small news bureau in Sydney with four staff. The company's global HQ is in London UK.

Argus' price assessments identify prevailing open-market spot prices in a wide range of specific bulk physical commodity markets. All price assessment activity is conducted strictly according to detailed public methodologies (www.argusmedia.com/methodology) and within a rigorous governance, compliance and controls framework (please see www.argusmedia.com/about-argus/how-we-work/ for further details).

A small number of Argus' published price assessments have been adopted by subscribers for use as independent benchmarks in commodity derivatives contracts. Argus has fully implemented IOSCO's PRA Principles, the agreed international regulatory technical standards for benchmarks published by commodity price reporting agencies. This includes successfully completing annual external assurance audits — to date in 2013, 2014 and 2015 — to verify compliance. The latest annual external audit report, by PwC, of Argus' compliance with the IOSCO PRA Principles, is available at: www.argusmedia.com/about-argus/how-we-work/.

Argus and its main competitors have become known as commodity 'price reporting agencies' (PRAs) — although the publishers themselves did not invent this term and in fact it is somewhat misleading. In reality, as a publisher Argus reports on physical commodities markets and the wider commodity industries, and the reporting of prices in the markets is just one integrated component of this.

Summary of consultation response

In summary Argus:

- agrees with CFR's targeted and proportionate approach focused on systemically important financial benchmarks, and the proposal to limit the application of the new regime in the first instance to BBSW and CGS yields survey;

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- draws to CFR's attention that IOSCO has issued two sets of benchmarks principles, and in particular that IOSCO has explicitly stated on multiple occasions that its Principles for Oil Price Reporting Agencies ('PRA Principles') of October 2012 are the correct set of benchmark principles for all physical commodity benchmarks published by price reporting agencies;
- urges CFR to ensure that, when constructing the proposed legislative regime and from the perspective of ensuring fitness-for-purpose for future eventualities even where unlikely, it makes reference to IOSCO's PRA Principles, and not IOSCO's Principles for Financial Benchmarks, in respect of any commodity benchmark published by a price reporting agency and later called into regulatory scope.

Background to IOSCO PRA Principles

In October 2012 IOSCO published its Principles for Oil Price Reporting Agencies¹ (PRA Principles), setting out a detailed set of regulatory standards for commodity benchmarks published by price reporting agencies (PRAs). The members of IOSCO's Committee 7, which developed the PRA Principles, comprised 24 national securities regulators from around the world including the Australian Securities and Investments Commission.

IOSCO made clear that the PRA Principles apply to all commodity benchmarks produced by price reporting agencies across all underlying commodities. IOSCO stated that "although the PRA principles were developed in the context of PRAs and oil derivatives markets, PRAs are encouraged to implement the principles more generally to any commodity derivatives contract that references a PRA assessed price without regard to the nature of the underlying". (p7, PRA Principles, FR06/12)

IOSCO subsequently explicitly reaffirmed the applicability of the PRA Principles, for PRAs, when it published the Principles for Financial Benchmarks² in July 2013. IOSCO stated in the Principles for Financial Benchmarks that "IOSCO expects that the oil PRAs should continue to comply with and implement the PRA Principles". (p6 FR07/13)

Since that time IOSCO has published two evaluation reports on implementation of the IOSCO PRA Principles³. In the first, IOSCO stated that "it is important to keep the PRA Principles separate from the Financial Benchmark Principles" and that "given that work to align the two sets of Principles already took place and that IOSCO's review of implementation of the PRA Principles did not suggest that further alignment of PRA Principles with those for Financial Benchmarks is warranted, IOSCO does not believe that further alignment of PRA Principles with those for Financial Benchmarks Principles is justified". (p16 FR05/2014)

In its final evaluation report of September 2015, IOSCO concluded that "given the progress that has been evidenced to date, the commitment of the four main PRAs to continue adhering to the PRA Principles, and to undergo independent external assurance reviews, IOSCO, IEA, IEF and OPEC do not believe that further annual implementation reviews will be necessary at this time". (p13, FR22/2015).

Argus responses to select specific consultation questions

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

Argus supports CFR's targeted and proportionate approach, focused on systemically important financial benchmarks.

¹ FR06/12 www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf

² FR07/13 www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf

³ FR05/2014 and FR22/2015

www.iosco.org/library/pubdocs/pdf/IOSCOPD448.pdf

www.iosco.org/library/pubdocs/pdf/IOSCOPD506.pdf

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

No

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

Argus welcomes CFR's recognition of the global nature of trading on financial markets (which we note also very much applies to bulk physical commodities), the global applicability of IOSCO standards for benchmarks and CFR's conclusion against developing an 'Australian-tailored' set of benchmark administration requirements.

As discussed in more detail in our introductory remarks, Argus respectfully wishes to draw to CFR's attention that IOSCO has issued two sets of benchmarks principles rather than just one. And in particular that IOSCO has explicitly stated on multiple occasions that its Principles for Oil Price Reporting Agencies ('PRA Principles') of October 2012 are the correct set of benchmark principles for all physical commodity benchmarks published by price reporting agencies.

While Argus has no particular preference regarding the means CFR adopts for imposing IOSCO standards on a benchmark administrator called into regulatory scope, Argus urges CFR to ensure that, when constructing the legislative regime, it enables the possible future application of the IOSCO PRA Principles, and not the IOSCO Principles for Financial Benchmarks, in respect of any commodity benchmark published by a price reporting agency and later called into regulatory scope.

While we consider it extremely unlikely that a commodity benchmark published by a price reporting agency would ever be called into regulatory scope, nonetheless from a design best practice perspective in terms of future fitness-for-purpose, we urge CFR to allow for a regime that would apply the IOSCO PRA Principles in all relevant circumstances. Only in this way would the regime be correctly aligned with IOSCO.⁴

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

Argus notes that in developing the PRA Principles, IOSCO took particular care to develop these regulatory technical standards taking full account of the specific characteristics of physical commodities markets and market participants, and to ensure appropriate calibration.

When issuing the PRA Principles IOSCO noted that "It is important to understand that these principles recognize that there is no requirement on any physical market oil participant to submit transaction data to PRAs. Because data are submitted on a voluntary basis, precipitous regulation of PRAs or requirements that oil market participants who submit data to PRAs submit all of their transaction data potentially could result in some oil market participants to decrease or even cease their submission of data to PRAs." (p8, PRA Principles, FR06/12). IOSCO's analysis and warning of course hold true not just for oil but more generally for all commodity markets.

In recognition of the specific characteristics of physical commodities markets and market participants — who are overwhelmingly non-bank non-financial companies, and of the critical importance of avoiding discouraging their continued voluntary provision of market data to the PRAs, IOSCO considered but firmly rejected as impractical and unworkable in the context of PRA benchmarks the regulation of benchmark submissions, including through approaches such as a Submitter Code of Conduct. However IOSCO incorporated into the PRA Principles practical, proportionate measures requiring PRAs, inter alia, to "Employ a system of appropriate measures so that, to the extent

⁴ The EU's forthcoming Benchmark Regulation (which will also supersede the current UK regime) also provides for the IOSCO PRA Principles, rather than the IOSCO Financial Benchmark Principles, to apply to physical commodity benchmarks produced by PRAs. The EU regime in effect codifies the PRA Principles into a separate commodities annex (Annex II), which applies in substitution to the general financial benchmarks regime requirements of Title II of the regulation.

possible, submitters comply with the PRA's applicable quality and integrity standards for market data." (p14, PRA Principles, FR06/12)

As discussed in response to earlier questions, Argus therefore respectfully urges CFR to ensure that, when devising the legislative regime, it enables the application of the IOSCO PRA Principles, and not the IOSCO Principles for Financial Benchmarks, in respect of any commodity benchmark published by a price reporting agency and subsequently called into regulatory scope. In such a situation the PRA Principles impose proportionate practicable obligations on PRAs as benchmark administrators regarding submitters' data quality. This may be regarded as indirect imposition on submitters. In contrast any legislative approach, however well-intentioned, that discourages the continued voluntary contribution of data to PRAs by market participants would be "precipitous regulation" as IOSCO explicitly warned against in the PRA Principles and would risk serious negative unintended consequences.

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

Please see response to Q7

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

Please see response to Q7. Argus understands the motivation to seek a reserve power in respect of financial benchmarks where banks and other financial institutions are the contributors. In respect though of physical commodities markets and benchmarks, as a practical matter it is difficult to envisage how such a reserve power could be effective or enforceable in practice, given the highly diverse nature and geographic location of participants in the physical markets.

In oil, for example, participants include major state-owned enterprises across the Middle East, Asia, Africa, Russia and the FSU, and elsewhere. Many other commodity markets exhibit similar features.

Comments on this topic in the UK's official response⁵, jointly by HM Treasury and securities regulator the FSA (now the FCA), to an early European Commission consultation paper on the EU's proposed Benchmark Regulation may be of interest to CFR. The UK authorities noted that "imposing a compulsion to submit in oil markets would likely need global agreement to be effective. Compelling all oil traders in the EU to submit trades could cause significant difficulties, including driving trading away from the EU, questions about who would have to report and how it would be enforced, as well as how the fact that all EU trading but only selective global trading would impact on the prices given and the reliability of the benchmark".

I hope that these comments are helpful. Please do not hesitate to contact me if you would like to discuss anything further.

Yours faithfully

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⁵ http://ec.europa.eu/internal_market/consultations/2012/benchmarks/public-authorities/uk-treasury_en.pdf