

Response to CFR Consultation Paper on Financial Benchmarks

SUBMISSION

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Overview

ASX is pleased to provide feedback on issues raised in the Consultation Paper on the importance of key financial benchmarks to the fair and efficient functioning of Australian markets and the broader economy. ASX has previously provided feedback on ASIC's Report 440 regarding the methodologies used to calculate financial benchmarks, in 2015.

In addition to broader uses across the financial system, benchmarks underpin the operation of important exchange-traded and over-the-counter derivatives markets and are used to create exchange traded products (ETPs) which offer investors exposure to a range of diversified financial assets.

While final consideration around the arrangements for the transparency of, and methodologies for determining, these benchmarks is ongoing, it is appropriate that the regulatory framework governing the administration of such benchmarks also be updated to enhance their integrity. This would ensure Australia is compliant with IOSCO's *Principles for financial benchmarks*.

A robust regulatory framework for calculating these benchmarks is important given the role they play in maintaining the integrity and efficiency of the financial system by minimising the risk of manipulation.

The IOSCO principles provide a framework for assessing the integrity of the benchmark calculation process and ASX agrees they should form the basis for standard setting. Australia's compliance with global standards is critical if some foreign jurisdictions (such as Europe) use that as a pre-condition for mutual recognition of regulatory arrangements to allow their investors to transact in Australian financial products.



ASX Response to Consultation Questions

Consultation Questions	
1. Do you have any comment on the proposed definition and scope of significant financial benchmarks?	<p>The criteria set out in the paper for determining when a benchmark is ‘systemically important’ and required to meet higher regulatory standards seem sound, i.e. the material risk of financial contagion or systemic instability if the availability or integrity of the benchmark is disrupted. Based on these criteria there are no particular objections to the benchmarks identified.</p>
2. Do you have a view on whether major equity indices such as the ASX200 should be subject to regulation as significant benchmarks?	<p>ASX supports exclusion of major equity indices from classification as ‘significant benchmarks’, subject to a caveat around the need to ensure international consistency in approach (see below) If an index is based upon regulated data, being data from a well-regulated and liquid public market, then the integrity of that data is apparent on its face.</p> <p>We note that the primary equity market benchmark (e.g. in Australia, the S&P/ASX 200 index) does not seem to be classified as systemically significant in other jurisdictions. This likely reflects a judgement that these indices are not at risk of manipulation given they are based on regulated data.</p> <p>However, we note the EU is still determining its position on the treatment of equity-base indices and we would encourage a consistency of approach so that benchmarks that ASX uses are treated similarly in all jurisdictions. That is, the approach to benchmark calculation/administration in Australia should be mindful of the need to ensure that Australian-based products (derivatives and ETPs) should be available to be traded by investors based in other jurisdictions.</p>
3. Are there any other financial benchmarks that you consider should be subject to regulation as significant benchmarks?	<p>No, but we do agree with the proposals in paragraph 3.2 regarding officially administered benchmarks.</p>
4. Do you have any comment on the proposed mechanism for designating the scope of regulation?	<p>ASX prefers the designation to be the hybrid option (clause 3.3(c)) subject to the drafting of the Regulation permitting the efficient addition or removal of benchmarks. As markets develop, the use of particular benchmarks to underpin specific financial markets and products may change and the arrangements for designating ‘significant’ benchmarks should not impede such transitions.</p>
5. Which means of imposing the IOSCO Principles as a requirement of benchmark administration would you favour among the options identified, and why?	<p>ASX prefers the licensing option of an AFSL or Australian Market Licence/CS Facility Licence where applicable. ASX prefers the certainty of the existing licensing regimes and consistency across all benchmarks.</p> <p>ASX, as the operator of the ASX 24 market that offers the bond futures contracts for trading, should be eligible for an automatic exemption without further application. Australian Securities Exchange holds an</p>



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Australian Market Licence and ASX Clear (Futures) holds a CS (clearing and settlement) Facility Licence, and the calculation of the bond futures expiry price is incidental to the operation of the market and CS facility. Activities incidental to the operation of a market or CS facility do not generally require an AFSL (Corporations Act s911A(2)(d)). Further, the requirement to have an AFSL would not provide any additional regulatory controls over and above the other licences held by those entities.

The bond futures contract expiry price methodology is transparent as it is included in the ASX 24 Operating Rules. Any changes to those rules are subject to both ASIC review and the non-disallowance process under the Corporations Act.

6. Is there another option you prefer?

No

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

The arrangements for regulating benchmark submission should ensure the integrity of the underlying data, so that regulators can be satisfied that the data is authentic. Benchmark administrators should have power to develop rules which can be monitored and enforced with penalties. The enforcement of these rules could be achieved through ASIC Market Integrity Rules pursuant to the Corporations Act, or through conditions on an AFSL.

Compliance with the rules could be demonstrated to benchmark administrators by auditor verification. Benchmark administrators should have the ability to refer matters to ASIC in the event of suspected misconduct.

The arrangements should also be flexible enough so that changes to benchmark methodologies can be implemented quickly and should not be so burdensome that they are a disincentive to submitters participating in the process.

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

We have concerns as to whether benchmark administrators would be able to effectively regulate submitters via a Submitter Code of Conduct as that Code would not be enforceable.

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

Yes this is appropriate as a last resort so that there is continuity of pricing to determine a benchmark. Compulsion could also be useful in those rare circumstances where the usual methodology for determining a benchmark is unavailable.



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10. If so, who should be able to exercise such a power?	ASIC on behalf of a benchmark administrator.
11. Which option do you prefer for compelling submission, and why?	ASX does not have a preference on the options but prefers any option that would enable benchmark pricing to be obtained efficiently if required.
12. Do you have any comments on the suggested cohort of entities that could be made subject to such a power?	ASX supports the suggested cohort of entities.
13. Do you have any other suggestions for how to compel submissions?	No
14. Do you have any comment on the proposal to introduce a specific offence of benchmark manipulation?	ASX is supportive of introducing a specific offence of benchmark manipulation.
15. Do you agree that the proposed offence should cover all financial benchmarks rather than just significant benchmarks?	In principle ASX agrees that all benchmarks should be covered subject to an assessment that the specific benchmark meets some de minimis criteria based on its significance and risk of manipulation.
16. Do you have any comment on: <ul style="list-style-type: none"> a) the physical elements of the proposed offence, b) the fault elements of the proposed offence, c) the proposed civil liability provision; or d) the proposed jurisdictional reach of the proposed offence? Are there other factors that should be considered in defining the jurisdictional reach of the proposed offence? 	No
17. Do you have any comment on the separate proposal to expressly provide that BABs and NCDs are financial products for the purposes of Part 7.10 of the Corporations Act?	ASX supports the extension of financial products to include BABs and NCDs.
18. Do you have any other comments?	ASX notes that the proposal in clause 4.1(c) regarding the commissioning of an independent audit review of the IOSCO compliance. ASX considers that a review by an internal audit function is sufficient,



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acknowledging that such a review would be available to the regulatory authorities to ensure appropriate oversight. Requiring an independent audit would seem to involve an unnecessary cost with no additional regulatory benefit. ASX has no issue with the publication of the internal audit review, or making it available on request.

19. Do you have any comments on the benefits and costs of reform?

ASX reiterates its position that it prefers an approach that supports market integrity but does not limit participation in the benchmark calculation process or the ability of financial markets and product creators to innovate. In particular, ASX opposes prohibitive costs of benchmark administration which could lead to the withdrawal of the administration of a benchmark.

