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STOXX: RESPONSE TO CONSULTATION PAPER ON FINANCIAL BENCHMARKS

Zurich, Apr. 28, 2016

Dear Ms Luo,

STOXX Ltd. ("STOXX") appreciates the opportunity to respond to the CFR's financial benchmarks regulatory reform consultation paper, please find our answers in the text below.

STOXX is an established and leading global index specialist with its headquarters in Zurich, Switzerland. The launch of the first STOXX indices in 1998, including the EURO STOXX 50 index, marked the beginning of a unique success story based on the company's neutrality and independence. Since then, STOXX has been at the forefront of market developments and has continuously expanded its portfolio of global indices.

STOXX is a wholly-owned subsidiary of Deutsche Börse AG and also functions as the marketing agent for DAX and SMI indices.

STOXX is a member of the Index Industry Association (IIA) and provides this response as a supplement to the answer provided by them on behalf of the wider industry.

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

STOXX generally agrees with CFR to cover so called significant benchmarks only in order to provide for a proportionate regulation. In addition to some benchmarks which have been prone to manipulation there are many benchmarks which have not been in the focus of manipulation, as they are being constructed in a way which does not allow for manipulations as experienced in the panel-based benchmark sector. Burdening riskless benchmark providers with additional regulation would be to the disadvantage of many Australian investors who currently may choose amongst a multitude of global indices provided to the Australian market by competing independent global-index providers like STOXX.

We agree with the scope of coverage of systemically important benchmarks, here called significant benchmarks. We also agree with the CFR that benchmarks based on regulated data (usually transaction data broadly published by regulated markets) should

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not be considered significant / systemically relevant. Of systemic relevance, in our view, may be benchmarks which significantly influence the economic pillars of a society, meaning especially import/export (FX Benchmarks), benchmarks used as reference for lending, mortgages and credit card payments (money market benchmarks like the BBSW in Australia or LIBOR in the EU), etc. as well as some commodity benchmarks. All those benchmarks have something in common: they are usually unique (meaning no substitute is available), usually significant exposure is being referenced to them, while they may easily be manipulated as they are based on non-transactional input data provided by submitters via panels (submitters are often employees of Investment Firms which hold on positions in those benchmarks they are contributing to). Submission- or panel-based indices pose a risk to the market given that in the majority of cases the data is based on 'best-guess', subjective, or non-transactional data. This combination is a toxic mixture which may create systemic risks. However, not all benchmarks indicated by CFR should be considered as systemically relevant. Please refer to our answer to Q 2.

As a side note and being a global Index provider STOXX would like to suggest to CFR to consider the definitions available in other global regulations, such as the EU benchmark regulation, where the definition of a panel- or submission-based benchmark with systemic importance is described as 'critical' instead of 'significant'. Within a global market, using similar terminology across countries could be helpful, more efficient, and avoid misunderstandings.

2. Do you have a view on whether major equity indices such as the ASX200 should be subject to regulation as significant benchmarks?

Please refer to our comments under point 1.

Not all benchmarks are created and operated in a non-transparent way, nor are there usually conflicts of interest involved as in the cases of the LIBOR, EURIBOR, BBSW and TIBOR manipulation. To the contrary, there are several Neutral Index Providers operating on a global scale who compete with each other and who in fact use high quality regulated markets data to calculate their benchmarks. Those benchmarks are not prone to manipulation as they are based on regulated data published by regulated markets and they operate alongside clear and transparent rules, and have no conflicts of interest tied to the production of those benchmarks.

Therefore, STOXX fully agrees with the CFR comments that a benchmark determined from data from regulated venues, should not be included in the description of significant or 'critical' benchmarks.

Neutral Index Providers serve the entire market in an unbiased and transparent way. For a fact, there have been no incidences where Neutral Index Providers were at the heart of market abuse as in the cases of LIBOR, EURIBOR, BBSW and TIBOR, and this for a set of good reasons – their independence, transparency and rule-based business, as well as their sole focus on the production of high quality indices. Reliability as well as transparency is in the Neutral Index Providers self-interest. Their only direct material exposure is based on the value of those indices which is a function of degree of brand awareness as well as trust of financial market participants in those indices. Those indices should not be considered systemically relevant as they usually are not unique, they are based on publicly available and fully reliable transaction data from regulated markets, and they are not affecting the economy in a way the above mentioned indices are doing.

While the EU is currently regulating the provision or administration of benchmarks in a rather strict way being compared to other regulators across the globe, benchmarks based on regulated data are being moderately regulated alongside the IOSCO principles and in line with the principle of proportionality.

A decision of the CFR to follow the line of even the strictest regulator should be reassuring.

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

STOXX has no further input on this section.

4. Do you have any comment on the proposed mechanism for designating the scope of regulation?

STOXX supports the CFR stance under section 3.2 of the consultation paper to exclude indices administered by central banks and by government agencies for statistical purposes as it would be disproportionate. The likelihood of manipulation is extremely low and costs to be ultimately covered by the tax payer would be increased without reason.

In terms of the three options given under section 3.3 of the consultation paper STOXX would like to show a preference for option (a) 'List-only option. In STOXX' opinion this option gives the highest level of clarity to market participants and benchmark administrators. If the proposed regulation only includes critical submission- or panel-based benchmarks it will be in line with the UK regulation on financial benchmarks as mentioned in the CFR paper.

Additionally, we believe that having quantitative criteria to determine the significance of a benchmark, such as that in the upcoming EU regulation, will be cumbersome to monitor for both the regulator and/or the benchmark providers. The proposals for the EU regulation to have notional thresholds which have to be monitored which in some cases is almost impossible to determine given the structure of products, differing values in the funded vs. listed amounts and lack of clarity of the data. No single reliable data source is available for such data.

If CFR choose to recommend the criteria-only or the hybrid option we would like CFR to apply proportionality to any criteria insofar as the spirit of any regulation on financial benchmarks should be proportionate to the risk which the benchmark presents to the market.

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

STOXX appreciates the CFRs intention not to develop an "Australian-tailored" set of benchmark administration requirements and generally agrees with the suggestions made under section 4.1 of the consultation paper.

However, we again urge CFR to apply a proportionate regime. Benchmarks based on regulated data provide choice and opportunities to retail investors to participate in global developments. It is therefore important, to allow non-critical or non-significant benchmark providers to offer their services under a proportionate regime.

In the two options provided we would support the second option and would like to strongly suggest that CFR consider not mandating any benchmark administrator of regulated data benchmarks operating in Australia to obtain a licence in order to provide benchmarks. Having a laborious application / authorisation process would most likely discourage many benchmark providers from providing their products to the Australian market thus reducing competition and choice to the detriment of retail

investors. Competition not only increases the choice for investors but also reduces cost even further for retail investment products.

In this context STOXX would like to point out to CFR that the vast majority of major benchmark administrators in the global market have declared compliance with the IOSCO principles by now and these already edict that to remain compliant there must be an annual review of compliance by an independent organisation. In order to prevent over-regulation and increase efficiency STOXX supports the option to give the ASIC a rulemaking power to ensure the independent report is published and provided to ASIC; STOXX would suggest that in order to avoid double-regulation the benchmark administrator should be exempted from providing a separate self-assessment to the regulator in addition to the audit report on IOSCO compliance.

6. Is there another option you prefer?

STOXX has no further comments on this section. Please see STOXX' response to Q5.

Q7-13.

As mentioned in our response to Q1 and Q2 the risk of regulated data benchmarks is low and therefore should not be captured in the spirit of this regulation.

STOXX considers it rather extraordinary that there should be a frequent cross-over between submission-based indices and those based on transaction data, including regulated data. The example mentioned by CFR is rather the exception than the rule. As regards the definition of a 'submitter' we would like to clearly point out that regulated markets (which are providing the input data for "regulated data benchmarks") are not falling into the category of submitters according to the EU Benchmark Regulation. This makes sense as there is no need to extend a Code of Conduct to Regulated Markets which provide first class data which is publicly available via multiple data vendors and widely used in financial markets.

14. Do you have any comment on the proposal to introduce a specific offence of benchmark manipulation?

STOXX supports the desire to prevent deliberate market manipulation in all of the jurisdictions it operates in. STOXX, as a provider of benchmarks in the EU market, will be subject to the EU Market Abuse Regulation and the provisions within it when they apply in July 2016; therefore if the Australian regulation was of a similar standard then STOXX supports the proposal to introduce a specific offence. Any requirements and penalties for offences should be proportionate to the risk or impact of any breaches of the regulation.

15. Do you agree that the proposed offence should cover all financial benchmarks rather than just significant benchmarks?

STOXX agrees that market participants should be protected against deliberate manipulation of benchmarks. We would like to stress again to CFR that indices that are provided using data from regulated venues are extremely low-risk in terms of market manipulation or abuse, so in relation to creating an offence STOXX would like to suggest that the Australian government to concentrate on those indices that are considered systemically relevant rather than all benchmarks.

16. Do you have any comment on:

- 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?

The elements of the offence seem to be in line with equivalent regulation in the EU and the wording around fault element of "intent" is in line with UK law and other regulations that involve deliberate breaches in legislation.

We have no comments on the civil liability provisions.

We have no comments on proposed jurisdictional reach of the proposed offence.

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?

STOXX has no comments on this question.

18. Do you have any other comments?

STOXX would like to recommend CFR to consider other global benchmark regulations and the IOSCO principles when deciding whether or not to include regulated data benchmarks such as the S&P/ASX200. As mentioned in our previous answers these benchmarks provide such a low risk to market participants and therefore including these in a regulation would likely mean unnecessary burden for the regulator and the benchmark administrator, would likely reduce competition in Australia and could put Australian market participants at a disadvantage to the rest of the global market.

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

We would like to point out that regulatory requirements and compliance with such regulations usually and naturally provide for additional cost factors within the industry. However, as long as the underlying regulation is being defined and applied in a proportionate way, usually its overall benefits should outweigh its overall cost.

In order for the any proposed regulation in Australia not to increase cost along the value chain without benefits outweighing them, the Regulation needs to provide for sufficient flexibility and proportionality.

Many thanks for allowing us to respond to your consultation. Should you have any questions relating to our submission please contact Rob Barker, Senior Regulatory Advisor, at robert.barker@stox.com or +41 58 399 4134.

Yours Sincerely,

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