MSCI RESPONSE TO THE ASIC CONSULTATION PAPER 292: IMPLEMENTING THE FINANCIAL BENCHMARK REGULATORY REGIME

MSCI

August 2017

MSCI supports ASIC's efforts to improve benchmark quality and integrity through ASIC's proposal. MSCI also supports ASIC's efforts in aligning to international standards. MSCI appreciates opportunity to comment on this consultation and we are available for any questions that ASIC may have.

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MSCI is a leading provider of investment decision support tools to institutional investors globally, including asset managers, banks, hedge funds and pension funds. MSCI products and services include indexes and portfolio risk and performance analytics. MSCI has research and commercial offices around the world. MSCI has over 6000 customers worldwide across MSCI's different business units.

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- passive fund managers to issue passive funds and ETFs based on the indexes;
- broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally;
- stock exchanges to create equity index linked futures and options contracts; and
- CCPs to calculate the risks of its positions for index linked futures and options contracts.

In each of 2014, 2015 and 2016, MSCI announced that it successfully completed an assurance review of its implementation of the IOSCO Principles for Financial Benchmarks. MSCI engaged PricewaterhouseCoopers LLP (PwC) to perform the reviews. The full report, including the PwC assurance review, for MSCI equity indexes (as well as select IPD real estate indexes and benchmarks) are available at www.msci.com/products/indexes/regulation.html.

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MSCI COMMENTS

Question Number	Question	MSCI response
B1Q1	Do you agree with our approach to maintaining international and cross-border regulatory consistency?	Yes, we generally agree with the use of the IOSCO Principles for Financial Benchmarks (IOSCO Principles), provided that the proportionality regime within the IOSCO Principles, including the comply and explain regime, is preserved to allow for applicability across different types of benchmarks.
B2Q1	Do you have feedback on the five proposed additional requirements set out under proposal B2?	(a) We would question the need for capital requirements in Sections 2.1.5 and 2.1.7 given that benchmark administrators, as administrators, are not managing client monies, taking deposits or issuing financial products. This is also inconsistent with the EU benchmark regulation. We would also question the obligation around resourcing. While ensuring that staff is qualified, it is very subjective to require that an "appropriate" number of people support a particular task. Is that x or x+1 or x+2 people and how is that to be proven or evidenced? (b) We believe that the risk management under the benchmark regulation should be related to administration and not cover more risks such as general "legal" risks which can go well beyond administration and are outside the scope of administration activities. (c) The record keeping obligations can be onerous for equity price data, in particular real-time data. The EU benchmark regulation includes a carve out for this data from record keeping because it can be obtained from the stock

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		exchanges. Generally, we believe that the time period for retention should be 5 years so that it is consistent with IOSCO Principles and regulation such as the EU benchmark regulation.
B3Q1	Do you agree with our proposed approach to rulemaking and regulatory guidance?	We agree with aligning with the IOSCO Principles and other regulation to promote international consistency. We also agree that proportionality should be adopted to address differences in types of benchmarks. In that light: • It is important to define contributors as those contributing data that is created solely for use in the benchmark, otherwise organizations like stock exchanges that provide stock prices for equity benchmarks become contributors (and that is inconsistent with the IOSCO Principles and the EU benchmark regulation). • The definition of “Interest” is unclear and seems circular. The benchmark doesn’t measure the price the assets. The benchmark measures the market, and uses the price of the underlying assets to do so. To align with international regulation believe that it should refer to the price of the underlying asset. For equity benchmarks, we believe that is the stock prices. While other data can be used for index calculation, such as FX rates, numbers of shares, etc. the “input data” or “interest” for the equity benchmark is the stock price. • We believe that 2.1.1(b)(iv) should be deleted. The benchmark should measure the market in accordance with its methodology. It should not take into consideration the strategy or goal of the financial products issued on it, otherwise it introduces conflicts of interest into the benchmark decision making process. The impact on the performance of financial products should not be a consideration in benchmark decisions, for example.

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		• We believe that 2.1.2(a)(v) should be deleted. Distribution of indexes should not be considered an administration function. Indexes are typically distributed through standard data feeds provided by varieties of distributors and terminals and that goes beyond “administration” in other regulation, which generally refers to the development, maintenance and calculation of benchmarks. • In Section 2.2.1, we believe that the benchmark would measure the relevant market not the Interest. Please see above. • In Section 2.2.2, input data not always be transactional, especially in private markets. That should be provisioned for as in the IOSCO Principles, for example. • In Section 2.2.4, ASIC should not receive any information prior to the market and if the information is publicly disclosed it is unclear why a separate notification needs to be sent to ASIC. • We believe that Section 2.6.1(a) should be deleted. The Interest is not the administrator’s data. Administrators typically will not have the right to make that data public. It would require the administrator to breach its agreements with the data provider. For example, for equity indexes, equity prices (closing and real-time) are the stock exchange’s data, not the administrator’s, and the stock exchanges impose contractual restrictions on the use/distribution of their data. Further, a similar clause was specifically deleted from the EU benchmark regulation, so this requirement would be inconsistent with the EU benchmark regulation. No such equivalent provision is in the IOSCO Principles. • We believe that Section 2.6.2 should be deleted. While we support efforts to improve benchmark standards, we believe that forcing the public disclosure of commercial terms and conditions (including fees) and the licensing of

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		benchmarks on non-discriminatory terms is unnecessary for the development, calculation and maintenance of benchmarks, and is inconsistent with the IOSCO Principles as well as other benchmark regulation in other jurisdictions. It is not relevant to improving benchmark standards and has the potential to introduce a competitive distortion in an otherwise competitive marketplace. As such, we believe that it is overreaching.
B3Q2	Does the alignment between the proposed administration rules and regulatory guidance, and international or overseas regulatory requirements need to be adjusted? If so, please provide details in your response.	We believe that RG 000.22 should be deleted for the reasons outlined above in relation to Section 2.1.1(b)(iv) the administration rules. We believe that the reference to dissemination should be deleted from RG 000.26 as we have explained above. We believe that resourcing requirements under RG 000.39 should be deleted as they are very subjective. We believe that RG 000.42 should be deleted as explained above. We believe that RG 000.48 should reference the market to be measured, not the Interest, as explained above. We believe that RG 000.54 is far more onerous to similar international rules and should be revised. Global equity benchmarks can use data from 70-80 stock exchanges globally with 80-100 more data providers for data such as number of shares, FX rates, fundamental data, etc. To require changes to contracts with all of those data providers for the Australian regulation is more than the IOSCO Principles or the EU benchmark regulation. If the data is not create solely for the purpose of benchmark calculation (and instead has an independent purpose), it is unclear why codes of conduct or contractual renegotiations with hundreds of data vendors is necessary or appropriate. For RG 000.58, please see above. For RG 000.64, the benchmark administrator does not have this information. The product issuer does and any financial product transition plan needs to be owned and handled by the financial product issuer, not the benchmark

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		administrator. We believe that the "Guidelines or code of conduct on the responsibilities of contributors" is unworkable for the reasons identified above. For equity indexes, data can be submitted on a real time or end of day basis. The requirements for contributors would not work in practice and also seem unnecessary where data (such as stock exchange prices, FX rates, companies earnings) has a separate independent purposes outside of benchmark calculation. "Contributors" should be those who provide data that is created solely for benchmark calculation (and not data that has an independent purpose). For RG 000.70, please see above. For the section titled "Fair, reasonable and non-discriminatory access", we believe this should be deleted as explained above. For the compelled rules, we believe that contributors should be limited to those providing data that is created solely for benchmark calculation.
C1Q1	Do you have feedback on the list of potential significant benchmarks based on the criteria in the draft legislation?	We believe that significant benchmarks should only have that designation if there are no reasonable substitutes in the market place.

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