

International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

16 May 2013

Dear Sirs,

Response submission from the International Capital Market Association (ICMA)

Re: IOSCO consultation report on “Principles for Financial Benchmarks”

Introduction:

The ICMA¹ is a pan-European self regulatory organisation and an influential voice for the global capital market. It has a membership of over 420 firms and represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges and other venues, central banks, law firms and other professional advisers. The ICMA's market conventions and standards have been the pillars of the international debt market for well over 40 years.

The ICMA notes that on 16 April IOSCO published its consultation report on “Principles for Financial Benchmarks”. The ICMA further notes that through this consultation IOSCO seeks public comments on a set of high-level principles for benchmarks used in global financial markets; and, because of the wide diversity of benchmarks, is also asking for public comment on a subset of more detailed principles for benchmarks having specific risks arising from their reliance on submissions and/or their ownership structure.

Overall commentary:

This IOSCO consultation report is the latest step in IOSCO's on-going work in relation to financial benchmarks. Under date of 11 February 2013, the ICMA made a response submission² to IOSCO's 11 January 2013 consultation report on “Financial Benchmarks”. This 11 February 2013 ICMA response submission drew attention to views consistently expressed by the ICMA in response to other related work undertaken by the UK's Wheatley Review and by the European Commission; and the ICMA respectfully asks that IOSCO continues to fully consider this prior submission.

¹ For more information regarding ICMA please go to <http://www.icmagroup.org/>

² <http://www.icmagroup.org/assets/documents/Regulatory/Other-projects/IOSCO-benchmarks-11Feb2013.pdf>

Detailed commentary:

The ICMA believes that there is value in the development of an internationally agreed set of principles for financial benchmarks and is, accordingly, pleased to see IOSCO's efforts in this regard. In detail, however, the majority of the matters covered by this work on principles lie beyond the ICMA's area of core concern and the ICMA will therefore at this stage leave it to others to comment on these matters.

The one particular aspect of IOSCO's current consultation which is of very direct interest to the ICMA is the strong emphasis that IOSCO's proposed principle #7 "Data Sufficiency" places on the use of transactional data. The ICMA does not dispute that transactional data has an important role to play in the setting of financial benchmarks, but neither does it consider that the use of such data is a panacea which will automatically ensure the reliability of a financial benchmark. The relevance of this caveat is likely to be most pertinent in situations where there are relatively small volumes of transactional data suitable for use in the setting of a desirable benchmark.

In this context, the ICMA wishes to particularly underscore its clearly stated prior views that:

- (i) it is for the market to choose, as a commercial matter, which reference rates to use for new transactions; and
- (ii) it is important that any reform of rate-setting processes for existing transactions referenced to indices does not disrupt the international capital market

In addition and without prejudice to the full content of the ICMA's 11 February 2013 submission, the ICMA repeats the following few paragraphs which generically restate some of its earlier key points:

- Given the ICMA's central role in sustaining and promoting an efficient international bond market, the ICMA is extremely anxious to see that index based bond contracts continue to have a readily available applicable pricing reference for so long as they are outstanding in the market. Naturally the ICMA is as keen as anyone that the market can have confidence in the index values which are used to price these instruments, such that current and, for so long as it remains commercially desirable to issue such instruments, future such securities can be originated and traded with confidence. Clearly such confidence needs to be shared by both index based rate payers and receivers. Given this the ICMA sees a clear case for effective governance of indices to ensure trust in the rate setting process. This should include appropriate regulatory powers, both to discourage any abusive behaviour and to administer proportionate sanctions in case any future cases of market abuse were to occur.
- The ICMA is particularly concerned by the potential for disruption in the market which could arise in case any changes to indices were to lead to issues regarding the continuity of existing securities contracts – the ICMA highlights that the Wheatley Review's agreed proposals, to significantly curtail the current range of daily LIBOR settings, do give rise to just such concerns. Bond contracts are bi-lateral as between issuers and each individual bondholder/noteholder. This means that it is highly impractical to make changes to the use of indices within outstanding contracts, as holders would have to agree any changes with the issuers – either in noteholder meetings or possibly through written noteholder votes. As any applicable reference index is one of the key pricing terms for an index based security, a majority, or indeed in some cases unanimity, amongst holders would be necessary, in respect of each outstanding series of notes, in order to effect a change. The ICMA notes that any non-transitory change in the time series for an index (a step-up or –down), or a structural increase in volatility, would have a significant effect on the value of contracts; and may also affect the market for future transactions.

- Broadly speaking, the ICMA considers that where market participants have chosen to utilise a certain index based reference, this is reflective of the fact that it is commercially suitable. This does not mean that alternatives would not prove suitable in some instances, but if there already were significantly better alternatives it seems reasonable to expect that the market would have migrated towards their utilisation. In case the market is to migrate away from the use of any particular index based reference, it will be important for those holding both investors (assets holders) and issuers (the associated liability holders) to be able to migrate in a coordinated manner.
- The ICMA wishes to emphasise that, whilst it believes that it is commercially appropriate for the market to determine which benchmarks are best suited to the needs of specific transactions, this does not contradict the establishment of relevant regulatory and governance frameworks to underpin the robustness of whichever benchmark the market opts to utilise.
- In the ICMA's opinion, the negative impact of legal and commercial uncertainties are likely to prove more damaging to the international capital markets than doubts over the on-going accuracy of index rate setting process. Accordingly any measures which could give rise to an adverse impact as to the legal or commercial certainty of transactions should be very carefully examined in advance of any decision on their adoption.

Concluding statement:

The ICMA appreciates the valuable contribution made by IOSCO through this public consultation process and would like to thank IOSCO for its careful consideration of this response, which the ICMA would be happy to discuss in a meeting with IOSCO's task force should they consider such to be helpful. The ICMA will continue closely to follow related developments and remains at your disposal to discuss any of the above points, or any further questions which may be relevant to the assessment of international capital market impacts as work progresses.

Yours faithfully,



David Hiscock
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ICMA