

May 16, 2013

**Comments on the International Organization of Securities Commissions' Consultation Report
"Principles for Financial Benchmarks" published on April 16, 2013**

Japanese Bankers Association

We, the Japanese Bankers Association ("JBA"), would like to express our gratitude for this opportunity to comment on the Consultation Report "Principles for Financial Benchmarks" published in April 2013 by the International Organization of Securities Commissions ("IOSCO"). Currently, the JBA is exploring specific measures to maintain/enhance the credibility of the JBA TIBOR and we should benefit from these IOSCO's proposed principles for benchmarks. We would like to fully consider the content of the Consultation Report in proceeding with our work.

We hope that our comments below will be of assistance as you work towards finalising the Report.

<General comment>

We believe that the Consultation Report's proposed principles that cover a broad range of financial benchmarks, from interest rates to oil prices, will contribute considerably to the enhanced credibility and transparency of Benchmarks, and eventually improve those of various markets in which such Benchmarks are used, leading to the development of sound markets. Further, while the Consultation Report states that the principles should be implemented by Benchmark Administrators and Submitters, it also states that the application of these principles should be proportional to the size, and risks posed by each Benchmark Administrator and benchmark setting process. It clearly maintains the position that IOSCO does not expect a *one-size-fits-all* method of implementation as mentioned in the previous Consultation Report. We understand this stance considers different jurisdiction, usage and other relevant factors across the countries on Benchmarks. We strongly support IOSCO's stance in this respect as it should be helpful for the retention and development of various Benchmarks prevailing across jurisdictions.

However, in our opinion the following four areas should be addressed in order to realise the objective of the Consultation Report.

First of all, taking into consideration that Benchmark regulatory frameworks and usage of Benchmarks differ across jurisdictions, it is requested that IOSCO to provide the Administrators of existing Benchmarks with a sufficient lead time to prepare for the implementation of the principles. Particularly, if the Administrator assumes primary responsibility for all aspects of the Benchmark determination process as proposed by the Consultation Report, the Administrator needs, among other things, to modify its existing governance arrangements, to newly establish relevant rules and to increase its resources. In order to achieve IOSCO's objective of policy recommendations, the Administrator would need a preparation period long enough to complete at least these structural/procedural changes. Further, there is also a

possibility that a transition period is required when any Benchmark characteristics become subject to modification. In a case that modification on the nature of a Benchmark is necessary, we need sufficient time to consider its consistency as Benchmark, evaluation on the modification, and notification to Benchmark users.

Secondly, it should be noted that requiring the Administrator to develop guidelines for Submitters, and uniformly requiring all Submitters to comply with such rules without due consideration, may significantly decrease incentives to participate in the Submitter group or to construct new Benchmarks, thereby unintentionally undermine the credibility of Benchmarks and convenience for users.

Thirdly, the Consultation Report stipulates that, except for those obligations to be undertaken by Submitters, the Administrator should be primarily responsible for maintaining/enhancing credible and transparent Benchmarks. Nonetheless, the details and scope of the Administrator's responsibilities should be determined according to the size and risks of Benchmarks on a case-by-case basis.

And finally, the social value of Benchmarks is essentially underpinned by the user's needs and whether to refer a Benchmark is decided at user's responsibility. Therefore, it is important to take into account the user's needs in discussing the criteria to guide the selection of an alternative Benchmark and other matters set out in section "12. Transition".

<Specific comments>

(Q1) (No comment.)

(Q2) We support the proposed additional requirements, provided that the Administrator takes into consideration the Submitter's feasibility and fully discusses with the Submitter when developing Submitter Code of Conduct. Specifics that need to be considered are discussed on a principle-by-principle basis below.

(Principle 5)

In carrying out the oversight function of the Submitter by the Administrator, as set out in Principle 5 a), the definition of Benchmark and characteristics of the Submitter should be taken into account.

Some Benchmarks, by their definition, require a submitted rate to reflect factors such as the Submitter's market view and credit risk. In such cases, if the Administrator scrutinises and monitors in a uniform manner regardless of the characteristics of a Benchmark, the characteristics of the Benchmark may be impaired, and thereby the consistency of Benchmark may be lost. Further, it should also be noted that excessive scrutiny and monitoring by the Administrator over the rates submitted by Submitters, may lead to a situation where every submitted rates may converge to a specific standardized level.

(Principle 10)

The Consultation Report sets out the additional principle which is applicable where a Benchmark is based on Submissions, requiring the Administrator to clearly establish criteria for including and excluding Submitters. Such criteria should consider any issues arising from the location of the Submitter, if in a different jurisdiction to the Administrator.

In this regard, first, we would like to confirm whether this additional principle to establish such criteria is not intended to limit the submission of rates by those Submitters outside the jurisdiction of the Administrator. Further, we would also like to confirm whether the Submitter should be primarily responsible for addressing any relevant local regulatory issues as it is difficult for the Administrator, if in a different jurisdiction to the Submitter, to understand the national laws and regulations applicable in jurisdictions of respective Submitters.

(Principle 13)

It should be noted that the effectiveness of the additional principle e) to require the policies to discourage the interim withdrawal of Submitters from surveys or Panels, may be limited depending on regulatory regimes across jurisdictions and/or the authority of Administrators.

Further, the additional principle f) requiring the policies to encourage Submitters to submit all relevant data may be overly broad if requiring “all” relevant data. It is our concern that this may cause an excessive burden on Submitters in retaining data and therefore we expect that Administrators will appropriately define the scope of relevant data to be submitted in the Submitter Code of Conduct.

(Principle 17)

With regard to the additional principle d) requiring Submitters to retain records on any interaction with the Administrator may be burdensome unless the scope of such records is specifically defined. It is expected that Administrators will appropriately define the scope of such records in the Submitter Code of Conduct in order to avoid an excessive burden on Submitters.

(Q3) We are basically in support of publishing the content of Expert Judgment provided that the content and method for such publication are thoroughly discussed between the Administrator and Submitter and are determined based on the characteristics of each Benchmark in order to ensure effectiveness.

To our understanding, it is the responsibility of the Submitters to determine, based on their own judgment, whether and to what extent Expert Judgment should be exercised, within the extent permitted under guidelines established by the Administrator in line with the principle

set out in the Consultation Report. However, we also expect Administrators to clearly specify cases where Expert Judgment should be used to enhance the ability of analysis by Benchmark users.

(Q4) (Principle 4) d)

Where a Benchmark is based on Submissions, we presume that it is practically difficult for the Administrator to have a sufficient number of staff members who possess an equal or higher level of expertise than Submitters. Given this, coupled with the fact that it takes considerable time to train/develop specialised personnel, it is requested that IOSCO considers allowing phased-in implementation or sufficient lead time.