Monetary Authority of Singapore

# RESPONSE TO FEEDBACK RECEIVED – PUBLIC CONSULTATION ON PROPOSED REGULATORY FRAMEWORK FOR FINANCIAL BENCHMARKS

## 1 BACKGROUND

1.1 On 14 June 2013, MAS issued a consultation paper on the proposed regulatory framework for financial benchmarks. The consultation closed on 15 July 2013 with feedback received from 24 respondents (list of respondents is at **Annex A**). We would like to thank all respondents for their feedback.

1.2 MAS has considered the feedback received. Comments that are of wider interest, together with MAS' responses, are set out in the following sections.

## 2 DEFINTION OF FINANCIAL BENCHMARKS

Proprietary Benchmarks and Single Bank Administered Rates

2.1 Most respondents supported MAS' proposed definition of a financial benchmark[1]. However, some respondents highlighted that the proposed scope of the definition could be too broad. They suggested that proprietary benchmarks produced by a bank for the sole purpose of using it for its own products in bilateral bespoke contracts, and that were not made available for use by third parties should be excluded. One respondent also suggested that rates computed internally by a single bank for purposes of determining lending rates to prime (or other classes) of borrowers (**"single bank administered rate"**) should be excluded from the definition of a financial benchmark. Another respondent highlighted that a publishing entity might not be aware that it was exposed to criminal liability as third parties could use the benchmark as a basis for financial products without its knowledge.

[1] A "financial benchmark" was proposed to be defined as:

*(1) Any price, estimate, rate, index or value that is –*

*(a) Calculated periodically using a formula or other methodology; and*

*(b) Used for reference to determine –*

*(i) the interest payable or other sums due on deposits or loan agreements;*

*(ii) the price, value or performance of any capital markets product as defined under the Securities and Futures Act (**"SFA"**) or investment product as defined under the Financial Advisers Act (**"FAA"**); or*

*(iii) the price, value or performance of any product offered by any entities regulated by MAS;*

*(2) Or such other price, estimate, index or value as MAS may prescribe.*

**MAS' Response**

2.2 A financial benchmark is generally understood to be a rate or value that is meant to represent the state of a market in respect of one or more underlying things. It is therefore typically determined by reference to information on transactions in the market or expressions of opinion provided by market participants in respect of transactions in the relevant underlying market to the Administrator of the benchmark. They are also typically made available to third parties to use as reference in financial instruments that they construct or financial transactions that they enter into. Examples of commonly known financial benchmarks include equity and bond indices, as well as interest rate and foreign exchange (**"FX"**) benchmarks.

2.3 MAS does not intend to include proprietary benchmarks within the definition of a "financial benchmark" as long as these benchmarks are not made available to the public. For example, benchmarks determined by a bank for its own use as reference in bespoke bilateral contracts entered into by the bank itself will not be considered a "financial benchmark".

2.4 We are also of the view that a single bank administered rate that is used internally to set lending rates for loans to various classes of borrowers essentially represents a bank's own commercial pricing decisions, and would not be caught as a financial benchmark so long as they are intended only for use in transactions or agreements that the bank enters into.

2.5 We will revise the definition of a financial benchmark to clarify that benchmarks not made available to the public and benchmarks that are only intended for use by its administrator are not within the definition.

2.6 We acknowledge that a person could be unaware that a price, estimate, rate, index or value that he makes available to the public is used by third parties to reference certain financial products, even though it was not intended for such use. However, anyone who makes a price, estimate, rate, index or value available to the public should be cognizant of the risks of such use by third parties and therefore be mindful of the potential criminal or civil liability arising from this set of proposed legislation, if none of the exceptions to the definition of financial benchmark applies.

New Rates or Indices Prescribed by MAS

2.7 A few respondents suggested that MAS should conduct a public consultation before any new rate or index that falls outside the proposed definition of a "financial benchmark" is prescribed as a "financial benchmark".

**MAS' Response**

*2.*8 We agree in principle with the respondents' suggestion and intend to consult before prescribing any new rate or index. Nevertheless, depending on the market impact and specific circumstances involving such benchmarks, MAS may decide that it would be more appropriate to conduct a closed-consultation process involving the relevant stakeholders.

## 3 CRIMINAL AND CIVIL SANCTIONS FOR BENCHMARK MANIPULATION

3.1 Respondents supported the proposed criminalization and introduction of civil sanctions for the manipulation of financial benchmarks. However, some respondents sought clarification and guidance on the scope of manipulation which will be caught under the proposed legislation.

3.2 For instance, some respondents suggested that the proposed offences should be restricted to where the accused intended by his acts or omissions to influence the benchmark, and where he intended or knew it would be likely that a financial transaction will thereby be affected. Others have sought clarification on whether financial institutions who act as intermediaries receiving and executing instructions of a client will be exposed to liability.

**MAS' Response**

3.3 The state of mind of an accused will be a key element in determining liability under the proposed offences. It is proposed that the mental element for the new offences will be similar to the existing provisions for false trading and market rigging i.e. a person who does any act that creates or is likely to create a false or misleading appearance will be liable if his purpose or any one of his purposes for which he does the act is to create a false or misleading appearance, or if he knows or is reckless as to whether, the act will or will be likely to result in the false or misleading appearance.

Liability of Corporate Entities

3.4 Several respondents further queried whether liability would be attributed to a corporate entity if it has implemented and ensured compliance of various internal measures to prevent benchmark manipulation. Respondents also sought clarification on whether they would be liable to third parties if civil liability is imposed on the corporate entity.

**MAS' Response**

3.5 Criminal or civil liability will be attributed to the corporate entity where the misconduct is committed with the consent or connivance of the corporate entity. Where the misconduct is attributable to the negligence of the corporate entity, the corporate entity will only be subject to civil penalty action. If the corporate entity had gained a profit or avoided a loss as a result of the trader's misconduct, it may also be liable to affected third parties.

## 4 REGULATION OF ACTIVITIES RELATED TO THE SETTING OF "DESIGNATED BENCHMARKS"

Designation of Key Financial Benchmarks

4.1 There was broad support from respondents for our proposed regulatory approach that focuses on key financial benchmarks that are to be designated based on a consideration of a benchmark's systemic importance and its susceptibility to manipulation. In this regard, respondents generally agreed that MAS' proposal to designate the Singapore Interbank Offered Rate (**"SIBOR"**), Swap Offer Rate (**"SOR"**) and FX benchmarks administered by the Association of Banks in Singapore (**"ABS"**) was an appropriate and proportionate response.

4.2 A few respondents noted that the ABS in consultation with the Singapore Foreign Exchange Market Committee (**"SFEMC"**) had implemented the new methodology for computing FX Benchmarks based on inter-bank transactions electronically routed and captured though MAS-approved money brokers (**"traded methodology"**). They therefore suggested that it might not be necessary for MAS to designate FX Benchmarks as these benchmarks were not as systemically important to the general public as compared to SIBOR and SOR.

4.3 One respondent also sought clarity on how MAS would determine that a benchmark Administrator was legally within its jurisdiction, and whether MAS would designate a benchmark administered overseas as a key financial benchmark.

**MAS' Response**

4.4 We welcome the efforts of the ABS and SFEMC to strengthen the robustness of FX Benchmarks through the implementation of a transaction-based methodology. This reduces the degree of discretion involved in setting these benchmarks, and hence its vulnerability to manipulation. We note that these FX Benchmarks are primarily used by institutional investors, and hence we agree that, for now, it is unlikely that any disruption to these benchmarks would have as significant an impact to the public as compared to SIBOR or SOR. Nonetheless,

MAS will continue to monitor the use of FX Benchmarks to determine if it becomes in the public interest to designate such benchmarks.

4.5 We understand that the SFEMC will continue to explore measures to further enhance the representativeness and transparency of FX Benchmarks. We welcome this, and will take into consideration any further measures undertaken when we implement the designation of key financial benchmarks via regulations at a later stage.

4.6 Regarding how MAS would determine whether a financial benchmark administered overseas would be designated, MAS will take into account the benchmark's impact to Singapore, particularly its susceptibility to manipulation and the impact to Singapore should there be signs of manipulation. Accordingly, MAS will consider the location of the benchmark Administrator and the regulatory regime which the benchmark Administrator is subject to in the overseas jurisdiction.

## 5 REQUIREMENTS FOR ADMINISTRATORS OF DESIGNATED BENCHMARKS

Oversight Committee, Transition Protocols, and Code of Conduct

5.1 One respondent highlighted that requiring members of the Oversight Committee to be approved by MAS could increase compliance costs as it was likely that the Administrator would have to provide liability insurance for members of this committee. The respondent further suggested that such a requirement could disincentivise the most appropriate individuals from coming forward.

5.2 Some respondents requested for MAS to provide more information regarding the proposed requirement on the Administrator's procedures for the maintenance of parallel benchmarks for a defined period of time, and asked whether such parallel benchmarks would need to be published.

5.3 Several respondents also suggested that for the ABS administered benchmarks, the proposed requirement for the Administrator's Code of Conduct for Submitters would be satisfied by the industry guidance set out in *the Singapore Guide to Conduct & Market Practices for Treasury Activities* (**"the Blue Book"**).

**MAS' Response**

5.4 Our view is that requiring MAS' approval would not create disincentives for individuals to come forward. On the contrary, this is intended to safeguard the

appointment process, such that only the most qualified individuals would be appointed to the committee.

5.5 In respect of the specific procedures for the maintenance of parallel benchmarks, MAS is of the view that the transition protocols for specific designated benchmarks should be decided by the relevant Oversight Committee taking into account the nature of the designated benchmark as well as the characteristics of its underlying market. Hence, we will not be overly prescriptive but would require an Administrator to put in place clear policies and procedures to address possible transition issues arising from the termination of a designated benchmark or one of its tenors.

5.6 Regarding the Code of Conduct for Submitters for the designated benchmarks administered by ABS, we welcome the ABS-SFEMC's issuance of industry guidelines on benchmark setting activities referenced in the relevant sections of the Blue Book[2]. When the regulatory regime for the Administrator of a designated benchmark is implemented, the Administrator will be required to seek MAS' approval of its Code of Conduct for Submitters. Assuming that ABS administered benchmarks are designated under the SFA, ABS will need to seek MAS' approval of the Code of Conduct for Submitters of the designated benchmarks administered by them. While MAS intends to issue further details of the requirements in respect of the Code of Conduct at a later stage, we expect that the requirements will generally be aligned with the relevant principles under the IOSCO Principles on Financial Benchmarks.

Transparency and Training Requirements

5.7 Some respondents suggested that MAS should consider imposing additional requirements on an Administrator to –

(i) Set out a clear definition and explanation of the benchmark methodology, including the extent to which expert judgment was used to derive a benchmark.
(ii) Solicit inputs from market participants before adopting major changes to a benchmark methodology, and to publish such adopted changes if any.
(iii) Publish the contingency provisions for possible episodes of market disruption or illiquidity.
(iv) Set out minimum requirements for the expertise of staff involved in administering the designated benchmark.

[2] The relevant sections of the Blue Book are "Chapter I: Ethics & Behavioral Standards", "Chapter II: Risk Management Principles", "Chapter III: General Dealing and Market Conduct", and "Chapter XII: Benchmark Rate Setting".

**MAS' Response**

5.8 We agree that the above suggestions would help enhance transparency and ensure minimum standards for the relevant staff involved in the benchmark administration. These requirements are also in line with the IOSCO Principles for Financial Benchmarks[3] (**"IOSCO Principles"**). MAS will incorporate these requirements in the regulatory framework via subsidiary legislation or guidelines as appropriate.

Benchmarks Based on Traded Methodology

5.9 One respondent sought further clarity on how the proposed ongoing requirements on Administrators would apply for designated benchmarks based on the traded methodology.

**MAS' Response**

5.10 Specific regulatory requirements designed to strengthen governance measures for survey-based benchmarks would not apply. For example, the requirement for the Code of Conduct for Submitters to include guidance for a hierarchy of data inputs and the appropriate use of expert judgement would not apply. Notwithstanding the above, if the designated benchmark's contingency provisions for periods of market disruption entail a survey-based methodology, MAS would require the Administrator to set out relevant guidance for such situations.

## 6 REQUIREMENTS FOR SUBMITTERS OF DESIGNATED BENCHMARKS

Record Keeping Requirements

6.1 Some respondents highlighted that written records of aggregated exposures to instruments which reference designated benchmarks may only be available at the trading desk level rather than for individual traders. One respondent commented that keeping detailed records as proposed would require significant enhancement to its IT infrastructure and internal processes, and would require a reasonable implementation timeframe. The respondent also suggested that the scope of records should only be confined to trades booked in Singapore.

[3] The IOSCO Principles for Financial Benchmarks is available here: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf

**MAS' Response**

6.2 We acknowledge that the proposed record keeping requirements would increase compliance costs to the extent that enhancements are needed. However, we are of the view that such records are critical to allow for the necessary audits and checks to be conducted in order to monitor compliance with the relevant regulatory requirements. In addition, should there be an allegation or suspicion of benchmark manipulation, such records would provide useful evidence to exonerate parties involved.

6.3 As such, it is important for the scope of records to capture the trades conducted by the Singapore branch or subsidiary regardless of where a trade is booked. MAS will therefore retain the requirement for written records to include records of individual traders' exposures to instruments which reference a designated benchmark. For avoidance of doubt, such records would not need to be reported to MAS on a periodic basis, and would only be required upon request. Noting that significant enhancements may be needed in some instances, we will provide a reasonable transition period for implementation when the relevant requirements are drafted in subsidiary legislation.

Benchmarks Based on Traded Methodology

6.4 Several respondents requested clarification on how the proposed definition of a Submitter would apply for benchmarks based on a traded methodology. Several bank and money broker responded that they should not be considered as "Submitters", as they transact or execute FX trades for commercial purposes in the normal course of their business. They highlighted that their transactions were not for the purpose of providing inputs to the Administrator to determine a designated benchmark.

**MAS' Response**

6.5 Under the new traded methodology for SOR and FX Benchmarks, we note that relevant underlying interbank trades conducted through money brokers[4] are captured to compute the benchmark. We recognize that the various market participants involved in transacting or executing FX trades in the relevant underlying market do not do so for the purpose of providing inputs to the Administrator to determine the benchmark. Despite this, it is vital to safeguard the integrity of the information and processes involved in the chain of transmitting information to the Administrator, which these market participants are involved in.

[4] This includes electronic dealing platforms like Reuters Dealing System and EBS.

6.6 Taking into account the new traded methodology, we intend to confine the scope of a Submitter to money brokers for benchmarks based on a traded methodology. This is because money brokers play a pivotal role in ensuring the correct time-stamping of transactions which is critical in whether a transaction is included to calculate the benchmark. The money brokers are also responsible for entering details of the transactions into the trade reporting system that serves as the source of the data used in determining the FX benchmarks.

6.7 Banks transacting in the underlying market of a designated benchmark based on a traded methodology but which do not submit information for the purpose of determining the benchmark would not be caught as a "Submitter". However, to ensure that MAS would be able to investigate any suspicions of manipulation in relation to such benchmarks, we will impose requirements, via regulations under the SFA[5], on banks to keep written records of their transactions in the underlying market of the relevant designated benchmark and their exposure to instruments which reference the relevant designated benchmark.

Independent External Auditor

6.8 A number of respondents commented that the proposal to require annual independent external audits for Submitters in respect of their benchmark submission activities would incur additional costs. They instead suggested for such a review to be conducted by the internal audit function.

**MAS' Response**

6.9 We consider it important for an independent external party to conduct checks given the scale of deficiencies in governance and risk management observed. We intend that an annual independent external audit would generally be the norm, but would reserve powers to vary the frequency, taking into consideration our supervisory review of the Submitter's compliance with the relevant regulatory requirements.

Data on Underlying Market

6.10 A few respondents highlighted issues related to the compilation of data on the underlying market of a designated benchmark. One respondent commented that the viability of the proposal for an Administrator to publish quarterly aggregate statistics outlining the activity in the underlying market of the designated benchmark could depend on the specific underlying market in question. It was highlighted that the proposal might prove complex to implement as it could be operationally onerous for Submitters to compile such information,

[5] Such regulations will be issued under Part VIAA.

and some Submitters might have difficulties disclosing such information due to confidentiality concerns. Another respondent suggested for MAS to impose requirements on Submitters to provide underlying data used to generate a benchmark submission to the Administrator. This would allow Administrators to validate individual submissions and to play a crucial role in ensuring the quality of the benchmark.

**MAS' Response**

6.11 To the extent possible, we encourage Administrators to publish quarterly aggregate statistics on the activity of the underlying market of the designated benchmark. This would improve transparency and facilitate market participants' awareness of the volume of underlying transactions. The IOSCO Principles[6] also recommended that an Administrator should periodically review the conditions of the underlying market of the benchmark to determine if a change in the benchmark methodology is needed, and to publish a summary of such reviews where material changes have been made.

6.12 We agree that a Submitter should be able to provide the basis used to generate a submission for verification or surveillance purposes if requested by Administrators. For example, this could include an explanation of which limb under the hierarchy of data inputs was relied on to generate a survey-based submission, or an explanation of how and to what extent expert judgement was used if any. This would allow the Administrator to monitor benchmark submissions to identify any market anomalies or suspected breaches of practice standards as appropriate.

Nature of Sanctions for Breaches of Ongoing Requirements

6.13 Some respondents asked about the nature of sanctions that will be imposed for breaches of ongoing requirements for both Administrators and Submitters for designated benchmarks. In particular, respondents asked if sanctions would apply for benchmarks based on traded methodology, and whether the scope of application of such sanctions would cover both individuals submitting inputs as well as the relevant supervisors.

**MAS' Responses**

6.14 The breaches of ongoing requirements are of a different nature from the sanctions for benchmark manipulation. The nature and severity of sanctions would depend on the seriousness of the breach of the ongoing requirements, regardless whether the benchmarks are based on traded or survey methodology.

[6] See Principle 10 of IOSCO Principles (Periodic Review).

Regulatory sanctions could range from supervisory warnings, formal reprimands, to fines, and in the most severe cases revocation of license. Regulatory sanctions may apply to individuals, supervisors, and/or the corporate entity itself depending on the culpability of the parties involved. The penalties for contravention of applicable regulatory requirements are broadly in line with the penalties under the current SFA. As an example, under our proposed legislative amendments, relevant persons could be liable on conviction to a fine not exceeding $100,000 or imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for every day the offence continues for a breach of a prescribed regulation.

## 7 OTHER FINANCIAL BENCHMARKS

Best Practice Guidelines for Financial Institutions' (**"FIs"**)

7.1 Many respondents highlighted that it would be difficult for FIs to assess if a benchmark Administrator complied with the IOSCO Principles before it used a benchmark as reference in a financial instrument or product. Some respondents also noted that they would not have access to the Administrator's internal processes, and such a move could significantly increase regulatory burden and restrict the range of product offerings. Several respondents also raised concerns that there could be an unlevel playing field if regulators in other jurisdictions do not similarly commit to do the same.

**MAS' Response**

7.2 We acknowledge the concerns raised by the respondents given that benchmark Administrators generally do not share detailed internal processes with market participants. Hence, MAS will not issue such best practice guidelines for FIs at this point. Nonetheless, we encourage FIs to take into consideration the IOSCO Principles when choosing which financial benchmarks to reference in when structuring financial products. This serves to strengthen investors' confidence that the financial products which they offer are sound and credible.

Administrators of Other Benchmarks

7.3 Some respondents cautioned that the proposed regulatory regime for designated benchmarks may not be suitable or practicable to be extended to commodity benchmarks. They highlighted potential challenges given that Administrators of such benchmarks and the respective entities which provide information for the computation of commodity benchmarks were generally not financial institutions. In addition, the submitters to such benchmarks could be located overseas and were often not established in Singapore. The respondents

therefore suggested that should there be new regulations covering commodity benchmarks, a public consultation should be undertaken.

**MAS' Response**

7.4 In view of the diverse types of financial benchmarks and that the administration and usage of many benchmarks occurs across national boundaries, we recognise that any regulatory approach covering the broader spectrum of financial benchmarks including commodity benchmarks requires an internationally coordinated approach. MAS will continue to monitor international regulatory developments on this front, review our regulatory approach, and undertake further public consultation if needed.

## 8 POWERS TO DIRECT PERSONS TO BE SUBMITTERS TO DESIGNATED BENCHMARKS

8.1 Most respondents supported the proposal for MAS to enhance its powers to direct entities to be Submitters to designated benchmarks, but requested for clarity on criteria and timeline, as well as the opportunity to appeal.

**MAS' Response**

8.2 In the revised draft legislation, we have outlined criteria that would be considered when determining if a financial institution is in a position to be a submitter to a designated benchmark. Specifically, MAS will consider the Submitter's market footprint and expertise in the underlying market, as well as the Administrator's selection criteria. Submitters will also have the right of appeal. Notwithstanding this, and in view of the need to maintain market functionality, Submitters would be expected to continue to comply with directions pending final determination of the appeal.

**ANNEX A**

**LIST OF RESPONDENTS TO PUBLIC CONSULTATION ON PROPOSED REGULATORY FRAMEWORK FOR FINANCIAL BENCHMARKS**

1. Association of Banks in Singapore (ABS)
2. Adrian Loo
3. Argus Media Ltd
4. Association of Banks in Singapore (ABS)
5. CME Group Inc.
6. ICIS, Reed Business Information Ltd
7. Life Insurance Association, Singapore
8. Markit Group Ltd
9. Oversea-Chinese Banking Group (OCBC)
10. Platts, McGraw Hill Financial
11. Prudential Assurance Company Singapore Pte Ltd / Eastspring Investments Ltd
12. Royal Bank of Scotland Group Plc (RBS)
13. Singapore Money Brokers Association
14. Sumitomo Mitsui Banking Corporation (SMBC)
15. Thomson Reuters
16. United Overseas Bank (UOB)

*This list includes only the names of respondents who did not request that their submissions be kept confidential.