

February 15, 2013

ESMA and the EBA
Consultation Paper
Principles for Benchmarks-Setting processes in the EU

Via electronic mail to www.esma.europa.eu

Dear Sir:

On behalf of The McGraw-Hill Companies, Inc. which owns the controlling interest in S&P Dow Jones Indices LLC, I thank you for the opportunity to respond to the questions raised in the ESMA/EBA Consultation Paper on Principles for Benchmarks-Setting Processes in the EU dated 11 January 2013 (the "Consultation Paper"). S&P Dow Jones Indices shares ESMA/EBA's goal of enhancing confidence transparency and integrity in key benchmarks and we welcome further engagement with ESMA/EBA as it undertakes its review.

S&P Dow Jones Indices is a leading publisher of a wide variety of indices, many of which are used as benchmarks. We publish over 830,000 indices, including globally-recognized and industry-leading indices such as the S&P 500, the Dow Jones Industrial Average and the S&P/Case Shiller Home Price Indices. In addition to calculating and publishing its own indices, S&P Dow Jones Indices also has a great deal of experience working with third parties and owners of other benchmarks to leverage its oversight and governance protocols, as well as its transparent systems and processes, to act as a custom index calculation agent, calculating, maintaining and distributing over 50,000 custom indices around the globe.

As S&P Dow Jones Indices, we recognize that indices, used as the underlying reference in a broad range of financial products and as a reference by portfolio managers worldwide, are important to a dynamic and robust marketplace. Markets

worldwide benefit from the increased liquidity and investment opportunities that result from index-based products. We also appreciate that there are many types of indices that capture and provide information for a number of different uses from various sources of information. Some of these indices are based on unsubstantiated estimates or surveys, while others, such as those published by S&P Dow Jones Indices, are tied to observable market information, such as actual securities transactions, observable bids and offers or other verifiable market data.

Given these differences, we believe a one size fits all approach is not appropriate. Instead, the key differences between indices that are transparent and are calculated and maintained according to robust governance policies and procedures, and which rely on actual market facts, should be distinguished from those that are not, and which by their nature may therefore need oversight. Failing to make this distinction would unnecessarily increase the cost of using indices that do not pose the same types of concerns as less robust indices and benchmarks. We encourage ESMA/EBA to conduct a thorough review of the characteristics of the different types of indices that are published, their methodologies, uses and user bases, existing governance and transparency policies, and the costs of creating additional layers of oversight, before determining what issues may have relevance for particular market measurements and whether a regulatory response is advisable with respect to a particular type of index. To aid ESMA/EBA in that process, below we set forth our responses to the 10 questions posed in its Consultation Paper.

Thank you again for the opportunity to respond to the Consultation Paper. S&P Dow Jones Indices welcomes the opportunity to discuss these topics at future stages of the consultation process.

Respectfully Submitted,

Respectfully Submitted,
Alexander J. Matturri Jr.
Chief Executive Officer
S&P Dow Jones Indices

ESMA and EBA Consultation Paper

Principles for Benchmarks - Setting processes in the EU

Question 1: Definition of the activities of benchmark setting

Do you agree with the definitions provided in this section? Is this list of activities complete and accurate?

The scope of the report, including the definition of “benchmark,” is quite broad, and we would urge ESMA and the EBA not to take a “one size fits all” approach. S&P Dow Jones Indices believes that it should be placed outside the scope of this report and that its published indices should fall outside of the scope of the defined term “benchmark,” as our role in index publishing is purely analytical and does not encompass the same issues which have drawn attention to other benchmarks, such as interest rate indices.

Once S&P Dow Jones Indices has developed an index, the market alone determines whether it will be adopted as a benchmark; not S&P Dow Jones Indices, its competitors, nor any other entity external to the markets. We believe the adaptation of benchmarks is for the market to decide based on the needs of its participants. As an independent index provider, S&P Dow Jones Indices has an incentive to publish the best product possible according to its established policies and procedures in order for it to be adopted by the market as a viable benchmark.

Moreover, S&P Dow Jones Indices is independent and separate from market participants, product providers and government entities. S&P Dow Jones Indices does not participate in the markets it measures and has no vested interest in the value of any of its indices at any given time. We do not create, manage, issue, trade, or clear any index-linked investment product or derivative.

Because the indices published by S&P Dow Jones Indices do not suffer from the same shortcomings as less robust benchmarks, to the extent that the definitions are sufficiently broad to include the activities of organizations like S&P Dow Jones Indices, they should be narrowed.

Question 2: Principles for benchmarks

Would you consider a set of principles a useful framework for guiding benchmark setting activities until a possible formal regulatory and supervisory framework has been established in the EU?

While S&P Dow Jones Indices supports the promotion of best practice standards, and has adopted such standards in our own operations, we do not believe it necessary to establish definitive governance and transparency principles for indices which have not suffered from problems with either transparency or governance.

In developing and maintaining its indices, we believe there are certain core principles that are essential to developing and maintaining the indices which S&P Dow Jones publishes, and to maintaining our reputation as an industry leader in the index industry. The first such attribute is independence. We are independent and separate from market participants, product providers and government entities. S&P Dow Jones Indices does not participate in the markets it measures and has no vested interest in the value of any of its indices at any given time. We do not create, manage, issue, trade or clear any index-linked investment product or derivative. The second principle is innovation. S&P Dow Jones Indices has made significant investments in technology and other product innovations over the decades in order to develop and maintain its industry-leading indices and constantly create new ones. Those indices are then licensed to a wide variety of exchanges and financial institutions through intellectual property licenses in order to be used for a diverse offering of financial products. In turn, these investments have contributed to the continued growth of financial markets in both developed and developing markets by allowing investors additional choice in the types of index-linked investment products available to them. The third characteristic is transparent systems and processes. S&P Dow Jones Indices provides broad access to its methodologies and research, and the broad dissemination of our indices helps participants understand the markets in which they operate. The fourth characteristic consists of integrity, oversight and governance. S&P Dow Jones Indices has robust independent oversight functions charged with: (a) reviewing its methodologies to ensure they meet stated objectives and continue to address market needs effectively and credibly; (b) publishing and adhering to a transparent construction and calculation methodology; (c) ensuring that editorial functions, including index development, calculation and maintenance, are appropriately firewalled from commercial functions; (d) employing rigorous compliance practices designed to prevent inappropriate behavior and conflicts of interest; and (e) obtaining data and submissions from reputable sources and monitoring of inbound and outbound data and sources to make sure they continue to meet our high standards. S&P Dow Jones Indices believes its benchmarks adhere to these principles. In addition to the principles outlined above, S&P Dow Jones Indices also believes that market participants want to be sure that an index is produced by a dependable index provider with a perceived commitment to the index before a given index will be adopted for use as a benchmark, and therefore the stability and reputation of the index provider is also of critical importance to whether the index will be adopted by the market as a benchmark.

S&P Dow Jones Indices is confident that its own policies and procedures comprise a robust self-regulation of its governance and transparency, as its reputation for such is the cornerstone of its business and the market demands it. It, along with other index publishers who are members of the Index Industry Association, are currently contemplating an index industry code. In light of the significant differences between the indices published by S&P Dow Jones Indices and the other types of benchmarks that prompted ESMA/EBA's current work, however, S&P Dow Jones Indices believes that the work which has been undertaken by it and the other index publishers is well-suited to the index publisher industry and that additional principles are unnecessary.

Question 3: General principles for benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

S&P Dow Jones Indices broadly agrees with many of the principles outlined in this section of the ESMA/EBA consultation paper. However, we do not believe that it is necessary to establish definitive governance requirements through regulation or other similar external oversight. The disadvantage of such external oversight is that it could drive up cost for consumers if such oversight is overly intrusive or onerous and could stifle innovation of new indices, giving investors less choice and providing less transparency to markets, including developing markets. Such oversight could also curtail the reputation for independence that is vitally important to the markets. Indeed, market participants want to be sure that benchmarks are not influenced by external factors. S&P Dow Jones Indices is confident that its own policies and procedures comprise a robust self-regulation of its governance, as its reputation for such is the cornerstone of its business and the market demands it.

Moreover, as a publisher whose publications are voluntarily used by market participants and others worldwide, S&P Dow Jones Indices is not regulated in any country. The financial index provider industry is highly-competitive, and one that provides high quality, substitutable indices, which are calculated according to publicly available, transparent index methodologies. That competition is a natural check and balance in that multiple competitors are provided with incentives to publish indices which reflect a given market to the best of their abilities.

Question 4: Principles for firms involved in benchmark data submissions

Do you agree with the principles cited in this section? Would you add or change any of the principles?

S&P Dow Jones Indices does not believe that benchmark submissions should be a regulated activity and that any perceived benefits would be far outweighed by the significant disadvantages of doing so. Many of the entities contributing price data used in the indices published by S&P Dow Jones Indices, via our data vendors or financial institutions, are regulated exchanges or other regulated entities. Those sources that are not are vendors providing robust and dependable data. Apart from creating an unnecessary additional regulatory layer, regulating contributions of such data used for S&P Dow Jones Indices could disrupt contractual arrangements with our data vendors (e.g., IDC), with no appreciable benefit to the quality or integrity of the data we receive, and could create disincentives for data vendors to enter into such agreements with index providers, thereby reducing the number of indices available to the public. Indices driven by prices obtained from voluntary submitters could see participation wane if too much regulatory activity is undertaken. Indeed, for less liquid asset classes like fixed

income, the result could be far less transparency, to the detriment of all market participants.

Ultimately, S&P Dow Jones Indices believes that it is the publisher of the benchmark who must determine the standards of data that they will accept, and to verify and test that the data received is appropriate to be utilized in the benchmark. In the case of S&P Dow Jones Indices, transactional price data are obtained from various vendors, usually in the form of a data feed from the vendors and/or pricing services (e.g., IDC, Bloomberg, Thomson Reuters), subject to data license agreements. In instances where S&P Dow Jones Indices is obtaining data through such an aggregator or pricing service, we ensure that the data providers are established reputable data providers with a proven track record of providing robust data sets. In certain cases, the information provided by the data aggregators may not be exchange price data, but rather other types of aggregated data, such as of closed home sales from county clerks or other similar sources, as in the case of the S&P/Case-Shiller Home Price Indices. These data are also provided through the use of reputable data aggregators with established reputations (e.g., Fiserv). In some cases, S&P Dow Jones Indices, like other index providers, uses data provided by a pricing service, such as in the case of its bond indices. In certain other instances, as in the case of the S&P Health Care Economic Indices, S&P Dow Jones Indices will take feeds from government data sources (e.g., unemployment rates, employee benefit costs), and the data are often from the same data providers which supply S&P Dow Jones Indices with data for its own proprietary indices. Certain of our custom index clients used “self-marked” indices, whereby they provide the data or direct S&P Dow Jones Indices as to which data to use for the construction of the index. These indices are not S&P branded. S&P Dow Jones Indices obtains representations with regard to the rights to use such data. In all cases, while we do not attempt to dictate contributing firms’ operational standards, we have a system of checks and balances to ensure that the data provided by our data vendor is robust and dependable, including redundancy of price information and the ability to confirm the accuracy of a price with the underlying source (e.g., the New York Stock Exchange) if there is a question about a specific datum.

Question 5: Principles for benchmark administrators

Do you agree with the principles cited in this section? Would you add or change any of the principles?

S&P Dow Jones Indices does not believe that Benchmark Administration should be a regulated activity and that any perceived benefits would be far outweighed by the significant disadvantages of doing so. As a publisher whose publications are voluntarily used by market participants and others worldwide, S&P Dow Jones Indices is not regulated in any country, nor do we believe that any regulation is necessary. The financial index provider industry is a highly competitive industry that provides high quality, substitutable indices, which are calculated according to publicly available, transparent index methodologies. That competition is a natural check and balance in that multiple competitors are provided with incentives to publish indices which reflect a given market to the best of their abilities. In particular, while S&P Dow Jones Indices

welcomes the opportunity to discuss its policies and procedures with policymakers and regulators, regulation of the processes by which S&P Dow Jones Indices develops and maintains its indices, including in developing its methodologies and any associated decision making, would not only infringe its rights as a publisher and proprietor of its intellectual property, but would also be an intrusion into the very independence that makes S&P Dow Jones Indices a valuable resource to the market as an impartial market observer.

We believe that the markets are the best arbiter of what indices and index providers are best suited to become benchmarks. For example, the S&P 500 is a widely-used benchmark precisely because it has a long track record of effectively reflecting the U.S. large cap market, without a vested interest in the value of the index at any given time and without undue external influences that could bias the outcome. While S&P Dow Jones Indices supports the promotion of best practice standards, and we have adopted such standards in our own operations, we do not believe that regulation is necessary. In fact, we believe overly prescriptive regulatory actions could drive up cost for and stifle innovation of new indices, thereby giving investors less choice and providing less transparency to markets, including developing markets. Regulation would also likely curtail the reputation for independence that is vitally important to the markets. Indeed, market participants want to be sure that benchmarks are not influenced by external factors. Recognizing that it is technically an “advantage” to existing index providers in that it would reduce competition, overly prescriptive regulation could also dissuade new index providers from entering the market or cause smaller existing firms to cease doing business, thereby reducing transparency into the capital markets and reducing investor choice. S&P Dow Jones Indices is confident that its own policies and procedures comprise a robust self-regulation of its governance and transparency, as its reputation for such is the cornerstone of its business and the market demands it.

Question 6: Principles for benchmark calculation agents

Do you agree with the principles cited in this section? Would you add or change any of the principles?

While, for certain Benchmarks, the administration, calculation, and publishing of the Benchmark are three separate activities conducted by separate entities, this is not the case for many others. For many Benchmarks, including many of those published by S&P Dow Jones Indices, these three activities are often integrated. Thus, S&P Dow Jones Indices believes that a one size fits all approach to setting the principles for benchmark calculation agents is not appropriate.

S&P Dow Jones Indices does agree that benchmark calculation agents should ensure a robust calculation of the benchmark. Indeed, as noted above, S&P Dow Jones Indices has robust policies and procedures designed to ensure the integrity of its indices and has detailed methodologies which allow users to understand how the indices are constructed and calculated. Transparency is a core value at S&P Dow Jones Indices; we provide broad access to our methodologies and research because we believe the

dissemination of such information helps participants understand the markets in which they operate.

In fact, our methodologies are publicly available on our website at:

<http://www.standardandpoors.com/servlet/BlobServer?blobheadername3=MDT-Type&blobcol=urldata&blobtable=MungoBlobs&blobheadervalue2=inline%3B+filename%3Dmethodology-sp-us-indices.pdf&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobkey=id&blobheadername1=content-type&blobwhere=1244125623286&blobheadervalue3=UTF-8>

S&P Dow Jones firmly believes that the detailed nature of its published methodologies is sufficient to allow users to assess the credibility, representativeness, relevance and suitability of its indices on an on-going basis.

Question 7: Principles for benchmark publishers

Do you agree with the principles cited in this section? Would you add or change any of the principles?

S&P Dow Jones Indices does agree that benchmark publishers should ensure the integrity of the benchmarks that it publishes. Indeed, as noted above, S&P Dow Jones Indices has robust policies and procedures designed to ensure the integrity of its indices and has detailed methodologies which allow users to understand how the indices are constructed and calculated. Transparency is a core value at S&P Dow Jones Indices. S&P Dow Jones firmly believes that the detailed nature of its published methodologies is sufficient to allow users to assess the credibility, representativeness, relevance and suitability of its indices on an on-going basis.

The process by which S&P Dow Jones Indices goes about publishing its indices is very well-controlled. In addition to the controls already mentioned in this response, S&P Dow Jones has detailed and publicly disseminated policies as to how changes to its indices will be treated, as well as how and when announcements will be made ([see e.g., http://us.spindices.com/resource-center/index-policies/](http://us.spindices.com/resource-center/index-policies/)).

Question 8: Principles for users of benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

Market participants, particularly those bearing the risks associated with the use of a particular index in a particular market, are typically well positioned to decide which index best suits their needs. Any given index is merely one tool used in a free market in order to help achieve a better understanding of the measured market. S&P Dow Jones Indices endeavors to make clear what the index is intended to reflect through its published methodologies and open processes and procedures; we do not endeavor to suggest how the index should be used, and various indices are developed and used for

different objectives and purposes. It is S&P Dow Jones Indices' view that the market should decide what those objectives and purposes are.

Question 9: Practical application of the principles

Are there any areas of benchmarks for which the above principles would be inadequate? If so, please provide details on the relevant benchmarks and the reasons of inadequacy.

S&P Dow Jones Indices believes that it is not necessary to establish definitive governance and transparency requirements through a prescribed code of conduct. S&P Dow Jones Indices is confident that its own policies and procedures comprise a robust self-regulation of its governance and transparency, as its reputation for such is the cornerstone of its business and the market demands it. It, along with other index publishers who are members of the Index Industry Association, are currently contemplating an index industry code, and believe that such a self-governing code would provide sufficient oversight.

Question 10: Continuity of benchmarks

Which principles/criteria would you consider necessary to be established for the continuity of benchmarks in case of a change to the framework?

As noted above, S&P Dow Jones Indices' role in index publishing is analytical. In developing indices designed to reflect a given market, we develop methodologies which include a detailed description of how S&P Dow Jones Indices intends to measure the given market, including how it will choose index constituents, how those constituents will be weighted, and other relevant information about how the index will be calculated, including our ability to exercise judgment in maintaining the index.

Transparency is a core principle to S&P Dow Jones Indices; the market demands it. Benchmarks in the highly-competitive index industry are not "set". Once S&P Dow Jones Indices has developed an index, the market, not S&P Dow Jones Indices, any of its competitors, nor any other entity external to the markets, determines whether it will be adopted as a benchmark, or discontinued as one. That is for the market to decide based on the needs of market participants. As an independent index provider, S&P Dow Jones Indices has an incentive to publish the best product possible according to its established policies and procedures, with the hope that it will be adopted as a benchmark by the market.

Many elements of S&P Dow Jones Indices' commercial relationships are competitively sensitive in nature. S&P Dow Jones would note that a change to the "framework" as defined in the Consultation Paper could cause significant market disruption in that investors may not have robust information available to them, or the underlying interest in financial products could become uncertain. A change to the framework could also significantly impact both S&P Dow Jones Indices' licensing relationships, but also downstream licensing relationships.

