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**SUBMISSION IN RESPONSE TO: REFORM OF THE REGULATION OF FINANCIAL BENCHMARKS**

Thank you for the opportunity to make a submission on the reform of regulation of financial benchmarks.

ASX supports the introduction of a regulatory framework for financial benchmarks in Australia that is consistent with the *Principles for Financial Benchmarks* developed by the International Organisation of Securities Commissions (IOSCO). This is important to ensure that benchmarks are robust and reliable and to facilitate international equivalence with overseas regulatory regimes, thereby allowing Australian benchmarks to be used overseas.

ASX is the administrator of the bank bill swap rate (BBSW) and the bond futures settlement price, both of which were identified as significant benchmarks by the Council of Financial Regulators in the *Recommended approach for regulatory reform of financial benchmarks*. In this role, particularly as BBSW administrator, we are working closely with ASIC, RBA and market participants on the implementation of the benchmark administration framework and the new BBSW methodology.

As benchmark administrator, ASX broadly supports the new licensing framework. However, while it is important that benchmarks are well regulated and administrators have a strong governance framework it is also important to ensure that benchmark administrators are able to operate a viable business in providing benchmarks. The use and distribution of benchmark data is key to this business. To this end we submit that the matters to be dealt with in ASIC rules be limited to those which are relevant to the production of a robust and reliable benchmark.

We also submit that the power to compel submissions and offence provisions should be clarified to the extent that they apply to benchmark administrators. In particular, it should be clear that the protections which apply when submissions are compelled will apply to benchmark administrators. Further, there should be a clear 'intent' requirements for civil offence provisions to ensure they do not inadvertently apply to benchmark administrators.



As to the offence provisions generally, it will be important to provide clarity to market participants concerning how these provisions operate so as not to discourage normal market behaviour and pricing in products used for the determination of a benchmark. ASX is working closely with market participants and ASIC to develop guidelines providing this clarity in relation to trading used to determine BBSW.

Our detailed comments are set out in Attachment A.

ASX would be happy to expand on any of the matters raised in this submission. Any questions should be addressed in the first instance to Sally Palmer (E: [sally.palmer@asx.com.au](mailto:sally.palmer@asx.com.au); Ph: 9227 0920) or Gary Hobourn (E: [gary.hobourn@asx.com.au](mailto:gary.hobourn@asx.com.au); Ph: 9227 0930).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sally Palmer', written in a cursive style.

Sally Palmer  
Deputy General Counsel, Trading

## Attachment A – Detailed Comments

Licensing framework for benchmark administrators	
Matters to be dealt with in ASIC rules	<p>The matters that may be dealt with in rules set out in section 908CB are very broad and include the manner in which a benchmark administrator may or must provide their services and the use of benchmark data including creation of statistical data from benchmark data. While it is important that benchmarks are well regulated it is also important to ensure that benchmark administrators can operate a viable business in providing benchmarks.</p> <p>Careful consideration should be given to ensuring that ASIC rules do not impede how a benchmark administration business can be operated. We submit that the matters in sections 908CB(c) and (g) be limited to matters relevant to the production of a robust and reliable benchmark.</p>
Audit statement provided by benchmark administrator	<p>Section 908BV(1) states that ASIC may, in writing, direct a benchmark administrator licensee to give ASIC a report that deals with specified matters and, if ASIC requires, an audit statement on the licensee's report by a person or body that is suitably qualified to prepare the audit statement. We submit that further information should be provided on when an audit statement may be required, and the scope of such a statement, as we expect that this would only be required in limited circumstances.</p>
Power to make compelled financial benchmark rules	
Power to compel submissions	<p>The wording of section 908CE(1) should be clarified. The S908CE(1)(a)(i) reference to 'continue' should be deleted so as not to impede provision of information under the compelled financial benchmark framework:</p> <ul style="list-style-type: none"> <li>• which is different to the information provided for the normal BBSW determination process; or</li> <li>• from a prime bank which had ceased to provide trade reporting information for normal BBSW determination process (e.g. if it had ceased to be appointed as an ASX Prime Bank for the purpose of the normal BBSW determination process).</li> </ul>
Power to require a benchmark administrator to continue to produce a benchmark	<p>ASIC may require a benchmark administrator to continue to generate a benchmark or generate or administer a benchmark in a particular way (section 908CE(1)(b)). ASX submits that restrictions on the ability of a benchmark administrator to cease providing a benchmark should have regard to the commercial circumstances. If a benchmark is no longer used or commercially relevant, or when another administrator intends to take over a benchmark and has the required licence, an administrator should be allowed to cease to provide it.</p>

<p>Protections should extend to benchmark administrators</p>	<p>It is not clear whether the protections in section 908CJ for persons providing data, in good faith, in compliance with the compelled financial benchmark rules, extend to administrators or only to contributors of data to the administrator. Such protections should extend to administrators regarding the calculation and publication of BBSW under the compelled financial benchmark rules, particularly given ASICs ability to require the administrator to generate or administer the benchmark in a particular way under s908CE(1)(b)(ii). We submit that section 908CJ should be modified to clearly state that it applies to benchmark administrators.</p>
<p><b>Offence provisions</b></p>	
<p>Clarity required in relation to benchmark administrators</p>	<p>The civil penalty/offence provisions in sections 908DA and 908DB could be viewed to apply to errors by a benchmark administrator in the calculation or publication of any financial benchmark (not limited to significant financial benchmarks). Those penalty/offence provisions do not expressly incorporate an 'intent' element in order to make out a breach of such provisions. To the extent that the statutory implied 'intent' or 'recklessness' element under the Criminal Code is not applicable to civil penalties under those provisions, they should be expressly incorporated into those provisions in order to make out a breach.</p>
<p>Qualified privilege</p>	<p>Consequential amendments to extend qualified privilege under s1100A(1)(b) should also extend to making s1100A(2) and s1100B applicable to a benchmark administrator licensee.</p>