S&P Global Inc.
Response to The Treasury Department's Exposure Draft re
Reform of the Regulation of Financial Benchmarks

Introduction and background

S&P Global Inc. (hereinafter "SPGI") is a leading US-headquartered financial intelligence company providing the capital and commodity markets with independent benchmarks, credit ratings, portfolio and enterprise risk solutions, and analytics. We are pleased to have the opportunity to provide our comments on the draft legislation proposed by the Australian Government Treasury Department regarding financial benchmark reform, namely the Corporations Amendment (Financial Benchmarks) Bill 2017 and the accompanying explanatory materials ("Corporations Act Bill"). We do not have any comments regarding the ASIC Supervisory Cost Recovery Levy Amendment Bill 2017. We previously participated in providing feedback in response to the issues raised by the Council of Financial Regulators in its Consultation Paper: Financial Benchmarks Regulatory Reform in April 2016 ("CFR Consultation") and prior to that in October 2015.

S&P Dow Jones Indices, one of the core businesses of SPGI (along with S&P Global Platts) is a producer and distributor of benchmarks used by the global financial and commodity markets. S&P Dow Jones Indices is a leading, global provider of financial market benchmarks formed in 2012 by combining the S&P Indices business of then SPGI and the Dow Jones Indexes business of the CME Group. S&P Dow Jones Indices and S&P Global Platts, hereinafter referred to as SPGI are independent and separate from market participants, product providers and government entities. These businesses do not participate in the markets which their benchmarks measure and have no vested interest in the value of any of their benchmarks or price assessments.

As an independent benchmark provider whose benchmarks are used as the basis for financial products, SPGI is fully supportive of benchmark reforms and the IOSCO Principles for Financial Benchmarks and the IOSCO Principles for Oil Price Reporting Agencies (collectively the "IOSCO Principles") and the objective of fostering integrity, transparency and efficiency of financial and commodity benchmarks. The IOSCO Principles are very much in line with how SPGI transparently and independently govern our benchmarks. Indeed, we had many of the practices called for by the IOSCO Principles in place before they were disseminated by IOSCO. SPGI is proud to be at the forefront of the industry with a comprehensive set of policies and practices in place that seek to achieve these concepts and align with the IOSCO Principles. On July 13, 2017, we announced the completion of our fourth annual review of our alignment with the IOSCO Principles for Financial Benchmarks. SPGI engaged an internationally recognized audit firm to assess our governance, operations and transparency against such principles (as recommended under paragraph 156 of Report 440) and received an unqualified reasonable assurance.

We have provided our comments on some of the key areas of the Corporation Act Bill, as set out below. We hope that our comments and suggestions are helpful. If you have any questions on the issues raised, or if you would like to discuss any other points please contact: Joe DePaolo, Chief Legal Officer, S&PDJI & Associate General Counsel, S&P Global Inc., at joseph.depaolo@spglobal.com.

Proposed definition and scope of *significant financial benchmark* under Section 908AC of the Corporations Act Bill.

As the Corporations Act Bill notes, a significant financial benchmark is a financial benchmark which has been so declared by ASIC. ASIC may make this declaration if it is satisfied that: (a) the benchmark is systematically important to the Australian financial system; or (b) presents a material risk of financial contagion or systemic instability in Australia if its availability or integrity is disrupted; or (c) there would be a material impact on retail or wholesale investors in Australia if its availability or integrity were disrupted. Whilst we understand the inclusion of these characteristics to determine whether a financial benchmark is a significant financial benchmark and we support no benchmarks being expressly specified as significant financial benchmarks in the Corporations Act Bill, Section 908AC(2) should expressly include substitutability as an exception to these factors. We would suggest including the following at the end Section 908AC under a new sub-section: "*and (d) there is (i) a material risk that the availability or integrity of the benchmark may be disrupted; and (ii) a lack of a similar or substitute benchmark available*". We believe the availability of a substitute benchmark should mitigate some concerns which may arise in connection with the failure of a financial benchmark as it would likely lessen or reduce the material impact on retail and wholesale investors in such event. For example, despite the S&P/ASX 200's benchmark leadership position in the marketplace, we operate in a very competitive environment and market participants do have multiple substitute benchmarks offered by a variety of competitors who have access to the necessary input data and have been producing benchmarks for years that may be used as a substitute for the S&P/ASX 200. If SPGI or any other benchmark administrator does not produce and publish a robust and reliable benchmark, market participants have options to use a substitute benchmark currently in the market and our understanding is that most licensing regimes provide licensees with this right.

In addition, and as we have expressed in prior submissions, we consider another important factor in determining whether to treat a benchmark as significant should be whether there are conflicts of interest in the benchmark administration process, including, for example, the independence of the benchmark provider which by its own nature excludes any incentives for manipulation. We believe that the lack of conflict of interests should be included in any assessment to meet the regulatory objective of ensuring that benchmarks are sound and robust. For example, equity benchmarks using regulated data such as the S&P/ASX 200, produced by an independent benchmark provider, do not suffer from the same types of conflicts of interest as other types of benchmarks and should not be subject to the same licensing conditions as a significant benchmark possessing such potential conflicts of interest. The latter is also in line with the IOSCO Principles for Financial Benchmarks which expressly provide for a preferential regime to regulated data benchmarks. Furthermore, at the EU level the final text of the EU Regulation on Benchmarks exclude regulated data benchmarks from being captured by the so called "critical" category and grant them a preferential regime in the EU Regulation. In the event a financial benchmark is declared to be a significant financial benchmark despite such mitigating factors then these factors should effect the proportional application of the rules.

Finally, the Corporations Act Bill should require a consultation process in the event ASIC is considering whether to designate a financial benchmark as a significant benchmark and impose conditions on the benchmark administrator. Section 908BG(3)(b) requires ASIC to provide a licensee "an opportunity to make a submission before" it imposes any conditions, or additional conditions, on a benchmark

administrator or varies or revokes its license. We feel it would be appropriate to include a similar process prior to designating a financial benchmark as a significant benchmark, as well as in the development of licensing conditions. ASIC's decision to require a benchmark administrator to become licensed can lead to a substantive changes to a benchmark administrator's operations and business. Therefore, a benchmark administrator should be afforded the opportunity to engage with ASIC, understand the rationale behind ASIC consideration and provide its own insight and concerns prior to any designation being made and any conditions being imposed.

Supervision of foreign country benchmark administrators – Section 908AD Corporations Act Bill

SPGI, as a foreign benchmark administrator, has been at the forefront of fostering integrity, transparency and efficiency of financial benchmarks around the world as exemplified by its adherence to the IOSCO Principles, of which it has released its fourth annual adherence statement in July 2017. As a foreign benchmark administrator we are particularly interested in this Section and how it may be implemented via the ASIC rules. We would stress the need for consistency to ensure this proposed Section 908AD(2)(a) of the Corporations Act Bill will apply similar methods for third country equivalence as provided for under the European Union Benchmark Regulations (EU) 2016/1011 ("BMR"), of which SPGI will become an authorized benchmark administrator.

As a global organization and benchmark administrator, the ability for regulatory regimes to apply a similar standard is key to enable us to adopt a consistent approach across all operations in all locations. The implementation and adoption of the IOSCO Principles has assisted SPGI to apply such consistency, of which the BMR in most part has followed and we suspect as will the Corporations Act Bill and related ASIC rules.

Licensing of financial benchmarks – Division 2 of the Corporations Act Bill

Whilst we expect much of the details of the licensing regime set out in Division 2 of the Corporations Act Bill to be included in the related ASIC rules once released and where we will provide a more detailed response, we would like to specifically reinforce the need for flexibility and proportionality in the administration and supervision of such licenses.

We note Sections 908BC and 908BG mention the possibility of conditions attached and imposed with regard to some licenses. Although we do not know what conditions will be attached, we stress the need for any such conditions to be proportionate and commensurate to the type of benchmark to be licensed and the type of benchmark administrator it is provided by. For example, equity benchmarks using regulated data such as the S&P/ASX 200, produced by an independent benchmark provider, do not suffer from the same types of conflicts of interest and direct trading behavior concerns as other types of benchmarks (such as the 'ibors) and should therefore not be subject to the same set of conditions as those providers and benchmarks. Similarly, benchmarks using actual market information, such as firm bid, offers or transactions are also less prone to manipulation and should also be subject to a less stringent set of licensing conditions.

The S&P/ASX 200 is administered and published by SPGI using several underlying practices that make it fundamentally different from the other benchmarks listed as significant benchmarks in the CFR Consultation. A major catalyst for the regulatory activity regarding benchmarks was concerns with those benchmarks which rely on submissions in relatively opaque, sometimes illiquid markets (e.g. LIBOR,

EURIBOR, FX, and BBSW). Submissions to such benchmarks are more prone to manipulation than those using data from regulated trading venue and exchanges, which are transparent and the subject of specific regulation and oversight and supervision by regulators. Benchmarks that utilize data sourced from regulated trading venue or exchanges need not be subject to extra scrutiny due to the nature of checks and monitoring of such data in place at the regulated trading venue or exchanges, as well as a regulator's authority over rules governing the listing and trading of financial instruments referencing these benchmarks such as the ASX. In addition, manipulation of the data would likely be detected by a variety of market participants who continually monitor the S&P/ASX 200 for their own investment purposes, often in real time. The proportional implementation of the IOSCO Principles allows for consideration of such important differences.

The IOSCO Principles for Financial Benchmarks focus on benchmarks based on submissions and/or those developed by benchmark providers with ownership structures or governance regimes that could lead to increased conflicts of interest. As previously noted, SPGI does not participate in the markets our benchmarks measure and we have no vested interest in the value of any of our benchmarks. In addition, as an independent benchmark provider we maintain a robust governance regime that separates commercial aspects of our business from editorial/analytical governance of our benchmarks, mitigating any potential or actual conflicts of interest. Our independent editorial/analytical staff is responsible for the development and governance of our benchmarks and their corresponding methodologies. They seek to ensure that existing benchmarks continue to achieve their stated objectives and are fit for purpose.

For these reasons, SPGI is supportive of a flexible licensing regime providing ASIC with appropriate powers to impose certain conditions on licenses that are proportionate to the associated risks benchmarks and benchmark administrators may be subject. Indeed, the BMR in the interests of proportionality, to a certain extent tailors requirements of a benchmark based on whether the input data is from a regulated source, and where this is the case, such benchmark is subject to a preferential set of rules.

Finally, Section 908BJ (1), states that "ASIC may give the licensee a written notice that requires the licensee to show cause…" We feel that a benchmark administrator should receive fair, due process prior to any decision to suspend or cancel its license. Therefore, ASIC should be required to provide a hearing and the aforementioned provision should be revised accordingly.

ASIC's empowerment re Financial Benchmark Rules – Section 908CB of the Corporations Act Bill

Whilst we understand the details of the Financial Benchmark Rules will appear in the draft proposals to be released by ASIC, we do feel the powers provided under sub-sections (b) and (c) to be quite broad. ASIC's ability to make rules regarding the design and method, and subsequent amendments thereto of a benchmark are quite significant, particularly for a global benchmark provider such as SPGI whose benchmarks are used around the world in various locations. Any amendment or direction process administered under sub-section (b)(iii) should at the very least include consultation with the benchmark administrator and be subject to a high threshold and enforced only in extreme circumstances and only then when also considered in the best interests of the public. Further, the ability of ASIC to make rules around the fees charged and method of providing benchmarks should also have regard to benchmarks administered by organizations such as SPGI who hold a high degree of credibility in many markets and who have spent decades and significant amounts of money growing and protecting its brand globally of which its fees are reflective of. ASIC should also have regard to global benchmark administrators who

provide and license their benchmarks in numerous jurisdictions, and what impact any enforcement power under these sub-sections may have on the rest of its global business.

Conclusion

SPGI is supportive of the benchmark reforms in Australia, as we have been fully supportive of the IOSCO Principles and the objective of fostering integrity, transparency and efficiency of financial and commodity benchmarks. The IOSCO Principles are very much in line with how SPGI already transparently and independently govern our benchmarks.

Treasury's and ASIC's encouragement to adopt and implement policies and procedures that align with the IOSCO Principles is appropriate provided proportionality is applied when assessing such alignment. It is important to note that the IOSCO Principles are principles that include a proportionality standard and comply or explain approach. The benchmark industry is a very diverse one, and only through a set of principles, can it continue to deliver high quality benchmarks in a professional, high-integrity manner. We support the concept that investment/financial product providers should utilize benchmarks produced and published by entities that adhere to the IOSCO Principles. Benchmark administrators should avoid actual and potential conflicts of interest and demonstrate proper governance, sound controls and a robust operating infrastructure, all of which benefit the markets as a whole and various stakeholders including market participants. Further, utilizing an independent third party auditor to provide an independent assessment of a benchmark administrator's achievement of aligning with or adhering to the IOSCO principles is an appropriate and practical approach to ensure such benchmark administrators publish robust and reliable benchmarks.

Again, we hope that our comments and suggestions are helpful. If you have any questions on the issues raised, or if you would like to discuss any other points please contact: Joe DePaolo, Chief Legal Officer, S&PDJI & Associate General Counsel, S&P Global Inc., at joseph.depaolo@spglobal.com.