

The Association of Corporate Treasurers

Comments in response to Consultation Report

Financial Benchmarks

IOSCO, January 2013

February 2013

The Association of Corporate Treasurers (ACT)

Established by Royal Charter, the ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website www.treasurers.org.

Contact details are also at the back of these comments.

We canvas the opinion of our members through seminars and conferences, our monthly e-newsletter to members and others, *The Treasurer magazine*, topic-specific working groups and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter.

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We should note that the ACT, with the Chicago Mercantile Exchange, represents users on the BBA Committee overseeing Libor following invitations in 2009 as part of the changes stemming from the Bank of England and FSA 2008 review with the BBA.

In this case we confine our comments to two simple points. We have been supportive of the Wheatley Review in the UK and IOSCO already takes advantage of the Wheatley work.

Our comments have application across various of the questions posed in the consultation and we have accordingly set them out by topic.

Role of the Benchmark Administrator

It is important to have in mind effectiveness and cost-effectiveness of proposals.

The Administrator should, of course, require proper governance and control of the Submitters' process and that of calculation agents and any other third parties involved. However, we believe that where a submitter is a regulated/supervised body, its compliance function/internal audit and the supervisor are best placed to verify that the processes required by the Administrator are actually and properly applied. In such cases, for the administrator to seek to undertake this work independently would be duplicative, likely less effective and certainly cause material extra cost. This would certainly be passed on in one way or another to users, ultimately to end users.

Users

We are concerned that the paper in places may treat "users" narrowly. So, for example, at the end of B.3 on page 21, it says "Users of a Benchmark should also monitor changes to the Benchmark's Methodology to assess if it remains a suitable reference for the relevant financial products." This may tempt the reader to assume that users are essentially confined to financial services firms dealing inter-se or with clients.

Non-financial users of a benchmark should of course have attention to continuing suitability for the purpose for which they are using it. Regulations or codes of practice in relation to benchmarks may require regulated (financial services industry) users to make such an assessment from time to time and should encourage non-regulated users to make a similar review where appropriate. Such firms will of course be contracting with financial services firms in ways that use benchmarks, but use may be much wider.

For example, predecessors of Libor – the cause of the current concern, arose first from the use of rates in bank lending to companies. But Libor is also extensively referenced in many contracts between non-financial services firms and between such firms and members of the public. Similar broad usage applies to many other benchmarks.

We consider it to be important that IOSCO recommendations extend to non-financial services users in two ways.

First, such users should be advised to follow, as appropriate, prudent approaches required or encouraged for regulated users.

Second, such non-financial services users should see themselves as "users" and so as having a stake in the proper provision of any benchmark they use, following carefully changes in the arrangements for provision of the benchmark and its governance and, in particular, as just discussed, its suitability for the purpose to which it is applied. Equally, the benchmark administrator should take care to ensure that a widely drawn audience of users would be able to hear about and to comment on proposed changes to the benchmark, its compilation and its governance.

Administrators and relevant authorities need to take account of the wider group of users in contemplating transitions to new benchmarks and that non-regulated users may not have systems etc. making such transitions easy to achieve in an orderly way or without material value transfer between parties. The numbers of contracts affected are huge and very long periods may be needed for relatively un-troubled transitions. The contracts

may be subject to laws of a wide variety of jurisdictions and that may not provide for appropriate transitions.

The ACT is particularly sensitive to these points from its experience with regard to Libor.

The Association of Corporate Treasurers

The Association of Corporate Treasurers (ACT) is a leading professional body for international treasury providing the widest scope of benchmark qualifications for those working in treasury, risk and corporate finance. Membership is by examination. We define standards, promote best practice and support continuing professional development. We are the professional voice of corporate treasury, representing our members.

Our 4,300 members work widely in companies of all sizes through industry, commerce and professional service firms.

For further information visit www.treasurers.org

Guidelines about our approach to policy and technical matters are available at <http://www.treasurers.org/technical/manifesto>.

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