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Argus Media's Response to the Consultation Paper P013-2014 on Proposed Amendments to the Securities and Futures Act on Regulation of Financial Benchmarks

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Please find below Argus Media's comments on the **Consultation Paper P013-2014 on Proposed Amendments to the Securities and Futures Act on Regulation of Financial Benchmarks**

1. Introduction — about Argus Media

- Argus Media is an independent media organisation whose activities include publication of price assessments for physical energy and related commodities. Argus Media's services are created by an international editorial operation with offices located in the world's principal energy centres under the editorial direction of an editor-in-chief, who reports to the chief executive and who has responsibility for the quality of content. Its well-trained journalists operate according to a rigorous and transparent Editorial Code of Conduct and an Ethics Policy (available at: www.argusmedia.com/About-Argus/How-We-Work) that align with the highest standards of journalistic best practice, including the avoidance of conflicts of interest. The company has been active in Singapore for more than 24 years.
- Argus Media is not a financial services company. It is an independent media organisation, sometimes referred to as price reporting agencies (PRAs), that reports on energy and commodity markets but is not a participant in the markets and has no vested interest in the level of prices in those markets. Its worldwide reputation and continued business success depend on maintaining that independence.
- Argus Media's publishing business faces competition from other specialist commodity media agencies such as ICIS, Platts, RIM, Opus, OMR, e-petrol, IHS McCloskey, Kortes, CRU and Metal Bulletin; other news agencies such as Thomson Reuters, Bloomberg and Dow Jones; information services such as Markit and SNL; commodity exchanges; and broker firms that produce price indexes. Commodity market participants are able to choose which information agency to use, and which prices reported by such agencies to use as benchmarks. The high level of competition in this marketplace drives standards relating to the integrity of an organisation's services.



**INVESTORS
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- Argus Media has fully implemented IOSCO's PRA Principles¹, as internationally-agreed best-practice standards for physical commodity benchmarks published by PRAs such as Argus Media. MAS participated in the IOSCO Committee 7 work to produce the PRA Principles. As specifically
- recommended by IOSCO, Argus Media has extended application of the PRA Principles to all its published commodity benchmarks, irrespective of the underlying commodity.

2. Specific characteristics of commodity markets

- Physical commodity markets are unlike financial markets and so are their benchmarks. Key differences are that:
- many commodities are heterogeneous, in their quality and in their uses, unlike financial markets, which deal in uniform instruments;
- a physical energy commodity market evolves from, and around, the physical infrastructure of the industry; and
- energy companies add value by moving energy down the supply chain from producer to consumer, optimising the value of its production and the cost of its supply through the market. Spot trading is carried out generally for marketing or supply, although the degree to which it is central to a company's operations depends on individual circumstances. Spot trading is executed in a discretionary fashion.

3. Regulatory considerations in respect of commodity market benchmarks

- As MAS will be aware from our response to the MAS Consultation Paper P007-2013 of June 2013, Argus Media is concerned whether an overarching Regulatory Framework can be fit-for-purpose for all benchmarks, given that markets, sectors and benchmark providers are so diverse. Any approach needs to be adaptable to the disparate global universe of benchmarks. Adaptability is necessary to allow for the specific characteristics of commodity markets, which differentiate such markets from financial markets. Adaptability is further required to allow for the identification of price benchmarks in commodity markets by journalistic enterprise as practised by PRAs such as Argus Media.
- In this context, Argus Media welcomes MAS' comment in its response to that earlier consultation: "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."
- In the context of the current Consultation Paper, Argus Media notes that MAS has no current plans to extend the list of "designated benchmarks" beyond those proposed earlier — ie SIBOR, SOR and ABS FX Benchmarks. We would reiterate our concern regarding the need for further public consultation and consideration, including impact assessment, should MAS ever consider bringing a physical commodity benchmark produced by a PRA into regulation through

¹ IOSCO FR06/12, 5 October 2012 (<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf>)

designation. It is not clear to us that physical commodity benchmarks can be properly, proportionately or effectively accommodated within the proposed amendments to the SFA.

- Furthermore, and recalling MAS' comment in its response to the earlier consultation that "any regulatory approach covering the broader spectrum of financial benchmarks including commodity benchmarks requires an internationally coordinated approach", Argus Media notes that IOSCO's PRA Principles are the established internationally-agreed standards for physical commodity benchmarks published by PRAs. Unfortunately MAS' response only made specific reference to the more general IOSCO Principles for Financial Benchmarks, which IOSCO has made clear do not apply to PRAs. Therefore in order to avoid inadvertent confusion, Argus Media encourages MAS always to make specific reference to the PRA Principles, in the context of physical commodity benchmarks published by PRAs.

4. Provisions dealing with manipulation of financial benchmarks and introducing civil and criminal sanctions for such misconduct

- Argus Media supports legislation that prohibits and provides for effective and proportionate sanctions for deliberate acts (including attempted acts) of market manipulation including the manipulation of benchmarks. Argus Media considers this is one important component to underpin market integrity.
- Argus Media would at the same time like to emphasise the importance of ensuring that inadvertent errors in information provided by market participants to a benchmark publisher such as Argus Media and other commodity PRAs, are not captured by any anti market/benchmark manipulation provisions.
- Recalling that all information is provided by market participants to PRAs on a wholly voluntary basis, it is vital that this voluntary flow of information is not destabilised by measures that could see a market participant risk civil, or even criminal sanction, as a result of a mere inadvertent error in information they provide to a PRA. Faced with such disproportionate risk, market participants would undoubtedly reduce or even fully cease providing information to PRAs for the purpose of market transparency. This would result in less transparent commodity markets and would foster conditions where market integrity is inherently lower. It would undermine the integrity of price assessments and benchmarks published by PRAs, no doubt directly contrary to the intent.
- Argus Media therefore requests that, if MAS is minded to proceed with a criminal standard based on a deliberate or reckless threshold, a 'safe harbour' defence be introduced in respect of good-faith errors in information provided to PRAs. This has already been provided in other major international jurisdictions and we would in particular draw MAS' attention to the defence contained within the Dodd-Frank Act in the US:

"(C) GOOD FAITH MISTAKES.—Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A)." [Dodd-Frank Act Section 753]

To succeed, this defence requires that both of two limbs are satisfied — that the action was mistaken and was in good faith.

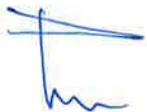
- We would also note that the European Union has adopted a 'deliberate' threshold, again in recognition of the important public policy benefit of market participants continuing to voluntarily provide their data to price reporting agencies. The EU's REMIT regulation (EU 1227/2011), which covers European energy (power and gas) markets, states:
"Forms of market manipulation include.....deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports;"
[REMIT Recital 13, emphasis added]
- Argus Media therefore urges MAS to ensure that proposed new sections 212C and 212E are subject to an exception, as above. One approach, based closely on that adopted in Dodd-Frank, would be to introduce a new provision:

Mistakenly transmitting, in good faith, false or misleading or inaccurate information to the administrator of a financial benchmark whose underlying thing is a commodity is not sufficient to violate section 212C or section 212E.

- This would ensure that Singapore establishes an effective, well-calibrated and proportionate regime, would avoid unwittingly deterring the voluntary flow of information to PRAs for market transparency purposes and therefore would support the integrity of commodity benchmarks published by PRAs.

Argus Media thanks MAS for the opportunity to comment on the proposed amendment to the SFA in regards the regulation of financial benchmarks. Please do not hesitate to contact us if you would like to discuss our comments further or in the event of any queries.

Yours faithfully



Pierre Lever
CEO Asia
Argus Media Ltd