

Report on Guidance on the IOSCO Principles for Financial Benchmarks

Final Report



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Report on Additional Guidance on the IOSCO Principles for Financial Benchmarks

1. Introduction

In July 2013, IOSCO published the Principles for Financial Benchmarks (the Principles), which set out a set of recommended practices that should be implemented by Benchmark Administrators and Submitters.¹

In response to a number of international and national initiatives including the FSB's workplan on measures to reduce misconduct risk and the UK's Fair and Effective Markets Review, IOSCO considered what further work it might consider in relation to the Principles. IOSCO decided to address remaining challenges by building on its substantial body of work in the benchmarks space and use its experience as a tool to drive any future work forward.

To this end, IOSCO analysed the outstanding issues in the benchmarks reform and the associated risks they may present by also considering the feedback received from a 2015 report on the implementation of the Principles. It agreed to undertake a process of consultation and information gathering with Benchmark Administrators, with a view to considering further guidance on Administrators' interpretation of proportionality and full compliance and the content and format of Administrators' statements of compliance.

Based on the findings of a survey carried out in early 2016 and the international and national initiatives and ongoing changes in the benchmarks sector, IOSCO has decided to develop guidance for Administrators on statements of compliance which can be found in Annex A of this report.

The Principles for Financial Benchmarks

The Principles note that, although they set out uniform expectations, IOSCO does not expect a "one-size-fits-all" method of implementation to achieve the objectives of the Principles. Given the large universe of Benchmarks, IOSCO recognises that the implementation of the Principles will not be identical for each Benchmark. Rather, the Principles provide a framework of standards, which might be met in different ways depending on the specificities of each Benchmark. In particular, the application and implementation of the Principles should be proportional to the size and risks posed by each Benchmark and/or Administrator and the Benchmark-setting process. This would also include the proportional application to new or emerging Benchmarks, in order to avoid material regulatory barriers to entry.

IOSCO also stated its expectation that Benchmark Administrators should publically disclose the extent of their compliance with the Principles annually. If implementation in any way deviates from the Principles, the Administrator should explain why it believes it meets the objectives and functions of the Principles, including to the extent they are relying on a proportionate view of the Principles, as that concept has been described in the Principles Report.

¹ *Principles for Financial Benchmarks*, Report of the Board of IOSCO, July 2013.
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>

The Principles are not intended to supersede existing laws, regulations or relevant regulatory or supervisory frameworks in specific jurisdictions, including any IOSCO Principles or undertakings agreed with Regulatory Authorities relating to a specific type of Benchmark, or a related activity.

Review of Implementation of the Principles

In February 2015, IOSCO published a report, *Review of the Implementation of IOSCO's Principles for Financial Benchmarks (2015 Report)*.² This Review complemented separate, and more detailed, reviews of how the Principles have been implemented by the Administrators of certain major interest rate and foreign exchange Benchmarks and sought to assess, at a high level, the implementation of the Principles across the broader Benchmarks sector.

As well as finding significant, yet mixed, progress in implementation across the market, the review report made specific observations on the issues of proportionality and on statements of compliance.

On proportionality, the review report stated that:

"Around half of the Administrators of the Benchmarks reviewed stated that they had applied proportionality in their implementation of the Principles ... The level of proportionality was not always clear in statements of compliance published by Administrators ..."

On statements of compliance, the report stated that:

"... for just under half of the Administrators of the Benchmarks in the sample, the Review Team could not find a published statement disclosing the level of compliance."

2. Further IOSCO Work on Benchmarks

Survey of Benchmark Administrators

In early 2016, IOSCO undertook a process of consultation and information gathering with Benchmark Administrators across the regions represented by IOSCO, with a view to identifying any relevant challenges and issues. IOSCO circulated a survey to Benchmark Administrators asking questions on the following topics:

- (i) The status of their implementation of the Principles;
- (ii) The number of Benchmarks they administered;
- (iii) The challenges they may have faced in interpreting and applying the Principles;
- (iv) Whether they adopted a 'proportional' implementation of the Principles;
- (v) What further guidance would assist them in the publication of their self-assessments;

² <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD474.pdf>

- (vi) Whether in finalising their statement of compliance, they seek internal or external assurance of the content of the statement; and
- (vii) Who in their organisation is ultimately responsible for approving the content of the statement of compliance and signing-off on it prior to publication.

Survey Findings

Twenty-nine Benchmark Administrators responded to the IOSCO survey.

The majority of responses received were in favour of more guidance on the statements of compliance, which Administrators should publish annually. Administrators felt that there is currently no uniformity across the industry on the format of compliance statements. Respondents considered that guidance on headings or a standard form would be useful to facilitate transparency and bring consistency to responses for a particular Administrator, as well as across the market. Such guidance could increase the consistency and quality of reporting by Administrators. However, there were differences of view on how prescriptive the guidance should be. That is, should it be in the form of a template, or a more flexible form, such as a statement of expectations, perhaps with guiding sub-headings.

A smaller group of respondents opposed further guidance on statements of compliance due to concerns that it might lead to a requirement for uniform implementation of the Principles and that Administrators might be required to disclose proprietary or confidential information. Respondents also noted that the introduction of a new form could be disruptive for those Administrators already regularly publishing statements of compliance.

Approximately half of the respondents were opposed to further guidance on proportionality as they felt that they understood the application of proportionality and that the meaning of the term was clear. Although there was support for additional guidance on proportionality among the rest of the respondents, these respondents had differing views on what the further guidance might actually mean. For example, some respondents suggested such guidance could include some sort of prioritisation of, or guidance about, specific Principles, which is not something that IOSCO was considering.

In summary, the results of the survey showed that, while there was a clear demand in the industry for further guidance on statements of compliance, support for guidance on proportionality was less strong and it was also divided in terms of focus.

Conclusion

IOSCO considered Administrators' feedback and decided to provide further guidance on statements of compliance. IOSCO also decided not to provide further guidance on proportionality at this time, but instead to seek greater disclosure from Administrators on where and how they had applied a proportional approach.

Given the variety of Benchmarks operating in the market place, IOSCO determined that guidance on statements of compliance should be flexible and take the form of reasonable expectations for reporting. IOSCO also decided that its guidance should include a clear expectation that Administrators explain where and how they have applied proportionality and why they have deemed it appropriate to do so.

Annex A

Guidance on Statements of Compliance with the IOSCO Principles for Financial Benchmarks

In its July 2013 report¹ adopting the Principles for Financial Benchmarks (the Principles), IOSCO stated its expectation that “Benchmark Administrators should publically disclose the extent of their compliance with the Principles annually. If implementation in any way deviates from the Principles, the Administrator should explain why it believes it meets the objectives and functions of the Principles, including to the extent they are relying on a proportionate view of the Principles (as that concept has been described [in the Principles Report]”.

As stated in the July 2013 report, the Principles are not intended to supersede existing laws, regulations or relevant regulatory or supervisory frameworks in specific jurisdictions, including any IOSCO Principles or undertakings agreed with Regulatory Authorities relating to a specific type of Benchmark, or a related activity.

This document sets out high level guidance on how Administrators of Benchmarks should consider framing their annual statements of compliance with the Principles in order to increase the consistency and quality of reporting under the Principles.

This guidance should not be seen as a template for statements of compliance with the Principles. Rather, it is intended to assist Administrators by setting out reasonable expectations about the level of detail that should be included in these statements, to enable market authorities, users of Benchmarks and other market participants and stakeholders to understand the extent to which the Administrator has implemented the Principles. As such, it is non-exhaustive and Administrators may add more information at their discretion. However, the statement of compliance should be sufficiently concise for users and stakeholders to quickly understand the Administrator’s approach to implementing the Principles.

Administrators are expected to explain their use of proportionality, where appropriate, in complying with the Principles. They should also explain any non-compliance with individual Principles. A decision by an Administrator to assign a rating to their compliance (for example, “full compliance”) should be clearly explained and supported with evidence.

1. Overall self-assessment

The Administrator should state their level of compliance with the relevant IOSCO Principles and what the rationale is for the outcome of the assessment of their compliance.

The Administrator is expected to specify the Principles with which they are not fully compliant and provide reasons for such partial compliance or non-compliance.

The Administrator should include information on the Benchmarks covered by the self-assessment.

¹ *Principles for Financial Benchmarks*, Report of the Board of IOSCO, July 2013. <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>

2. Use of proportionality

The Administrator is expected to outline any Principles to which they have applied a proportional rather than full approach and why they have done so, by answering these questions:

- *Have you applied any of the Principles proportionately rather than in full?*
 - *If so, which Principles?*
 - *How have you applied proportionality?*
 - *Why have you applied a proportional rather than full approach to the Principle?*

The Administrator may choose to structure this part of the self-assessment through the use of the subsections but should ensure that it addresses all Principles. The subsections that the Administrator may use are grouped together by theme as follows.

- a) **Governance:** A Benchmark should have appropriate governance arrangements in place to protect the integrity of the Benchmark and to address conflicts of interests. The Governance section covers the following Principles:
 1. Overall Responsibility of the Administrator
 2. Oversight of Third Parties
 3. Conflicts of Interest for Administrators
 4. Control Framework for Administrators
 5. Internal Oversight

- b) **Benchmark Design:** Benchmark determinations should be made through the application of design factors that result in a Benchmark that reflects a credible market for an interest measured by that Benchmark. A variety of data may be appropriately used to construct a Benchmark, provided that Principle 7 on data sufficiency is met. The Benchmark Design section covers the following Principles:
 6. Benchmark Design
 7. Data Sufficiency
 8. Hierarchy of Data Inputs
 9. Transparency of Benchmark Determinations
 10. Periodic Review

- c) **Quality of the Methodology:** The Benchmark methodology should be published or made available so that stakeholders may understand and make their own judgments concerning the overall credibility of a Benchmark. The methodology should also include procedures for material changes, as a means of alerting stakeholders to changes that might affect their positions, financial instruments or contracts. Administrators should have credible policies in case a Benchmark ceases to exist or stakeholders need to transition to another Benchmark. Vulnerabilities in the submission process (e.g., conflict of interest, improper communication between Submitters and Administrators, selective submission) should be addressed by both Administrators and Submitters. The Quality of the Methodology section covers the following Principles:
 11. Content of the Methodology
 12. Changes to the Methodology
 13. Transition

14. Submitter Code of Conduct
15. Internal Controls over Data Collection

d) **Accountability:** The Benchmark Administrator should have in place complaints processes, documentation standards and audit reviews that are intended to provide evidence of compliance by the Administrator with its quality standards, as defined by these Principles and its own policies. This information should be available to relevant market authorities. The Accountability section covers the following Principles:

16. Complaints Procedures
17. Audits
18. Audit Trail
19. Cooperation with Regulatory Authorities

3. Compliance

When structuring the responses for this topic, the Administrator may choose to use the subsections outlined in the proportionality section but should ensure that they address all of the Principles.

When assessing compliance with the Principles, the following questions should be addressed:

- *How have you implemented each Principle?*
- *What policies and processes have you put in place to implement these Principles? (e.g. conflicts of interest policies, change to submission processes, consultation policies etc.)*
- *Where have you ‘published or made available²’ to users or stakeholders the information called for by Principles 3-5, 8-14 and 16?*
- *How have you determined that the processes you have put in place to implement these Principles actually have the intended results? (For example, have you sought feedback from stakeholders, undertaken internal or external testing or reviews etc?)*
- *Have you conducted an internal or external audit/compliance review of your implementation of the Principles? If so, please provide the date of completion and a summary of the findings, where appropriate.*
- *Where you have not implemented a Principle, please explain why you have not done so.*
- *Have there been any changes to the extent of your implementation of these Principles since your most recent report? (If so, please explain these changes.)*

When accounting for the non-compliance of one or more Principles, it is expected that the Administrator states, per Principle, the reason for its non-compliance.

Although there is no recommendation to make the audits public under Principle 17, the Administrator may choose to publish such an audit as part of the compliance statement.

² As defined in the Glossary of Key Terms in the report adopting the Principles, the phrase “published or made available” <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>