STOXX Ltd.

Response
to
Public Consultation

by the IOSCO on
Financial Benchmarks

Zurich, February 8, 2013

STOXX Limited
Selnaustrasse 30
8021 Zurich
Switzerland

STOXX is pleased to have the opportunity to submit comments to the IOSCO in response to their "Financial Benchmarks - Consultation Report".

STOXX Limited is an established index specialist with a European heritage. The launch of the first STOXX® indices in 1998, including the EURO STOXX 50® index, marked the beginning of the STOXX business activities. Since that time, STOXX has been continuously expanding its portfolio of indices, and now operates on a global level, across all asset classes. STOXX Limited is committed to delivering its high-quality, reliable and trusted index offerings to its global client base.

Our indices are licensed to the world's largest issuers of financial products, capital owners and asset managers as well as to more than 400 companies around the world, and are used not only as underlying for financial products such as exchange-traded funds (ETFs), futures and options, and structured products, but also for risk and performance measurement.

Indices fulfill a number of important roles in the financial markets. Indices in general have come under increased scrutiny despite the fact that the alleged manipulation of LIBOR was related to a specific panel-based index with opaque and subjective pricing sources. Neutral and unbiased market information is key for a functioning capital market. We fully support efforts to strengthen the robustness and integrity of financial indices provided in the context of offering financial products.

We also support initiatives that address concerns about subjective indices or panel-based indicators and welcome policy orientations and the potential implementation of standards to guide these specific activities. We support IOSCO and its global approach in order to identify the necessary safeguards and framework for the provision of indices. For your reference STOXX has contributed to other consultations including the EU Commission consultation on financial indices.

In addition to the detailed answers to the questions asked, we deem it supportive to provide a framework and introduction. In summary, we distinguish between what we call "objective indices" – fulfilling a clear set of criteria which prevents conflicts of interest and manipulation – and "subjective indices". We argue that objective indices do not require regulation due to their specific design. Furthermore, we argue that subjective indices are best provided by neutral index providers – separate organizational units with the primary objective of developing, calculating, maintaining and marketing indices for profit to third parties – which have the relevant skills and infrastructure and are independent from market participants and so not exposed to conflicts of interest.

The indices of neutral index providers such as STOXX are and have to be of high quality, are produced without conflicts of interests and are of the strictest neutrality to all market participants. Without these qualities the neutral index provider would lose its reputation and therefore its customer base in the global and fully competitive market. It is also for the benefit of the entire market that neutral index providers are able to monetize their efforts enabling them to continuously improve their services and quality and to allow a broad range of investors to participate in state-of-the-art-concepts.

Finally, we would like to emphasize that index providers act globally both with respect to their products as well as to their client base (and partially also with respect to their operational set-up). It will therefore be important that any future regulatory action is aligned globally, avoiding any potential loopholes or room for regulatory arbitrage.

We would welcome the opportunity to discuss the content of our submission with you further. Should you require any additional information in the meantime, please contact: Dr. Hartmut Graf; CEO; STOXX Ltd.; Selnaustrasse 30; 8021 Zurich; Switzerland; Hartmut.Graf@stoxx.com.

We are happy for our comments to be made public.

Contents

1. INTRODUCTION

The function of financial indices is not limited to their direct use in the financial products markets only; they fulfill other important roles in the overall macro-economic environment:

» Only with proper and reliable indices is a rational, efficient and transparent global capital allocation possible for financial investors. Efficient capital allocation minimizes the capital costs for companies and thus spurs global economic growth.
» Indices allow companies with global business activities an easy and transparent macro-hedging of their business exposure to certain countries, regions or industry sectors.
» Indices (through financial products issued on them) enable a broader range of investors, including retail investors, to access entire markets and advanced asset allocation strategies. They can hereby diversify their investments and thus reduce their investment risk.

Although provision of information was the primary reason for establishing the first indices, today's prominent and well-known indices usually fulfill three main purposes often simultaneously:

» As a source of information about financial performance or as a "**benchmark**" against which to assess the performance of a given or hypothetical financial investment.
» Fulfilling an "**underlying**" function, in which the index provides a reference price for tradable investment products such as exchange traded funds ("ETFs"), structured products, or derivatives.
» Providing aggregated **information** to the public and investors on certain markets as a whole or on certain market segments as a means of supportive information on economic development.

1.1. DEFINITIONS AND GENERAL VIEWS

1.1.1. DEFINITION OF AN "INDEX"

The term "index" as used here shall have the following meaning:

An "**index**" is an aggregation of market data of financial instruments or acquirable assets which are used either as a basis for financial products ("underlying") or to evaluate financial investments ("benchmark").

The key element of our definition is the foundation of indices on either market data of financial instruments or acquirable assets. This relationship allows the index to be fully replicated by directly investing in the respective financial instruments or acquirable assets. Thus, only those concepts where full direct replication is possible qualify as an index. The second constitutive element of indices is their usage in the financial services industry. Again, we consider as indices only those statistical figures composed of market data, which are used for the specific purposes of being an underlying or a benchmark.

Please note that our definition is widely similar to the definition of "Benchmarks" as drafted by IOSCO. However, we deviate from the suggested wording for the following reasons:
» Aggregations of market data are used for a broader range of purposes. Any policy making should be clear about whether it is addressing the use of indices in general or specific types of use only. To establish clarity we segregate indices in the two main areas of use, namely as underlyings and for benchmarking.
» As both "benchmarking" and "underlyings" are commonly applied terms for very specific types of usage, we establish "index" as the master term.
» In addition, a figure only qualifies as an index if the building blocks of this index (the index components) are in principle acquirable financial instruments or assets. Pure numerical and statistical figures do not therefore qualify as an index.

However, **pure macroeconomic indicators** – beyond those published by governmental agencies – which describe the state of an economy are excluded from the definitions above as they are not directly tied to any financial instrument, and are usually only used to achieve a clearer picture of the current economic environment.

Those indicators (even if sometimes referred to as “indices”) can be identified as pure information indicators, although the calculation of such an indicator may appear to resemble those of a benchmark from a pure technical point of view. Furthermore, those macro-economic indicators provided by commercial neutral index providers are not prone to any conflict of interest (contrary to LIBOR, no financial instruments can be linked directly to those indicators) and usually complement the macro-economic indicators published by governmental agencies. We therefore suggest leaving those indicators out of any planned regulation going forward.

1.1.2. DIFFERENTIATION BETWEEN OBJECTIVE INDICES AND SUBJECTIVE INDICES

The broad range of figures used as underlyings and benchmarks differ widely depending on their principles of construction, maintenance and objectivity. As a result indices can be broken down into two distinct categories: objective and subjective indices.

Objective indices fulfill a clear set of criteria (simultaneously) as follows:

- **Possibility of full replication:** the index should be fully replicable by existing financial instruments without significant tracking errors for all licensees. This requires that the same performance of the index could be obtained by acquiring all index components according to the methodology of the index. This can be achieved by providing the composition and weights ex-ante to the licensees of the index.
- **High quality data:** One prerequisite for full replication is the use of either traded prices of liquid instruments or prices from firm quotes, both from regulated trading venues (without conflicts of interest), which are fully executable at any time. This is required to ensure that market participants can actually adjust their portfolios at the price levels used in the index at all times. The price source for the index should come from the price determining venue and – in case this is not biunique – have sufficient liquidity in the corresponding asset/index constituent. Only those prices which provide indiscriminate access to all market participants, and without distortions, should be used. For certain indices there might be added value in having all prices from one venue in order to determine high quality and highly liquid settlement prices based on the same methodology and homogenous data quality and standards.
- **Adequate methodology:** It is of paramount importance to have a fully rules-based methodology that is published in a completely transparent rule book. Discretionary elements should not be part of the methodology. This methodology should reflect the relevant market or the relevant strategy accordingly and with the required level of sophistication. In addition, the methodology should cover an appropriate checking of ingoing and outgoing data to avoid the inclusion of any mispricing. Furthermore, a continuous index calculation hinders exercise of influence on the index values as a potential manipulation might need to occur over a longer time period.
- **Inherent integrity:** The index methodology and calculation should be free of conflicts of interest and guarantee a clear split between the providers of indices, the sources of pricing for the instruments in the index and parties being (directly or indirectly) economically exposed to the resulting index values. The following cases might require special consideration:
  - If the pricing sources and the provider of indices are related, the prices should be sourced from regulated trading venues only.
  - Trading and investing in indices while in parallel providing prices for the index calculation would violate the required integrity.

  Please note, that according to this definition pure providers of infrastructure for trading (i.e. trading venues) have no conflict of interest with providers of indices as they are of course not economically exposed to the index values by themselves.
- **Continuous quality controls:** The inbound and outbound information should be filtered according to the methodology. Similarly the resulting index values should be filtered or flagged. In addition, index calculations should be monitored at all times.
- **High availability:** Given their importance as underlying, objective indices need to be available to professional investors and product providers. Systems used to provide index values should follow the highest technical standards including fail-over hot-stand-by technology.
- **Appropriate governance:** Only fully rules-based indices fall under the definition of objective indices. However, as markets are evolving and external factors change over time, a process and communication channels need to be in place to adjust the rules, and this could involve independent advisory boards and appropriate publication mechanisms for the changes.

By contrast, all indices which do not meet at least one of the criteria above are categorized as **subjective indices**.

A subcategory of subjective indices are **panel-based indices**. These indices do not use traded prices or binding quotes, but rely on a group of market participants who provide subjective pricing information; potentially voluntarily. It might even be that the pricing quality is not verified due to the lack of transparency about the submitters of the prices or comparable public markets. Recent allegations highlighted a broader set of governance issues for these panel-based indices. STOXX fully supports all initiatives for policy making and governance improvement for these panel-based indices.

1.1.3. THE IMPORTANCE OF INHERENT INTEGRITY

As outlined above, certain index providers do, by their specific set-up and focus, guarantee safeguards for proper index maintenance. This is particularly true where the provider or any associated affiliate does not benefit directly from the provided index levels. Indeed any form of manipulation of their indices would endanger the trust in its products which is a key asset for that group of index providers. The indices of neutral index providers such as STOXX are and have to be of high quality, produced without conflicts of interests and of the strictest neutrality to all market participants, otherwise the index provider would lose its reputation and therefore its customers in a highly competitive business.

In contrast, the absence of this split between provider of prices/provider of indices and the economic beneficiary of the index levels was a key issue in the LIBOR case.

1.1.4. THE IMPORTANCE OF INGOING DATA

Indices differ according to the type of ingoing data being used. Index providers may rely on third-party data providers and data aggregators for screening purposes. The results of their screenings; i.e. the composition of their indices, are made broadly available to the licensees of the index.

In principle, there are three different types of data to distinguish:

» Publicly available **traded prices or firm quotes** sourced from a liquid and regulated market. Traded prices from a regulated market do not require explicit explanations. A relevant example would be equity indices like the EURO STOXX 50 or the DAX being calculated with the traded prices from the leading locally regulated exchanges in Europe. Firm quotes from regulated markets are defined as being executable at all times. An example of the usage of firm quotes is the process for including new components in the eb.rexx fixed income indices, where binding ask prices from the regulated Eurex Bonds platform are used.
» Any other **indicative pricing** which could be non-firm quotes or estimates obtained systematically or randomly. An example would be the LIBOR. However, indices for market segments currently dominated by off-exchange trading resulting in non-transparent pricings also fall into this category. One prominent example would be many fixed income indices (if they are not based on traded prices).
» **Any other data** may also be used as a basis for the other informational instruments. Those figures might be obtained by surveys, statistical census or individual measurements. Examples here are unemployment rates, inflation rates or consumer sentiment data. In principle, there is no limitation for any such figures.

However, it is not only relevant what the source of the data is, but also the quality of those data. As a general rule higher liquidity is favorable. However, in cases where there are several sources available for the prices of the index constituents, a more detailed evaluation based on a broader set of criteria is necessary of whether to include prices from more than one trading venue or not for the index calculation. Again, as a general rule, if the index is used as an underlying (i.e. as a basis for financial products), the much simpler replication, the higher transparency about the concrete calculation, and the superior possibility of deriving clear settlement values favor the use of prices from one trading venue over the use of several sources.

1.2. RELEVANCE OF THE EXISTING LEGAL FRAMEWORK

Index providers and data providers (that are their sources of data for the purpose of index calculations) do not operate in an unregulated environment today. Firstly, there is vertical, product specific regulation such as the EU's UCITS regulations which require entirely rule-based indices. Secondly, there is upcoming horizontal regulation in the area of manipulation of benchmarks in connection with the proposal for a revised EU market abuse regulation. Finally, index providers have multiple intellectual property rights which need to be considered in this context as well. This includes, but is not limited to copyrights, data base protection rights, trademark rights, etc. The European Commission and also the G8 governments have put much effort into promoting their knowledge-based economies through strengthening intellectual property rights (see for example the respective G8 statement at http://www.whitehouse.gov/the-press-office/2012/05/19/statement-g-8-leaders-global-economy).

1.3. NEUTRAL INDEX PROVIDERS

There are in principle no restrictions on providing indices to the market place and as a result a broader group of providers develops and maintains indices. However, we believe that one group in particular is dedicated to providing high quality indices and we define these as **neutral index providers**: separate organizational units with the primary objective of developing, calculating, maintaining and marketing indices for profit to third parties. Those neutral index providers are in particular independent from market participants (who trade index related products or invest into index related products).

For clarification, providers who

» predominantly provide indices for the use of organizationally-related units or in-house issuers of products which benefit from the value of the indices or
» predominantly calculate and maintain indices on behalf of one specific market participant only

do not satisfy our definition above and are therefore not considered as neutral index providers. The main criteria are that the neutral index providers generate income from licensing their indices and **do not benefit from the value of the indices they provide**. For the avoidance of doubt, infrastructure providers who only enable trading or investing by providing technical platforms have no economic relationship to the index performance and are thus not included in the definition of the market participants above.

Any potential limiting of the activities of neutral index providers may bring undesired costs and potential negative impacts on the market place which would be undesirable for the following reasons:

1. Neutral index providers do **not have conflicts of interest** such as providing information for the index calculation and indirectly benefitting from specific index values.
   - All index methodology and calculation related decisions are taken independently by the index provider without any direct influence being granted to clients or other third parties.
   - In addition, neutral index providers do not generate revenues from index membership fees, also ensuring independence in the selection of the components of an index.

   Only neutral index providers will **guarantee unbiased indices** (like the objective indices defined above).

   In the absence of neutral index providers the issuers of financial products will rely exclusively on indices from associated parties provided for their own usage only. **Less competition in the products market** will occur as a consequence, as the products in the market will no longer be directly comparable for the end investor – at least not without a significant amount of sophisticated research.

   Subsequently more differently priced but rather undistinguishable products will appear without the possibility of comparison of concept and pricing. This will harm end investors by reducing their possibilities for un-biased tools for a broader diversification, hinder risk reduction and reduce market transparency. In addition, broader licensing of those proprietary concepts by product sponsors does not currently exist and will not exist in the future. In consequence, those indices will be used predominantly for the purpose of one specific product sponsor and not for the benefit of end investors.

2. **Neutral index providers are committed, out of their own business interest, to achieving the highest quality of index calculation** and maintenance*;* only a for-profit index business allows the **participation** of the entire market including the retail market **in state-of-the-art innovations**.
   » As their main nature of business is the provision of indices, neutral index providers continuously improve their operational processes to preserve their competitive position.
   » Only by having the opportunity to materialize the benefits of innovation will new concepts be made widely available.

   If the monetization of neutral index providers' products / indices were restricted, the overall **dynamics of innovation might decrease** and fewer state-of-the-art-concepts would be available for the broader investor base. In this case only sophisticated investors will be able to exploit newly occurring market opportunities and benefits of broad diversification whereas ordinary investors might suffer because these concepts are not available to them or because they will need to rely on concepts which have been developed by product issuers primarily for their own benefit.

3. Neutral index providers, by nature of their business models, **serve the entire market** and are therefore best suited to **offer indices unbiased** towards any specific user group.
   » Neutral index providers offer their services to both sides of the market: the issuers of financial products ("sell-side") as well as to asset managers and asset owners ("buy-side").
   » Any adjustment of the indices must be suitable for all market participants simultaneously (and not only to the benefit of product issuers).
   » Partial restriction of activities would potentially lead to partitioned and biased groups of index providers, each serving a limited range of market participants only. Index providers will therefore become pure service providers for a limited group of market participants only, namely the product issuers. As this might not become completely transparent, **less sophisticated or less influential investors may suffer** from being pulled into potentially one-sided products.

4. Neutral index providers **have built up significant experience** of index calculation without causing any distortions in the past.
   » Index provision from the neutral index providers is driven by high performance requirements as one of the key competitive criteria.
   » The wider usage of indices as underlyings has driven index providers to continuously develop highly sophisticated methods for quality checking both inbound and outbound data.
   » If the market structures change significantly, the **know-how and experience** of neutral index provider **may shrink** leaving the experience with the product issuers only.

5. As mentioned above, index providers have a wide range of **property rights in their indices.** There is an effective global market for the provision of indices. Some of the larger and market leading providers are domiciled outside the European Union, but also offer indices to clients in Europe.

1.4. CONCLUSIONS AND SUMMARY

As outlined above indices are used differently in the financial markets. Guidelines and safeguards are necessary to protect the markets from illegal actions. However, they should be drafted in a way which is proportionate and which supports the functioning of the markets in general and serves economic prosperity, while considering the differences between objective and subjective indices and the specific role of neutral index providers.

We conclude that:

» **due to their specific set-up, objective indices should not be subject to regulation;**
» **neutral index providers are best suited to calculate and operate subjective indices; and**
» **neutral index providers offer a significant benefit to the market and regulation should rather be extended to other providers of indices related to product issuers.**

Please note for clarification that the above mentioned potential higher need for regulation applies to those combinations of index providers and product issuers/investors, where the issuer or investor either holds significant investments or has own trade positions in indices provided by the associated index provider or related products. The reason for potential higher regulation is the imminent potential conflict of interest in this combination.

For all the reasons that make indices subjective – lack of transparency, inability to be replicated, inclusion of discretionary elements, lack of quality control – we believe that **regulatory focus and attention is required for subjective indices.** Additional guidelines and effective oversight would provide a valuable additional safeguard to the financial markets**.**

However, neutral index providers do not have conflicts of interest. Therefore, with the right set of guidelines and governance requirements, they are the best qualified to also calculate, maintain and operate subjective indices. For all other market participants, further safeguards should be considered.

2. SPECIFIC ANSWERS TO QUESTIONS

CHAPTER 1
Scope

Question	STOXX answer
1. Do you agree with the scope of the report and intended audience? Are there other Benchmarks or stakeholders that have idiosyncrasies that should place them outside of the scope of the report? Please describe each Benchmark or stakeholder and the idiosyncrasies that you identify and the reasons why in your view the Benchmark or stakeholder should be placed outside of the scope of the report.	As rightly outlined in Annex B of the Consultation Paper, a wide range of indices and benchmarks exists. They differ in methodology and purpose. We thus regard it as important to classify indices in general into different categories, namely when analyzed by methodology and construction into "**objective**" and "**subjective indices**" and when split by usage into "**underlyings**" and "**benchmarks**" (please see our introduction for a more thorough discussion). Referring to our introduction we believe that, due to their specific nature of inherent integrity and governance, "**neutral index providers**" and "objective indices" should not be subject to regulation. The inherent definition of "objective indices" already requires the strictest framework for the maintenance of those indices. In addition, again by definition, neutral index providers by their structural set-up have no conflict of interest. Over its long history this combination of neutral index providers and objective indices has not produced fractions in the market place. Apart from the different type of indices mentioned above there are also macro-economic indicators, which primarily serve as informational instruments for the capital markets only. As they are not composed of any acquirable financial asset and thus could not be used directly as a basis for a financial instrument, we suggest leaving them out of the focus of the consultation.

CHAPTER 2
Benchmark design

Question	STOXX answer
2. Do you agree that the design of a Benchmark should clearly reflect the key characteristics of the underlying interest it seeks to measure?	By (our) definition, there is always a complete link between the composing assets for an index and the index (as the index is based on those acquirable assets). By this definition it is inherent that the index fully reflects the underlying interest and we thus fully agree with this statement. However, indices have been established for numerous different markets, segments, styles and other investment areas. Construction of indices for some of those areas may come along with challenges at least in the mentioned areas of size and liquidity, relative market size, transparency, market concentration and market dynamics. It requires sufficient diligence and clarity on the purpose of use which drives defining methodologies. So while we clearly support the statement of alignment between the key characteristics and the underlying interests, we would like to emphasize that due to the wide range of available indices, a homogeneous answer on how to achieve this objective is not possible: certain indices may violate requirements which might be obligatory for others. For example, small cap indices by nature violate higher requirements for tradability and size which would be compulsory for large cap indices. To what extent certain limitations are acceptable must be determined by the purpose and use of the indices. Neutral index provid-

Question	STOXX answer
	ers have built a significant experience in balancing these diverging interests for the benefit of all market participants.

Benchmark design

Question	STOXX answer
3. What measures should Administrators take to ensure the integrity of information used in Benchmarking-setting and that the data is bona fide? Please highlight any additional measures required where Benchmarks are survey based. Please also comment on each of the factors identified in the discussion on the 'vulnerability of data inputs' such as voluntary submission, discretion exercised by Administrators. Are these measures adequately reflected in the discussion of roles and responsibilities of the Administrator discussed in section E?	A robust framework evaluating incoming data, transparency of sources and processes and guidelines for extreme market development is a necessity to ensure integrity of information. Changes to key information and data source used in benchmark setting should be preceded by efficient and timely communication to market participants. Similar to the answer to the second question this is dependent on whether it concerns objective or subjective indices. Objective indices are based on regulated and publicly available prices from trading venues and controls and checks are limited to mispricing. For subjective indices key components that constitute the setting of a benchmark, a wider range of cross-checks might be suitable, e.g. by verification of the data with another reputable source and by ensuring information used in benchmark setting and methodology is well documented and made available to customers, users, regulatory boards and where applicable to the public. Where discretion is taken by administrators, clients and customers of these benchmarks should be informed of the decision in a timely manner as well as given a credible reason and basis as to why and how the decision was made. Please note that these procedures are common practice for neutral index providers.
4. What measures should Submitters implement to ensure the integrity of information provided to Administrators? Are these measures adequately reflected in the discussion of a code of conduct for Submitters discussed in section E? In particular, should Submitters submit all input data and not a selection of such data so as to maximise the representation of the underlying market? Please comment on any practical issues that compliance with such an approach may give rise to.	According to our definitions, any potential safeguards would be applicable for subjective indices only (and not for the objective indices). For those subjective indices however, submitters of pricing data must ensure quality measures internally to enable verification of how their submitted data were derived. The diverse nature of indices complicates uniform governance setting. However, we believe that submitters of data should not be Administrators (with the exception of data generated by regulated and supervised trading venues).
5. What level of granularity with regard to the transparency of Methodologies would enable users to assess the credibility, representativeness, relevance and suitability of a Benchmark on an on-going basis and its limitations with respect to their intended use? Relevant factors could include; criteria and	Objective indices ensure by definition full transparency. However, due to the nature of the business activities of index providers, this transparency might be limited to clients of the index provider only. We would like to emphasize that we therefore disagree with full public transparency and would like to restrict this transparency to clients only. Users of indices should of course have a comprehensive understanding of key elements of indices. This principle understanding should cover the

Question	STOXX answer
procedures used to develop the Methodology, type of data used, how data is collected, relative weighting of data used, how and when judgment is used, contingency measures (e.g., methods when transaction data is unavailable etc.), publication of information supporting each Benchmark determination, etc. Please provide examples where you consider there are currently significant gaps in the provision of this information.	aggregation mechanisms of the indices, the data collection, the selection of the underlying assets and elements of the calculation. Neutral index providers already provide detailed information on the methodologies of their indices in their technical descriptions and rule books (see for example http://www.stoxx.com/indices/rulebooks.html). It is worthwhile noting that the transparency should be sufficient to replicate the indices in principle. In practice, however, the replication of certain indices may require a sufficient level of sophistication.

Transparency of contingency provisions for episodes of market disruption, illiquidity or other issues

Question	STOXX answer
6. What steps should an Administrator take to disclose to Market Participants and other stakeholders the contingency measures it intends to use in conditions of market disruption, illiquidity or other stresses?	Within the methodology and rule books the process for handling extreme and unforeseeable market scenarios should be described in advance to the extent possible. However, as by their very nature these events cannot be fully foreseen, it is essential that appropriate communication channels are available to ensure an equal and fast distribution of the information to subscribers of the index to avoid market frictions. If contingency measures are identified in order to cater for market disruption, illiquidity or other stresses, such measures should then be documented and made available to market participants and other stakeholders.

Transparency over changes to the Methodology

Question	STOXX answer
7. What steps should an Administrator take to notify Market Participants of material changes to a Benchmark Methodology (including to Benchmark components) and to take their feedback into account?	The process for regular changes of index constituents and the timing of the announcements and publications should be described within the methodology and the rule books. All objective indices corresponding to our definitions should have clear and objective rules, by which the concrete changes to the composition could be derived. Results of applying these rules should be made available to all clients of those indices in advance of the actual adjustment. For example, STOXX publishes all index adjustments publicly and relevant data are made available on the website also in advance for STOXX clients. As market interests are diverse, we favor the pure rule based approach where appropriate, compared to a process with market involvement (i.e. by advisory boards selecting the components). However, certain more exotic or niche markets require expertise for selection, where an independent advisory board composed from participants of different user groups might be best suited to support decision making. For material changes to the methodology, communication needs to be ensured. Support for decision making should again be given by an independent advisory board. In certain cases a broader consultation amongst the index users may also be of benefit for obtaining a broader view on a specific subject.
8. *How often should the Administrator*	Indices differ by their design to reflect the characteristics of the underly-

Question	STOXX answer
review the design and definition of the Benchmark to ensure that it remains representative?	ing markets they intend to measure. As these markets change over time, either developing further or even deteriorating, a general frequency cannot and should not be given. However, it is essential that appropriate advisory boards and communication channels are in place to collect market feedback on an ongoing basis and to stimulate eventually actions.

Governance

Question	STOXX answer
9. The Consultation Report discusses a number of potential conflicts of interest that may arise at the level of the Submitters, between Submitters at different entities, and between Submitters, Administrators and other third parties. Are there other types of conflicts of interest that have not been mentioned that you consider may arise? If so, how best should these conflicts of interest be addressed? Are the measures discussed in the Consultation Report sufficient to address potential conflicts of interests at the level of the Submitters, between Submitters at different entities, and between Submitters, Administrators and other third parties?	STOXX fully supports the view that a governance framework should be established and closely managed where the Index Administrator is owned by a Market Participant who » contributes non-market data (where non-market data should be viewed as data not generated on a regulated trading venue); » issues financial instruments (incl. derivative contracts) where the Market Participant benefits from the level of the underlying index; » is trading products linked to the index; » carries positions on products linked to the index. Note that our definition varies in some aspects from the wording outlined in the consultation: » Contribution is only potentially harmful if the data are not generated on a regulated market with all its inherent regulatory safeguards. Subscription to the benchmark is a prerequisite for index users (and thus the Market Participants) and is therefore not regarded as harmful. » The pure structuring and issuing of financial contracts (incl. derivative contracts) is not per se in conflict with an Index Administrator as long as the issuing party does not only trade these instruments or benefits in a similar way from the level of the index directly. In particular, we do not regard market infrastructure providers, e.g. derivative exchanges, as being in conflict with Index Administrators, as they only offer the underlying infrastructure for trading and do not benefit in any way from the index levels. On the contrary, where providers of exchange traded funds are also acting as their own Index Administrators, a conflict of interest might be possible, as the provider of the exchange traded fund holds positions in the index. » Rather than the term “active participants” we see more clarity in the term “trading products”. » We regard any position in the index as a source of potential conflict of interest, not only large ones. Ideally, Market Participants active in one of the above areas should be clearly separated from the Index Administrators and not only by governance policies.
10. Do you agree that the Administrator should establish an oversight committee or other body to provide independent scrutiny of all relevant activities and management of conflicts of interest? Please comment if and why any different approaches might be ap-	For certain aspects an additional expertise and experience will be supportive for scrutiny. However, the more complex an index concept or the more specific underlying market structure becomes, the fewer experts are available. Therefore oversight committees cannot be established for all topics. Oversight committees should be restricted in their role to advice only.

Question	STOXX answer
propriate for different kinds of Benchmarks. What is the minimum level of independent representation this committee or body should include?	Any influence on the composition of an index should be avoided wherever reasonable to limit a potential conflict of interest. The setting of rules and other aspects of the index maintenance should be and should remain the full responsibility of the Index Administrator. Clear accountability enforces compliance with highest standards and we therefore believe that oversight committees should have an advisory function only. We therefore favor the term “Advisory Board” over “Oversight Committee” and thus use it throughout this document.

Accountability

Question	STOXX answer
11. Should the Submitters establish accountability procedures to assess their compliance with operational standards and scrutiny of Benchmark submissions?	Panel-based indices with submissions of data by Submitters require additional safeguards along the lines proposed.
12. *Are the measures discussed in the Consultation Report (e.g. Audit Trail, external audits and requirement for regulatory cooperation) sufficient to ensure the accountability of Submitters? Should additional mechanisms be considered?*	n/a
13. How frequently should Submitters be subject to audits? Should these be internal or external audits?	n/a
14. *Are the measures discussed in the Consultation Report (e.g., complaints process, Audit Trail, external audits and requirement for regulatory cooperation) sufficient to ensure accountability of the Administrator? Should additional mechanisms be considered?*	n/a
15. If recommended, how frequently should Administrators be subject to audits? Should these be internal or external audits?	n/a
16. Is public self-certification of compliance with industry standards or an industry code another useful measure to support accountability? This approach might also contemplate explanation of why compliance may not have occurred. If so, what self-certification requirements would make this approach most reliable and useful to support market integrity.	For many years the combination of neutral index providers and objective indices has not produced frictions in the market place. Market standards towards publication and transparency of methodologies and index adjustments are in place and do not need to be formalized. Formalization may lead to inflexibility, harm innovation and lead to inefficiency and cost increases. A formalized standard setting is also prone to misuse by competitors.

Code of conduct for Submitters

Question	STOXX answer
17. The Consultation Report discusses elements of a code of conduct for Submitters. Are the measures discussed (e.g., adequate policies to verify submissions, record management policies that allow the Submitter to evidence how a particular submission was given, etc.) sufficient to address potential conflicts of interest identified or do you believe that other control framework principles should be added?	As mentioned in our introduction, one subcategory of subjective indices are panel- and submission-based indices. The submissions are critical as here a submitter is very often also a market participant benefitting from the index levels by their own financial transactions. Panel members (submitters) should be audited, rather than the panels themselves, but how and to what extent this is done must be further analyzed per market and type of underlying asset or type of input. The audit of the submitters themselves should fall within whatever regulatory body and framework it adheres to. If auditing is critical then it should focus more on the submissions. With regard to neutral index providers no further measures are needed as they are both independent from market participants and free of conflicts of interest as they do not have any beneficial economic position in the benchmarks and the related financial products.
18. What would be the key differences in the code of conduct for Benchmarks based on different input types, for example transactions, committed quotes and/or expert judgment?	In addition to splitting benchmarks according to different input sources, it is important to recognize that the type of index administrator who oversees the benchmark-setting plays a key role. If the provider conducting the calculations is not neutral, is without transparent governance and has a potential conflict of interest, a code of conduct should be enforced. By contrast neutral providers ensure a friction free approach by their set-up and independence from market participants.

CHAPTER 3
Approaches to enhanced oversight

Question	STOXX answer
19. What are the advantages and disadvantages of making Benchmark submissions a regulated activity?	As discussed in the introduction, we clearly separate panel-based indices from other indices in general. We clearly argue that no regulation is necessary for objective indices. By contrast, we do understand the need for more scrutiny for panel-based indices.
20. *What are the advantages and disadvantages of making Benchmark Administration a regulated activity?*	The index business has developed and progressed over the last hundred years with a wide range of innovations. The business conducted by neutral index providers has not produced significant distortions, but panel-based indices driven by banks have come under intensified scrutiny. The unregulated activities in the index business have produced a wide range of innovations. Today these innovations allow investors of all kinds to participate and benefit in sophisticated investments which previously had been restricted to fewer market participants only. The availability of state-of-the-art indices allows low cost access to these strategies. Regulation of indices would limit the degree of innovation and would lead to fewer market participants being able to exploit opportunities (either by using their proprietary research or by accessing other asset classes) – and as this is a zero sum game this benefit must come from the less sophisticated investors.
21. Do you agree with the factors identified for drawing regulatory distinctions? What other factors should	We disagree with the statement that vulnerabilities in the benchmark setting process discussed in the Consultation Paper apply to benchmarks in general. The need for regulatory action should be assessed based on

Question	STOXX answer
be considered in determining the appropriate degree of oversight of Benchmark activities (discussed in Chapter 3)? Please provide specific recommendations as to how the distinctions discussed in Chapter 3 should inform oversight mechanisms.	the criteria that we have proposed for objective indices (please refer to the introduction of our response for a detailed discussion). From these criteria the ones concerning the quality of the source data and the integrity/neutrality of the index provider should be decisive for the purpose of evaluating the requirements for regulatory action.
22. What distinctions, if any, should be made with regard to Benchmarks created by third parties and those created by regulated exchanges?	The line of differentiation between the various parties providing benchmarks – according to our introduction – should be drawn between neutral index providers and others. Neutral index providers maintain the index business as an independent business activity and comply with the requirements as outlined in the answer to question 9. Where exchanges comply with these requirements, no further differentiation for exchanges is necessary.
23. Assuming that some form of enhanced regulatory oversight will be applied to an asset class Benchmark, should such enhanced oversight be applied to the Submitters of data as well as the Administrator?	Submissions made by panel members should be subject to enhanced scrutiny, as outlined in the introduction. Apart from this general statement the concrete level of necessary oversight might differ from asset class to asset class.
24. What are the considerations that should be taken into account if the Submitters to a Benchmark operate in an otherwise unregulated market (e.g., physical oil, gold or agricultural commodity markets) and are not otherwise under any obligation to submit data to an Administrator?	n/a
25. Do you believe that a code of conduct, either on its own or in conjunction with other measures outlined within the report, would provide sufficient oversight to mitigate the risks that have been identified in Chapter 2? What measures should be established in conjunction with a code of conduct? For which Benchmarks is this approach suitable?	In the case of subjective indices, where market participants are involved in the index production, which is especially the case for panel based indices, it is difficult to imagine how appropriate codes of conduct or industry standards could be established by the companies involved. With respect to neutral index providers, codes of conducts are unnecessary as explained in our answer to question 16. However, neutral index providers already operate their business under a wide range of governance measures ensuring an unbiased service to the entire market. Depending on particularities, these measures already include codes of conduct where meaningful and feasible.
26. What other measures outlined in the report, if any, should apply in addition to a code of conduct? If you believe a code of conduct, either on its own or in conjunction with other measures outlined within the report, would provide sufficient oversight to mitigate the risks that have been identified in Chapter 2, what type of code of conduct should apply (e.g., a voluntary code of conduct, an industry code of conduct submitted to and approved by the relevant Regulatory Authority, a code of conduct developed by IOSCO, etc.)?	Given that codes of conduct are the least intrusive measure compared to self-regulation and classic regulation, we may understand the intent of such solutions as far as **subjective indices** are concerned. However, given the truly international nature of the index business, any such solution should be internationally harmonized. Hence IOSCO is probably the best forum to develop such solutions. We have already argued above (please refer to the introduction) that due to the diversity of the index business a uniform and homogenous code of conduct would not address the specific characteristics. We thus argue in favor of voluntary measures for subjective indices where those indices are calculated and maintained by neutral index providers. However, relevant regulatory authorities may issue a code of conduct to avoid conflict of interests between other Market Participants who are also Index Administrators.

Question	STOXX answer
27. Do you believe that the creation of a Self-Regulatory Organisation (e.g., one that exercises delegated governmental powers) and itself subject to governmental oversight, whether or not in conjunction with industry codes is a viable alternative for sufficient oversight and enforcement to mitigate the risks that have been identified in Chapter 2? For which Benchmarks is this approach suitable? What if any complementary arrangements might be necessary, such as new statutory obligations or offences for Administrators and/or Submitters?	Switzerland has put SRO's in place for the prevention of money laundering by financial institutions. The system works well and is said to be equivalent to state regulation while minimizing the impact on investors' privacy. The latter aspect is not relevant in the case of the regulation of benchmarks. However, in the case of benchmarks, the lack of specialized knowledge of governmental bodies could be an argument in favor of SRO's. SRO's would nevertheless impact the commercial freedom of benchmark providers more heavily than codes of conduct developed within IOSCO and should therefore be very much a second choice. In any case the laws or regulations governing the set-up and functioning of SRO's would need to be internationally harmonized as well.
28. Do you believe that, for some Benchmarks, reliance upon the power of securities and derivatives regulators to evaluate products that reference a Benchmark or exercise their market abuse or false reporting powers creates sufficient incentives for the Administrator to ensure sure that Submitters comply with a code of conduct?	Product specific regulation already exists today, e.g. the EU's UCITS and prospectus directives. Both regulations are commercially highly relevant for STOXX and we need to comply with them in the interest of our customers for commercial reasons. Especially the UCITS directives cover a wide range of aspects concerning our index production. No further indirect regulation is currently needed for objective indices in our opinion as such regulation would heavily impact the commercial balance between index providers and index users.
29. Do you believe that users of a Benchmark, specifically, the users who are regulated or under the supervision of a national competent authority should have a role in enhancing the quality of Benchmarks? Which form should this role take: on a voluntary basis (e.g. the user being issued a statement that will only use Benchmarks that follow IOSCO principles), or on a compulsory basis (e.g., the competent authority could request that users who are registered under their jurisdiction should only use Benchmarks that fulfill IOSCO principles)?	The responsibility for the quality of an index should fully reside with the index provider. The proposed principles would distort the commercial balance between index providers and index users. This would be a far reaching limitation on the index provider's freedom to do business which would be clearly disproportionate.

CHAPTER 4
Data sufficiency

Question	STOXX answer
30. Do you agree that a Benchmark should be anchored by observable transactions entered into at arm's length between buyers and sellers in order for it to function as a credible indicator of prices, rates or index values? How should Benchmarks that are otherwise anchored by bona-fide	Whereas in equity markets it is a widely established principle to use prices from regulated trading venues only, in other markets a similar requirement might be impossible to establish due to lack of transparency. Whereas, for example, full transparency of bond market transactions would be preferential, indicative prices and/or non-binding quotes are available today in certain areas.

Question	STOXX answer
transactions deal with periods of illiquidity due to market stress or long-term disruption?	
31. Are there specific Benchmarks for which you consider that observable transactional data is not an appropriate criterion or the sole criterion? If so, please provide a description of such Benchmarks and what value you think such Benchmarks provide?	Please see answer to question 2 and 30.
32. What do you consider the limitations or value in Benchmarks referencing asset classes and underlying interests where there is limited liquidity? Please describe the uses and value of such Benchmarks in the financial markets.	We have already outlined above that indices differ with respect to their focus, and that as a consequence liquidity criteria for certain indices may not be sufficient for others: For example small cap indices will by nature have smaller liquidity than large cap indices. However, also the possibility for smaller enterprises to raise capital in the equity markets is a cornerstone of a functioning economy and indices for this segment would support this function by attracting investors and creating visibility for the companies. We would again like to emphasize that a potential "one-size-fits-all" approach may have significant negative side effects.
33. Do you agree that the greatest weight should be given to transactions in the construction of a Benchmark and that non-transactional information should be used as an adjunct (e.r., as a supplement) to transactions?	Please see answer to question 2 and 30.
34. What factors and how often should Administrators (or others) consider in determining whether the market for a current Benchmark's underlying interest is no longer sufficiently robust? What effective methods of review could aid in determining the insufficiency of trading activity within the market for a Benchmark's underlying interest?	Please see answer to question 8.

Transition

Question	STOXX answer
35. What precautions by Benchmark Administrators, Submitters, and users can aid Benchmark resiliency during periods of market stress, mitigating the potential need for market transition?	It is in the self-interest of neutral index providers to continuously adapt their indices to best meet market requirements, especially also in times of stress. The measures mentioned in the Consultation Paper are some of those precautions, but as the markets are evolving we consider it inadequate to provide an exhaustive list.
36. What elements of a Benchmark "living will," drafted by a Benchmark Administrator, should be prioritised?	Indices are provided on the basis of a commercial business, thus there should of course be the possibility for the Benchmark Administrators to discontinue those indices.
37. By what process, and in consultation with what bodies, should alterna-	A replacement of an underlying for a specific financial product should be approved by the regulatory organization overseeing the issuance of the

Question	STOXX answer
tives be determined for Benchmark replacement?	respective financial product.
38. What characteristics should be considered when determining an appropriate alternate Benchmark? (Examples below) Should any of these factors be prioritised? o *Level and Type of Market Activity* o *Diversity/Number of Benchmark Submitters* o *Length of historical price series for the Benchmark alternative* o *Benchmark Methodology* o *Existing regulatory oversight* o *Existing enforcement authority* o *Volume, tenors and contract structure of the legacy trades*	Replacements of underlyings for financial products would affect the investor in this specific product: Initially the investor had made the decision for a specific exposure described by the methodology of the index. In the event that the underlying is changed, the investor will obtain a different exposure described by the methodology of the new index. In order to minimize the impact on the investor, the methodologies should be similar, also including indirect elements such as the liquidity of the constituents.
39. What conditions are necessary to ensure a smooth transition between market Benchmarks?	n/a
40. What considerations should be made for legacy contracts which reference a Benchmark in transition? To what extent does a substantive legacy book preclude transition away from a Benchmark? What provisions can be included in [new and existing] contract specifications which would mitigate concerns if and when a Benchmark transitions occurs?	n/a
41. How should a timeframe be determined for market movement between a Benchmark and its replacement? What considerations should be made for: o *Altered regulatory oversight?* o *Infrastructure development/modification?* o *Revisions to currently established contracts referencing the previous Benchmark?*	n/a

Question	STOXX answer
o *Revisions to the Benchmark Administrator?* o *Risk to contract frustration*	