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European Commission
Directorate General Internal Market and Services
B-1049 Bruxelles,
Belgium,
Via electronic mail: markt-benchmarks-consultations@ec.europa.eu

Dear Sir:

On behalf of The McGraw-Hill Companies, Inc. and S&P/ Dow Jones Indices, LLC, I thank you for the opportunity to respond to the questions raised in the European Commission's *Consultation Document on the Regulation of Indices* (the "Consultation Document"). S&P Dow Jones Indices shares the European Commission's goal of enhancing confidence, transparency and integrity in key benchmarks and we welcome further engagement with the Commission as it undertakes its review.

S&P/Dow Jones Indices, LLC, a subsidiary of The McGraw-Hill Companies, Inc. ("S&P Dow Jones Indices"), is a leading publisher of a wide variety of indices, many of which are used as benchmarks. We publish over 830,000 indices, including globally-recognized and industry-leading indices such as the S&P 500, the Dow Jones Industrial Average and the S&P/Case Shiller Home Price Indices. In addition to calculating and publishing its own indices, S&P Dow Jones Indices also has a great deal of experience working with third parties and owners of other benchmarks to leverage its oversight and governance protocols, as well as its transparent systems and processes, to act as a custom index calculation agent, calculating, maintaining and distributing over 50,000 custom indices around the globe.

As S&P Dow Jones Indices, we recognize that indices, used as the underlying reference in a broad range of financial products and as a reference by portfolio managers worldwide, are important to a dynamic and robust marketplace. Markets worldwide benefit from the increased liquidity and investment opportunities that result

from index-linked products. We also appreciate that there are many types of indices that capture and provide information for a number of different uses from various sources of information. Some of these indices are based on unsubstantiated estimates or surveys, while others, such as those published by S&P Dow Jones Indices, are tied to observable market information, such as actual transactions, observable bids and offers or other verifiable market data.

Given these differences, we believe a “one size fits all” approach is not appropriate. Instead, the key differences between indices that are transparent and are calculated and maintained according to robust governance policies and procedures, and which rely on actual market facts, should be distinguished from those that are not, and which by their nature may therefore need additional oversight. Failing to make this distinction would unnecessarily increase the cost of using indices that do not pose the same types of concerns as less robust indices and benchmarks. We encourage the Commission to conduct a thorough review of the characteristics of the different types of indices that are published, their methodologies, uses and user bases, existing governance and transparency policies, and the costs of creating additional layers of oversight, before determining what issues may have relevance for particular market measurements and whether a regulatory response is advisable with respect to a particular type of index. To aid the Commission in that process, we set forth below our responses to the 46 questions posed in its Consultation Document.

Thank you again for the opportunity to respond to the Consultation Document. S&P Dow Jones Indices welcomes the opportunity to discuss these topics further at future stages of the consultation process.

Respectfully Submitted,

Alexander J. Matturri Jr.
Chief Executive Officer
S&P Dow Jones Indices

SUMMARY OF QUESTIONS

Chapter 1. Indices and Benchmarks: What they are, who produces them and for which purposes

(1) Which benchmarks does your organisation produce or contribute data to? S&P Dow Jones Indices is a producer of a wide variety of benchmarks. We obtain price data and other information from various sources in order to publish over 830,000 indices, including globally-recognized and industry-leading indices such as the S&P 500, the Dow Jones Industrial Average and the S&P/Case Shiller Home Price Indices. In addition to calculating and publishing its own indices, S&P Dow Jones Indices also has a great deal of experience working with third parties and owners of other benchmarks to leverage its oversight and governance protocols, as well as its transparent systems and processes, to act as a custom index calculation agent. S&P Dow Jones Indices calculates, maintains and distributes over 50,000 custom indices around the globe. The custom indices, which provide independently-calculated solutions, are designed to the specifications of our clients. These indices are used for various purposes including benchmarking of investment performance, and risk management, as the basis of financial products such as index funds and ETFs and as the basis of listed and OTC derivatives.

(2) Which benchmarks does your organization use? What do you use each of these benchmarks for? Has your organization adopted different benchmarks recently and if so why? S&P Dow Jones Indices is an independent index provider. Certain indices are comprised of underlying indices, in some cases its own and in other cases third-party indices, which are used only with appropriate permission. S&P Dow Jones Indices does not use benchmarks published by other entities for any purpose other than the creation of indices or to measure the performance of its own proprietary indices.

(3) Have you recently launched a new benchmark or discontinued existing ones? S&P Dow Jones Indices regularly launches new indices when it determines that there is an interest in having an index product which is designed to measure a given market or opportunity (e.g., the Global Resources Select Equal Weighted Index, launched on October 18, 2012); when appropriate, we also discontinue publication of existing indices when we make the determination that there is no longer an interest in the particular measurement or for other business purposes (e.g., the S&P GSCI Heating Oil Enhanced EUR Index, discontinued on November 9, 2012). In terms of indices which are adopted for benchmarking purposes, the

market, rather than S&P Dow Jones Indices, controls whether an index will be used as a benchmark. Whether an index is adopted for use as a benchmark, or is licensed from S&P Dow Jones Indices to become the underlying interest for a financial product, depends on whether there is a need for that market measurement among market participants, and whether the publisher of the index is a recognized and reputable index provider. Adoption of an index for use as a benchmark often takes years.

List agreements

(4) How many contracts are referenced to benchmarks in your sector? Which persons or entities use these contracts? And for which purposes? S&P Dow Jones Indices are not generally used as references in contracts in the same manner that a price commodity price assessment would be. (See Response to Question 5 below.)

(5) To what extent are these benchmarks used to price financial instruments? Please provide a list of benchmarks which are used for pricing financial instruments and if possible estimates of the notional value of financial instruments referenced to them. Indices published by S&P Dow Jones Indices are used as the underlying interest for a whole host of financial products. Our indices are licensed to exchanges and financial institutions around the globe for use as the underlying interest in index mutual funds, cash-settled options and futures, ETFs, as well as myriad OTC financial instruments such as swaps, which are traded bi-laterally. The amount referenced to indices published by S&P Dow Jones Indices is significant. For example, S&P Dow Jones Indices estimates that, as of 2010, there was approximately USD 5.58 trillion benchmarked to the S&P 500, with USD 1.3 trillion making up indexed assets. In addition, in 2011, the avenge daily volume traded in S&P 500 futures contracts was over 2 million contracts per day and for S&P 500 index options was over 600,000 contracts per day, making these derivatives among the most liquid and heavily used in the world. As of the end of October 2012, there were over 650 Exchange Traded Funds with assets of approximately $440 Billion benchmarked to S&P Dow Jones indices.

(6) How are benchmarks in your sector set? Are they based on real transactions, offered rates or quotes, tradable prices, panel submissions, samples? Please provide a description of the benchmark setting methodology. S&P Dow Jones Indices' role in index publishing is analytical. In developing indices designed to reflect a given market we develop methodologies which include a detailed description of how S&P Dow Jones Indices intends to measure the given market, including how it will choose index constituents, how those constituents will be

weighted, and other relevant information about how the index will be calculated, including how S&P Dow Jones Indices will exercise its judgment in maintaining the index. While our methodologies are transparent and publicly available, index governance does include a degree of judgment in applying those methodologies. For example, S&P's U.S. Indices like the S&P 500 are maintained by the U.S. Index Committee, which meets monthly to review such things as pending corporate actions that may affect index constituents, statistics comparing the composition of the indices to the market, companies that are being considered as candidates for addition to an index, and any significant market events. In addition, the Index Committee may revise index policy covering rules for selecting companies, treatment of dividends, share counts or other matters. S&P Dow Jones Indices considers information about changes to its indices and related matters to be potentially market moving and material and therefore all Index Committee discussions are confidential. To reiterate, however, our methodologies and processes and procedures are transparent and open to the public. Indeed, our methodologies are publicly available on our website at:

http://www.standardandpoors.com/servlet/BlobServer?blobheadername3=MDT-Type&blobcol=urldata&blobtable=MungoBlobs&blobheadervalue2=inline%3B+filename%3Dmethodology-sp-us-indices.pdf&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobkey=id&blobheadername1=content-type&blobwhere=1244125623286&blobheadervalue3=UTF-8

Transparency is a core principle to S&P Dow Jones Indices; the market demands it. Benchmarks in the highly-competitive index industry are not "set". Once S&P Dow Jones Indices has developed an index, the market, not S&P Dow Jones Indices, any of its competitors, or any other entity external to the markets, determines whether it will be adopted as a benchmark. That is for market to decide based on the needs of market participants. As an independent index provider, S&P Dow Jones Indices has an incentive to publish the best product possible according to its established policies and procedures, with the hope that it will be adopted as a benchmark by the market.

(7) What factors do you consider to be the most important in choosing a reliable benchmark? Could you provide examples of benchmarks which incorporate these factors? S&P Dow Jones Indices is an independent index provider, and does not choose which of its indices will be used as benchmarks. In developing and maintaining its indices, however, we believe there are certain core principles that are essential to developing and maintaining the indices which S&P Dow Jones publishes, and to maintaining our reputation as an industry leader in the index industry. The first such attribute is independence. We are independent and separate from market participants, product providers and government entities. S&P Dow Jones Indices does not participate in the markets it measures and has no

vested interest in the value of any of its indices at any given time. We do not create, manage, issue, trade or clear any index-linked investment product or derivative. Second is innovation. S&P Dow Jones Indices has made significant investments in technology and other product innovations over the decades in order to develop and maintain its industry-leading indices and constantly create new indices. Those indices are then licensed to a whole host of exchanges and financial institutions through intellectual property licenses to be used for a wide range of financial products. In turn, these investments have contributed to the continued growth of financial markets in both developed and developing markets by allowing investors additional choice in the types of index-linked investment products available to them. The third characteristic is transparent systems and processes. S&P Dow Jones Indices provides broad access to its methodologies and research, and the broad dissemination of our indices helps market participants understand the markets in which they operate. Fourth is integrity, oversight and governance. S&P Dow Jones Indices has robust independent oversight functions charged with: (a) reviewing its methodologies to ensure they meet its stated objectives and continue to address market needs effectively and credibly; (b) publishing and adhering to a transparent construction and calculation methodology; (c) ensuring that editorial functions, including index development, calculation and maintenance, are appropriately firewalled from commercial functions; (d) employing rigorous compliance practices designed to prevent inappropriate behavior and conflicts of interest; and (e) obtaining data and submissions from reputable sources and monitoring of inbound and outbound data and sources to make sure they continue to meet our high standards. S&P Dow Jones Indices believes its benchmarks adhere to these principles. In addition to the principles outlined above, S&P Dow Jones Indices also believes that market participants want to be sure that an index is likely to be produced by a dependable index provider with a perceived commitment to the index before a given index will be adopted for use as a benchmark, and therefore the stability and reputation of the index provider is also of critical importance to whether the index will be adopted by the market as a benchmark.

Chapter 2. Calculation of Benchmarks: Governance and Transparency.

(8) What kinds of data are used for the construction of the main indices used in your sector? Which benchmarks use actual data and which use a mixture of actual and estimated data? S&P Dow Jones Indices obtains transactional price data from various vendors, usually in the form of a data feed from one of its primary data vendors or pricing services (e.g., IDC, Bloomberg, Thomson Reuters) for the relevant market and applies the methodology for the given index to that data. In short, S&P Dow Jones Indices is a price taker, not a price maker. In the case of equity indices, the data is generally in the form of the last traded price from the

given exchange, information which is provided via the data vendor with which S&P Dow Jones Indices has entered into a data license (e.g., IDC). In certain cases, the information provided by the data aggregators may not be exchange price data, but rather other types of aggregated data, such as of closed home sales from county clerks or other similar sources, as in the case of the Case Shiller Home Price Indices, or information aggregated by Experian, which provides credit default data from its databases. In certain other instances, like in the case of the S&P Health Care Economic Indices, S&P Dow Jones Indices will take feeds from government data sources (e.g., unemployment rates, employee benefit costs). In some cases, S&P Dow Jones Indices, like other index providers, uses data provided by a pricing service, such as in the case of its bond indices. We also calculate what are known as "white label" custom indices on behalf of certain clients. In these cases, the intellectual property in the indices are owned by the client and S&P Dow Jones Indices serves solely as an independent third-party calculation agent. Some of these white label custom clients provide, either directly or indirectly, estimated or evaluated price data to S&P Dow Jones Indices for use in the calculation of the index. These data may originate from the client's own firm; however, in these cases we require that the price data be provided by a separate branch or profit center within the client's firm. Moreover, we require the client to represent and warrant in our agreements that all self-reported data is independent and separate from the group creating the index. In all cases, we have a system of checks and balances to ensure that the data provided by our data vendor is robust and dependable, including redundancy of price information and the ability to confirm the accuracy of a price with the underlying source (e.g., the New York Stock Exchange) if there is a question about a specific datum.

(9) Do you consider that indices that do not use actual data have particular informational or other advantages over indices based on actual data? As stated above, S&P Dow Jones Indices generally uses data provided by data aggregators or pricing services in its indices and is a price taker, not a price maker. In some cases, as with bond indices, the underlying prices provided by a pricing service may be a mixture of concluded transactions, bids and offers and other market information, in markets where there are few concluded transactions. While S&P Dow Jones Indices does not participate in the price discovery process in such instances, its view is that such price assessments using estimated data should be based on market facts rather than opinion or speculation. The quality and representative nature of data inputs in such circumstances are important in determining a price that is representative of true market value.

(10) What do you consider are the advantages and disadvantages of using a

mixture of actual transaction data and other data in a tiered approach? As stated above, S&P Dow Jones Indices is not involved in the price discovery process.

(11) What do you consider are the costs and benefits of using actual transactions data for benchmarks in your sector? Please provide examples and estimates. ? There are several categories of indices based on robust methodologies and data sets that help to bring transparency to the markets and are valuable to investors, such as bond indices, which are not based solely on actual transactions, but a combination of transactions, bids and offers and other actual market information. Not having these tools available to investors would be detrimental to global financial markets.

(12) What specific transparency and governance arrangements are necessary to ensure the integrity of benchmarks? S&P Dow Jones Indices has robust policies and procedures designed to ensure the integrity of its indices. As stated above, transparency is a core value at S&P Dow Jones Indices; we provide broad access to our methodologies and research because we believe the broad dissemination of such information helps market participants understand the markets in which they operate. As further stated above, S&P Dow Jones Indices has robust independent oversight functions charged with: (a) reviewing its methodologies to ensure they meet its stated objectives and continue to address market needs effectively and credibly; (b) publishing and adhering to a transparent construction and calculation methodology; (c) ensuring that editorial functions, including index development, calculation and maintenance, are appropriately firewalled from commercial functions; (d) employing rigorous compliance practices designed to prevent inappropriate behavior and conflicts of interest; and (e) obtaining data and submissions from reputable sources and monitoring of inbound and outbound data and sources to make sure they continue to meet our high standards. S&P Dow Jones Indices believes its benchmarks adhere to these principles. Importantly, S&P Dow Jones does not create, distribute, sponsor, trade or settle investment products.

It is important to note that S&P Dow Jones Indices differs fundamentally from the British Bankers' Association, and its indices are fundamentally different from LIBOR. The inputs are taken from a regulated exchange or otherwise constituted from actual market data rather than an estimate or opinion of the price at which a transaction might take place made by a small panel of interested parties. Further, as stated above, our publicly available methodologies clearly explain how our indices are created, calculated and maintained.

(13) What are the advantages and disadvantages of imposing governance and

transparency requirements through regulation or self- regulation? While S&P Dow Jones Indices supports the promotion of best practice standards, and we have adopted such standards in our own operations, we do not believe that it is necessary to establish definitive governance and transparency requirements through regulation. The disadvantage of such regulation is that it could drive up cost for consumers if such regulation is overly prescriptive and could stifle innovation of new indices thereby giving investors less choice and providing less transparency to markets, including developing markets. Regulation would also likely curtail the reputation for independence that is vitally important to the markets. Indeed, market participants want to be sure that benchmarks are not influenced by external factors. Recognizing that it is technically an "advantage" to existing index providers in that it would reduce competition, overly prescriptive regulation could also dissuade new index providers from entering the market or cause smaller existing firms to cease doing business, thereby reducing transparency into the capital markets and reducing investor choice. S&P Dow Jones Indices is confident that its own policies and procedures comprise a robust self-regulation of its governance and transparency, as its reputation for such is the cornerstone of its business and the market demands it.

(14) What are the advantages and disadvantages of making contributing data or estimates to produce benchmarks a regulated activity? Please provide your arguments. Many of the entities contributing price data used in the indices published by S&P Dow Jones Indices, via our data vendors or financial institutions, are often regulated exchanges or other regulated entities. Apart from creating an unnecessary additional regulatory layer, regulating contributions of such data used for S&P Dow Jones Indices could disrupt contractual arrangements with our data vendors (e.g., IDC), with no appreciable benefit to the quality or integrity of the data we receive, and could create disincentives for our data vendors to enter into such agreements with S&P Dow Jones Indices, thereby reducing the number of indices available to the public.

(15) Who in your sector submits data for inclusion in benchmarks? What are the current eligibility requirements for benchmarks' contributors? S&P Dow Jones Indices obtains transactional price data from various vendors, usually in the form of a data feed from the vendors and/or pricing services (e.g., IDC, Bloomberg, Thomson Reuters), subject to data license agreements. While in these instances there are no eligibility requirements per se, in instances where S&P Dow Jones Indices is obtaining data through such an aggregator or pricing service, we ensure that the data providers are established reputable data providers with a proven track record of providing robust data sets. In certain cases, the information provided by

the data aggregators may not be exchange price data, but rather other types of aggregated data, such as of closed home sales from county clerks or other similar sources, as in the case of the Case Shiller Home Price Indices. These data are also provided through the use of reputable data aggregators with established reputations (e.g., Fiserv). In some cases, S&P Dow Jones Indices, like other index providers, uses data provided by a pricing service, such as in the case of its bond indices. In certain other instances, like in the case of the S&P Health Care Economic Indices, S&P Dow Jones Indices will take feeds from government data sources (e.g., unemployment rates, employee benefit costs). Certain of our custom index clients used "self-marked" indices, whereby they provide the data or direct S&P Dow Jones Indices as to which data to use for the construction of the index. These indices are not S&P branded. S&P Dow Jones Indices obtains representations with regard to the rights to use such data, and the data is often from the same data providers which supply S&P Dow Jones Indices with data for its own proprietary indices. In all cases, we have a system of checks and balances to ensure that the data provided by our data vendor is robust and dependable, including redundancy of price information and the ability to confirm the accuracy of a price with the underlying source (e.g., the New York Stock Exchange) if there is a question about a specific datum.

(16) How should panels be chosen? Should safeguards be provided for the selection of panel members, and if so which safeguards? S&P Dow Jones Indices does not obtain data from panels and therefore expresses no view on how panels should be chosen.

(17) How should surveys of data used in benchmarks be performed? What safeguards are necessary to ensure the representativeness and integrity of data gathered in this way? S&P Dow Jones Indices does not obtain information through the use of surveys and therefore expresses no view on how survey data should be used in benchmarks.

(18) What are the advantages and disadvantages of large panels? Even in the case of large panels could one panel member influence the benchmark? S&P Dow Jones Indices does not obtain data from panels and therefore expresses no view on the advantages and disadvantages of large panels.

(19) What would be the main advantages and disadvantages to auditing of panels? Please provide examples. S&P Dow Jones Indices does not obtain data

from panels and therefore expresses no view on the advantages and disadvantages to auditing panels.

(20) Where indices rely on voluntary contributions, do you consider that there are factors which may discourage the making of these contributions and if so why? Except in the case where S&P Dow Jones Indices obtains data from government or other similar sources, contributions of data underlying its indices are voluntary in the sense that they are subject to negotiated commercial arrangements with data aggregators or pricing services. If these disclosures were made mandatory such that there were no longer a commercial incentive for these aggregators to operate, or the provision of data was subject to a layer of regulatory oversight in addition to the oversight already imposed on many underlying sources (e.g., the New York Stock Exchange), there could be disincentives to continuing to operate as a contributor and/or data aggregator, thereby making less information available to the markets and to independent index providers, thereby reducing market transparency, which could in turn undermine the effective functioning of the markets.

(21) What do you consider to be the advantages and disadvantages of mandatory reporting of data? Please provide examples. S&P Dow Jones Indices is not sure to whom any such mandate would apply. If it is to the regulator, then it would often be duplicative of the regulatory oversight of the exchanges from whom S&P Dow Jones Indices obtains prices, or in some cases the mandate would be imposed on the government for the reporting of its own data to the regulator (e.g. home price data). If the mandate would be to report the data to the regulator, it is unclear what would be done with the data; if for market monitoring purposes, in many instances, that is already an activity available to regulators with regard to the underlying data. If, instead, it is for the purpose of replicating indices, this could create significant issues if the regulator or other governmental organization did not calculate or maintain (through, for example, index committee decisions) the index in the same manner, which could create significant marketplace confusion. Assuming the mandatory reporting would be to index providers, putting aside the issues with existing contractual arrangements with data providers, there would be issues and risks that could arise from a mandatory reporting regime, including that existing systems would need to be reconfigured to take feeds directly from data sources (e.g., the New York Stock Exchange), and the data aggregators would no longer be in a position to provide a secondary check on the data from each source.

(22) For entities contributing to benchmarks which are regulated by financial

regulation, what would be the advantages and disadvantages of bringing their benchmark submissions under the scope of this framework? See S&P Dow Jones Indices' response to Question 21.

(23) Do you consider that responsibility for making adjustments if inadequate data is available should rest with the contributor of the data, the index provider or the user of the index? An index provider should take responsibility for determining when it has enough data available to publish an index according to its methodology. In the case of S&P Dow Jones Indices, if we find that inadequate data is available, we will not publish the index.

(24) What is the formal process that you use to audit the submissions and calculations? While our data contributors are leading global market data providers such as IDC, Bloomberg and Thomson Reuters, and in major markets we have the data from multiple sources and the ability to switch between data sources if a problem arises, we nevertheless have processes and procedures in place to validate the data we receive. For example, we have automated systems in place to compare end-of-day prices from the source exchanges. If a discrepancy is found, we will contact the source, e.g., the exchange, to verify the price, and make any necessary corrections immediately. We verify corporate actions and other information that impacts index calculations via multiple sources (e.g., DTCC, Bloomberg, S&P CapitalIQ, etc.). This is largely done in real-time so that any necessary correction to a price included in the calculation of one of our indices can be made as soon as possible.

(25) If there are any weaknesses identified in the audit, who are they reported to and how are they addressed? Is there a follow up process in place? If our processes and procedures identify a discrepancy in any datum, we will ask the data aggregator or pricing service to verify. With regard to equity indices, for example, we take feeds from multiple sources (e.g., IDC, Thomson Reuters). If there is a discrepancy, we will contact the exchange and ask them to verify the price. Any necessary adjustments to the index calculation will be made immediately. Any price corrections issued by exchanges are incorporated in the index calculations and index values are restated when appropriate.

(26) How often are submissions audited, internally or externally, and by what means? Do you consider the current audit controls are sufficient? What additional validation procedures would you suggest? Our audit procedures take place through the identification of discrepancies in real-time through automated processes and

any necessary corrections to the calculation of an index are made immediately.

(27) What are the advantages and disadvantages of a validation procedure? Please provide examples. See S&P Dow Jones Indices Response to Question 26.

(28) Who should have the responsibility for auditing contributed data, the index provider or an independent auditor or supervisor? There is typically no independent third party auditor who audits the data that is used to calculate indices published by S&P Dow Jones Indices. For independent index providers such as S&P Dow Jones Indices, there is an incentive to audit and/or verify the data in real-time and making any necessary corrections immediately.

(29) What are the advantages and disadvantages of making benchmarks a regulated activity? Please provide your arguments. As a publisher whose publications are voluntarily used by market participants and others worldwide, S&P Dow Jones Indices is not regulated in any country. The financial index provider industry is a highly-competitive industry that provides high quality, substitutable indices, which are calculated according to publicly available, transparent index methodologies. That competition is a natural check and balance in that multiple competitors are provided with incentives to publish indices which reflect a given market to the best of their abilities. In particular, while S&P Dow Jones Indices welcomes the opportunity to discuss its policies and procedures with policymakers and regulators, regulation of the processes by which S&P Dow Jones Indices develops and maintains its indices, including in developing its methodologies and any associated decision making, would not only infringe its rights as a publisher and proprietor of its intellectual property, but would also be an intrusion into the very independence that makes S&P Dow Jones Indices a valuable resource to the market as an independent and impartial market observer. We believe that the markets are the best arbiter of what indices and index providers are best suited to become benchmarks. For example, the S&P 500 is a widely-used benchmark precisely because it has a long track record of reflecting well the U.S. large cap market, without a vested interest in the value of the index at any given time and without undue external influences that could bias the outcome.

Chapter 3: The Purpose and Use of Benchmarks

(30) Is it possible and desirable to restrict the use of benchmarks? If so, how, and what are the associated costs and benefits? Please provide estimates. S&P Dow Jones Indices believes the market is best-suited to determine which indices to

use as benchmarks and for what purpose. Restricting the use of the indices published by S&P Dow Jones Indices (and those adopted as benchmarks) would lead to less innovation in the index industry, and provide less choice for investors. It would also create less transparency in the market the given benchmark measures, which could in turn lead to market disruption.

(31) Should specific benchmarks be used for particular activities? By whom? Please provide examples. Market participants are best-suited to determine for which activities a specific benchmark should be used, and mandating the use of specific benchmarks for particular activities should be avoided. If an index provider maintains its independence and produces its indices with integrity and in a transparent manner, the market will adopt the index provider's indices for use as benchmarks without the need for a government mandate.

(32) Should benchmarks developed for wholesale purposes be used in retail contracts such as mortgages? How should non-financial benchmarks used in financial contracts be controlled? S&P Dow Jones Indices publishes its methodologies and makes the purpose of its indices known. The most appropriate measure of a given market is what should be used in each instance. Further, the same index can be used for multiple purposes. For example, the S&P 500 can be considered to be a retail index when it is used as the underlying interest in an ETF, but can be considered wholesale when a pension fund uses it as a benchmark to track its portfolio. S&P Dow Jones Indices endeavors to produce indices that reflect the value of a given market, and believes that its indices provide value to the markets and consumers by providing information and greater transparency about markets worldwide. The specific uses for which its indices are used are broad and, as discussed, can vary depending on the circumstances.

(33) Who should have the responsibility for ensuring that indices used as benchmarks are fit for purpose, the provider, the user (firms issuing contracts referenced to benchmarks), the trading venues or regulators? The user of the benchmark should determine how best to use the index. Any given index is merely one tool used in a free market in order to help achieve better understanding of the measured market. S&P Dow Jones Indices endeavors to make clear what the index is intended to reflect through its published methodologies and open processes and procedures; we do not endeavor to suggest how the index should be used, and various indices are developed and used for different objectives and purposes. The market should decide what those objectives and purposes are.

Chapter 4: Provision of Benchmarks by Private or Public Bodies

(34) Do you consider some or all indices to be public goods? Please state your reasons. S&P Dow Jones does not consider the indices it produces to be public goods. While we publish our index values and methodologies widely, our indices, as recognized by our many licensees around the world, constitute valuable intellectual property and reflect expertise and investments dating back well over 100 years. The fact that the indices published by S&P Dow Jones Indices are not public goods is what makes them relevant and robust, and what provides an incentive for S&P Dow Jones Indices to produce the best possible product. Treating indices such as those produced by S&P Dow Jones Indices as public goods would reduce the quality and number of indices available to the market and the public at large by creating economic disincentives to innovate, calculate and maintain the indices we produce. That would result in fewer index providers publishing fewer indices, meaning less information would be available to the marketplace and the public, and what information remained would be of lesser quality and therefore of less value to market participants and the public.

(35) Which role do you think public institutions should play in governance and provision of benchmarks? As recognized by IOSCO Chairman Kono during his spoken remarks at the European Parliament's Economic and Monetary Affairs Committee meeting held on September 24, 2012, there is no need for public institutions to play a role in the governance and provision of benchmarks such as those published by S&P Dow Jones Indices and such indices should continue to be produced by private enterprise. The industry is highly-competitive and operates in a transparent and efficient manner. Indeed, in certain instances in the past, public institutions have recognized that private enterprise was better suited to produce certain benchmarks. For example, S&P Dow Jones Indices acquired the IFC Emerging Markets indices produced by the World Bank to encourage investment in emerging markets in the late 1990s when the World Bank decided that it should no longer be in the business of being an index provider. Similarly, the Index of Leading Economic Indicators published by the U.S. Commerce Department was eventually sold to the Conference Board, a non-governmental organization. While there are potentially certain statistical measures and other similar benchmarks that may be best-suited for calculation and dissemination by public institutions, we would caution against a broad conclusion that public institutions are well-suited to provide benchmarks. In our view, the role of public institutions in this area should involve promoting best practices and transparency in the already highly-competitive and well-functioning benchmark industry.

(36) What do you consider to be the advantages and disadvantages of the provision of indices by public bodies? As recognized by IOSCO Chairman Kono during his remarks at the European Parliament's Economic and Monetary Affairs Committee meeting held on September 24, 2012, indices should continue to be produced by private enterprise. The markets benefit from having choices among index providers and the methodologies they employ. No one party should be given responsibility for creating indices, including government. Among other things, public institutions would likely lack the in-depth knowledge of markets and lack the necessary familiarity with market processes and may therefore not be able to develop methodologies to measure those markets effectively. Another disadvantage is that it could be a lengthy process to launch indices and there could be an inability to react in a timely fashion to market needs. Moreover, reducing choice or competition would not serve the interests of the marketplace or the public. It is essential that the index providers be seen as independent, credible and impartial. Provision of indices by public bodies could be perceived to be biased towards various political and/or commercial objectives and would be antithetical to the need for independence in evaluating methodology and related editorial considerations.

(37) Which indices, if any, would be best provided by public bodies? We agree with IOSCO Board Chairman Kono that the provision of indices is best handled by private enterprises.

Chapter 5: Impact of Potential Regulation: Transition, Continuity and International Issues.

(38) What conflicts of interest would arise in the provision of indices by public bodies? What would be the best way of avoiding these conflicts of interest? It is essential that index providers be seen as independent, credible and impartial. Provision of indices by public bodies could be perceived to be biased towards various political and/or other objectives and there could be a perception that the public body would act in response to political rather than to market needs. In fact, potential or perceived conflict of interest is inherent if a public body interferes in a free market process. Further, employees of public bodies could face the same conflicts of interest as those employed by private enterprises like S&P Dow Jones Indices, which takes steps to address those conflicts of interest. For example, members of the S&P 500 Index Committee have significant restrictions on stock ownership and trading. The same restrictions on stock ownership and trading would likely have to be placed on public employees, as but one example. Where government agencies overlap, there could also be competition amongst the public

index providers from different public bodies. The government agencies could produce inconsistent results and would have to be reconciled. There could also be questions about listing requirements as they concern inclusion in an index; for example, query whether a company by listing in a certain jurisdiction would be required to be included in the government of that jurisdiction's index or vice versa, and what implications would such forced inclusion have.

(39) What are the likely transition challenges, costs and timelines for relevant benchmarks? Please provide examples. Because we do not think that indices should be provided by public bodies, we do not think there should be a transition, but the transition to the provision of benchmarks to public bodies could cause significant market disruption, including with regard to existing financial products, including listed securities, which are already linked to indices currently provided by index providers such as S&P Dow Jones Indices.

(40) How do you consider that the adoption of new benchmarks could be ensured? Is this best framed in terms of encouraging or mandating the use of particular benchmarks? S&P Dow Jones Indices believes the markets are best suited to adopt new benchmarks without external pressure or mandates.

(41) How can reforms of the regulation of benchmarks be most easily implemented? S&P Dow Jones Indices believes the markets are best suited to adopt new benchmarks without external pressure or mandates. As stated above, while S&P Dow Jones Indices welcomes the opportunity to discuss its policies and procedures with policymakers and regulators, regulation of the processes by which S&P Dow Jones Indices develops and maintains its indices, including in developing its methodologies and any associated decision making, would not only infringe its rights as a publisher and proprietor of its intellectual property, but would also be an intrusion into the very independence that makes S&P Dow Jones Indices a valuable resource to the market as an independent and impartial market observer.

(42) What positive or negative impacts, if any, do you see on small and medium-sized enterprises of the possible regulation of indices, and how could any negative impacts be mitigated? The negative impact cannot be foreseen, but regulation of indices could affect large, medium and small enterprises, as well as consumers, in that it could result in fewer indices which are less dynamic, offering fewer choices to investors.

(43) Are there other impacts which should be considered? If so please specify the nature of these impacts and provide evidence. N/A.

(44) In which countries are benchmarks used in your sector produced? From which countries are data used for the production of benchmarks in your sector sourced? In which countries are benchmarks used in your sector used? Indices produced by S&P Dow Jones Indices are used in virtually every market. We have operations around the globe, and the market information comes from virtually every market with a stock exchange.

(45) Are there non-EU benchmarks which could serve as substitutes? Are there non-EU benchmark providers which could produce similar benchmarks? Yes. Currently, the market is using benchmarks reflecting markets throughout the world. The index industry is highly competitive and faces competition worldwide from global publishers. Indices produced within the EU either by private enterprise or by public bodies could face competition by index providers outside the EU, and indices measuring markets relevant to the EU could be published outside the EU as substitutes.

(46) Are there international benchmarks which could serve as substitutes for national benchmarks? Benchmarks are international in nature. Indices, and those adopted as benchmarks, are designed to reflect a given market. The substitutability of benchmarks depends on the market the given benchmark was designed to measure. As mentioned above, the index industry is highly competitive, with multiple multinational index providers offering indices which measure similar markets, thereby making those indices substitutable.