MSCI RESPONSE

TO THE ESMA CONSULTATION PAPER

PRINCIPLES FOR BENCHMARKS-SETTING PROCESSES IN THE EU (ESMA/2013/12)

MSCI Inc. is a leading provider of investment decision support tools to institutional investors globally, including asset managers, banks, hedge funds and pension funds. MSCI products and services include indices, portfolio risk and performance analytics, and governance tools. MSCI is headquartered in New York, with research and commercial offices around the world. MSCI has approximately 6200 customers worldwide across MSCI's different business units.

The company's flagship products include the MSCI Global Equity Indices.[1] The MSCI Global Equity Indices have been calculated for more than 40 years, and today MSCI calculates over 150,000 equity indices per day. MSCI Global Equity Index families include country and regional indices, size indices (large cap, small cap, micro cap), sector indices, style (value/growth) indices, strategy indices, thematic indices and ESG indices. MSCI also calculates custom indices, by applying client screens and constraints to MSCI Global Equity Indices.

MSCI Global Equity Indices are used worldwide by:

- assets owners to help them with their mandate decisions and with reviewing their managers' performance;
- active asset managers so that they can actively manage their funds against an index and report performance;
- passive fund managers to issue passive funds and ETFs based on the indices;
- broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally; and
- stock exchanges to create equity index linked futures and options contracts.

We appreciate the opportunity to respond to the ESMA Consultation Paper, and will be happy to respond to any further questions that ESMA may have.

We have responded to the relevant questions below and have provided some introductory comments where we thought it was necessary to help ESMA better understand the impact of potential regulation on the industry and market users.

ESMA has rightly pointed out that there are different types of indices across different asset classes, and it is important to recognize that different types of indices:

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[1] MSCI's flagship products also include its: Barra multi-asset class factor models, portfolio risk and performance analytics; RiskMetrics multi-asset class market and credit risk analytics; MSCI ESG (environmental, social and governance) research screening, analysis and ratings; ISS governance research and outsourced proxy voting and reporting services; FEA valuation models and risk management software for the energy and commodities markets; and IPD private real estate benchmarks. IPD will respond separately to this ESMA Consultation Paper.

- have different methodologies,
- use different types of data sources,
- have different data collection methods,
- use different index calculation methods and approaches,
- can be used for different purposes,
- have different types of users, and
- have had widely varying histories of manipulation.

At the outset, MSCI thinks it is important to note that we are unaware of, and ESMA does not cite, any instances of manipulation of equity indices that use exchange traded prices and rules-based methodologies. While MSCI agrees that equity indices have been playing an increasingly large role in the investment process, we would strongly disagree that there is anything in the characteristics of the equity index industry that should lead one to believe that it is in need of regulation to help ensure its credibility. In such a situation, we believe that special attention should be paid to the potential costs of regulation, including its unintended and unknown consequences, before determining that regulation is warranted. The consideration of costs and unintended consequences is why we do not think regulation at this point is necessary or useful for the equity index business and may in fact lead to a lessening in competition, innovation and services, particularly to the extent that regulation would lessen index owners' control over the distribution of their intellectual property.

The situation with LIBOR/EURIBOR that the ESMA Consultation Paper cites highlights very clearly the differing treatment that different types of indices may need to maintain credibility and protect users. For LIBOR/EURIBOR, the input data is based on a select set of estimates of the price at which interbank lending might take place. Because the input data is based on estimates and the number of data inputs is low, individuals and banks can have a direct impact on the ultimate LIBOR/EURIBOR rate. In addition, individuals and banks that provide estimates could in certain circumstances directly benefit from supplying inaccurate estimates. Under these circumstances, there may an opportunity and motive for manipulation. It is these shortfalls specific to LIBOR/EURIBOR that are the issue. Equity indices do not generally present the same opportunity or motive for manipulation.

MSCI Global Equity Indices, for example, are calculated using market prices and other market transaction data and public market data that is available and licensed from third party market data providers. Such market data includes, end of day and real time prices provided by exchanges, the numbers of shares, corporate actions, fundamental company data, dividends, exchange rates, forward rates, measures of liquidity such as trading volumes, percentage of shares available for sale to international investors (free float), etc. We have agreements with approximately 150 different data providers, who provide data used in our equity indices. These market data providers, such as stock exchanges, license their data to us for a fee and subject to use and redistribution restrictions as set forth in the written contracts between the parties. The data can delivered to MSCI directly by those different market data providers or through distributors who also charge a fee and impose use and redistribution restrictions as set forth in the written contracts between the parties. Certain fundamental company data (such as revenues, earnings numbers and the identities of shareholders) also may be sourced from publicly available company annual reports and other publicly available company filings. Clients do not submit data to be included in MSCI Global Equity Indices and we do not source data using surveys, panels or samples.

MSCI Global Equity Indices are calculated strictly in accordance with our rules-based methodologies which are publicly available on our website, www.msci.com. Stocks are added or removed from our indices based solely on whether they meet the criteria as outlined in the methodologies. We rebalance our indices as detailed in our methodologies (e.g., quarterly or semi-annually) and we publicly announce the results of those rebalancings on dates that are publicly announced in advance. The treatment of corporate actions is handled on a daily basis and is announced to clients. MSCI often consults the investment community on new methodologies and methodological changes. MSCI announces new methodologies and methodological changes publicly in advance. Public announcements are available on our website, www.msci.com.

MSCI has robust governance structures and rigorous calculation processes in place. MSCI observes strict Chinese Walls that separate (physically and by rule) those involved in equity index calculation and maintenance from those who are not. Employees of MSCI engaged in equity index calculation and maintenance are not permitted to purchase stocks (other than MSCI Inc. stock). The creation, maintenance and calculation of the MSCI Global Equity Indices are supervised and monitored by four different index committees. These committees are (1) the Universe Management Committee (UMC), responsible for constituent level data points, (2) the Global Constituent Committee (GCC), responsible for complex corporate events, (3) the Equity Index Committee (EIC), responsible for approving all changes to existing index methodologies and all decisions to create new index methodologies, and (4) the Index Policy Committee (IPC), responsible for all policy level decisions. These committees are staffed exclusively by MSCI employees, which is fundamental to our principles around independence.

The quality of our equity indices and methodologies and the integrity of our index calculation and maintenance processes and governance structures are fundamental to our brand, and ultimately our clients.

While MSCI Global Equity Indices are used as the basis of financial products, that is certainly not their only use. As described above, MSCI Global Equity Indices are used by financial institutions around the world in many other ways. It is important to note that any impacts to equity benchmarks will not only impact product creators but also other market participants, both in the EU and outside the EU.

Question 1: Definition of the activities of benchmark setting

Do you agree with the definitions provided in this section? Is this list of activities complete and accurate?

Definitions 11. For the purpose of this Consultation Paper, the following definitions apply: i. **Benchmark**: Any commercial index or published figure, including those accessible on the internet whether free of charge or not, a) calculated entirely or partially by the application of a formula to or an assessment of the value of one or	We believe that it is important to define the terms “benchmark” and “index” as the terms are often used interchangeably. It is not clear to us how ESMA defines “index.” We would suggest adding “and” after subclause a). According to this definition, an index becomes a benchmark only when it is by reference to the index that the amount payable under

more underlying assets, prices or certain other data, including estimated prices, interest rates or other values, or surveys; b) by reference to which the amount payable under a financial instrument or the value of the financial instrument is determined.	a financial instrument or the value of a financial instrument is determined. Many ETFs and funds do not perfectly replicate the performance of an underlying index and their value is not precisely determined by the value of the index. The words "reference" and "determine" may be ambiguous.
ii. **Contributing firm**: A legal person contributing to benchmark data submissions which are used for the calculation of the benchmark.	We believe that the term "contributing firms" should only apply to those entities that are providing their data as an input for the sole purpose of the benchmark calculation and for no other independent use. We believe that "contributing firms" should exclude entities that provide actual market transactions data, such as stock exchanges that provide stock price data, numbers of shares, etc. Actual market transactions data do not suffer from the same opportunities for manipulation and conflicts of interest that the data submissions for LIBOR present. Because actual market transactions data are independently verifiable and published for uses outside benchmark calculation, we believe that regulating each stage of equity benchmark calculation, strictly out of concerns regarding estimated input data, is overbroad. We believe that the costs and delays associated with any such regulation outweigh any benefits in the context of equity benchmarks, and we believe that these costs could ultimately result in increased costs to investors.
iii. **Benchmark administration**: Includes all the stages and processes involved in the production and dissemination of a benchmark from the gathering of the input data and the calculation of the benchmark based on the input data to the dissemination of the benchmark to users including any review, adjustment and modifications to this process.	"Benchmark administration" seems to be missing the concept of creating and developing the methodologies themselves, which is fundamental to benchmark calculation. Developing new methodologies requires substantial investment, as well as significant effort, skill, knowledge and expertise.
iv. **Benchmark administrator**: Refers to the person that controls the creation and operation of the benchmark process, and in particular has responsibility for the calculation of the benchmark, determining the benchmark methodology and disseminating the benchmark regardless of whether it delegates or outsources any of these activities to a	We believe the use of "administrator" is an imprecise term in the context of equity benchmarks, which represents a large part of the financial index industry. The benchmark "owner" is the party that is generally fully responsible for all aspects of data collection and index calculation, licensing and distribution. The benchmark owner may outsource aspects (such as distribution by using distributors or calculation by a calculation agent), but by and large, the benchmark owner is fully responsible for the indices. Further, the

third person such as a benchmark calculation agent.	benchmark owner owns the intellectual property in the benchmark and is not just "administering" the benchmark. The term "administrator" obscures this very important point.
v. **Benchmark calculation**: The activity of performing the calculation of the benchmark based on the data collected by the entity performing the calculation or submitted by contributing firms.	
vi. **Benchmark calculation agent**: A legal entity performing benchmark calculation activities.	
vii. **Benchmark publication**: The activity of publishing the benchmark values, which includes making available such values on the internet, whether free of charge or not.	We believe the use of "values" is imprecise in the context of equity benchmarks. For equity benchmarks would this mean benchmark performance levels? Also, by "publish" would this extend to distribution channels per distribution contracts or would this only include publishing in the context of "display"? In the context of equity benchmarks, "benchmark publication" could be construed extremely broadly to include not only display by the owner of the benchmark but also display by those authorized by the owner to display the benchmark, such as television news stations, news websites, newspapers, magazines, financial websites that post equity index performance levels (such as Yahoo Finance), as well as ETF providers, and other financial institutions that post end of day equity index performance levels on their websites. This would also include Bloomberg, Thomson Reuters and other data aggregators and distributors that make their data available on their websites or terminals. Capturing all of those channels under a regulatory regime in the context of equity benchmarks seems overreaching. Regulatory processes and oversight in connection with publishing equity index performance levels could result in these types of publishers choosing not to publish the equity benchmark index performance levels through their channels.
viii. **Benchmark publisher**: A legal entity performing benchmark publication activities.	See our comment above on the definition of "Benchmark publication".
ix. **Methodology**: The written rules and procedures according to which	With respect to equity benchmarks, we believe that

the data are collected and the benchmark is calculated.	"Methodology" should be defined as "the written rules and procedures according to which the benchmark is calculated". We believe that the inclusion of "procedures according to which the data are collected" creates confusion with respect equity benchmarks. Data is either (i) licensed by data providers under contract and provided through datafeeds or (ii) sourced from publicly available sources. That information does not seem appropriate information for benchmark calculation methodologies. Further, any requirement for index providers to list the sources for the actual market transactions data would unreasonably restrict the index providers' ability and flexibility to switch data providers and distributors as necessary. The definition of methodology and what a methodology should include should be appropriate to the benchmark and the data used to calculate the benchmark.
x. **Benchmark User**: A financial market participant that uses a benchmark in one of the following manners: - as a reference for financial transactions that it sells of places, or for financial instruments that it structures; or - as a reference for financial transactions to be entered into by its clients (or by itself on behalf of clients) in the context of its individual or collective portfolio management activities	Please see our comments above on the definition of benchmark.
Additional thoughts	1. We believe that benchmarks that rely on contributed data from panels or surveys should be distinguished from those that rely on actual market transactions (e.g., prices) or other fundamental company data from company filings (e.g., revenues, earnings and identities of shareholders). For actual market transactions, the data is provided by stock exchanges and other data providers. Data is often delivered through multiple datafeeds with many other data points directly and/or through distributors. These data providers are providing those same datafeeds to many other clients for many different purposes. Recipients of these datafeeds cannot influence the data itself. Company fundamental data is provided publicly by companies in

	their public filings as required by law and can be publicly verified. Because of the foregoing, the potential benefits of regulating each stage of equity benchmark calculation (e.g., data sourcing, calculation, distribution and publication) do not seem necessary and would not outweigh the increased costs and delays associated with the additional processes. 2. We believe that the term “benchmark setting” is imprecise, unclear and confusing with respect to equity benchmarks. Equity benchmark providers do not “set” the benchmark performance levels. Equity benchmark providers calculate the index performance based on many data inputs and the application of their complex methodologies. MSCI uses actual market transactions (e.g., prices) and publicly available data (e.g., company earnings from company reports) and applies its rules-based methodologies. MSCI does not “set” any benchmark performance levels.

Question 2: Principles for benchmarks

Would you consider a set of principles a useful framework for guiding benchmark setting activities until a possible formal regulatory and supervisory framework has been established in the EU?

As we said at the outset, we do not think that regulation of the equity index business is necessary. MSCI agrees, however, that, at a high level, principles for benchmark calculation are important. That is the reason that equity benchmark providers who calculate indices for broad usage, such as MSCI, already have principles and structures in place. This is demanded by the market and by clients. Publicly available methodologies, rigorous calculation processes and robust governance structures are key features of equity benchmark calculation.

For MSCI, it is the integrity of its principles and structures that form the basis of the MSCI brand. In calculating and maintaining MSCI Global Equity Indices, MSCI uses robust rules-based methodologies that are available on www.msci.com, with governance structures including Chinese Walls, employee trading policies and, four different index committees that supervise the creation, production and maintenance of MSCI Global Equity Indices. We produce high quality indices, publish high quality research and provide our clients with 24x5 client services support. These are the reasons clients use MSCI Global Equity Indices.

Because these principles and structures already exist for equity benchmarks and because equity benchmarks use actual market transactions data and/or publicly available data, we do not believe that developing separate sets of principles through regulation is necessary in the equity benchmark space.

Further, we are not aware of issues of confidence with respect to equity benchmarks and we believe that is because these principles and structures are already in place and the market for indices is a competitive one, demanding that index providers produce accurate indices.

Additionally, we are concerned that establishing principles that are too granular and focused primarily on one particular slice of the benchmark industry, will have unintended consequences and will negatively impact, not only the rest of the benchmark providers, but also their clients, other market participants and ultimately investors.

Regulating all benchmarks to correct issues with particular to LIBOR/EURIBOR, will result in overreaching and overbroad regulation. This will introduce unnecessary costs and delay into the benchmark calculation process, and in the context of benchmarks based on actual market transactions data and/or publicly available data, these costs and delays will not outweigh the benefits. Further, these costs and delays may ultimately impact the investors.

Further, if in addition to additional costs and delays, overregulation or mismatched regulation or excessive transparency requirements threatens the equity benchmark providers' rights to protect their intellectual property or damages their business models, equity benchmark providers may be forced to retreat from the market. If that happens, there will be a reduction in the number of benchmarks, which will reduce innovation and competition. This, in turn, will reduce the choices for investors.

Additionally, as explained above, because equity benchmarks have many other uses other than being the bases of financial products (e.g., exchange traded funds, mutual funds or derivatives), there will be knock on effects on those other market users/uses, not only in the EU but also worldwide.

If principles were to be adopted to apply across benchmark types, then they would need to be at a high enough level to respect the different types of benchmarks, asset classes and business models, as well as the intellectual property rights of the benchmark owner. If they are too granular, they will create confusion and possible disruption to the market. Having multiple sets of principles will create confusion to the extent that they diverge or can be interpreted differently. The legal uncertainty with respect to the application of the ESMA principles by supervising authorities may also create confusion and possible disruption to the market.

Question 3: General principles for benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

As a general comment, the principles appear to be focused primarily on issues that arose in connection with the calculation of LIBOR. Not all benchmarks suffer the same opportunities for manipulation and conflicts of interest that are embedded in LIBOR and LIBOR is not the best vantage point from which to view all benchmarks.

Because many of the principles below are focused on LIBOR, they are too granular and do not fit within the equity benchmark calculation process. As such, they create confusion and extra layers of verifications, processes and costs that do not seem appropriate or necessary where actual market transaction data and publicly available data forms the basis of the equity benchmark calculation.

Further, some of the sections in Section A somewhat overlap and are inconsistent with the other sections which results in different sets of standards and creates some confusion with respect to the application of the different principles.

A.1 Methodology	
The methodologies for the calculation of a benchmark, including information on the way in which contributions are determined and corroborated, should be documented and be subject to regular scrutiny and controls to verify its reliability.	We agree that methodologies should be robust, should outline the index calculation rules and should be regularly reviewed. However, because equity benchmarks are largely based on actual market transactions (such as stock exchange prices) or publicly available information (such as information from company public filings) and the datafeeds are used for other purposes (and not just benchmark calculation), we believe that the particular focus on contributed data may be misplaced in the context of equity benchmarks.
The definition of a specific benchmark should be precise in order to avoid subjective interpretation of key concepts.	The use of the term "definition" is unclear. We believe that the "objective" of the index should be clear in the index methodology to help the investor understand what the index aims to or is designed to do.
A benchmark should represent adequately the market to which it refers, and measure the performance of a representative group of underlyings in a relevant and appropriate way.	Equity benchmark providers calculate benchmarks that are used for many different purposes as explained above and that should be outlined in the methodologies. The MSCI Global Equity Indices measure opportunity sets, whether it be a country, region, sector, industry, etc. The way MSCI does that is explained in the methodology. To the extent that these comprise a "market", we do not disagree with this in principle. However, the determination of adequacy is made by the financial institution/product provider according to its particular intended use. That is not determined by the equity benchmark provider.
The underlyings should be sufficiently liquid.	We do not believe this should be a requirement. Liquidity can depend on the market or assets being measured.

	For equity benchmarks, in some cases, such as frontier markets or certain small cap securities, liquidity is inherently low. When liquidity disappears (e.g., due to market disruption), we believe that good equity benchmark calculation methodologies should explain what happens with respect to benchmark calculation. However, the equity benchmark providers are not able to guarantee any particular liquidity of the underlyings. As a specific example, MSCI Global Equity Indices are designed to reflect an appropriate liquidity measure for the underlying market it reflects. For example the cutoff points chosen for inclusion in the index with regard to trading volumes varies by the MSCI definition of developed, emerging and frontier markets. The MSCI equity index methodologies reflect these levels, which have been established via a public consultations with clients and continue to be assessed and monitored for suitability. Further, MSCI equity benchmarks include the relevant rules in the case of market disruptions, etc.
As relevant, a benchmark should reflect market conditions, including relevant prices and volumes.	We believe that a good methodology should state the objectives of the benchmark and its calculation rules. As mentioned above, whether the equity benchmark “reflects” the market conditions for the relevant market is a determination that the financial institution makes according to its particular intended use. If a benchmark provider’s methodology becomes outdated or inapplicable, the institutional investor will not use that equity benchmark for its financial products or other uses.

Actual market transactions should, as a matter of preference, be used as a basis for a benchmark, where appropriate.	Whether actual market transactions data can be used will depend on the type of benchmark and the asset class being measured. Actual market transactions may not be available or available at reasonable cost for certain types of benchmarks so appropriate proxies may need to be used instead. For equity benchmarks, actual market transactions data (such as prices) are used. But equity benchmarks are not just calculated using prices. As described above, MSCI uses prices as well as other market transaction data and public market data that is available and licensed from third party market data providers. Such market data includes the numbers of shares, corporate actions, fundamental company data, dividends, exchange rates, forward rates, measures of liquidity such as trading volumes, percentage of shares available for sale to international investors (free float), etc. Certain fundamental company data, however, such as revenues, earnings and identities of shareholders, may be sourced from publicly available company annual reports and other publicly available company filings. Revenues, earnings and identities of shareholders, are not necessarily “market transactions” but they are public available data points. We believe that any principles should allow multiple types of data to be used in benchmark calculation and should not unnecessarily or inadvertently restrict valid types of data that can be used.
A.2 Governance structure:	
The process of setting a benchmark needs to be governed by a clear and independent process in order to avoid conflicts of interest and limit its susceptibility to manipulation, discretionary decision making or price distortion.	It is important for governance structures to address conflicts of interest and limit susceptibility to manipulation, discretionary decision making and price distortion. MSCI has structured its governance committees so that there is no outside influence on our index calculation process. Our index committees are staffed exclusively by our employees, and include multiple members and multiple committees to provide checks and balances on decision making.

	We are an independent index provider and our corporate group does not include and is not part of any asset manager, broker dealer, stock exchange or other financial institution. We have strict Chinese walls in place, physically and by rule. If “independent” means “external”, that would be counter to our fundamental principles of index calculation and could harm our governance structures, by allowing for the potential of outside parties to influence index calculation. We believe that external governance structures are dangerous principle to apply across all benchmarks. As explained in our introductory comments, MSCI Global Equity Indices are used by many different types of financial institutions for many different purposes. These entities are parties that could benefit directly from index methodological changes and index rebalancings, especially if they have products linked to the indices. MSCI has staffed its four index governance committees exclusively with MSCI employees specifically to prevent outside influence and conflicts of interest from being introduced into the MSCI index calculation or maintenance processes. Staffing the index committees with MSCI employees ensures that committee members are inside the MSCI Chinese walls and subject to employee trading policies, thus removing any conflicts of interest for committee members. Further, this ensures that market sensitive data is not disclosed to third parties.
Governing processes should include clear rules on the allocation of responsibilities for calculation and oversight activities.	We agree that good governance processes should include this.
Benchmark structures should be managed in a way so as to reduce conflicts of interest as much as possible. Conflicts of interest may arise where contributing firms have discretion regarding the submitted data, while at the same time they or their clients have an exposure against the benchmark.	In principle, we agree that benchmark calculation processes and governance structures should be designed to reduce conflicts of interest or permit their effective management. However, as mentioned above, we believe that companies licensing actual market transactions data (such as stock exchanges licensing price data

	to index providers for a fee) should not be considered “contributing firms” for the purposes of these principles.
A.3 **Supervision**:	
Confidence in a benchmark is enhanced through regulation and oversight and an appropriate sanctioning regime that allows sanctions for improper conduct. In the EU, a formal regulatory regime for benchmarks does not exist so far. For any existing applicable regimes and rules, contributing firms, benchmark administrators and users of benchmarks should co-operate closely with the relevant supervisory authorities.	In theory, regulation could improve confidence where there are issues of confidence. However, we are not aware of confidence issues with respect to equity benchmarks. Because the equity index industry is highly competitive and methodologies are publicly available, clients are able to choose the best benchmark that addresses their objectives. Further, the data used to calculate equity benchmarks is based on actual market transactions or publicly available data. As such, it is important that any regulatory scheme avoids introducing costs and delays into the equity benchmark production process, as well as negative impacts on the market and investors, where there are no issues of confidence. As equity benchmarks are used for purposes other than as the basis of financial products, it is also important that any regulatory scheme not have unintended consequences affecting those other market uses and market participants.
A.4 **Transparency**:	
A benchmark should be transparent and accessible, with fair and open access to it.	We agree that there are benefits to having methodologies publicly accessible. The MSCI equity index calculation methodologies are available on www.msci.com. However, requiring “fair and open” access to benchmarks seems to be introducing restrictions on the ability of benchmark providers to license and charge for their benchmarks according to their commercial drivers and business models. With respect to MSCI Global Equity Indices, we are unaware of any issues with respect to access. Clients regularly license, and pay for, the rights to access and use our indices.

	We believe that any regulation must respect the intellectual property rights of the equity benchmark provider. Creating high quality benchmarks with robust methodologies and governance structures, using data that is subject to license fees, and providing high quality research with 24x5 client services, requires a viable commercial model to support it. Removing the equity benchmark provider's ability to invest in its business and/or removing the equity benchmark provider's ability to protect its intellectual property, could reduce the ability of equity index providers to invest in products and services or potentially drive certain equity index providers out of the EU market altogether, reducing innovation and competition and ultimately reducing choice for investors. Further, it appears that the phrase "fair and open" access may be a reference to "fair, reasonable and non-discriminatory" or "FRAND" standard, which is a patent law concept, and is used in patent pool situations and/or situations where an industry is working together to create a single standard for the entire industry. In these situations, a small group of rights holders pool their intellectual property (IP) to create the patent/standard. To prevent that small pool of rights holders from exploiting their monopoly position (which is secured by the shared patent), the FRAND standard is imposed and those rights holders are required to license the patent on fair and non-discriminatory commercial terms. So they gain protection as a group from the patent, but in exchange they are required to license their IP on standard terms (without commercial discretion) to everyone. The equity benchmark industry is very different. First, equity benchmark providers are not pooling their benchmarks or their IP. In fact, just the opposite is happening. Equity benchmark providers are competing vigorously is the marketplace. Second, indices are substitutable. They measure opportunity sets (UK market, emerging markets, etc.), and multiple benchmark

	providers produce indices measuring the same opportunity sets. Equity benchmark providers measure the same or similar opportunity sets according to their individual methodologies. As such, any type of FRAND standard would be applied erroneously and inappropriately, i.e. where there is no pooling of IP to create single standard for an entire industry. Effectively, it would force index providers to license to everyone (regardless of the situation, which would be unreasonable), without any commercial discretion (e.g., in price, terms, etc.). The equity benchmark provider would feel the sting of a mandatory licensing regime, without any of the associated IP rights protection. Imposing any kind of FRAND standard would act to weaken the intellectual property rights of the benchmark provider without justification.
A high degree of transparency on the process determining a benchmark and/or any modification thereof will enhance confidence in its integrity, which would also help foster understanding of the benchmark in the market place. However, transparency needs to be carefully balanced with protecting confidentiality, as the release of institution-specific information could also create countervailing incentives. The full methodology should be disclosed wherever possible. Where this is not possible, the relevant information such as weightings and prices of components should be disclosed prior to any rebalancing.	While we are not aware of any issues of integrity with respect to those equity benchmark providers that make their methodologies publicly available and use actual market transactions or publicly available data for benchmark calculation, we agree that making benchmark calculation and maintenance methodologies publicly available, to the extent possible, can be helpful for benchmark users. We also agree that equity benchmark providers who make their methodologies publicly available should not also be required also make their constituents and weights publicly available. Indeed, it is difficult to conceive of how a retail investor in a financial product based on an index would use a full list of benchmark constituents and weights. This difficulty exists where the product perfectly replicates the constituents and weights of the benchmark and where it does not. For example, it might be more useful for the product provider to show how much tracking error exists between the benchmark and the product. Transparency requirements should allow for the protection of intellectual property rights and should accommodate different business models.

A.5 **Continuity**:	
Benchmark administrators and users should put in place robust contingency provisions for a drying-up of market liquidity, a lack of transactions or quotes or the unavailability of the benchmark, respectively.	We agree that good methodologies should include rules that address situations when liquidity disappears (e.g., when the market is shut down and/or where there is no trading). For example, we have provisions in our methodology books (available on www.msci.com) for removing constituents following lengthy suspensions or removing country indices from global composites following imposition of flow restrictions or other investability impediments. However, if an equity benchmark provider must shut down a benchmark completely (for example if a stock exchange terminates its contract to provide price data to the equity benchmark provider), then the financial institution using that index as the basis of a financial product will need identify the process for replacing the benchmark in the prospectus. The equity benchmark cannot be and should not be responsible for determining the relevant client's contingency plans.

Question 4: Principles for firms involved in benchmark data submissions

Do you agree with the principles cited in this section? Would you add or change any of the principles?

As discussed above, we do not believe that stock exchanges and other data providers that provide observable market transactions or providers of publicly available data (such as public companies posting their revenues as part of their local filing requirements) should be considered contributing firms for the purposes of these principles.

Question 5: Principles for benchmark administrators

Do you agree with the principles cited in this section? Would you add or change any of the principles?

C.1 A benchmark administrator should ensure the	We agree that good methodologies should be

existence of robust methodologies for the calculation of the benchmark and appropriately oversee its operations and ensure that the appropriate level of transparency to the market regarding the rules of the benchmark is made.	robust. We also agree that benchmark administrators should oversee their benchmark calculation and maintenance processes and should provide appropriate levels of transparency. How this is can be accomplished will be dependent on the type of benchmark.
C.2 A benchmark administrator should have governance or compliance functions to enable it to operate effectively and ensure the quality of the benchmark. A benchmark administrator should provide well-defined criteria and procedures to select members of the governance/compliance functions that participate in the determination of the methodologies for the calculation of the benchmark. Members of the governance/compliance functions should have „independent" (i.e. non-contributing) members who are present and fully involved in ensuring that the work respects internal rules and procedures. Details of the membership of the relevant governance/compliance functions should be made public, along with any declarations of conflicts of interests and the processes for election or nomination to the governance/compliance functions.	We agree that appropriate governance structures are important. Again, how this can be accomplished will be dependent on the type of benchmark. This requirement assumes that third parties are involved in the governance function. That is not the case for MSCI. MSCI's equity benchmark governance committees are staffed exclusively by MSCI employees. This allows members of the committee to be inside the MSCI Chinese walls and subject to employee trading policies, thus removing any conflicts of interest for committee members. See comment above. Because the members of our index governance committees are internal, we do not understand the purpose of posting employee details on external websites. Further, we would be very concerned about making our employees' names public, not only because competitive reasons (i.e., poaching) but also because of privacy and data protection concerns.

C.3 A benchmark administrator should establish methodologies with well-defined criteria for the calculation of the benchmark, so that judgement and qualitative assessments or other opportunities for discretionary decision making are limited as much as possible. Such criteria should address *inter alia* the composition of the panel, the algorithm for the calculation of the benchmark, provisions regarding operational continuity.	We agree that good methodologies should clearly describe the index calculation and maintenance processes. However, we wish to point out that judgment does not automatically create conflicts of interest. It is not the mere existence of judgment in the equity benchmark calculation process that is the issue. Even with rules-based methodologies like MSCI's, there will be certain judgments made in applying the methodologies in a consistent manner. That does not mean there are automatically conflicts of interest. Limiting conflicts of interests and opportunities for manipulation, rather than judgment itself, should be the focus. We agree that good methodologies should be robust and should outline the index calculation rules. However, panels are not used by all benchmark administrators, so the reference "inter alia" to panels is not appropriate. Operational continuity is addressed above in our response to A5.
C.4 The methodologies established by the	We agree that good methodologies should be

benchmark administrator should be rigorous, systematic and continuous. Any amendment to an established methodology should be made according to a transparent and determined process.	rigorous, systematic and continuous and that amendments should be made according to a transparent and determined process. Please note that that various principles regarding index calculation methodologies seem to be repetitive. C1 states that methodologies should be robust, C2 states that methodologies should include well defined criteria, along with applicable detail and this principle states that methodologies should be rigorous, etc. We believe that these principles can be combined.
C.5 A benchmark administrator should regularly review the range of benchmarks that it provides (such as for example asset classes, currencies and tenors). It should ensure that the range of benchmarks reflects market conditions.	To remain competitive, equity benchmark providers must review their methodologies to ensure their benchmark methodologies remain relevant. Additionally, to remain competitive equity benchmark providers must develop and release new indices and methodologies. However, we do not understand why the index provider is required to have a “range of benchmarks” that reflect market conditions. While it may be the responsibility of a financial institution to provide ranges of investment products to its clients, it is not the responsibility of the benchmark provider to provide calculate “ranges” of indices. Further, it seems to prohibit a benchmark provider from releasing single indices measuring single markets or assets. We do not believe that is the intent and we believe the application of this principle to equity benchmarks creates an anomalous result and an unintended consequence.
C.6 A benchmark administrator should fully disclose the methodology. Where this is not possible, the relevant information such as weightings and prices of the components should be disclosed particularly in advance prior to any rebalancing.	As this is covered in A4, please see our comments to A4 above.

C.7 A benchmark administrator should have procedures to enable its oversight functions to report to their respective competent authorities, if any, any misconduct by the contributing firms of which they become aware.	As discussed above, we believe that this should not apply where actual market transactions data and/or publicly available data is used. We wish to point out that today nothing stops any firm from reporting, so the term "enable" seems confusing in this section.
C.8 A benchmark administrator should record and post minutes of relevant meetings along with details of the interactions between its oversight function on the one hand and contributing firms and benchmark calculation agents on the other.	This appears to be specific to LIBOR and does not apply to equity benchmarks. It is too narrow a concept to apply to benchmarks generally. For observable market transactions, the data is provided by stock exchanges and other data providers and delivered through datafeeds with multiple data points, either directly by the exchanges or from data distributors. These data providers are providing those same data feeds to hundreds of other clients for different purposes.
C.9 The governance/compliance function of a benchmark administrator should ensure that principles applying to contributing firms in order to prevent any misconduct are implemented.	As discussed above, this appears to be specific to LIBOR and does not apply to equity benchmarks using actual market transactions data or publicly available data. With respect to equity benchmarks, actual market transactions data is licensed pursuant to written license agreements under which fees are paid. The data is subject to use restrictions and is provided on an as is basis pursuant to the terms of the agreement. The data is delivered through aggregate datafeeds either on a real-time basis (every 15 seconds) or end of day basis, either directly by the data provider or through data aggregators or distributors. These data points are used by hundreds of clients around the world for different purposes. Where data inputs are comprised of actual market transactions data and publicly available data, there are no conflicts of interest or opportunities for manipulation. Creating layers of processes around using those data points, e.g., requiring stock

	exchanges around the world to sign up to principles (who are not legally bound to do so), would add unnecessary cost, delay, confusion and risk into the benchmark calculation process. For example, we receive prices from over 70 stock exchanges around the world for use in the MSCI Global Equity Indices. It is unclear how an equity benchmark provider could "ensure…that the principles….are implemented". The equity benchmark provider is not in a position to do this vis-à-vis stock exchanges. Further, what is the implication if a stock exchange fails to or refuses to sign up to principles? While the principles are non-binding, this still puts the equity benchmark in an untenable situation of having a benchmark that does not comply with the principles because a single stock exchange will not implement the principles, even if the equity benchmark provider has robust methodologies and governance structures, etc. Further, what is the knock on effect? Will the those equity benchmarks now suffer commercially? What happens to those products that are based on those benchmarks? How does that impact investors in those products, globally? How does that impact the other users of those benchmarks, globally?
C.10 A benchmark administrator should establish, implement and maintain adequate internal control mechanisms on the data contributed that should include consistency checks on the basis of transaction-based or other verifiable data where available. Controls should also ensure that the benchmark computation process works properly at the level of the benchmark calculation agent.	Where appropriate, we do not disagree with this principle. However, any controls will depend on the underlying data and the sources of the underlying data.
C.11 A benchmark administrator should retain adequate access and control on the activities of the benchmark calculation agent and the ability to check its compliance with the methodology of the benchmark.	This seems to be a subset of C12 and should be combined with C12.

C.12 A benchmark administrator, when outsourcing benchmark calculations to a third party, should retain adequate access and control on the activities of the third party. A benchmark administrator should periodically audit the benchmark calculation agent.	
C.13 A benchmark administrator should establish an effective whistleblowing mechanism in order to ensure early awareness of any misconduct or other irregularities that may arise.	This seems specific to LIBOR and not applicable where actual market transaction data or publicly available data is used. Further, whistleblowing can only be employed in narrow and specific circumstances in Europe under local law.
C.14 A benchmark administrator should publicly disclose a confirmation by the management of the relevant entity of compliance with the above principles.	We are unclear how this would need to be accomplished in practice, especially in the context of equity benchmark providers that calculate thousands of indices using hundreds of data provider data points (based on actual market transactions data and publicly available data). We calculated 150,000 indices daily and we have agreements in place with approximately 150 data providers. According to these principles, any one of those data providers could cause MSCI not to be compliant with these principles, even though MSCI has robust methodologies, processes and governance structures in place.

Question 6: Principles for benchmark calculation agents

Do you agree with the principles cited in this section? Would you add or change any of the principles?

We do not have any comments in the context of benchmark calculation agents, as we are a benchmark administrator.

Question 7: Principles for benchmark publishers

Do you agree with the principles cited in this section? Would you add or change any of the principles?

See our comments above in the definitions of benchmark publisher in Section (vii).

Question 8: Principles for users of benchmarks

Do you agree with the principles cited in this section? Would you add or change any of the principles?

We agree that it is the responsibility of the benchmark users to ensure that the benchmark is adequate, suitable and relevant for their products and clients.

Question 9: Practical application of the principles

> Are there any areas of benchmarks for which the above principles would be inadequate? If so, please provide details on the relevant benchmarks and the reasons of inadequacy.

The principles above are largely focused on the issues surrounding LIBOR and in many instances are inapplicable and contrary to the way the equity benchmarks are calculated. Because of this, in a number of key areas the application of the principles seems difficult, creates confusion and can have unintended consequences. Additionally, in many instances as outlined above, the principles could add cost and delay into the benchmark production process. Costs and delays may ultimately impact the end investors. With respect to equity benchmarks where there has been no failure of confidence, methodologies are publicly available, there are robust governance structures, benchmarks are calculated using actual market transactions and publicly available data, these costs seem to outweigh any potential benefits.

Further, the "fair and open" access provision suggests that national intellectual property rights laws and international intellectual property rights conventions are being challenged and that index providers may not be able to appropriately commercialize their products. Free and open access provisions also run counter to the principles of the freedom to contract.

Question 10: Continuity of benchmarks

> Which principles/criteria would you consider necessary to be established for the continuity of benchmarks in case of a change to the framework?

To minimize market disruption, we believe that any changes should allow for sufficient time for implementation.

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The company's flagship product offerings are: the MSCI indices with close to USD 7 trillion estimated to be benchmarked to them on a worldwide basis[1]; Barra multi-asset class factor models, portfolio risk and performance analytics; RiskMetrics multi-asset class market and credit risk analytics; IPD real estate information, indices and analytics; MSCI ESG (environmental, social and governance) Research screening, analysis and ratings; ISS governance research and outsourced proxy voting and reporting services; FEA valuation models and risk management software for the energy and commodities markets; and CFRA forensic accounting risk research, legal/regulatory risk assessment, and due-diligence. MSCI is headquartered in New York, with research and commercial offices around the world.

[1]As of March 31, 2012, as published by eVestment, Lipper and Bloomberg in September 2012