

Benchmarks part I – regional regulatory updates

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Panelists

- Sven Gentner, Counselor, Economic and Finance Section, European Commission.
- Elaine Lanouette, Director, Exchanges and SROs, Authority des marchés financiers, Quebec, Canada.
- David Lawton, Director, Markets Policy and International Division, Financial Conduct Authority, United Kingdom.
- Ng Yao Loong, Executive Director and Head, Markets Policy and Infrastructure Department, Monetary Authority of Singapore.
- Keith Lui, Executive Director, Supervision of Markets, Securities and Futures Commission, Hong Kong.

In the Beginning ... Barclays(開始...巴克萊)

•“Hi Guys, We got a big position in 3m libor for the next 3 days. **Can we please keep the libor fixing at 5.39 for the next few days.** It would really help. We do not want it to fix any higher than that. Tks a lot.” (September 13, 2006, Senior Barclays Trader in New York to Submitter);

•(嗨,接下來的3天裡,我們有一筆大部位的3個月美元LIBOR,我們可以在未來幾天讓LIBOR穩定維持在5.39嗎,這會有很大的幫助,我們不想LIBOR固定比5.39更高的水準,多謝), (2006.9.13 巴克萊的資深交易員)

•“For Monday we are very long 3m cash here in NY and **would like the setting to be set as low as possible ... thanks**” (December 14, 2006, Barclays Trader in New York to Submitter).(星期一我們會有300萬的現金部位,我們希望設定(基準利率)盡量愈低愈好...感謝(2006.12.14巴克萊的交易員在紐約對報價者))

In the Beginning... UBS(瑞銀...開始)

“I live and die by these libors, even dream about them....have put some pressure on a few people i know to get libors up today” (Nov 8, 2006)(LIBOR決定我的死活連作夢都會夢到這些.....施加壓力在一些我認識的人上,來使LIBOR提高)

[to interdealer broker] **“if you keep 6s unchanged today I will do [expletive deleted] one humongous deal with you...Like a 50,000 buck deal whatever. I need you to keep it as low as possible ...I’ll pay you, you know, 50,000 dollars, 100,000 dollars whatever you want... I’m a man of my word.”** (Sept. 18, 2008)([對交易商之經紀商]如果你維持6s不變,我就會[其他單取消]與你下一個一筆龐大交易單... 像50,000元, 我要你把 “那個”之水準維持在愈低愈好...我會付錢,你懂的,50,000還是100,000美元,不論你想要多少錢,我是個說話算話的人)

Manipulation Cases: Catalyst for Change

(操縱市場案例-改變的催化劑)

- High profile manipulation cases against Barclays, UBS, Royal Bank of Scotland and ICAP and Rabobank (2012-2013) - not only by CFTC but also UK FSA, Swiss FINMA and Japan FSA – involving LIBOR, EURIBOR and TIBOR - were the catalyst for global efforts to address financial benchmark manipulation, including: (Barclays, 瑞銀, 蘇格蘭皇家銀行, ICAP 及荷蘭合作銀行等, 這些案例使他們有操縱之市場形象-不只CFTC, 還有英國FSA, 瑞士FINMA和日本的FSA-包括LIBOR, EURIBOR及TIBOR-促使全球努力對付金融基準指標之操縱行為)
- The Wheatley Review of LIBOR; (Wheatley Review報告的LIBOR)
- The European Commission's Consultation on the Regulation of Indices; (歐盟執行委員會對規範相關指標之會議)
- European Securities and Markets Authority's Consultation on Principles for benchmark-setting processes; (歐洲證券及市場管理局制定基準指標設定之程序制定相關原則性規範的會議)
- BIS Board of Governors Economic Consultative Committee; (國際清算銀行之經濟諮商委員會)
- Global Financial Markets Association. (全球金融管理協會)

IOSCO: Financial Benchmarks(金融監管基準)

- In September 2012 IOSCO formed a Task Force on Financial Benchmarks co-chaired by the CFTC and UK FCA.
 - (2012.09 IOSCO對金融監管基準成立一個小組,由CFTC和UK的FCA共同主持)
- In July 2013 – following two consultation papers and one stakeholder meeting -- the Task Force produced the Principles for Financial Benchmarks, which were adopted by the IOSCO Board in July 2013.(2013.07--2份諮商文件及1個利害關係人會議—該小組制定了金融監管基準指標之原則，並於2013年7月被IOSCO接受)
- Principles endorsed by the Financial Stability Board(該原則受到金融穩定理事會FSB的許可(背書))

IOSCO – PRA Principles

- In 2011 the G20, recognizing the role of price reporting agencies (PRAs) for the proper functioning of oil markets, asked that IOSCO, in collaboration with International Energy Agency, International Energy Forum, and the Organization of Petroleum Exporting Countries (OPEC) prepare recommendations to improve their functioning and oversight. (在2011年的G20，體認到油價報告機構(PRAs)在石油市場中是一個有獨特功能的角色,請IOSCO與國際能源署(IEA),國際能源基金會(IEF)及OPEC提供一些建議去增強PRA的運作及監管功能)
- PRA work taken forward by IOSCO Committee on Commodity Derivatives Markets, chaired by UK FCA and the CFTC. PRA Principles finalized in October 2012. (PRA運作功能由衍生性商品市場之IOSCO理事會(UK的FCA和CFTC主持)制定,PRAs之原則於2012.10完成)

Common Objectives (普遍或共通目標)

- Both sets of principles were viewed as voluntary frameworks for administrators. (這些原則被認為是對管理人員的自發性架構)
- Both sets of principles were designed to minimize vulnerabilities that could undermine the accuracy and reliability of a benchmark determination by addressing: (這些原則的設計是為了將損及基準指標之準確性及可靠性的缺點降到最小)
- Governance and control - how administrator is managed, management responsibility, conflicts of interest, control frameworks. (治理與控管-管理人員如何被管理,管理階層之職責,利益衝突,控制架構)
- Quality of the benchmark - benchmark design, express priority for data drawn from active markets, quality controls for submitted data.(基準的品質-基準的訂定, 呈現由現有市場抽出數據之優先順序,報價數據品質之控制)
- Accountability - complaints procedures, audits and cooperation with regulatory authorities. (應負的責任-控訴程序,審核與監管機構合作)

IOSCO Did Not Expect a One-Size-Fits-All” Method of Implementation(IOSCO不會去期待一個一體適用的實行辦法)

- “Differences in methodological approach or the specific measures to obtain bona fide information are permissible, provided they meet the objectives set out in the [PRA] principles.”(可以允許用不同方式或不同的衡量方法來得到的真實資訊,上述之方式或方法算是符合原則)
- “In particular, the implementation of the [Financial Benchmark] Principles should be proportional to the size and risks posed by each Benchmark and/or Administrator and the benchmark setting process.”
 - (特別的是, [金融基準指標]原則的實施上, 基準指標及/或管理人員呈現的規模與風險必須與基準指標設定之程序要成比例)
 - Example: The application of the Financial Benchmark Principles to benchmarks that are derived from regulated markets or exchanges with mandatory post-trade transparency requirements could be less intensive.(例如:原則在應用上, 金融基準指標是從受規範的市場或交易所衍生而來,有關事後交易透明性的規範可以較不嚴格)

IOSCO's Position on Factors Influencing Need for Regulatory Action(IOSCO的定位在影響監管行為需求性之因素)

Facts and circumstances of Benchmark activity in a jurisdiction;(現實及環境中, 對基準指標相關規範的管轄範圍)

- Impact of such activity on the member's regulatory responsibilities;(基準指標相關規範對成員應負管理責任的衝擊)
- Investor and retail usage;(投資者及零售者)
- Economic and financial stability impacts of such activity;(基準指標相關規範對經濟和金融穩定性之影響)
- Existing review and approval authority over rules governing the listing and trading of securities and derivatives that reference benchmarks;(目前管制辦法中, 檢視及核准涉及基準指標之相關證券和衍生性商品掛牌及交易之權限)
- Allocation of regulatory responsibility within a jurisdiction; and(管轄範圍內管理職責之配置)
- The IOSCO member's determination of the need for, and effectiveness of, any policy changes.(IOSCO成員決定其訴求為何, 有效性及政策變化)

CFTC Approach to Benchmarks -1

- CFTC rules focuses on ensuring the integrity of the derivative instrument that references a benchmark through, among other things: (CFTC之規範聚焦在確保衍生性工具之完善,除了基準指標外,仍還有其他地方)
- CEA Core Principle listing requirements imposed on exchanges (DCMs) and swap execution facilities (SEFs): “shall list only contracts that are not susceptible to manipulation”. (CEA之核心原則點出對特定契約市場(DCMs)及交換契約執行設施(SEFs)多加之要求 “應列出唯一種不受操縱之契約”)
- In evaluating the susceptibility of a cash-settled contract to manipulation, core principle guidance states that a DCM should consider the size and liquidity of the cash market that underlies the listed contract in a manner that follows the determination of deliverable supply. [“anchored in transactions” concept] (評估現金交割契約受操縱的容易性,核心原則敘述DCM在上市契約之現貨商品供給量方面,應考量現貨市場的規模及流動性)
- In particular, situations susceptible to manipulation include those in which the volume of cash market transactions and/or the number of participants contacted in determining the cash-settlement price are very low. (進一步來說,易受操縱情形包括現貨市場之交易量非常少及/或決定現金結算價之參與人數非常少)

CFTC Approach to Benchmarks - 2

- Where an independent, private sector third party calculates the cash settlement price series, the DCM should verify that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series. (當獨立,私部門之第三方計算現金交割契約之價格,DCM應驗證第三方商業實務上有極小化操縱現金交割契約價格之機會或動機)
- Such safeguards may include lock-downs, prohibitions against derivatives trading by employees, or public dissemination of the names of sources and price quotes they provide. (這種安全防護可能包括封鎖,禁止員工交易衍生性商品,或公開宣布報價及來源之名稱)
- The DCM should, whenever practicable, enter into an information-sharing agreement with the third-party provider which would enable the designated contract market to better detect and prevent manipulative behavior.(DCM應與第三方之提供者簽署資訊分享協議,讓指定合約市場(DCM)更容易去調查及預防操縱行為)
- Similar requirements apply to SEFs listing swaps. (類似的要求應用在SEFs掛牌之SWAP)

CFTC Approach to Benchmarks - 3

- Market integrity enhanced through:(提升市場健全性透過)
- Requirement on exchange's to conduct surveillance;(要求交易所實施監督)
- The CFTC's independent market surveillance program, which seeks to detect anomalous and/or suspicious trading in a financial instrument;(CFTC的獨立性市場監督方案,尋求能偵測出金融工具之異常和/或可疑之交易)
- Ability to obtain trading data directly from traders under "special call" authority;(依據"特殊來電"之權限,從交易者直接獲取交易數據之能力)
- Referrals to enforcement when appropriate;(適當時要引入實行)
- Authority to investigate and prosecute manipulation or attempted manipulation or other trading abuses in a derivative contract, swap or physical commodity; and(調查及起訴操縱或企圖操縱者之權限,調查及起訴衍生性商品合約之交易弊端,swap之交易弊端或實體商品之交易弊端之權限)
- A record of bringing such actions.(引起相關行為的紀錄)

On to the Panelists(小組的參與者)

Our panelists this morning will discuss a diversity of approaches that reflect their jurisdiction's policy decisions with regard to, among other things: (我們成員今早將討論1個多元性之方法, 該方法除反應管理決策, 還有下列事項:)

- The type of benchmarks covered;(基準指標涵蓋的類型)
- The licensing or authorization of administrators and/or submitters;(許可及管理權限 及/或報價者)
- Use of rules, guidelines, or codes of conduct;(規範, 準則或指導準則之作法)
- The use of listing authority over contracts that reference benchmarks.(上市監管機構對涉及基準指標契約之作法)