

Recommendations on the basis of the findings

All companies that work with calculation agents are recommended to compare their current practice with these recommendations and to implement additional measures where necessary to reduce possible risks.

Finding 1: Institutions do not devote sufficient attention to the place of calculation agents within their organisation and possible conflicts of interest. This should be considered in relation to the various duties and responsibilities that calculation agents often have and their dependence on other departments within the organisation in the performance of their work as calculation agents.

Recommendations to securities-issuing institutions:

- The organisation is aware of the importance of the role of calculation agents and has structured its organisation in such a way that the calculation agent is able to fulfil his role properly. The calculation agent has a proper understanding of the duties described in the prospectus.
- The institution guarantees that the calculation agent does not harm the interests of investors. This is particularly important if the calculation agent also performs other activities.
- The calculation agent performs activities within a department that is independent of sales and trading. There must be sound control measures and proper guidelines for ethical conduct if such a division of duties is not possible. An example: if possible, the calculation agent personally retrieves the quotes that he needs as input for calculations, rather than asking someone else in the organisation (for example a trader) to send him this information.
- Checks performed on the activities of the calculation agent must be truly independent where the system is concerned, and therefore able to identify errors in the data collection process and the calculation model used. This check is performed by at least one functionally different (independent) department or party. Clear agreements must be reached if another party assumes these duties.
- Institutions must limit the discretionary powers of calculation agents as much as possible, for example by drawing up regulations for calculations and collecting underlying data, such as screen quotes, that are as accurate as possible.
- Institutions record how outcomes are reached. There must be at least a record of the reasons why certain choices were made. Situations in which the calculation agent has significant discretionary power are laid down properly and accounted for in particular.

Finding 2: As regards complex products whereby payment cannot be determined in an unambiguous manner, there is a latent risk that the calculation agent arrives at a wrong conclusion without the possibility of verification. The impression exists that fewer products with very complex and/or unclear calculations are being issued than before, but the risk remains.

Recommendations to securities-issuing institutions:

- The calculation agent understands the workings of the products in respect of which he carries out his activities.
- The standard calculations to be made are rendered as 'objectifiable' as possible. Formulas and the data collection process are described in detail.
- The calculation agent is involved in the product development process and the product documentation process so that practical problems that can occur during the calculation can be prevented at an early stage.

Finding 3: When outsourcing the activities of the calculation agent to an external party, too little attention is devoted to the ethical and verifiable performance of the activities by this party. This external party can also be confronted with conflicts of interest if it also performs other roles with respect to the same securities, such as market maker and/or hedge counter party.

Recommendations to securities-issuing institutions:

- Duties that are outsourced and the fact that these duties are performed in an expert and ethical manner are laid down in an agreement.
- Records must be of such quality that they can be audited. The possibility of audits is included in the agreement. Consultation must take place with the client concerning the form that any discretionary powers will take.
- There must be attention for possible conflicts of interests, for example if the party to whom the duties are outsourced also performs other activities for the securities-issuing institution. The agreement lists possible conflicts of interest and includes regulations concerning the division of duties.
- The agreement must provide for a regular report to the client concerning all aspects of the performance of the activities that have been outsourced.