CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment
Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy

March 14, 2019

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing the following for a 90-day comment period, expiring on June 12, 2019:

- proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**Proposed NI 25-102**), and
- proposed Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **Proposed CP**).

Collectively, Proposed NI 25-102 and the Proposed CP are referred to as the **Proposed Instrument** in this Notice.

The text of Proposed NI 25-102 and the Proposed CP is contained in Annex A and Annex B, respectively, of this Notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.sk.ca
www.mbsecurities.ca

We are issuing this Notice to solicit comments on the Proposed Instrument. We welcome all comments on this publication and have also included specific questions in the "Request for Comments" section below.

Currently, benchmarks, and persons or companies that administer them, contribute data that is used to determine them, and use them, are not subject to formal securities regulatory requirements or oversight in Canada. However, as the importance of benchmarks continues to increase in Canadian capital markets, and because misconduct involving benchmarks has led to significant negative impacts on capital markets causing several international developments, we are of the view that it is appropriate to develop a securities regulatory regime for benchmarks and their administrators, contributors and certain of their users.

The Proposed Instrument is intended to implement a comprehensive regime for:

- the designation and regulation of benchmarks (**designated benchmarks**), including specific requirements (or exemptions from requirements) for designated critical

benchmarks (**designated critical benchmarks** or **critical benchmarks**), designated interest rate benchmarks (**designated interest rate benchmarks** or **interest rate benchmarks**) and designated regulated-data benchmarks (**designated regulated-data benchmarks** or **regulated-data benchmarks**),

- the designation and regulation of persons or companies that administer such benchmarks (**designated benchmark administrators** or **administrators**),

- the regulation of persons or companies, if any, that contribute certain data that will be used to determine such designated benchmarks (**benchmark contributors** or **contributors**), and

- the regulation of certain users of designated benchmarks, particularly users who are already regulated in some capacity under Canadian securities legislation (**benchmark users** or **users**).

In Canada, Refinitiv Benchmark Services (UK) Limited (**RBSL**)[1] is currently the administrator of two domestically important benchmarks:

- the Canadian Dollar Offered Rate (**CDOR**), and

- the Canadian Overnight Repo Rate Average (**CORRA**).

Currently, the intention of the CSA is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks (which are each expected to be designated as a critical benchmark and an interest rate benchmark), under Proposed NI 25-102.[2] This intention is based on the significant reliance placed by users and other market participants on CDOR and CORRA, which are used in various financial instruments with a notional value of at least $12.3 trillion dollars.[3] This figure is approximately five times larger than the gross domestic product for Canada in 2017.[4] For CDOR and CORRA, we believe that the following risks should be minimized:

- interruption or uncertainty (if, for example, the administrator resigns or is unsuitable), and

- abusive activity relating to the benchmark, including manipulation of the benchmark.

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[1] Prior to a name change on February 28, 2019, RBSL was known as Thomson Reuters Benchmark Services Limited.

[2] CDOR is the recognized financial benchmark in Canada for bankers' acceptances (BAs) with a term of maturity of one year or less; it is the rate at which banks are willing to lend to companies. CORRA is a measure of the average cost of overnight collateralized funding, and is widely used as the reference for overnight indexed swaps and related futures. Additional information on CDOR and CORRA can be found at: https://financial.thomsonreuters.com/en/products/data-analytics/market-data/financial-benchmarks/benchmarks-in-canada.html.

[3] Bank of Canada, *CDOR & CORRA in Financial Markets –Size and Scope* (September 2018), online: https://www.bankofcanada.ca/wp-content/uploads/2018/10/CDOR-CORRA-in-Financial-Markets-%E2%80%93Size-and-Scope.pdf.

[4] See, for example: http://www.international.gc.ca/economist-economiste/statistics-statistiques/data-indicators-indicateurs/Annual_Ec_Indicators.aspx?lang=eng.

If not, confidence in Canadian capital markets would suffer and participants in Canadian financial markets (including investors) would incur significant losses or costs.

It is possible that the CSA may designate other administrators and their associated benchmarks in the future on public interest grounds, including where:

- a benchmark is sufficiently important to financial markets in Canada,
- a benchmark administrator applies for designation to allow its benchmark to be referenced in financial instruments that are invested in by, or where a counterparty is, one or more European institutional investors pursuant to the EU BMR (defined below), and
- the CSA becomes aware of activities of a benchmark administrator, contributor or user that raise concerns that align with the regulatory risks identified below in respect of such parties and conclude that the administrator and benchmark in question should be designated.

Please refer to the section of this Notice on "Expected Future Amendments on Commodity Benchmarks" for circumstances in which a CSA jurisdiction may designate commodity benchmarks in the future.

Background

In 2012, allegations of manipulation of the London inter-bank offered rate (**LIBOR**) led to the loss of market confidence in the credibility and integrity of LIBOR and financial benchmarks in general. The manipulation of LIBOR led to individual and class-action lawsuits, criminal prosecutions, significant fines and settlements paid by banks that contributed data, an independent review (the **Wheatley Review**)[5] and, ultimately, the implementation of several recommendations from that review, including the replacement in February 2014 of the British Bankers' Association as the administrator of LIBOR by ICE Benchmark Administration Limited. Although the change in administrator and the implementation of other changes recommended in the Wheatley Review have increased market confidence in LIBOR, market concerns have persisted regarding the reliability of LIBOR due to the decline in interbank borrowing activity since the onset of the financial crisis. As a result, regulatory work has been ongoing to identify alternatives to LIBOR and other interbank offered rates.[6]

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[5] Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf.

[6] See, for example, the following publications:
ISDA, *Interbank Offered Rate (IBOR) Fallbacks for 2006 ISDA Definitions - Consultation on Certain Aspects of Fallbacks for Derivatives Referencing GBP LIBOR,1 CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR and BBSW* (July 12, 2018), online: http://assets.isda.org/media/f253b540-193/42c13663-pdf/,
Deloitte, *The alphabet soup of alternative reference rates post-LIBOR - SOFR, SONIA, EONIA, SARON, and TONAR* (April 11, 2018), online: https://www2.deloitte.com/us/en/pages/financial-services/articles/alternative-reference-rates-post-libor.html,
PWC, *Farewell LIBOR - The transition to alternative reference rates for new and legacy contracts* (October 3, 2018), online: https://www.pwc.ch/en/publications/2018/Farewell-LIBOR_EN_web2.pdf, and

IOSCO Principles

In October 2012, after the LIBOR controversies, the International Organization of Securities Commissions (**IOSCO**) published the *Principles for Oil Price Reporting Agencies* (the **IOSCO PRA Principles**)[7] which are intended to enhance the reliability of oil price assessments that are referenced in derivatives contracts subject to regulation by IOSCO members.

In July 2013, IOSCO published the *Principles for Financial Benchmarks* (**IOSCO Financial Benchmark Principles**).[8] Together the IOSCO Financial Benchmark Principles and the IOSCO PRA Principles (the **IOSCO Principles**) provide an overarching framework of principles for the regulation of benchmarks used in financial markets, including principles to address conflicts of interest in processes for determining benchmarks, that are referenced in financial instruments subject to regulation by IOSCO members.

Initial Canadian Regulatory Response

Following the controversies in 2012 regarding alleged misconduct related to the determination of LIBOR and the introduction of the IOSCO Principles, we initially decided that we did not need to seek to immediately regulate benchmarks. Instead, Canadian financial sector regulators pursued other measures to reduce risk, such as:

- encouraging contributors to CDOR to develop a voluntary code of conduct that addresses some of the conflicts of interest issues that could lead to manipulation of submission-based benchmarks, and

- arranging for RBSL to agree to follow certain procedures to strengthen the integrity of CDOR and CORRA.

EU Benchmarks Regulation

On June 30, 2016, the European Union's (**EU**) *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (**EU BMR**)[9] came into force. Most of the provisions of the EU BMR came into effect on January 1, 2018. The regulation introduces a common framework and consistent approach to benchmark regulation across the EU. It aims to ensure benchmarks are robust and reliable, and to minimize conflicts of interest in benchmark-setting processes.

The EU BMR is part of the EU's response to the LIBOR scandal and, in particular:

- aims to reduce the risk of manipulation of benchmarks by addressing conflicts of interest, governance controls and the use of discretion in the benchmark-setting process, and

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Oliver Wyman, *Making the World's Most Important Number Less Important - Libor Transition* (July 2018), online: https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2018/july/Oliver-Wyman-Making-The-Worlds-Most-Important-Number-Less-Important_vFINAL.pdf.

[7] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf.

[8] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.

[9] Available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN.

- requires administrators of a broad range of benchmarks used in the EU to be authorized or registered by a national regulator and to implement governance systems and other controls to ensure the integrity and reliability of the benchmarks they administer.

The EU BMR has provisions regulating benchmark administrators, benchmark contributors and benchmark users.

Supervised entities under EU legislation (e.g., banks, investment firms, insurance companies, mutual funds, pension funds, fund managers and consumer lenders) will be subject to restrictions on using benchmarks (including trading in financial contracts and instruments that reference a benchmark) unless:

- they are produced by an EU administrator authorized or registered under the EU BMR, or

- they are benchmarks of a benchmark administrator located outside the EU that have been qualified for use in the EU under the EU BMR's third country regime (three possible routes are described below).

The restriction applies to "third country regime" benchmarks from January 1, 2022.[10] In other words, a benchmark produced outside of the EU cannot be used by EU supervised entities after December 31, 2021, unless that benchmark meets the requirements in the EU BMR and, as a result, is listed on the European Securities and Markets Authority (**ESMA**) Benchmarks Register.[11]
In order for supervised entities in the EU to be able to use benchmarks produced by third country administrators (e.g., administrators located in Canada), those administrators must apply to be added to the ESMA list of benchmarks in one of three ways:

- *Recognition* – where an administrator located in a third country has been recognised by a EU member state in accordance with the requirements set out in the EU BMR. This process is not relevant for purposes of Proposed NI 25-102.

- *Endorsement* – where an administrator or supervised entity located in the EU has a clear and well-defined role within the control or accountability framework of a third country administrator and is able to monitor effectively the provision of a benchmark. This process is relevant if the administrator or supervised entity applies for endorsement in accordance with the requirements set out in the EU BMR but is not relevant for purposes of Proposed NI 25-102.

- *Equivalence* – where an equivalency decision has been adopted by the European Commission (**EC**), as described further below.

[10] Originally, this restriction was to apply from January 1, 2020. However, on February 25, 2019, EU authorities announced that the date would be extended to January 1, 2022.
[11] ESMA's Benchmarks Register can be found online at https://www.esma.europa.eu/databases-library/registers-and-data.

Under the EU BMR, ESMA will be able to register a benchmark provided by a non-EU administrator in a non-EU state as qualified for use in the EU if:

- the EC has adopted an equivalency decision with respect to the non-EU state,
- the administrator is authorized or registered, and is supervised, in the non-EU state,
- the administrator has notified ESMA of its consent to the use of its benchmarks in the EU by supervised entities (the administrator must also provide ESMA with a list of the relevant benchmarks and advise ESMA of the relevant non-EU regulator in the non-EU state), and
- specific cooperation arrangements between ESMA and the non-EU regulator in the non-EU state are operational.

The EC will be able to adopt an equivalency decision with respect to the non-EU state if administrators authorized or registered in that state comply with binding requirements that are equivalent to the EU BMR. The determination of equivalence takes into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO Principles, as applicable.

Alternatively, the EC will be able to adopt an equivalency decision if there are binding requirements in the non-EU state equivalent to the EU BMR with respect to a specific non-EU administrator or benchmark or benchmark family. This provides some flexibility as it will allow the EC to make equivalency decisions for non-EU benchmarks in those cases where a non-EU state only regulates a limited category of critical benchmarks on an equivalent basis.

RBSL Authorization

On July 12, 2018, RBSL issued a press release announcing that it had been approved by the United Kingdom's (**UK**) Financial Conduct Authority (**FCA**) as an authorized "benchmark administrator" under the EU BMR. As an authorized administrator, RBSL is certified to continue to administer, calculate and publish benchmarks in line with the EU BMR, and users of these benchmarks can continue to use them in accordance with the EU BMR. For additional information regarding the impact of the UK leaving the EU on RBSL's authorization with the FCA, please see the discussion below under the heading "*EU Equivalency*".

Substance and Purpose

We developed Proposed NI 25-102 to establish an EU BMR-equivalent benchmarks regulatory regime and to reduce risk in Canada's capital markets, thereby protecting Canadian investors and other Canadian market participants.

As previously indicated, the current intention of the CSA is to designate only:

- RBSL as an administrator, and

- CDOR and CORRA as RBSL's designated benchmarks under Proposed NI 25-102.

The Proposed CP is meant to assist in the interpretation and application of Proposed NI 25-102.

EU Equivalency

In light of the EU BMR, having the EU recognize the Canadian benchmarks regime as equivalent is desirable and important since it would allow EU institutional market participants to continue to use any Canadian benchmark designated under Proposed NI 25-102. For example, an EU institutional investor may hold securities that refer to a Canadian benchmark.

Although Canada-based administrators are able to directly apply for EU-based registration in the EU under the EU BMR (and, as noted above, RBSL has in fact secured such authorization from the FCA), the CSA is of the view that:

- Canadian securities regulators have a sovereign responsibility and are best positioned to directly regulate benchmarks with a significant connection to Canada, including such benchmarks' administrators, contributors and users, and

- it would be prudent to implement a Canadian regime by, or soon after, the EU equivalency deadline (i.e., January 1, 2022) in the event that, for example

    - another entity, including an entity resident in Canada, is later chosen to act as the administrator of benchmarks (e.g., CDOR and CORRA) administered by an EU-registered benchmark administrator (e.g., RBSL) and would like the benefit of a Canadian regime that has been recognized as equivalent by the EU, or

    - a non-EU registered benchmark administrator of another Canadian benchmark would like the benefit of a Canadian domestic regime that has been recognized as equivalent by the EU.

In addition, we understand that, in the event that the UK leaves the EU, the UK will make amendments to retain EU law related to financial benchmarks (i.e., the EU BMR) to ensure that it continues to operate effectively in a UK context.[12] In such an event, we would also seek a UK equivalency decision. Having the UK recognize the Canadian regime as equivalent is desirable and important since it would, for example, allow UK institutional market participants to continue to use any Canadian benchmark designated under Proposed NI 25-102. We expect that a positive EU equivalency decision would lead to a positive UK equivalency decision.

Risk Reduction and Investor Protection

The CSA believes that Canadian securities regulators should now establish and implement a regulatory regime for benchmarks for the following reasons:

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[12] See, for example, HM Treasury, *Draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019*, online: https://www.gov.uk/government/publications/draft-benchmarks-amendment-and-transitional-provision-eu-exit-regulations-2019.

- there is a need to regulate CDOR and CORRA and their administrator (i.e., RBSL) in light of the significant reliance placed by users and other market participants on CDOR and CORRA. In particular, for CDOR and CORRA, we believe that the following risks should be minimized:

    - interruption or uncertainty (if, for example, the benchmark administrator resigns or is unsuitable), and

    - misconduct relating to benchmarks including manipulation of the benchmark.

  If not and one of these events occurs, the loss of confidence that Canadian capital markets would suffer and the costs that would be borne by Canadian financial markets (including investors), would be significant,[13]

- there is a need for the ability to regulate benchmark administrators and benchmark contributors due to the risk of benchmark-related misconduct that would adversely impact:[14]

    - investors,

    - market participants, and

    - the reputation of, and confidence in, Canada's capital markets,

- many factors that resulted in benchmark-related misconduct in other jurisdictions are also present in Canada (e.g., widespread usage of the benchmark to price unrelated securities that can be traded by contributors, rate fixing activities that rely on a combination of observable market inputs and expert judgment),

- such a regime would clarify, strengthen and specify the legal basis on which Canadian securities regulators may take enforcement and other regulatory action against benchmark administrators, benchmark contributors and benchmark users in the event of misconduct involving a benchmark that harms (or threatens to harm) investors, market participants and capital markets generally, and

- such a regime would ensure the continuity of a viable designated critical benchmark by requiring market participants to provide information in relation to the designated critical benchmark for use by the designated benchmark administrator.

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[13] In January 2018, 9 large banks, including 6 from Canada, were accused by a plaintiff in a U.S. civil lawsuit of conspiring to rig CDOR to improve profits from derivatives trading. The complaint, filed by a Colorado pension fund in U.S. District Court in New York, accused the banks of suppressing CDOR from August 2007 to June 2014 by making artificially lower interest rate submissions to RBSL, CDOR's administrator. The lawsuit has not yet gone to trial and the plaintiff's allegations have not been proven in court.

[14] See, for example, the enforcement actions taken in the UK alone: https://www.fca.org.uk/markets/benchmarks/enforcement.

In addition, the CSA believes it is necessary to reflect international developments in the regulation of benchmarks. IOSCO has released its IOSCO Principles and certain other major jurisdictions have either introduced benchmark regulations or taken measures to regulate key benchmarks or their methodologies.[15]

Summary of Proposed NI 25-102

Designated Benchmarks and Benchmark Administrators

Under current or forthcoming securities legislation,[16] a benchmark administrator can apply for designation as a designated benchmark administrator and to request the designation of a benchmark. Alternatively, the regulator can also apply for a benchmark administrator or benchmark to be designated under securities legislation.[17]

The Proposed CP explains that if a benchmark administrator wants to apply to be designated as a designated benchmark administrator and to request the designation of a benchmark, the application should provide the same information as that set out in Form 25-102F1 and Form 25-102F2. A benchmark administrator may request, or the regulator or securities regulatory authority may decide, that a benchmark should receive, one or more of the following additional designations:[18]

- **Critical benchmark** – Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as a "critical benchmark" if the benchmark is critical to financial markets in Canada or a region of Canada. The following two factors are among those that will be considered:

  (a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value in Canada of at least $400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable, or

  (b) the benchmark satisfies all of the following criteria:

    (i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable,

[15] In addition to the EU, for example, Australia, Hong Kong, Singapore and South Africa. For additional detail, see Financial Stability Board, *Reforming major interest rate benchmarks - Progress report* (November 14, 2018), online: http://www.fsb.org/wp-content/uploads/P141118-1.pdf.

[16] For additional detail, see the section "Recent or Proposed Legislative Amendments" below.

[17] Except in Québec, where the securities regulatory authority has the authority to designate a benchmark administrator or benchmark on its own initiative.

[18] Note that the interpretations of what can constitute a critical benchmark, an interest rate benchmark and a regulated-data benchmark are located in the Proposed CP.

(ii) the benchmark has no, or very few, appropriate market-led substitutes,

(iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on:

(A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or

(B) a significant number of market participants in one or more jurisdictions of Canada.

For the purpose of paragraph (a) and subparagraph (b)(i), staff of a regulator or securities regulatory authority will consider, among other things, the outstanding principal amount of any debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and the outstanding net asset value of any investment funds that use the benchmark to measure performance.

- **Interest rate benchmark** – Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as an "interest rate benchmark" if the benchmark is used to set interest rates of debt securities or is otherwise used as a reference in derivatives or other instruments. Factors that will be considered include the following:

(a) the benchmark is determined on the basis of the rate at which financial institutions may lend to, or borrow from, other financial institutions, or market participants other than financial institutions, in the money market, or

(b) the benchmark is determined from a survey of bid-side rates provided by financial institutions that routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

- **Regulated-data benchmark** – Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as a "regulated-data benchmark" if the benchmark is determined by the application of a formula from any of the following:

(a) input data contributed entirely and directly from:

(i) any of the following, but only with reference to transaction data relating to securities or derivatives:

(A) a recognized exchange in a jurisdiction of Canada or an exchange that is subject to appropriate regulation in a foreign jurisdiction,

(B) a recognized quotation and trade reporting system in a jurisdiction of Canada or a quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction,

(C) an alternative trading system that is registered as a dealer in a jurisdiction in Canada and is a member of a self-regulatory entity or an alternative trading system that is subject to appropriate regulation in a foreign jurisdiction,

(D) an entity that is similar or analogous to the entities referred to in clause (A), (B) or (C) and that is subject to appropriate regulation in a jurisdiction of Canada or a foreign jurisdiction,

(ii) a service provider to which the designated benchmark administrator of the designated benchmark has outsourced the data collection in accordance with section 14 of Proposed NI 25-102, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);

(b) net asset values of investment funds that are reporting issuers in a jurisdiction of Canada or subject to appropriate regulation in a foreign jurisdiction.

When designating a benchmark, a securities regulatory authority will issue a decision document designating the benchmark as a designated benchmark. If applicable, the decision document will indicate if the benchmark is also designated as a designated critical benchmark, a designated interest rate benchmark or a designated regulated-data benchmark. It is possible that a designated benchmark will receive two designations:

- a designated interest rate benchmark may also be designated as designated critical benchmark, and
- a designated regulated-data benchmark may also be designated as a designated critical benchmark.

General Requirements for Administrators

Once designated, an administrator must comply with various requirements, such as:

- delivering audited annual financial statements and certain forms (e.g., Form 25-102F1 *Designated Benchmark Administrator Annual Form* and Form 25-102F2 *Designated Benchmark Annual Form*) to Canadian securities regulators (Part 2),

- maintaining a governance regime that includes a board of directors (of which at least half of the members must be independent), oversight committee and compliance officer with defined roles and responsibilities within an accountability and control framework that addresses conflicts of interest, complaints, reporting of infringements, and outsourcing (Part 3),

- applying policies, procedures and controls relating to input data and the contribution of input data, as well as complying with obligations relating to the benchmark methodology used by the administrator and any changes to such methodology (Part 4),

- publishing information about the administration of its designated benchmarks, including publishing:

    - important information about the methodology,

    - the procedures relating to a significant change or cessation of a designated benchmark, and

    - a specified benchmark statement (Part 5),

- if the designated benchmark is determined using input data from contributors that is not reasonably available to the administrator,[19] applying a code of conduct to the contributors of such input data that:

    - specifies the responsibilities of those contributors with respect to the contribution of input data for the designated benchmark, and

    - includes policies and procedures designed to ensure the contributors are adhering to the code of conduct (Part 6), and

- keeping specified books, records and documents for a period of 7 years (Part 7).

[19] Note that since the input data for CORRA is reasonably available to RBSL as the CORRA administrator (e.g., it is available via subscription or is a public source) and such data is not created for the specific purpose of determining CORRA, the providers of such data sources are not considered "contributors" for purposes of certain provisions relating to input data in the EU BMR and Proposed NI 25-102.

Additional Administrator Requirements for Critical Benchmarks

Proposed NI 25-102 has additional requirements relating to an administrator of a critical benchmark (Part 8), including:

- that the administrator provides specific notice to securities regulators and complies with other requirements if it intends to cease administering the critical benchmark,
- that the administrator provides specific notice to securities regulators if a contributor decides to cease contributing input data with respect to the critical benchmark and an assessment of the impact of such development on the critical benchmark,
- that the administrator provides user access to the critical benchmark on a fair, reasonable, transparent and non-discriminatory basis,
- that the administrator provides securities regulators with an assessment at least once every 24 months of the capability of the critical benchmark to accurately represent that part of the market or economy the critical benchmark is intended to record,
- that at least half of the administrator's oversight committee be comprised of independent members, and
- that, at least once every 12 months, the administrator must engage a public accountant to provide an assurance report on the administrator's compliance with certain key sections of Proposed NI 25-102 and the methodology for the critical benchmark and publish a copy of the assurance report.

Additional Administrator Requirements for Interest Rate Benchmarks

Similarly, Proposed NI 25-102 has additional requirements relating to the administrator of an interest rate benchmark (Part 8), including:

- that the administrator follows a specified order of priority for the use of input data and adjusts the data in specified circumstances,
- that at least half of the administrator's oversight committee be comprised of independent members, and
- that, at least once every 2 years, the administrator must engage a public accountant to provide an assurance report on the administrator's compliance with certain key requirements under Proposed NI 25-102 and the methodology for the interest rate benchmark and publish a copy of the assurance report.

General Requirements for Contributors

Proposed NI 25-102 also imposes requirements on contributors to a designated benchmark, including governance and control requirements, such as appointing a compliance officer and applying policies and procedures relating to accurate and complete contributions of input data, conflicts of interest involving contributions of input data, and the use (and records evidencing the rationale of such use) of expert judgment (Part 6).

Additional Contributor Requirements for Critical Benchmarks

Proposed NI 25-102 has additional requirements relating to a contributor of a critical benchmark (Part 8), including that:

- a contributor provides specific notice to the administrator if it decides to cease contributing to the critical benchmark, and

- if required by the administrator's oversight committee, the contributor engages a public accountant to provide an assurance report on the contributor's compliance with certain key requirements under Proposed NI 25-102 and the methodology for the critical benchmark and deliver a copy of the assurance report to the oversight committee, the board of the administrator, and the regulator or securities regulatory authority.

Additional Contributor Requirements for Interest Rate Benchmarks

Similarly, Proposed NI 25-102 has additional requirements relating to a contributor of an interest rate benchmark (Part 8), including that the contributor must:

- engage a public accountant to provide an assurance report on the contributor's compliance with certain key requirements under Proposed NI 25-102 and the administrator's code of conduct, at least once every 2 years or when required by the administrator's oversight committee, and deliver a copy of the assurance report to the oversight committee, the board of the administrator, and the regulator or securities regulatory authority,

- ensure that each contributing individual (and their direct managers) provide a written statement that they will comply with the code of conduct established by the applicable administrator, and

- have additional policies, procedures and controls relating to various matters, including:

    - an outline of responsibilities within the benchmark contributor's organization, including a list of contributing individuals and their managers and alternates,

    - sign-off of contributions of input data,

    - disciplinary procedures relating to actual or attempted manipulation of the interest rate benchmark,

- the management of conflicts of interest and controls to avoid any inappropriate external influence over those responsible for contributing rates,
- requirements that contributing individuals work in locations physically separated from interest rate derivatives traders,
- requirements to avoid collusion, and
- requirements to keep detailed records on specified matters, such as all relevant aspects of contributions of input data and any communications between contributing individuals and other persons, including internal and external traders and brokers.

Exemptions for Regulated-data Benchmarks

Proposed NI 25-102 (section 41) includes several exemptions from certain requirements in Proposed NI 25-102 for administrators and contributors of regulated-data benchmarks, including exemptions from:

- administrator requirements relating to systems and controls for detecting manipulation or attempted manipulation,
- administrator requirements involving policies, procedures and controls relating to contribution of input data and the accuracy and completeness of such data,
- the administrator requirement for a code of conduct for contributors, and
- contributor requirements relating to appointing a compliance officer and maintaining a specified governance and control framework.

Requirements for Registrants, Reporting Issuers and Recognized Entities

Proposed NI 25-102 (section 22) also imposes certain requirements on registrants, reporting issuers and specified recognized entities that use a designated benchmark if the cessation of the designated benchmark could have a significant impact on such person or company, a security issued by the person or company, or any derivative to which the person or company is a party. In this case, registrants, reporting issuers and specified recognized entities must:[20]

[20] We note that these obligations are not exhaustive and should be considered as supplementary to obligations that may otherwise exist in respect of the use of benchmarks (whether or not the benchmark is a "designated benchmark" for the purposes of Proposed NI 25-102) under other requirements pursuant to securities and derivatives legislation, such as the requirement for a registered firm to "establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to … manage the risks associated with its business in accordance with prudent business practices" under paragraph 11.1(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

- establish and maintain written plans setting out the actions the entity would take in the event of a significant change or cessation of the designated benchmark, including the identification of a suitable alternative, and

- if appropriate, reflect the written plans in any security issued by the person or company, or any derivative to which the person or company is a party, that references the designated benchmark.

Proposed NI 25-102 is in Annex A.

Summary of the Proposed CP

The Proposed CP provides interpretational guidance on elements of Proposed NI 25-102, including the criteria the regulators may consider when determining whether to designate a benchmark as a critical benchmark, interest rate benchmark and/or regulated-data benchmark.

Proposed CP is in Annex B.

Recent or Proposed Legislative Amendments

In order to implement Proposed NI 25-102 and have the Canadian benchmarks regulatory regime recognized as equivalent in the EU (and potentially the UK), staff in each CSA jurisdiction recommended changes to their local securities legislation, including:

- additional authority to regulate benchmarks and benchmark administrators, benchmark contributors and benchmark users (including authority to designate benchmarks and benchmark administrators), and

- prohibitions on market misconduct in relation to benchmarks, specifically a prohibition on providing false or misleading information for a benchmark determination and a prohibition on benchmark manipulation.

To date, benchmark-related amendments to securities legislation are in force or have received royal assent in Alberta, Ontario, Québec and Nova Scotia. Other CSA jurisdictions are recommending these amendments to their government.

Anticipated Costs and Benefits of Proposed NI 25-102

Currently, the intention of the CSA is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks, under Proposed NI 25-102. Since the obligations under Proposed NI 25-102 are substantially similar to the EU BMR requirements already applicable to RBSL and the current contributors for CDOR, we anticipate that Proposed NI 25-102 would not impose a significant incremental regulatory burden to RBSL, the current contributors to CDOR, and certain users of CDOR and CORRA that are already regulated under Canadian securities legislation.

However, there are many expected benefits from Proposed NI 25-102 to benchmark administrators, contributors, users, investors, market participants and Canada's capital markets. Proposed NI 25-102 significantly mitigates the risks of manipulation, interruption and uncertainty[21] in the use of CDOR and CORRA, which are Canada's most important interest rate benchmarks. The proposed regulatory requirements should further enhance confidence in Canadian capital markets and minimize the higher costs that may be borne by Canadian financial markets, including investors, in the event of interruption, uncertainty or manipulation of designated benchmarks. For example, even if Proposed NI 25-102 only results in the avoidance of a small error, distortion or manipulation of CDOR and CORRA, this would mean the direct avoidance of an error, distortion, or manipulation on financial instruments with a value of at least $12.3 trillion.

As a result, the CSA is of the view that the regulatory costs of Proposed NI 25-102 are proportionate to the benefits that would be realized by impacted market participants and the broader Canadian financial market.

Potential Models for Designation and Ongoing Regulatory Oversight of Benchmarks and Benchmark Administrators

We are considering the following four options for processing the designation and regulation of benchmarks and benchmark administrators and for ongoing regulatory oversight:

- Non-coordinated review model: Each CSA jurisdiction would separately process designation applications in its jurisdiction without coordinating with other CSA jurisdictions.

- Coordinated review model: The CSA would manage designation applications in accordance with a process that mirrors the "coordinated review" process set out in National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

- Passport model: The CSA would add designations of benchmarks and benchmark administrators to the Passport system with a process that mirrors:
    - Part 4B (Application to become a designated rating organization) in Multilateral Instrument 11-102 *Passport System*.
    - National Policy 11-205 *Process for Designation of Credit Rating Organizations in Multiple Jurisdictions*.

- Regulatory model similar to that used for exchanges, self-regulatory organizations, clearing houses, trade repositories and matching services utilities: The CSA would develop an approach to regulation similar to the CSA's approach to regulating exchanges, self-regulatory organizations, clearing houses, trade repositories and matching services utilities. Different approaches (e.g., principal, lead, co-leads) could be used based on a memorandum of understanding established by CSA jurisdictions.

[21] As examples of uncertainty, the benchmark administrator resigns or is no longer suitable in carrying out its role as a benchmark administrator, or contributors cease to contribute to a benchmark.

The CSA is also considering a two-phased approach to implementation where we could begin using a non-coordinated review model on a trial basis. Based on the CSA's experience processing the designations and the frequency of such designations, the CSA would consider the model which is most appropriate as the permanent CSA model.

Unpublished Materials

In developing the Proposed Instrument, we have not relied on any significant unpublished study, report or other written materials.

Expected Future Amendments for Commodity Benchmarks

We expect to propose revisions to Proposed NI 25-102 to incorporate requirements relating to commodity benchmarks later in 2019. We expect these changes to include a definition of "designated commodity benchmark" and to specify whether the existing requirements in Proposed NI 25-102 apply to "designated commodity benchmarks" (or their administrators, contributors and certain users) and whether any additional or different requirements are appropriate.

These proposed amendments would be subject to a separate publication and comment process.

Request for Comments

We welcome your comments on the Proposed Instrument and also invite comments on the specific questions set out in Annex C of this Notice.

Please submit your comments in writing on or before June 12, 2019. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (in Microsoft Word format).

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission

Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA.

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square Victoria, 4e étage
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Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.ca

Contents of Annexes

This Notice includes the following annexes:

Annex A — Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*

Annex B — Proposed Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators*

Annex C — Specific Questions of the CSA Relating to the Proposed Instrument

Questions

Please refer your questions to any of the following:

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416-593-8079
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ANNEX A

NATIONAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

A text box in this Instrument located below subsection 1(5) refers to terms defined in securities legislation. This text box does not form part of this Instrument.

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1.(1) In this Instrument

"benchmark individual" means any DBA individual who participates in the provision of, or overseeing the provision of, a designated benchmark;

"board of directors" means, in the case of a person or company that does not have a board of directors, a group that acts in a capacity similar to a board of directors;

"contributing individual" means an individual who contributes input data for a benchmark contributor;

"CSAE 3000" means Canadian Standard on Assurance Engagements 3000 *Attestation Engagements Other than Audits or Review of Historical Financial Information*, as amended from time to time;

"CSAE 3001" means Canadian Standard on Assurance Engagements 3531 *Direct Engagements*, as amended from time to time;

"CSAE 3530" means Canadian Standard on Assurance Engagements 3530 *Attestation Engagements to Report on Compliance*, as amended from time to time;

"CSAE 3531" means Canadian Standard on Assurance Engagements 3531 *Direct Engagements to Report on Compliance*, as amended from time to time;

"DBA individual" means an individual who is

(a) a director, officer or employee of a designated benchmark administrator, or

(b) an agent who provides services directly to the designated benchmark administrator;

"designated benchmark" means a benchmark that is designated by an order or a decision of the regulator or securities regulatory authority;

"designated benchmark administrator" means a benchmark administrator that is designated by an order or a decision of the regulator or securities regulatory authority;

"designated critical benchmark" means a benchmark that is designated as a "critical benchmark" by an order or a decision of the regulator or securities regulatory authority;

"designated interest rate benchmark" means a benchmark that is designated as an "interest rate benchmark" by an order or a decision of the regulator or securities regulatory authority;

"designated regulated-data benchmark" means a benchmark that is designated as a "regulated-data benchmark" by an order or a decision of the regulator or securities regulatory authority;

"expert judgment" means the discretion exercised by

(a) a designated benchmark administrator with respect to the use of input data in determining a benchmark, and

(b) a benchmark contributor with respect to the contribution of input data;

"input data" means the data in respect of the value or price of one or more underlying assets, interests or elements that is used by a designated benchmark administrator to determine a designated benchmark;

"limited assurance report on compliance" means

(a) a public accountant's limited assurance report on management's statement that a person or company complied with specified requirements prepared in accordance with CSAE 3000 and CSAE 3530, or

(b) a public accountant's limited assurance report on the compliance of a person or company with specified requirements prepared in accordance with CSAE 3001 and CSAE 3531;

"management's statement" means, as applicable, a statement of management of a designated benchmark administrator or a benchmark contributor;

"methodology" means a document specifying how a designated benchmark administrator determines a designated benchmark;

"reasonable assurance report on compliance" means

(a) a public accountant's reasonable assurance report on management's statement that a person or company complied with specified requirements prepared in accordance with CSAE 3000 and CSAE 3530, or

(b) a public accountant's reasonable assurance report on the compliance of a person or company with specified requirements prepared in accordance with CSAE 3001 and CSAE 3531;

"specified requirements" means, as applicable, the requirements referred to in

(a) subparagraphs 24(2)(g)(i) and (ii),

(b) paragraphs 33(1)(a), (b), and (c),

(c) paragraphs 34(1)(a), (b) and (c),

(d) paragraphs 37(1)(a) and (b),

(e) paragraphs 38(1)(a) and (b), and

(f) paragraphs 39(1)(a), (b) and (c);

"transaction data" means the data in respect of a price, rate, index or value representing transactions between unaffiliated counterparties in an active market subject to competitive supply and demand forces.

(2) Terms defined in National Instrument 21-101 *Marketplace Operation* and used in this Instrument have the respective meanings ascribed to them in that Instrument.

(3) For the purposes of this Instrument

(a) input data is considered to have been contributed if

(i) it is not reasonably available to

(A) the designated benchmark administrator, or

(B) another person or company for the purpose of providing the input data to the designated benchmark administrator, and

(ii) is provided to the designated benchmark administrator or the other person or company referred to in subparagraph (i)(B) for the purpose of determining a benchmark, and

(b) the provision of a designated benchmark is considered to occur through one or more of the following means:

(i) the administration of the arrangements for determining the benchmark;

(ii) the collection, analysis or processing of input data for the purposes of determining the benchmark;

(iii) determining the benchmark through the application of a formula or other method of calculation or by an assessment of input data.

(4) For the purposes of this Instrument, the definitions in Appendix A apply.

(5) Subsection (4) does not apply in •.

Note: In • ***[Note: At the time of the final rule, we plan to insert a list of jurisdictions that have included the defined terms in Appendix A in their securities legislation]****, the terms in Appendix A are defined in securities legislation.*

(6) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if either of the following apply:

(a) one of them is the subsidiary of the other;

(b) each of them is controlled by the same person or company.

(7) For the purposes of paragraph (6)(b), a person or company (first person) is considered to control another person or company (second person) if any of the following apply:

(a) the first person beneficially owns, or controls or directs, directly or indirectly, securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership;

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

PART 2
DELIVERY REQUIREMENTS

Information on a designated benchmark administrator

2.(1) In this section, the following terms have the same meaning as in subsection 1.1 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*:

(a) "accounting principles";

(b) "auditing standards";

(c) "U.S. GAAP";

(d) "U.S. PCAOB GAAS".

(2) In this section, "parent issuer" means an issuer of which a designated benchmark administrator is a subsidiary.

(3) A designated benchmark administrator must deliver to the regulator or securities regulatory authority

(a) information that a reasonable person would conclude fully describes its organization and structure and its administration of benchmarks, including, but not limited to, its policies and procedures required under this Instrument, its conflicts of interest, its outsourced service providers referred to in section 14, its benchmark individuals, the officer referred to in section 7 and its revenue, and

(b) annual financial statements for its most recently completed financial year that include:

(i) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for

(A) the most recently completed financial year, and

(B) the financial year immediately preceding the most recently completed financial year, if any;

(ii) a statement of financial position at the end of each of the periods referred to in subparagraph (i);

(iii) notes to the annual financial statements.

(4) For purposes of paragraph (3)(b), if the designated benchmark administrator is a subsidiary of a parent issuer, the designated benchmark administrator may instead deliver consolidated annual financial statements for the most recently completed financial year of the parent issuer that include all of the following:

(a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for

(i) the most recently completed financial year, and

(ii) the financial year immediately preceding the most recently completed financial year, if any;

(b) a statement of financial position at the end of each of the periods referred to in paragraph (a);

(c) notes to the annual financial statements.

(5) The annual financial statements delivered under paragraph (3)(b) or subsection (4) must be audited.

(6) The notes to the annual financial statements delivered under paragraph (3)(b) or subsection (4) must identify the accounting principles used to prepare the annual financial statements.

(7) The annual financial statements delivered under paragraph (3)(b) or subsection (4) must

(a) be prepared in accordance with one of the following accounting principles:

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) Canadian GAAP applicable to private enterprises, if

(A) the financial statements consolidate any subsidiaries and account for significantly influenced investees and joint ventures using the equity method, and

(B) the designated benchmark administrator or parent issuer, as applicable, is a “private enterprise” as defined in the Handbook;

(iii) IFRS;

(iv) U.S. GAAP,

(b) be audited in accordance with one of the following auditing standards:

(i) Canadian GAAS;

(ii) International Standards on Auditing;

(iii) U.S. PCAOB GAAS, and

(c) be accompanied by an auditor's report that:

(i) if subparagraph (b)(i) or (ii) applies, expresses an unmodified opinion;

(ii) if subparagraph (b)(iii) applies, expresses an unqualified opinion;

(iii) identifies the auditing standards used to conduct the audit.

(8) The information required under subsection (3) must be provided for the periods set out in, and in accordance with, Form 25-102F1 *Designated Benchmark Administrator Annual Form* and delivered

(a) initially, within 30 days after the designation unless previously provided, and

(b) subsequently, no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(9) If any of the information delivered by a designated benchmark administrator under paragraph (3)(a) becomes significantly inaccurate, the designated benchmark administrator must promptly deliver a completed amended Form 25-102F1 *Designated Benchmark Administrator Annual Form* with updated information.

Information on a designated benchmark

3.(1) A designated benchmark administrator must, for each designated benchmark that it administers, deliver to the regulator or securities regulatory authority

(a) information about the provision and distribution of the designated benchmark, including, but not limited to, its procedures, methodologies and distribution model, and

(b) any code of conduct for the relevant benchmark contributors.

(2) The information required under subsection (1) must be provided for the periods set out in, and in accordance with, Form 25-102F2 *Designated Benchmark Annual Form* and delivered

(a) initially, within 30 days of the designation unless previously provided, and

(b) subsequently, no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(3) If any of the information in a Form 25-102F2 *Designated Benchmark Annual Form* delivered by a designated benchmark administrator in respect of a designated benchmark it administers becomes significantly inaccurate, the designated benchmark administrator must promptly deliver a completed amended Form 25-102F2 *Designated Benchmark Annual Form* in respect of the designated benchmark with updated information.

Submission to jurisdiction and appointment of agent for service of process

4.(1) A designated benchmark administrator must, if the benchmark administrator is incorporated or organized under the laws of a foreign jurisdiction or does not have an office in Canada, submit to the non-exclusive jurisdiction of tribunals in the applicable jurisdictions of Canada and appoint an agent for service of process in Canada.

(2) The submission to jurisdiction and appointment required under subsection (1) must, unless previously provided, be provided in accordance with Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and delivered within 30 days after the designation.

(3) A designated benchmark administrator must deliver an amended Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* with updated information at least 30 days before the earlier of

(a) the termination date of the Form, and

(b) the effective date of any amendments to the Form.

(4) Subsection (3) applies until the date that is 6 years after the date on which the designated benchmark administrator ceased to be designated in the jurisdiction.

PART 3
GOVERNANCE

Board of directors

5.(1) A designated benchmark administrator must not distribute information relating to a designated benchmark unless the designated benchmark administrator has a board of directors.

(2) For the purposes of subsection (1), the board of directors of a designated benchmark administrator must not have fewer than 3 members.

(3) For the purposes of subsection (1), at least one-half of the members of the designated benchmark administrator's board of directors must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(4) For the purposes of subsection (3), a director of the board of directors of a designated benchmark administrator is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the board of directors or a board committee, the director accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the director is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the director has served on the board of directors for more than 5 years in total;

(d) the director has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors, be reasonably expected to interfere with the exercise of the director's independent judgment.

(5) For the purposes of paragraph (4)(d), in forming its opinion, the board of directors is not required to conclude that a member of a board of directors is not independent solely on the basis that the member is, or was, a benchmark user of a designated benchmark administered by the designated benchmark administrator.

Accountability framework requirements

6.(1) In this section, "accountability framework" means the polices and procedures referred to in subsection (2).

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) ensure and evidence compliance with this Instrument, and

(b) ensure and evidence that the designated benchmark administrator follows the methodology for each designated benchmark it administers.

(3) The accountability framework must specify how the designated benchmark administrator complies with each of the following:

(a) the record-keeping requirements in this Instrument;

(b) the requirements in this Instrument relating to internal review or audit, or a public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(c) the complaint handling procedures in this Instrument.

Compliance officer

7.(1) A designated benchmark administrator must designate an officer that monitors and assesses compliance by the designated benchmark administrator and its DBA individuals with securities legislation in relation to benchmarks.

(2) A designated benchmark administrator must not prevent the officer referred to in subsection (1) from directly accessing the designated benchmark administrator's board of directors or a member of the board of directors.

(3) An officer referred to in subsection (1) must do all of the following:

(a) monitor and assess compliance by the designated benchmark administrator and its DBA individuals with the designated benchmark administrator's accountability framework referred to in section 6, control framework referred to in section 9, policies and procedures applicable to benchmarks, and securities legislation in relation to benchmarks;

(b) at least once every 12 months, submit a report to the designated benchmark administrator's board of directors for the purpose of reporting on

(i) the officer's activities referenced in paragraph (a),

(ii) compliance by the designated benchmark administrator and its DBA individuals with securities legislation in relation to benchmarks, and

(iii) compliance by the designated benchmark administrator with the methodology for each designated benchmark it administers;

(c) report to the designated benchmark administrator's board of directors as soon as reasonably possible if the officer becomes aware of any circumstances indicating that the designated benchmark administrator or its DBA individuals might not be in compliance with securities legislation in relation to benchmarks and any of the following apply:

(i) the suspected non-compliance is reasonably expected to create a significant risk of financial loss to a benchmark user or to any other person or company;

(ii) the suspected non-compliance is reasonably expected to create a significant risk of harm to the integrity of the capital markets;

(iii) a reasonable person would conclude that the suspected non-compliance is part of a pattern of non-compliance.

(4) An officer referred to in subsection (1) must not participate in any of the following:

(a) the provision of a designated benchmark, including, but not limited to,

(i) the administration of the arrangements for determining the benchmark,

(ii) the collection, analysis or processing of input data for the purposes of determining the benchmark, or

(iii) determining the benchmark through the application of a formula or other method of calculation or by an assessment of input data;

(b) the establishment of compensation levels for any DBA individuals, other than for a DBA individual that reports directly to the officer.

(5) An officer referred to in subsection (1) must certify that a report submitted under paragraph (3)(b) is accurate and complete.

(6) The designated benchmark administrator must not provide a payment or other financial incentive to the officer referred to in subsection (1), or any DBA individual that reports directly to the officer, if that payment or incentive is linked to either of the following:

(a) the financial performance of the designated benchmark administrator or an affiliated entity of the designated benchmark administrator;

(b) the financial performance of a designated benchmark administered by the designated benchmark administrator.

(7) The designated benchmark administrator must not provide a financial incentive to an officer referred to in subsection (1), or any DBA individual that reports directly to the officer, in a manner that a reasonable person would determine compromises the independence of the officer or the DBA individual.

(8) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure compliance with subsections (6) and (7).

(9) A designated benchmark administrator must deliver to the regulator or securities regulatory authority, promptly after it is submitted to the board of directors, a report referred to in paragraph (3)(b) or (c).

Oversight committee

8.(1) A designated benchmark administrator must establish and maintain an oversight committee to oversee the provision of a designated benchmark.

(2) The oversight committee must not include individuals that are members of the board of directors of the designated benchmark administrator.

(3) The oversight committee must assess the decisions of the board of directors of the designated benchmark administrator with regards to compliance with securities legislation in relation to a designated benchmark and raise any concerns with those decisions with the board of directors of the designated benchmark administrator.

(4) The oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator.

(5) A designated benchmark administrator must establish, document, maintain and apply policies and procedures regarding the structure and mandate of the oversight committee.

(6) The board of directors of the designated benchmark administrator must appoint the members of the oversight committee.

(7) A designated benchmark administrator must not distribute information relating to a designated benchmark unless its board of directors has

(a) approved the policies and procedures referred to in subsection (5), and

(b) approved the procedures referred to in paragraph (8)(d).

(8) The oversight committee must, for each designated benchmark that the designated benchmark administrator administers, do all of the following:

(a) review the methodology of the designated benchmark at least once in every 12-month period;

(b) oversee any changes to the methodology of the designated benchmark, including requesting that the designated benchmark administrator consult with benchmark contributors or benchmark users on any significant changes to the methodology of the designated benchmark;

(c) oversee the management and operation of the designated benchmark, including the designated benchmark administrator's control framework referred to in section 9;

(d) review and approve procedures for any cessation of the designated benchmark, including procedures governing a consultation about a cessation of the designated benchmark;

(e) oversee any service provider involved in the provision or distribution of the designated benchmark, including calculation agents or dissemination agents;

(f) assess any report resulting from an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(g) monitor the implementation of any remedial actions relating to an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(h) keep minutes of each meeting;

(i) if the designated benchmark is based on input data from a benchmark contributor,

(i) oversee the designated benchmark administrator's establishment, implementation, maintenance and application of the code of conduct referred to in section 24,

(ii) monitor each of the following:

(A) the input data;

(B) the contribution of input data by a benchmark contributor;

(C) the actions of the designated benchmark administrator in challenging or validating contributions of input data,

(iii) take reasonable measures regarding any significant breach of the code of conduct referred to in section 24 to mitigate the impact of the breach and prevent additional breaches in the future, and

(iv) promptly notify the board of directors of the designated benchmark administrator of any breach of the code of conduct referred to in section 24.

(9) If the oversight committee becomes aware that the board of directors of the designated benchmark administrator has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting.

(10) If the oversight committee becomes aware of any of the following, the oversight committee must promptly report it to the regulator or securities regulatory authority:

(a) any significant misconduct by the designated benchmark administrator in relation to the provision of a designated benchmark;

(b) any significant misconduct by a benchmark contributor in respect of a designated benchmark that is based on input data from the benchmark contributor;

(c) any input data that

(i) a reasonable person would conclude is anomalous or suspicious, and

(ii) is used in determining the benchmark or is contributed by a benchmark contributor.

(11) The oversight committee, and each of its members, must operate with integrity in carrying out its, and their, actions and duties in this Instrument.

(12) A member of the oversight committee must disclose in writing to the oversight committee the nature and extent of any conflict of interest involving the designated benchmark or the designated benchmark administrator.

Control framework

9.(1) In this section, "control framework" means the policies, procedures and controls referred to in subsections (2) and (4).

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated benchmark is provided in accordance with this Instrument.

(3) Without limiting the generality of subsection (2), the designated benchmark administrator must ensure that its control framework includes controls relating to all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingency procedures in the event of a disruption to the provision of the designated benchmark or the process applied to provide the designated benchmark.

(4) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls reasonably designed to

(a) ensure that benchmark contributors comply with the code of conduct referred to in section 24 and the standards for input data in the methodology of the designated benchmark,

(b) monitor input data before any publication relating to the designated benchmark, and

(c) validate input data after publication to identify errors and anomalies.

(5) A designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any significant security incident or any significant systems issue relating to any designated benchmark it administers.

(6) A designated benchmark administrator must review and update its control framework on a reasonably frequent basis and at least once in every 12-month period.

(7) A designated benchmark administrator must make its control framework available, on request and free of charge, to any benchmark user.

Governance requirements

10.(1) A designated benchmark administrator must establish and document a clear organizational structure.

(2) The organizational structure referred to in subsection (1) must establish well-defined and transparent roles and responsibilities for each person or company involved in the provision of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that each of its benchmark individuals

(a) has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to them, and

(b) is subject to adequate management and supervision.

(4) A designated benchmark administrator must ensure that any information published by the benchmark administrator relating to a designated benchmark is internally approved by management of the designated benchmark administrator.

Conflict of interest requirements

11.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and avoid conflicts of interest, or mitigate risks resulting from conflicts of interest, involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that any expert judgment used by the benchmark administrator or DBA individuals in the benchmark determination process is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated benchmark, and

(d) ensure that each of its benchmark individuals is not subject to undue influence or conflicts of interest, including ensuring that each of the benchmark individuals

(i) is not subject to compensation or performance evaluations from which conflicts of interest arise or that otherwise impinge on the integrity of the benchmark determination process,

(ii) does not have any financial interests, relationships or business connections that compromise the activities of the designated benchmark administrator,

(iii) does not contribute to a determination of a designated benchmark by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except in accordance with explicit requirements of the methodology of the designated benchmark, and

(iv) is subject to procedures to control the exchange of information that may affect a designated benchmark with either of the following:

(A) other DBA individuals involved in activities that may create a risk of conflicts of interest,

(B) benchmark contributors or other third parties.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of a designated benchmark and its benchmark individuals from any other part of the business of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a risk of a conflict of interest between the business of the designated benchmark and the other part of the business.

(3) A designated benchmark administrator must promptly publish a description of a significant conflict of interest, or a risk of a significant conflict of interest, in respect of a designated benchmark on becoming aware of the conflict or risk, including, but not limited to, a conflict or risk arising from the ownership or control of the designated benchmark administrator.

(4) The designated benchmark administrator must ensure that the policies and procedures referred to in subsection (1)

(a) take into account the nature of the designated benchmark and the risks that the designated benchmark poses to markets and benchmark users,

(b) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure and transparency obligations under this Instrument, and

(c) identify and avoid conflicts of interest, or mitigate risks resulting from conflicts of interest, including, but not limited to, those that arise as a result of

(i) expert judgment or other discretion exercised in the benchmark determination process,

(ii) the ownership or control of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, and

(iii) any other person or company exercising control or direction over the designated benchmark administrator in relation to determining the designated benchmark.

(5) In the event of a significant failure to apply or follow policies and procedures to which paragraph (4)(b) applies, a designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

Reporting of infringements

12.(1) A designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed for the purposes of detecting and reporting to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve manipulation or attempted manipulation of a designated benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures for its DBA individuals to report any contravention of this Instrument to the officer referred to in section 7.

(3) A designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any conduct that it, or any of its DBA individuals, becomes aware of that might involve manipulation or attempted manipulation of a designated benchmark.

Complaint procedures

13.(1) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures reasonably designed for receiving, handling, investigating and resolving complaints relating to a designated benchmark, including, without limitation, complaints in respect of each of the following:

(a) whether a determination of a designated benchmark accurately represents that part of the market or economy the benchmark is intended to record;

(b) whether a determination of a designated benchmark was made in accordance with the methodology of the designated benchmark;

(c) the methodology of a designated benchmark or any proposed change to the methodology.

(2) A designated benchmark administrator must do all of the following:

(a) provide a written copy of the complaint procedures at no cost to a complainant on request;

(b) investigate a complaint in a timely and fair manner;

(c) communicate the outcome of the investigation of a complaint to the complainant within a reasonable period of time;

(d) conduct the investigation of a complaint independently of persons who may have been involved in the subject-matter of the complaint.

Outsourcing

14.(1) A designated benchmark administrator must not outsource a function, service or activity relating to the administration of a designated benchmark in such a way as to significantly impair either of the following:

(a) the designated benchmark administrator's control over the provision of the designated benchmark;

(b) the ability of the designated benchmark administrator to comply with securities legislation in relation to benchmarks.

(2) A designated benchmark administrator that outsources to a service provider a function, service or activity in the provision of a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure

(a) the service provider has the ability, capacity, and any authorization required by law, to perform the outsourced function, service or activity reliably and effectively,

(b) the designated benchmark administrator maintains records documenting the identity and the tasks of each service provider that participates in the provision of a designated benchmark and makes those records available to the regulator or securities regulatory authority promptly on request,

(c) the designated benchmark administrator and the service provider to which a function, service or activity is outsourced enter into a written contract that

(i) imposes service level requirements on the service provider,

(ii) allows the designated benchmark administrator to terminate the agreement when reasonably appropriate,

(iii) requires the service provider to disclose to the designated benchmark administrator any development that may have a significant impact on its ability to carry out the outsourced function, service or activity in compliance with applicable law,

(iv) requires the service provider to cooperate with the regulator or securities regulatory authority regarding the outsourced function, service or activity,

(v) includes a provision allowing the designated benchmark administrator to access

(i) the books, records and data related to the outsourced function, service or activity, and

(ii) the business premises of the service provider,

(vi) includes a provision requiring the service provider to provide the regulator or securities regulatory authority with the same access to the books, records and data related to the outsourced function, service or activity that the regulator or securities regulatory authority would have if the function, service or activity were not outsourced, and

(vii) includes a provision requiring the service provider to provide the regulator or securities regulatory authority with the same rights to access the business premises of the service provider that the regulator or securities regulatory authority would have if the function, service or activity was not outsourced,

(d) the designated benchmark administrator takes reasonable measures if the administrator becomes aware of any circumstances indicating that the service provider might not be carrying out the outsourced function, service or activity in compliance with this Instrument or with the contract referenced in paragraph (c),

(e) the designated benchmark administrator conducts reasonable supervision of the outsourced function, service or activity and manages the risks associated with the outsourcing,

(f) the designated benchmark administrator retains the expertise that a reasonable person would consider to be necessary to conduct reasonable supervision of the

outsourced function, service or activity and to manage the risks associated with the outsourcing, and

(g) the designated benchmark administrator takes steps, including developing contingency plans, that a reasonable person would consider to be necessary to avoid or mitigate operational risk related to the participation of the service provider in the provision of the designated benchmark.

PART 4
INPUT DATA AND METHODOLOGY

Input data

15.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that each of the following are satisfied in respect of input data used in the provision of a designated benchmark:

(a) the input data, in aggregate, is sufficient to provide a designated benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record;

(b) the input data will continue to be available on a reliable basis;

(c) if appropriate transaction data is available to satisfy paragraphs (a) and (b), the input data is transaction data;

(d) if appropriate transaction data is not available to satisfy paragraphs (a) and (b), the designated benchmark administrator uses, in accordance with the methodology of the designated benchmark, relevant and appropriate estimated prices, quotes or other values as input data;

(e) the input data is capable of being verified as being accurate and complete.

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that input data for a designated benchmark is accurate and complete and that include all of the following:

(a) criteria that determine who may contribute input data to the designated benchmark administrator;

(b) a process for determining benchmark contributors;

(c) a process for assessing a benchmark contributor’s compliance with the code of conduct referred to in section 24;

(d) a process for applying measures that a reasonable person would consider to be appropriate in the event of non-compliance by a benchmark contributor with the code of conduct referred to in section 24;

(e) if appropriate, a process for stopping a benchmark contributor from contributing further input data;

(f) a process for verifying input data to ensure its accuracy and completeness.

(3) If a reasonable person would consider that the input data results in a designated benchmark that does not accurately represent that part of the market or economy the designated benchmark is intended to record, the designated benchmark administrator must do either of the following:

(a) within a reasonable time, change the input data, the benchmark contributors or the methodology of the designated benchmark in order to ensure that the designated benchmark accurately represents that part of the market or economy the designated benchmark is intended to record;

(b) cease to provide the designated benchmark.

(4) A designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority if the designated benchmark administrator is required to take an action set out in paragraph (3)(a) or (b).

(5) A designated benchmark administrator must publicly disclose each of the following:

(a) the policies and procedures referred to in subsection (1) regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgment in the determination of a designated benchmark;

(b) the methodology of the designated benchmark.

Contribution of input data

16.(1) For the purpose of paragraph 15(1)(a) in respect of a designated benchmark that is based on input data from benchmark contributors, the designated benchmark administrator must obtain, if a reasonable person would consider it to be appropriate, input data from a representative sample of benchmark contributors.

(2) A designated benchmark administrator must not use input data from a benchmark contributor if the designated benchmark administrator has any indication that the benchmark contributor does not adhere to the code of conduct referred to in section 24, and in such a case, if a reasonable person would consider it to be appropriate, must obtain alternative representative data in accordance with the guidelines referred to in paragraph 17(3)(a).

(3) If input data is contributed from any front office of a benchmark contributor or an affiliate that performs any activities that relate to or might impact the input data, the designated benchmark administrator must

(a) obtain information from other sources that confirms the accuracy and completeness of the input data in accordance with its policies and procedures, and

(b) ensure that the benchmark contributor has in place adequate internal oversight and verification procedures.

(4) For the purpose of subsection (3), "front office" means any department, division, group or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities.

Methodology

17.(1) A designated benchmark administrator must not use a methodology for determining a designated benchmark unless all of the following apply:

(a) the methodology is sufficient to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to record;

(b) the methodology clearly identifies how and when expert judgment may be exercised in the determination of the designated benchmark;

(c) the accuracy and reliability of the methodology is capable of being verified including, if appropriate, by back-testing;

(d) the methodology is reasonably designed to ensure that a determination under the methodology can be made in all reasonable circumstances, without compromising the accuracy and reliability of the methodology;

(e) a determination under the methodology can be verified as being accurate and complete.

(2) A designated benchmark administrator must not implement a methodology for a designated benchmark unless the designated benchmark administrator

(a) takes into account, in the preparation of the methodology, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to record,

(b) if applicable, determines what constitutes an active market for the purposes of the designated benchmark, and

(c) establishes the priority given to different types of input data.

(3) A designated benchmark administrator must establish, document, maintain, apply and publish guidelines that

(a) identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to record, and

(b) indicate whether and how the designated benchmark is to be calculated in those circumstances.

Proposed significant changes to methodology

18.(1) A designated benchmark administrator must establish, document, maintain and apply procedures that provide for all of the following:

(a) public notice of a proposed significant change to the methodology of a designated benchmark;

(b) the provision of comments by benchmark users and other members of the public on the proposed significant change and its effect on the designated benchmark;

(c) the publication of any comments received unless the commenter has requested that their comments be held in confidence, and the designated benchmark administrator's response to the comments that are published;

(d) public notice of an implemented significant change to the methodology of the designated benchmark.

(2) For the purposes of subsection (1),

(a) the procedures in relation to the public notice under paragraph (1)(a) must provide that notice of the proposed change be published on or before a date that provides benchmark users and other members of the public with reasonable time to consider and comment on the proposed change,

(b) the procedures in relation to the publication of comments under paragraph (1)(c) may permit a part of a written comment to be excluded from publication if both of the following apply:

(i) the designated benchmark administrator considers that disclosure of that part of the comment would be seriously prejudicial to the interests of the designated benchmark administrator or would contravene privacy laws;

(ii) the designated benchmark administrator includes, with the publication, a description of the nature of the comment, and

(c) the procedures in relation to the public notice under paragraph (1)(d) must provide that notice of the implemented change be published on or before an effective date that provides benchmark users and other members of the public with reasonable time to consider the implemented change.

PART 5
DISCLOSURE

Disclosure of methodology

19.(1) A designated benchmark administrator must publish all of the following in respect of the methodology of a designated benchmark:

(a) the information that

(i) a reasonable benchmark contributor may need in order to carry out its responsibilities as a benchmark contributor, and

(ii) a reasonable benchmark user may need in order to evaluate whether the designated benchmark accurately and reliably represents that part of the market or economy the designated benchmark is intended to record;

(b) a complete explanation of all of the elements of the methodology, including, but not limited to, the following:

(i) a description of the designated benchmark and of the part of the market or economy the designated benchmark is intended to record;

(ii) the currency or other unit of measurement of the designated benchmark;

(iii) the criteria used by the designated benchmark administrator for selecting the sources of input data used to determine the designated benchmark;

(iv) the types of input data used to determine the designated benchmark and the priority given to each type;

(v) the benchmark contributors and the criteria used to determine eligibility of a benchmark contributor;

(vi) a description of the constituents of the designated benchmark and the criteria used for selecting and giving weight to them;

(vii) any minimum liquidity requirements for the constituents of the designated benchmark;

(viii) any minimum requirements for the quantity of input data, and any minimum standards for the quality of input data, used to determine the designated benchmark;

(ix) provisions identifying how and when expert judgment may be exercised in the determination of the designated benchmark;

(x) whether the designated benchmark takes into account any reinvestment of dividends paid on securities that are included in the designated benchmark;

(xi) if the methodology may be changed periodically to ensure the designated benchmark continues to accurately represent that part of the market or economy the designated benchmark is intended to record, all of the following:

(A) any criteria to be used to determine when such a change is necessary;

(B) any criteria to be used to determine the frequency of such a change;

(C) any criteria to be used to rebalance the constituents of the designated benchmark as part of making such a change;

(xii) the potential limitations of the methodology and details of any methodology to be used in exceptional circumstances, including in the case of an illiquid market or in periods of stress or where transaction data sources may be insufficient, inaccurate or unreliable;

(xiii) a description of the roles of any third parties involved in data collection for, or in calculation or dissemination of, the designated benchmark;

(xiv) the model or method used for the extrapolation and any interpolation of input data;

(c) the process for the internal review and the approval of the methodology and the frequency of such reviews;

(d) the procedures referred to in section 18;

(e) examples of the types of changes that may constitute a significant change to the methodology.

(2) A designated benchmark administrator must provide written notice to the regulator or securities regulatory authority of a proposed significant change to the methodology of a designated benchmark at least 45 days before its implementation.

Benchmark statement

20.(1) No later than 15 days following the designation of a designated benchmark, the designated benchmark administrator of the designated benchmark must publish a benchmark statement.

(2) For the purpose of subsection (1), a "benchmark statement" means a statement that includes all of the following:

(a) a description of the part of the market or economy the designated benchmark is intended to record, including all of the following information:

(i) the geographical area, if any, of the part of the market or economy the designated benchmark is intended to record;

(ii) any other information that a reasonable person would believe to be relevant or useful to help existing or potential benchmark users to understand the relevant features of the part of the market or economy the designated benchmark is intended to record, including both of the following to the extent that reliable information is available:

(A) information on existing or potential participants in the part of the market or economy the designated benchmark is intended to record;

(B) an indication of the dollar value of the part of the market or economy the designated benchmark is intended to record;

(b) an explanation of the circumstances in which the designated benchmark might, in the opinion of a reasonable person, no longer represent the part of the market or economy the designated benchmark is intended to record;

(c) technical specifications that set out

(i) the elements of the calculation of the designated benchmark in relation to which expert judgment may be exercised by the designated benchmark administrator or any benchmark contributor,

(ii) the criteria applicable to the exercise of expert judgment by the designated benchmark administrator or any benchmark contributor, and

(iii) the job title of the individuals that are authorized to exercise expert judgment on behalf of the designated benchmark administrator or any benchmark contributor;

(d) how the expert judgment referred to in paragraph (c) could be evaluated;

(e) notice that factors, including external factors beyond the control of the designated benchmark administrator, could necessitate changes to, or the cessation of, the designated benchmark;

(f) notice that changes to, or the cessation of, the designated benchmark could have an impact on contracts and instruments that reference the designated benchmark or on the measurement of the performance of an investment fund that references the designated benchmark;

(g) explanations for all key terms used in the statement relating to the designated benchmark and its methodology;

(h) the rationale for adopting the methodology of the designated benchmark and procedures for the review and approval of the methodology;

(i) a summary of the methodology of the designated benchmark, including, but not limited to, all of the following:

(i) a description of the input data;

(ii) the priority given to different types of input data;

(iii) the minimum data needed to determine the designated benchmark;

(iv) the use of any models or methods of extrapolation of input data;

(v) any procedure for rebalancing the constituents of the designated benchmark;

(vi) the controls and rules that govern any exercise of expert judgment by the designated benchmark administrator or any benchmark contributor;

(j) the procedures which govern the provision of the designated benchmark in periods of stress or where transaction data sources may be insufficient, inaccurate or unreliable, and the potential limitations of the designated benchmark in those periods;

(k) the procedures for dealing with errors in input data or in the determination of the designated benchmark, including when a re-determination of the designated benchmark is required;

(l) potential limitations of the designated benchmark, including its operation in illiquid or fragmented markets and the possible concentration of input data.

(3) The designated benchmark administrator must review the benchmark statement at least every 2 years.

(4) If there are significant changes to the information in the benchmark statement, the designated benchmark administrator must promptly update the benchmark statement to reflect any changes to the information required by this section.

(5) Where the benchmark statement is updated under subsection (4), the designated benchmark administrator must promptly publish an updated version of the benchmark statement.

Changes to and cessation of a benchmark

21.(1) A designated benchmark administrator must publish, simultaneously with the benchmark statement referred to in subsection 20(1), the procedures to be followed by the designated benchmark administrator in the event of a significant change to or the cessation of a designated benchmark it administers.

(2) If the designated benchmark administrator makes a significant change to the procedures referred to in subsection (1), the designated benchmark administrator must promptly publish the updated procedures.

Registrants, reporting issuers and recognized entities

22.(1) If a person or company uses a designated benchmark, and if the cessation of the benchmark could have a significant impact on the person or company or a security issued by the person or company or a derivative to which the person or company is a party, the person or company must establish and maintain a written plan setting out the actions that the person or company would take in the event that the designated benchmark significantly changes or ceases to be provided and the person or company is one or more of the following:

(a) a registrant;

(b) a reporting issuer;

(c) a recognized exchange;

(d) a recognized quotation and trade reporting system;

(e) a recognized clearing agency within the meaning of National Instrument 24-102 *Clearing Agency Requirements*.

(2) If a reasonable person would consider it to be appropriate, a person or company referred to in subsection (1) must

(a) identify, in the plan referred to in subsection (1), one or more benchmarks suitable to substitute for the designated benchmark, and

(b) indicate why the substitution would be suitable.

(3) If a reasonable person would consider it to be appropriate, a person or company referred to in subsection (1) must reflect the plan referred in that subsection in any security issued by the person or company, or any derivative to which the person or company is a party, that references the designated benchmark.

Publishing and disclosing

23. If a designated benchmark administrator is required by this Instrument to publish a document or information, or disclose a document or information to a benchmark user or benchmark contributor, the designated benchmark administrator must publicly and prominently disclose the document or information, free of charge, on the designated benchmark administrator's website.

PART 6
BENCHMARK CONTRIBUTORS

Code of conduct for benchmark contributors

24.(1) If a designated benchmark is determined using input data from benchmark contributors, the designated benchmark administrator of the designated benchmark must establish, document, maintain and apply a code of conduct that specifies the responsibilities of benchmark contributors with respect to the contribution of input data for the designated benchmark.

(2) A designated benchmark administrator must include in the code of conduct referred to in subsection (1) all of the following:

(a) a clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with sections 12, 15 and 16;

(b) the method by which benchmark contributors confirm and amend the identity of each contributing individual that could contribute input data to the designated benchmark administrator;

(c) procedures to verify the identity of a benchmark contributor and any contributing individual;

(d) procedures to authorize an individual to be a contributing individual;

(e) procedures to ensure that a benchmark contributor contributes all relevant input data;

(f) systems and controls that a benchmark contributor must establish, document, maintain and apply, including all of the following:

(i) procedures for contributing input data to the designated benchmark administrator;

(ii) requirements for the benchmark contributor to

(A) specify whether input data is transaction data, and

(B) confirm whether input data conforms to the designated benchmark administrator's requirements;

(iii) procedures on the use of expert judgment in contributing input data;

(iv) any requirement for the validation of input data before it is contributed to the designated benchmark administrator;

(v) requirements to maintain records relating to its activities as a benchmark contributor;

(vi) requirements that the benchmark contributor report to the designated benchmark administrator any instance where a reasonable person would believe that a contributing individual, acting on a behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate or incomplete;

(vii) requirements concerning the identification and avoidance of conflicts of interest or mitigation of risks resulting from conflicts of interest;

(viii) the designation of an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, this Instrument and securities legislation relevant to benchmarks;

(ix) a requirement that the officer referred to in paragraph (viii) be provided with direct access to the benchmark contributor's board of directors at such times as the officer may consider necessary or advisable in view of the officer's responsibilities;

(g) a requirement that, if required by the oversight committee referred to in section 8 as a result of a concern with the conduct of a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and the benchmark

contributor's compliance with all of the following:

(i) sections 25 and 40;

(ii) the methodology of the designated interest rate benchmark;

(h) a requirement that the benchmark contributor must deliver a copy of the report referred to in paragraph (2)(g) to the oversight committee referred to in section 8.

(3) The designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure, at least once in every 12-month period and promptly after any change to the code of conduct referred to in subsection (1), that a benchmark contributor is adhering to the code of conduct.

Governance and control requirements for benchmark contributors

25.(1) A benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure all of the following:

(a) the contribution of input data by the benchmark contributor is not significantly affected by any conflict of interest involving the benchmark contributor and its employees, officers, directors and agents, if a reasonable person would consider that the contribution of the input data might be inaccurate or incomplete;

(b) if any expert judgment contemplated by this Instrument is exercised by the benchmark contributor in contributing input data, the benchmark contributor exercises the expert judgment independently and in good faith and in accordance with the code of conduct referred to in section 24.

(2) A benchmark contributor to a designated benchmark must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the accuracy and completeness of each contribution of input data to the designated benchmark administrator, including policies, procedures and controls governing all of the following:

(a) the manner in which the input data is contributed in compliance with this Instrument and the code of conduct referred to in section 24;

(b) who may submit input data to the designated benchmark administrator including, where applicable, a process for sign-off by an individual holding a position senior to that of a contributing individual;

(c) training for contributing individuals with respect to this Instrument;

(d) the identification and avoidance of conflicts of interest or mitigation of risks resulting from conflicts of interest, including, but not limited to, when appropriate

(i) organizational separation of contributing individuals from employees whose responsibilities include transacting the underlying interest of the benchmark, and

(ii) removal or avoidance of incentives to manipulate a designated benchmark that may arise from remuneration policies.

(3) Before contributing input data for a designated benchmark, a benchmark contributor to a designated benchmark must

(a) establish, document, maintain and apply policies and procedures reasonably designed to guide any use of expert judgment, and

(b) if expert judgment is exercised in relation to input data, retain records that record the rationale for any decision made to use that expert judgment and the manner of the exercise of the expert judgment.

(4) A benchmark contributor to a designated benchmark must keep, for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later, records relating to each of the following:

(a) communications in relation to the contribution of input data;

(b) all information used by the benchmark contributor to make each contribution, including details of any contributions made and the names of the contributing individuals;

(c) all documentation relating to the identification and avoidance of conflicts of interest or mitigation of risks resulting from conflicts of interest;

(d) a description of the potential for financial loss or gain of the benchmark contributor and each contributing individual to financial instruments that reference the designated benchmark for which it acts as a benchmark contributor;

(e) any internal or external review of the benchmark contributor, including, for greater certainty, each limited assurance report on compliance or reasonable assurance report on compliance under this Instrument.

(5) A benchmark contributor to a designated benchmark must

(a) cooperate with the designated benchmark administrator in the review and supervision of the provision of the designated benchmark, including, but not limited to, cooperation in connection with any limited assurance report on compliance or reasonable assurance report on compliance under this Instrument, and

(b) make available the information and records kept in accordance with subsection (4) to

(i) the designated benchmark administrator, or

(ii) any public accountant in connection with any limited assurance report on compliance or reasonable assurance report on compliance under this Instrument.

Compliance officer for benchmark contributors

26.(1) A benchmark contributor to a designated benchmark must designate an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, this Instrument and securities legislation relevant to benchmarks.

(2) A benchmark contributor must permit the officer referred to in subsection (1) to directly access the benchmark contributor's board of directors at such times as the officer may consider necessary or advisable in view of the officer's responsibilities.

PART 7
RECORDKEEPING

Books and records

27.(1) A designated benchmark administrator must keep such books and records and other documents as are necessary to account for the conduct of its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated benchmarks.

(2) A designated benchmark administrator must keep records of all of the following:

(a) all input data, including how the data was used;

(b) if input data is rejected despite conforming to the requirements of the methodology of the designated benchmark, the rationale for rejecting the input data;

(c) the methodology of a designated benchmark;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of a designated benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls and methodologies;

(f) the identities of the contributing individuals and of the benchmark individuals;

(g) all documents relating to a complaint;

(h) communications, including telephone conversations, between any benchmark individual and benchmark contributors or contributing individuals in respect of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must keep the records described in subsection (2) in such a form that it is possible to

(a) replicate the determination of a designated benchmark, and

(b) enable an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance under this Instrument.

(4) A designated benchmark administrator must retain the books, records and documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and documents to be provided on request promptly to the regulator or securities regulatory authority.

PART 8
DESIGNATED CRITICAL BENCHMARKS, DESIGNATED INTEREST RATE BENCHMARKS AND DESIGNATED REGULATED-DATA BENCHMARKS

DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Administration of a designated critical benchmark

28.(1) If a designated benchmark administrator decides to cease providing a designated critical benchmark, the designated benchmark administrator must

(a) promptly notify the regulator or securities regulatory authority, and

(b) not more than 4 weeks after notifying the regulator or securities regulatory authority, submit a plan to the regulator or securities regulatory authority of how the designated critical benchmark can be transitioned to a new designated benchmark administrator or cease to be provided.

(2) Following the submission of the plan referred to paragraph (1)(b), the designated benchmark administrator must continue to provide the designated critical benchmark until one or more of the following has occurred:

(a) the provision of the designated critical benchmark has been transitioned to a new designated benchmark administrator;

(b) the designated benchmark administrator receives notice from the regulator or securities regulatory authority authorizing the cessation;

(c) the designation of the designated benchmark has been revoked or varied to reflect that the designated benchmark is no longer a designated critical benchmark;

(d) unless paragraph (e) applies, 12 months have elapsed from the submission of the plan referred to paragraph (1)(b);

(e) a period longer than 12 months has elapsed from the submission of the plan referred to in paragraph (1)(b), if that period is provided by the regulator or securities regulatory authority in written notice delivered to the designated benchmark administrator before the elapsing of the 12 months.

Access

29. A designated benchmark administrator of a designated critical benchmark must take reasonable steps to ensure that benchmark users or potential benchmarks users have access to the designated critical benchmark on a fair, reasonable, transparent and non-discriminatory basis.

Assessment

30. A designated benchmark administrator of a designated critical benchmark must, at least once in each 24-month period, submit to the regulator or securities regulatory authority an assessment of the capability of the designated critical benchmark to accurately represent that part of the market or economy the designated critical benchmark is intended to record.

Benchmark contributor to a designated critical benchmark

31.(1) If a benchmark contributor to a designated critical benchmark decides to cease contributing input data, it must promptly notify in writing the designated benchmark administrator.

(2) If a designated benchmark administrator receives a notice referred to in subsection (1), the designated benchmark administrator must

(a) promptly notify the regulator or securities regulatory authority of the decision referred to in subsection (1), and

(b) no later than 14 days after receipt of the notice, submit to the regulator or securities regulatory authority an assessment of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately represent that part of the market or economy the designated benchmark is intended to record.

Oversight committee

32.(1) For a designated critical benchmark, at least one-half of the members of the oversight committee referred to in section 8 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has served on the oversight committee for more than 5 years in total;

(d) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be reasonably expected to interfere with the exercise of the member's independent judgment.

(3) For the purposes of paragraph (2)(d), in forming its opinion, the board of directors is not required to conclude that a member of the oversight committee is not independent solely because the member is, or was, a benchmark user of a designated benchmark administered by the designated benchmark administrator.

(4) The oversight committee must

(a) publish details of its membership, any declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold no less than one meeting every 4 months.

Assurance report on designated benchmark administrator

33.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 8, a limited assurance report on

compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with all of the following in respect of each designated critical benchmark it administers:

(a) sections 6, 9 to 17 and 27;

(b) the methodology of the designated critical benchmark.

(2) The engagement referred to in subsection (1) must be carried out once in every 12-month period.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish a copy of the report and deliver a copy of the report to the regulator or securities regulatory authority.

Assurance report on benchmark contributor

34.(1) If required by the oversight committee referred to in section 8 as a result of a concern with the conduct of a benchmark contributor to a designated critical benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and its compliance with all of the following:

(a) section 25;

(b) the methodology of the designated critical benchmark.

(2) A benchmark contributor must, within 10 days of the receipt of a report provided for in subsection (1), deliver a copy of the report to

(a) the oversight committee,

(b) the board of directors of the designated benchmark administrator, and

(c) the regulator or securities regulatory authority.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Accurate and sufficient data

35.(1) For the purposes of subsection 15(1) and paragraph 15(5)(a), input data for the determination of a designated interest rate benchmark must be used by the designated benchmark administrator in the following order of priority:

(a) a benchmark contributor's transactions in the underlying market that a designated interest rate benchmark intends to measure or, if not sufficient, its transactions in related markets, including, but not limited to

(i) the unsecured inter-bank deposit market,

(ii) other unsecured deposit markets,

(iii) markets for commercial paper, and

(iv) other markets generally, including markets for overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options, provided that those transactions comply with the input data requirements in the code of conduct referred to in section 24;

(b) if the input data referred to in paragraph (a) is not available, a benchmark contributor's observations of third-party transactions in the markets described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available, committed quotes;

(d) in any other case, indicative quotes or expert judgments.

(2) For the purposes of subsections 15(1) and (3), input data for a designated interest rate benchmark may be adjusted by the designated benchmark administrator to more accurately represent that part of the market or economy that the designated interest rate benchmark is intended to record, including, but not limited to, where:

(a) the time of the transactions that are the basis for the input data is not sufficiently proximate to the time of contribution of the input data;

(b) a market event occurs between the time of the transactions and the time of contribution of the input data and the market event might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark;

(c) there have been changes in the credit risk of the benchmark contributors and other market participants that might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark.

Oversight committee

36.(1) For a designated interest rate benchmark, at least one-half of the members of the oversight committee referred to in section 8 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has served on the oversight committee for more than 5 years in total;

(d) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be reasonably expected to interfere with the exercise of the member's independent judgment.

(3) For the purposes of paragraph (2)(d), in forming its opinion, the board of directors is not required to conclude that a member of the oversight committee is not independent solely because the member is, or was, a benchmark user of a designated benchmark administered by the designated benchmark administrator.

(4) The oversight committee must

(a) publish details of its membership, any declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold no less than one meeting every 4 months.

Assurance report on designated benchmark administrator

37.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 8, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with all of the following in respect of each designated interest rate benchmark it administers:

(a) sections 6, 9 to 17, 27 and 35;

(b) the methodology of the designated interest rate benchmark.

(2) The engagement referred to in subsection (1) must be carried out for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 24 and subsequently every 2 years.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish a copy of the report and deliver a copy of the report to the regulator or securities regulatory authority.

Assurance report on benchmark contributor required by oversight committee

38(1) If required by the oversight committee referred to in section 8 as a result of a concern with the conduct of a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and its compliance with all of the following:

(a) sections 25 and 40;

(b) the methodology of the designated interest rate benchmark.

(2) The benchmark contributor must, within 10 days of the receipt of a report provided for in subsection (1), deliver a copy of the report to

(a) the oversight committee,

(b) the board of directors of the designated benchmark administrator, and

(c) the regulator or securities regulatory authority.

Assurance report on benchmark contributor required at certain times

39(1) A benchmark contributor to a designated interest rate benchmark must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct and input data of the benchmark contributor and its compliance with all of the following:

(a) sections 25 and 40;

(b) the methodology of the designated interest rate benchmark;

(c) the code of conduct referred to in section 24.

(2) The engagement referred to in subsection (1) must be carried out for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 24 and subsequently every 2 years.

(3) The benchmark contributor must, within 10 days of the receipt of a report provided for in subsection (1), deliver a copy of the report to

(a) the oversight committee,

(b) the board of directors of the designated benchmark administrator, and

(c) the regulator or securities regulatory authority.

Benchmark contributor policies and procedures

40.(1) The requirements in subsections (2) to (7) apply to a benchmark contributor only in respect of a designated interest rate benchmark.

(2) Each contributing individual of the benchmark contributor and the direct managers of that contributing individual must provide a written statement to the benchmark contributor and the designated benchmark administrator that they will comply with the code of conduct referred to in section 24.

(3) The benchmark contributor must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure all of the following:

(a) there is an outline of responsibilities within the benchmark contributor's organization, including internal reporting lines and accountabilities;

(b) the maintenance of a current list of the names and locations of contributing individuals and managers and their alternates;

(c) there are internal procedures for sign-off of contributions of input data;

(d) there are disciplinary procedures in respect of an actual or attempted manipulation, or a failure to report an actual or attempted manipulation, by any party, including, but not limited to, any party external to the contribution process;

(e) there are conflicts of interest management procedures and communication controls, both within the benchmark contributor's organization and between benchmark contributors and other third parties, to avoid any inappropriate external influence over those responsible for contributing rates;

(f) there is a requirement that contributing individuals employed by the benchmark contributor work in locations physically separated from interest rate derivatives traders;

(g) the prevention or control of the exchange of information between persons or companies engaged in activities involving a risk of conflict of interest where the exchange of that information may affect the input data contributed;

(h) there are requirements to avoid collusion

(i) among benchmark contributors, and

(ii) between benchmark contributors and the designated benchmark administrator;

(i) there are measures to prevent, or limit, any person from exercising inappropriate influence over the way persons or companies contribute input data;

(j) the removal of any direct link between the remuneration of employees involved in the contribution of input data and the remuneration of, or revenues generated by, persons or companies engaged in another activity, where a conflict of interest may arise in relation to those activities;

(k) there are controls to identify any reverse transaction subsequent to the contribution of input data.

(4) The benchmark contributor must keep detailed records of all of the following:

(a) all relevant aspects of contributions of input data;

(b) the process governing input data determination and the sign-off of input data;

(c) the names of contributing individuals and their responsibilities;

(d) any communications between the contributing individuals and other persons or companies, including internal and external traders and brokers, in relation to the determination or contribution of input data;

(e) any interaction of contributing individuals with the designated benchmark administrator or any calculation agent;

(f) any queries regarding the input data and the outcome of those queries;

(g) sensitivity analysis for interest rate swap trading books and any other derivative trading books with a significant exposure to interest rate fixings in respect of input data.

(5) The benchmark contributor and the designated benchmark administrator must keep each of their records on a medium that allows the storage of information to be accessible for future reference with a documented audit trail.

(6) The benchmark contributor's officer referred to in section 26 must report any findings, including any reverse transaction subsequent to the contribution of input data, to the benchmark contributor's board of directors on a regular basis.

(7) A benchmark contributor to a designated interest rate benchmark must subject the benchmark contributor's input data and procedures to regular internal reviews.

DIVISION 3 – DESIGNATED REGULATED-DATA BENCHMARKS

Non-application to designated regulated-data benchmarks

41. A designated regulated-data benchmark is exempt from the requirements in

(a) subsections 12(1) and (2),

(b) subsection 15(2),

(c) subsections 16(1), (2) and (3),

(d) sections 24, 25 and 26, and

(e) paragraph 27(2)(a).

PART 9
DISCRETIONARY EXEMPTIONS

Exemptions

42.(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 10
EFFECTIVE DATE

Effective date

43. This Instrument comes into force on •.

APPENDIX A
TO
NATIONAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

Definitions Applying in Certain Jurisdictions
(Subsection 1(4))

"benchmark" means a price, estimate, rate, index or value that is

(a) determined from time to time by reference to an assessment of one or more underlying interests,

(b) made available to the public, either free of charge or on payment, and

(c) used for reference for any purpose, including,

(i) determining the interest payable, or other sums that are due, under a contract, derivative, instrument or security,

(ii) determining the value of a contract, derivative, instrument or security or the price at which it may be traded,

(iii) measuring the performance of a contract, derivative, investment fund, instrument or security, or

(iv) any other use by an investment fund;

"benchmark administrator" means a person or company that administers a benchmark;

"benchmark contributor" means a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark;

"benchmark user" means a person or company that, in relation to a contract, derivative, investment fund, instrument or security, uses a benchmark.

FORM 25-102F1
Designated Benchmark Administrator
Annual Form

Instructions

(1) Terms used in this form but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under securities legislation to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator
State the name of the designated benchmark administrator.

Item 2. Organization and Structure of Designated Benchmark Administrator
Describe the organizational structure of the designated benchmark administrator, including, as applicable, an organizational chart that identifies the ultimate and intermediate parent companies, subsidiaries, and material affiliated entities of the designated benchmark administrator (if any); an organizational chart showing the divisions, departments, and business units of the designated benchmark administrator; and an organizational chart showing the managerial structure of the designated benchmark administrator, including the officer referred to in section 7 of the Instrument and the oversight committee referred to in section 8 of the Instrument. Provide detailed information regarding the designated benchmark administrator's legal structure and ownership.

Item 3. Designated Benchmark
Provide the name of the designated benchmark.

Item 4. Policies and Procedures re Confidential Information
Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained by the designated benchmark administrator to prevent the misuse of confidential information.

Item 5. Policies and Procedures re Conflicts of Interest
Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained with respect to conflicts of interest.

Item 6. Conflicts of Interest Arising from the Control or Ownership Structure of the Applicant

(a) Describe any conflicts of interest that arise from the control or ownership structure of the designated benchmark administrator, or from any other activities of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, in relation to a designated benchmark administered by the designated benchmark administrator.

(b) Describe the designated benchmark administrator's policies and procedures to manage or mitigate each conflict of interest described in paragraph (a).

Item 7. Policies and Procedures re Control Framework

Describe the designated benchmark administrator's control framework referred to in section 9 of the Instrument and policies and procedures designed to ensure the quality of the designated benchmark.

Item 8. Policies and Procedures re Complaints

Describe the designated benchmark administrator's policies and procedures regarding complaints.

Item 9. Policies and Procedures re Books and Records

Describe the designated benchmark administrator's policies and procedures regarding recordkeeping.

Item 10. Outsourced Service Providers

Describe the designated benchmark administrator's policies and procedures regarding outsourcing and disclose the following information about the designated benchmark administrator's outsourced service providers (OSPs) and the individuals who supervise the OSPs:

- The identity of each OSP and each of their key individual contacts,
- The total number of supervisors of each OSP,
- A general description of the minimum qualifications required of the OSPs for any outsourcing, and
- A general description of the minimum qualifications required of the benchmark individuals' supervisors for any outsourcing, including education level and work experience.

Item 11. Benchmark Individuals

Disclose the following information about the benchmark individuals of the designated benchmark administrator and the individuals who supervise the benchmark individuals:

- The total number of benchmark individuals,
- The total number of supervisors of benchmark individuals,

- A general description of the minimum qualifications required of the benchmark individuals, including education level and work experience (if applicable, distinguish between junior, mid, and senior level benchmark individuals), and

- A general description of the minimum qualifications required of the benchmark individuals' supervisors, including education level and work experience.

Item 12. Compliance Officer

Disclose the following information about the officer of the designated benchmark administrator referred to in section 7 of the Instrument:

- Name,

- Employment history,

- Post-secondary education, and

- Whether employed full-time or part-time by the designated benchmark administrator.

Item 13. Specified Revenue

Disclose information, as applicable, regarding the designated benchmark administrator's aggregate revenue for the most recently completed financial year:

- Revenue from determining the designated benchmark,

- Revenue from determining any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator),

- Revenue from granting licences or rights to publish information about the designated benchmark, and

- Revenue from granting licences or rights to publish information about any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator).

Include financial information on the revenue of the designated benchmark administrator divided into fees from benchmark and non-benchmark activities, including a comprehensive description of each.

This information is not required to be audited, but any disaggregation of revenue must be determined using the same accounting principles as the annual financial statements required by section 2 of the Instrument.

Item 14. Financial Statements
Attach a copy of the annual financial statements required by section 2 of the Instrument.

Item 15. Verification Certificate
Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-102F1 *Designated Benchmark Administrator Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Designated Benchmark Administrator)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-102F2
Designated Benchmark
Annual Form

Instructions

(1) Terms used in this form but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under securities legislation to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator
State the name of the designated benchmark administrator.

Item 2. Designated Benchmark
Provide the name of the designated benchmark and whether it is also any of the following:

- interest rate benchmark,
- critical benchmark,
- regulated-data benchmark.

Item 3. Benchmark Distribution Model
Describe how the designated benchmark administrator makes the designated benchmark readily accessible for free or for a fee. If a person must pay a fee to obtain information about the designated benchmark made readily accessible by the designated benchmark administrator, provide a fee schedule or describe the prices charged.

Item 4. Procedures and Methodologies
Describe the procedures and methodologies used by the designated benchmark administrator to determine the designated benchmark. The description must be sufficiently detailed to provide an understanding of the processes employed by the designated benchmark administrator in determining the designated benchmark, including, as applicable:

- the public and non-public sources of information used in determining the designated benchmark, including information provided by benchmark contributors;

- procedures for monitoring, reviewing, and updating the designated benchmark,

- the methodologies, policies and procedures described in the Instrument.

A designated benchmark administrator may provide the location on its website where additional information about the methodologies, policies and procedures is located.

Item 5. Code of Conduct for Benchmark Contributors
Unless previously provided, attach a copy of any code of conduct for benchmark contributors.

Item 6. Verification Certificate
Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-102F2 *Designated Benchmark Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Designated Benchmark Administrator)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-102F3
Submission to Jurisdiction and
Appointment of Agent for Service of Process

1. Name of designated benchmark administrator (DBA):

2. Jurisdiction of incorporation, or equivalent, of DBA:

3. Address of principal place of business of DBA:

4. Name, email address, phone number and fax number of contact person at principal place of business of DBA:

5. Name of agent for service of process (Agent):

6. Address in Canada for service of process of Agent:

7. Name, email address, phone number and fax number of contact person of Agent:

8. The DBA designates and appoints the Agent at the address of the Agent stated in Item 6 as its agent on whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the Proceeding) arising out of, relating to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The DBA irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which it is a designated benchmark administrator; and

   (b) any administrative proceeding in any such province or territory,

   in any Proceeding arising out of or related to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator.

10. This submission to jurisdiction and appointment of agent for service of process is governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

_____ _____

Signature of Designated Benchmark Administrator Date

_____

Print name and title of signing officer
of Designated Benchmark Administrator

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of DBA] under the terms and conditions of the appointment of agent for service of process set out in this document.

_____ _____

Signature of Agent Date

_____

Print name of person signing and, if Agent
is not an individual, the title of the person

ANNEX B

COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

TABLE OF CONTENTS

PART 1
GENERAL COMMENTS

Introduction

This companion policy (the "Policy") provides guidance on how the Canadian Securities Administrators ("we") interpret various matters in National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (the "Instrument").

Except for Parts 1 and 8, the numbering and headings of Parts, sections and subsections in this Policy generally correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Introduction to the Instrument

Securities legislation provides that a benchmark administrator or a regulator may apply to a securities regulatory authority to request the designation of a benchmark or a benchmark administrator. In Québec, the securities regulatory authority may make the designation on its own initiative. "Regulator" and "securities regulatory authority" are defined in National Instrument 14-101 *Definitions*.

The Instrument contains requirements that apply to designated benchmark administrators, benchmark contributors and certain benchmark users in respect of a designated benchmark. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are additional requirements in the Instrument that apply to designated critical

benchmarks and designated interest rate benchmarks. The Instrument also includes a number of exemptions from certain requirements for designated benchmarks administrators and benchmark contributors in respect of designated regulated-data benchmarks.

When designating a benchmark, a securities regulatory authority will issue a decision document designating the benchmark as a designated benchmark. If applicable, the decision document will indicate if the benchmark is also designated as a designated critical benchmark, a designated interest rate benchmark or a designated regulated-data benchmark. It is possible that a designated benchmark will receive two designations:

- a designated interest rate benchmark may also be designated as designated critical benchmark, and
- a designated regulated-data benchmark may also be designated as a designated critical benchmark.

As discussed below, we expect a benchmark administrator that applies for designation of a benchmark to provide written submissions on whether the administrator considers the benchmark to be a critical benchmark, an interest rate benchmark or a regulated-data benchmark.

When designating a benchmark administrator, a securities regulatory authority will issue a decision document designating the benchmark administrator as a designated benchmark administrator of one or more designated benchmarks.

We expect that a benchmark administrator that applies under securities legislation for the designation of the administrator or a benchmark will provide written submissions that contain the same information as that required by Form 25-102F1 *Designated Benchmark Administrator Annual Form* and Form 25-102F2 *Designated Benchmark Annual Form* in a format that is consistent with those forms.

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

"Designated critical benchmark" is a benchmark that is designated as a "critical benchmark" by an order or a decision of the regulator or securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are specific requirements in Division 1 of Part 8 of the Instrument that apply to designated critical benchmarks.

Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as a "critical benchmark" if the benchmark is critical to financial markets in Canada or a region of Canada. The following two factors are among those that will be considered:

(a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance

of investment funds, having a total value in Canada of at least $400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable; or

(b) the benchmark satisfies all of the following criteria:

(i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable;

(ii) the benchmark has no, or very few, appropriate market-led substitutes;

(iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on

(A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or

(B) a significant number of market participants in one or more jurisdictions of Canada.

For the purpose of paragraph (a) and subparagraph (b)(i), staff of a regulator or securities regulatory authority will consider, among other things, the outstanding principal amount of any debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and the outstanding net asset value of any investment funds that use the benchmark to measure performance.

We note that the above list is not a complete list of factors and the existence of one of these factors by itself will not necessarily determine whether a benchmark is a critical benchmark. Instead, staff intend to follow a holistic approach where all relevant factors are considered.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the regulator or the securities regulatory authority should designate the benchmark as a critical benchmark.

Subsection 1(1) – Definition of designated interest rate benchmark

“Designated interest rate benchmark” is a benchmark that is designated as an “interest rate benchmark” by an order or a decision of the regulator or securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there

are specific requirements in Division 2 of Part 8 of the Instrument that apply to designated interest rate benchmarks.

Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as an "interest rate benchmark" if the benchmark is used to set interest rates of debt securities or is otherwise used as a reference in derivatives or other instruments. Factors that will be considered include the following:

(a) the benchmark is determined on the basis of the rate at which financial institutions may lend to, or borrow from, other financial institutions, or market participants other than financial institutions, in the money market; or

(b) the benchmark is determined from a survey of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

We note that the above list is not exhaustive.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the regulator or the securities regulatory authority should designate the benchmark as an interest rate benchmark.

Subsection 1(1) – Definition of designated regulated-data benchmark

"Designated regulated-data benchmark" is a benchmark that is designated as a "regulated data benchmark" by an order or a decision of the regulator or securities regulatory authority. Benchmark administrators of, and benchmark contributors to, regulated-data benchmarks are exempted from certain governance and control requirements relating to the contribution of input data (see Division 3 of Part 8 of the Instrument).

Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as a "regulated-data benchmark" if the benchmark is determined by the application of a formula from any of the following:

(a) input data contributed entirely and directly from

  (i) any of the following, but only with reference to transaction data relating to securities or derivatives:

    (A) a recognized exchange in a jurisdiction of Canada or an exchange that is subject to appropriate regulation in a foreign jurisdiction;

    (B) a recognized quotation and trade reporting system in a jurisdiction of Canada or a quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction;

(C) an alternative trading system that is registered as a dealer in a jurisdiction of Canada and is a member of a self-regulatory entity or an alternative trading system that is subject to appropriate regulation in a foreign jurisdiction;

(D) an entity that is similar or analogous to the entities referred to in clause (A), (B) or (C) and that is subject to appropriate regulation in a jurisdiction of Canada or a foreign jurisdiction;

(ii) a service provider to which the designated benchmark administrator of the designated benchmark has outsourced the data collection in accordance with section 14 of the Instrument, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);

(b) net asset values of investment funds that are reporting issuers in a jurisdiction of Canada or subject to appropriate regulation in a foreign jurisdiction.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the regulator or the securities regulatory authority should designate the benchmark as a regulated-data benchmark.

Subsection 1(1) – Definition of expert judgment

"Expert judgment" is the discretion exercised by:

- a designated benchmark administrator with respect to the use of input data in determining a benchmark, and
- a benchmark contributor with respect to the contribution of input data.

Expert judgment may involve various activities, including:

- extrapolating values from prior or related transactions,
- adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, or
- assigning a greater weight to data relating to bids or offers than the weight assigned to a relevant concluded transaction.

Subsection 1(1) – Definition of input data

"Input data" is the data in respect of the value or price of one or more underlying assets, interests or elements that is used by a designated benchmark administrator to determine a designated benchmark. For example, input data may include estimated prices, quotes, committed quotes or other values.

Subsection 1(1) – Definitions of limited assurance report on compliance and reasonable assurance report on compliance

A "limited assurance report on compliance" and a "reasonable assurance report on compliance" must be prepared in accordance with the applicable Canadian Standard on Assurance Engagements (CSAE). The CSAE require that any public accountant that prepares such a report be independent.

Subsection 1(1) – Definition of transaction data

"Transaction data" means the data in respect of a price, rate, index or value representing transactions between unaffiliated counterparties in an active market subject to competitive supply and demand forces.

We consider that:

- transaction data would include published or onscreen data available to the public generally or by subscription, and
- the reference to "active market subject to competitive supply and demand forces" would include a market in which transactions take place, or are reported, between arm's length parties with sufficient frequency and volume to provide pricing information on an ongoing basis. This reference is separate and different from any definition for accounting purposes.

Subsection 1(1) – Interpretation of certain definitions

Definitions of each of the following terms are considered to apply only in respect of the designated benchmark to which they pertain:

- "benchmark administrator";
- "benchmark contributor";
- "benchmark individual";
- "benchmark user";
- "contributing individual";
- "DBA individual";
- "designated benchmark administrator";
- "input data";
- "transaction data".

Paragraph 1(3)(a) – Interpretation of contribution of input data

Paragraph 1(3)(a) of the Instrument provides that input data is considered to have been "contributed" if

(i) it is not reasonably available to

(A) the designated benchmark administrator, or

(B) another person or company for the purpose of providing the input data to the designated benchmark administrator, and

(ii) it is provided to the designated benchmark administrator or the person or company referred to in subparagraph (i)(B) above for the purpose of determining a benchmark.

We consider that the reference to "not reasonably available" would include situations where input data is not published or otherwise available to a designated benchmark administrator using reasonable effort, on reasonable terms or a reasonable cost and the designated benchmark administrator therefore needs to obtain the input data from a benchmark contributor who has access to that data. For example, an interest rate benchmark may be based on a survey by a benchmark administrator of bid-side rates contributed by benchmark contributors that are financial institutions which routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

Subsection 1(4) – Definitions of benchmark, benchmark administrator, benchmark contributor and benchmark user in Appendix A

Subsection 1(4) of the Instrument indicates that, for purposes of the Instrument, the definitions in Appendix A apply. Appendix A contains definitions of "benchmark", "benchmark administrator", "benchmark contributor" and "benchmark user". However, subsection 1(5) indicates that subsection 1(4) does not apply in **• [Note: At the time of the final rule, we plan to insert a list of jurisdictions that have not included these defined terms in their securities legislation]**. The other jurisdictions of Canada have defined these terms in their securities legislation.

The definition of benchmark refers to a "price, estimate, rate, index or value". We consider that "index" would include any indicator that is:

- made available to the public, and
- regularly determined
    - entirely or partially by the application of a formula or any other method of calculation, and
    - on the basis of the value or price of one or more underlying assets, interests or things.

PART 2
DELIVERY REQUIREMENTS

Section 2 – References to Canadian GAAP, Canadian GAAS, Handbook, IFRS and International Standards on Auditing

There are references in section 2 of the Instrument to "Canadian GAAP", "Canadian GAAS", "Handbook", "IFRS" and "International Standards on Auditing", which are defined in National Instrument 14-101 *Definitions*.

Subparagraph 2(7)(a)(ii) – Canadian GAAP applicable to private enterprises

Subject to certain conditions, subparagraph 2(7)(a)(ii) of the Instrument permits audited annual financial statements of a designated benchmark administrator to be prepared using Canadian GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprise in Part II of the Handbook.

PART 3
GOVERNANCE

Subsection 7(1) – Reference to securities legislation in relation to benchmarks

Subsection 7(1) of the Instruments refers to "securities legislation in relation to benchmarks", which would include the Instrument and benchmark provisions in local securities legislation. "Securities legislation" is defined in National Instrument 14-101 *Definitions*.

Subsection 8(7) – Information relating to a designated benchmark

We consider that the reference to "information relating to a designated benchmark" in subsection 8(7) of the Instrument would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

Subsection 8(8) – Required actions for oversight committee of a designated benchmark administrator

Subsection 8(8) of the Instrument requires the oversight committee of a designated benchmark administrator to carry out certain actions. We expect that the oversight committee will carry out these actions in a manner that reasonably reflects the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Paragraph 8(8)(e) – Calculation agents and dissemination agents

Paragraph 8(8)(e) of the Instrument requires the oversight committee of a designated benchmark administrator to oversee any service provider involved in the provision or distribution of the designated benchmark, including calculation agents or dissemination agents. We consider that

- a "dissemination agent" is a person or company with delegated responsibility for disseminating a designated benchmark to benchmark users in accordance with the instructions provided by the designated benchmark administrator for the designated benchmark, including any review, adjustment and modification to the dissemination process, and
- a "calculation agent" is a person or company with delegated responsibility for determining a designated benchmark through the application of a formula or other method of calculating the information or expressions of opinions provided for that purpose, in accordance with the methodology set out by the designated benchmark administrator for the designated benchmark.

A dissemination agent would not include:

- a publisher that pays a licensing fee to publish a benchmark under a non-exclusive publishing license, or
- a publisher that pays a licensing fee to publish a benchmark under an exclusive publishing license if the benchmark administrator also makes the benchmark publicly available through other means.

Subparagraph 8(8)(i)(iii) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference to "significant breach" of a code of conduct in subparagraph 8(8)(i)(iii) of the Instrument would include significant, non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark.

Section 9 – Control framework for designated benchmark administrator and controls for benchmark contributors

Section 9 of the Instrument requires a designated benchmark administrator to establish a control framework to ensure that a designated benchmark is provided in accordance with the Instrument. Similarly, subsection 25(2) of the Instrument requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy and completeness of each contribution of input data to the designated benchmark administrator, including controls that the input data is provided in accordance with the Instrument.

We expect that the control framework provided for under subsection 9(1) of the Instrument and the controls provided for under subsection 25(2) of the Instrument will be proportionate to all of the following:

- the level of conflicts of interest identified in relation to the designated benchmark, the designated benchmark administrator or the benchmark contributor,
- the extent of expert judgment in the provision of the designated benchmark,
- the nature of the input data for the designated benchmark.

In establishing the control framework required under subsection 9(1) of the Instrument, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 25(2) of the Instrument.

The control framework and the controls used should be consistent with guidance published by a body or group that has developed the guidance through a process that includes the broad distribution of the proposed guidance for public comment.

Examples of suitable guidance that a designated benchmark administrator or a benchmark contributor could follow include:

(a) the *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Chartered Professional Accountants of Canada;

(b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and

(c) the *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* published by U.K. Financial Reporting Council.

These examples of suitable guidance include, in the definition or interpretation of "internal control", controls for compliance with applicable laws and regulations.

Subsection 9(5) – Reporting of significant security incident

Subsection 9(5) of the Instrument provides that a designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any significant security incident or any significant systems issue relating to the designated benchmark it administers. We consider a failure, malfunction, delay or other incident or issue to be a "significant security incident" or a "significant systems issue" if the designated benchmark administrator would, in the normal course of operations, escalate the matter to or inform its executive management ultimately accountable for technology.

Subsection 11(2) – Conflict of interest requirements for designated benchmark administrators

Subsection 11(2) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark and its benchmark individuals from any other part of the business if the designated benchmark administrator becomes aware of a conflict of interest or a risk of a conflict of interest between the business of the designated benchmark and the other part of the business.

We expect that, when contemplating the nature and scope of such a conflict of interest, a designated benchmark administrator would consider the following:

- the provision of benchmarks often involves discretion in the determination of benchmarks and is inherently subject to certain types of conflicts of interest, which implies the existence of various opportunities and incentives to manipulate benchmarks, and

- in order to ensure the integrity of designated benchmarks, designated benchmark administrators should implement adequate governance arrangements to control such conflicts of interest and to safeguard confidence in the integrity of benchmarks.

For example, if the designated benchmark administrator does identify such a conflict of interest, the administrator should ensure that persons responsible for the administration of the designated benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities.

Subsection 12(1) – Reporting of infringements

Subsection 12(1) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed for the purposes of detecting and reporting to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve manipulation or attempted manipulation of a designated benchmark. As part of that reporting to the regulator or securities regulatory authority, we expect that the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the regulator or securities regulatory authority.

Paragraph 13(2)(c) – Complaint procedures of designated benchmark administrator

Paragraph 13(2)(c) of the Instrument provides that a designated benchmark administrator must communicate the outcome of the investigation of a complaint to the complainant within a reasonable period of time.

We expect that, in establishing the policies and procedures for handling complaints relating to the designated benchmark required by subsection 13(1) of the Instrument, the designated benchmark administrator would include a target timetable for investigating complaints.

A designated benchmark administrator may, on a case-by-case basis, apply for exemptive relief from paragraph 13(2)(c) of the Instrument if such a communication to the complainant would be seriously prejudicial to the interests of the designated benchmark administrator or would violate confidentiality provisions.

Section 14 – Outsourcing by designated benchmark administrator

Section 14 of the Instrument sets out requirements on outsourcing by a designated benchmark administrator. For purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Paragraph 14(2)(c) – Written contract for an outsourcing

Paragraph 14(2)(c) of the Instrument provides that the policies and procedures of a designated benchmark administrator in relation to outsourcing must be reasonably designed to ensure that the designated benchmark administrator and the service provider enter into a written contract that covers the matters set out in subparagraphs 14(2)(c)(i) to (v). We consider the reference to "written contract" to include one or more written agreements.

PART 4
INPUT DATA AND METHODOLOGY

Subsection 16(4) – Front office of a benchmark contributor

Subsection 16(4) of the Instrument provides that "front office" of a benchmark contributor or an applicable affiliate means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliate.

Paragraph 17(1)(e) – Determination under the methodology

Paragraph 17(1)(e) of the Instrument provides that a determination under the methodology of a designated benchmark must be able to be verified as being accurate and complete.

A determination under a methodology that is based on information such as input data would be verified as being accurate and complete if:

- it can be clearly linked to the original information, and
- it can be linked to complementary, but separate information.

For example, in the case of an interest rate benchmark that is determined daily and calculated as the arithmetic average of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances and are market-makers in bankers' acceptances, the daily determination would be verified as being accurate and complete if:

- the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and
- the benchmark administrator's record of the rates contributed by the financial institutions can be matched to the records of those rates maintained by the applicable financial institutions.

Paragraph 17(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph 17(2)(a) of the Instrument provides that a designated benchmark administrator must take into account, in the preparation of the methodology of a designated benchmark, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to record.

In this context, we consider that "applicable characteristics" include:

- the size and reasonably expected liquidity of the market,
- the transparency of trading and the positions of participants in the market,
- market concentration,
- market dynamics, and
- the adequacy of any sample to reasonably represent that part of the market or economy the designated benchmark is intended to record.

Subsection 18(1) – Proposed or implemented significant changes to methodology

Subsection 18(1) of the Instrument provides that a designated benchmark administrator must have policies that provide for public notice of a proposed or implemented significant change to the methodology of a designated benchmark.

As part of the methodology disclosure required under section 19, paragraph 19(1)(e) of the Instrument provides that a designated benchmark administrator must publish examples of the types of changes that may constitute a significant change to the methodology of the designated benchmark.

We consider publication on the designated benchmark administrator's website of a proposed or implemented change to the methodology of a designated benchmark, accompanied by a news release advising of the publication of the proposed or implemented change, as sufficient notification in theses contexts. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of such a publication by email.

PART 5
DISCLOSURE

Subsection 20(2) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 20(2)(a) through (l) of the Instrument, are designed to provide transparency to benchmark users to understand the purpose or intention of the benchmark, the limitations of the benchmark, and how the designated benchmark administrator will apply the methodology to provide the benchmark. In preparing the benchmark statement, a designated benchmark administrator should attempt to ensure that benchmark users have sufficient information to understand what the benchmark is intended to record and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph 20(2)(a) – Applicable market or economy for purposes of the benchmark statement

Paragraph 20(2)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market or economy the designated benchmarks is intended to record. This relates to the benchmark's purpose.

For example, an interest rate benchmark may be intended to reflect the cost of unsecured interbank lending and may be intended to be used as a benchmark interest rate in interbank loan agreements. In this example, we consider it problematic if

- the type of prime bank lending rate the benchmark is intended to record is unclear, or
- the calculation method does not work well in periods of low liquidity.

PART 6
BENCHMARK CONTRIBUTORS

General

Part 6 of the Instrument contains provisions that apply in respect of benchmark contributors to a designated benchmark. There are also specific requirements that apply to:

- benchmark contributors to a designated critical benchmark (see sections 31 and 34 of the Instrument), and
- benchmark contributors to a designated interest rate benchmark (see sections 38, 39 and 40 of the Instrument).

In **[•][Note: At the time of the final rule, we will insert a list of applicable jurisdictions]**, securities legislation defines "benchmark contributor" as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

In **[•][Note: At the time of the final rule, we will insert a list of applicable jurisdictions]**, securities legislation provides that the securities regulatory authority may, in response to an application by the regulator or, in Québec, on its own initiative, require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. For example, a person or company may be required to provide information to a designated benchmark administrator for the purpose of determining a designated critical benchmark. In such a case, the person or company would be a benchmark contributor, and would therefore be subject to the provisions of the Instrument applicable to benchmark contributors generally and the provisions applicable to benchmark contributors to a designated critical benchmark. However, certain of those provisions only apply if input data is considered to have been contributed within the meaning of paragraph 1(3)(a) of the Instrument.

Subparagraph 24(2)(f)(vi) – Input data that is inaccurate or incomplete

Subparagraph 24(2)(f)(vi) of the Instrument requires that a code of conduct for a benchmark contributor include reporting requirements for any instance where a reasonable person would believe that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has provided input data that is inaccurate or incomplete. In establishing these requirements, we expect the designated benchmark administrator to consider providing indicators that could be used to identify input data that is inaccurate or incomplete, based on past

experience. The indicators should reasonably reflect the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Subsection 24(3) – Adherence to code of conduct

In establishing the policies and procedures required under subsection 24(3) of the Instrument, we expect the designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark. For example, the policies and procedures may include the use of verification certificates signed by an officer of the benchmark contributor and on-site inspections by internal compliance staff that are independent from the business unit whose activities are subject to the code of conduct.

Paragraph 25(1)(a) – Conflict of interest requirements for benchmark contributors

Paragraph 25(1)(a) of the Instrument provides that a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure the contribution of input data by the benchmark contributor is not significantly affected by any conflict of interest involving the benchmark contributor and its employees, officers, directors and agents, if a reasonable person would consider that the contribution of the input data might be inaccurate or incomplete.

We expect that, when contemplating the scope of such conflicts of interest, a benchmark contributor would consider the following:

- benchmark contributors of input data to benchmarks can often exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation, and
- consequently, conflicts of interest must be managed or mitigated to ensure they do not affect input data.

For example, if the benchmark contributor does identify such a conflict of interest involving other business activity, the contributor should ensure that persons responsible for the contribution of input data to a designated benchmark administrator for the purpose of determining a designated benchmark:

- are located in a secure area apart from persons that carry out the other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to the other business activity.

Subsection 25(2) – Accuracy and completeness of input data

In establishing the policies, procedures and controls required under subsection 25(2), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy and completeness of input data.

Paragraph 25(3)(a) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 25(3)(a), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and the nature of its input data.

Subsection 26(1) – Compliance officer for benchmark contributors

Subsection 26(1) of the Instrument provides that a benchmark contributor to a designated benchmark must designate an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, the Instrument and securities legislation relevant to benchmarks. The officer can conduct these activities on a part-time basis but should be independent from persons involved in determining or contributing input data.

PART 7
RECORDKEEPING

Paragraph 27(2)(h) – Records of communications

The reference to "communications" in paragraph 27(2)(h) of the Instrument includes telephone conversations, email and other electronic communications.

PART 8
DESIGNATED INTEREST RATE BENCHMARKS

Subsection 35(1) – Accurate and sufficient data for designated interest rate benchmarks

Subsection 35(1) of the Instrument sets out an order of priority for input data for the determination of a designated interest rate benchmark. The order of priority lists committed quotes and indicative quotes or expert judgments. In the absence of reliable transaction data for a designated interest rate benchmark, we are of the view that committed quotes should take precedence over non-committed/indicative quotes and expert judgment.

We consider a "committed quote" to be a quote that is actionable for the other party to the potential transaction. The party that provides that quote announces their willingness to enter into transactions at the relevant bid and ask prices and agree that if they do transact, they will do so at the quoted price up to the maximum quantity specified in the quote.

We consider "indicative quote" to be a quote that is not immediately actionable by the other party to the potential transaction. Indicative quotes are usually provided before the parties negotiate the price or quantity at which the potential transaction will occur.

Subsection 37(1) – Assurance report for designated interest rate benchmark

Subsection 37(1) of the Instrument provides that a designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to section 8, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with certain sections of the Instrument and the methodology in respect of each designated interest rate benchmark it administers.

We note that the report required by subsection 37(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph 7(3)(b) of the Instrument. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph 7(3)(b) and with the requirement in subsection 37(1).

ANNEX C

SPECIFIC QUESTIONS OF THE CSA RELATING TO THE PROPOSED INSTRUMENT

Definitions and Interpretation

1. Does the proposed definition of "contributing individual" capture (or fail to capture) all of the arrangements between contributing individuals and administrators? If not, please explain with concrete examples.

2. Is the proposed interpretation of "control" appropriate? Please explain with concrete examples.

Governance

3. Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples.

4. The determination of non-independence of members of the board of directors and the oversight committee by the boards of directors of administrators as set out in paragraphs 5(4)(d), 32(2)(d) and 36(2)(d) of Proposed NI 25-102 includes a provision that if the director or oversight committee member has a relationship with the administrator that may, *in the opinion of the board of directors*, be reasonably expected to interfere with the exercise of the director's or oversight committee member's independent judgment, such director or oversight committee member would not be independent for purposes of Proposed NI 25-102. We are seeking comment on whether the CSA should replace the opinion of the board of directors with a "reasonable person" opinion in these paragraphs. Please explain with concrete examples.

Administrator Compliance Officer

5. Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples.

6. Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed NI 25-102), other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.

Critical Benchmarks

7. Under Proposed NI 25-102, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the

designated critical benchmark are provided to all benchmark users on a fair, reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.

8. Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision.

Conflicts of Interest

9. Is the requirement in subsection 11(3) of Proposed NI 25-102 appropriate, particularly as it relates to a *risk* of a significant conflict of interest? Please explain with concrete examples.

Designated Benchmarks

10. The Notice states that the current intention of the CSA is to designate only RBSL as an administrator and CDOR and CORRA as RBSL's designated benchmarks. Are there any other benchmark administrators that you believe should be designated under Proposed NI 25-102? If so, please:

    (a) identify the benchmark administrator,
    (b) identify any benchmark that the benchmark administrator administers that should also be designated, and
    (c) provide your rationale for why such designations are appropriate.

11. If your organization is a benchmark administrator, please:

    (a) advise if you intend to apply for designation under Proposed NI 25-102,
    (b) advise of any benchmark you intend to also apply for designation under Proposed NI 25-102, and
    (c) the rationale for your intention.

Anticipated Costs and Benefits

12. The Notice sets out the anticipated costs and benefits of Proposed NI 25-102 (in Ontario, additional detail is provided in Annex D). Do you believe the costs and benefits of Proposed NI 25-102 have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain with concrete examples.

June 12, 2019

BY EMAIL ONLY

The Secretary
Ontario Securities Commission
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AND TO

Me Anne-Marie Beaudoin
Corporate Secretary
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Dear Sirs/Madams,

Re: Proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy

TMX Group Limited ("**TMX**" or "**we**") welcomes the opportunity to comment on the proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and its Companion Policy, as published by the Canadian Securities Administrators ("**CSA**") in a Notice and Request for Comment dated March 14, 2019 (the "**Notice**"). Capitalized terms used in this letter and not otherwise defined have the meaning given to them in the Notice.

TMX is an integrated, multi-asset class exchange group. TMX's key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange, TSX Venture Exchange, TSX Alpha Exchange, The Canadian Depository for Securities Limited, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets.

TMX welcomes and supports the CSA's efforts to develop a regulatory regime for benchmarks aiming to establish an EU BMR-equivalent benchmark regulatory regime and to reduce risk in Canada's capital markets, thereby protecting Canadian investors and other Canadian market participants. These objectives are sound, and in line with other efforts globally to implement the IOSCO Financial Benchmark Principles.

As drafted, Proposed NI 25-102 goes beyond the IOSCO Financial Benchmark Principles, and even beyond the EU BMR in some respects, and adopts a very prescriptive approach to implementing these principles. We are also concerned that the Proposed NI 25-102 does not sufficiently address the significant differences between submission-based benchmarks and public data-based benchmarks, as acknowledged in the IOSCO Financial Benchmark Principles. TMX is of the view that the Canadian regime should seek to ensure compliance with the IOSCO Financial Benchmark Principles, which have proven to be a workable framework over the last few years for major global benchmark providers. The need to regulate beyond these principles is unclear, and in our view would have unintended negative consequences for Canadian market participants. Proportional implementation being at the core of the IOSCO Financial Benchmark Principles, we suggest that a principles-based regime in line with the IOSCO Financial Benchmark Principles would be a more appropriate first step, followed by future assessment, which could lead to more prescriptive regulation if warranted based on experience.

A. Alignment with Overarching Objectives

a) Objective of the IOSCO Financial Benchmark Principles

It is useful to recall the main objective of the IOSCO Financial Benchmark Principles, which was to create an overarching framework of principles for benchmarks used in financial markets, particularly to address conflicts of interest in the benchmark setting process, as well as transparency and openness when considering issues relating to transition. IOSCO's Task Force has identified factors to be taken into account when assessing the risks of a benchmark: submissions to benchmarks, content and transparency of methodologies, and governance process. The IOSCO Financial Benchmark Principles were developed to address these vulnerabilities.

It is also important to recall the scope of the IOSCO Financial Benchmark Principles:

> *"Benchmark Administration by a National Authority used for public policy purposes (e.g., labour, economic activity, inflation or consumer price indices) is not within the scope of the Principles. However, Benchmarks where a National Authority acts as a mechanical Calculation Agent are within the scope of the Principles. The Principles also exclude reference prices or settlement prices produced by Central Counterparties (CCPs), provided that they are produced solely for the purposes of risk management and settlement. The prices of single financial securities (e.g., equity securities underlying stock options or futures) are not considered Benchmarks for the purposes of these Principles."*

As a general comment, we note that Proposed NI 25-102 seems to go beyond the stated objective and scope of the IOSCO Financial Benchmark Principles. We also note that the EU BMR provides that in establishing equivalency, the European Commission will in particular take into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles.[1] The Notice does not discuss why it would be necessary or beneficial in Canada to establish legislation that extends beyond the objective or the scope of the IOSCO Financial Benchmark Principles.

Finally, it is also important to note that the IOSCO Financial Benchmark Principles recognize that the expectation is not to find a one-size-fits-all method of implementation and that their application and implementation should be proportional to the size and risks posed by each benchmark or administrator. Given the broad definition of "benchmark" in Proposed NI 25-102, we believe the Canadian market would be better served by a regulation that is more principles-based, rather than very prescriptive and detailed. This would provide the CSA with the tools to properly regulate and oversee benchmarks and their administrators in Canada, with the flexibility to impose more detailed requirements in recognition documents, if and as appropriate, while avoiding a regulatory framework that has the effect of driving benchmarks and their administrators into a specific model. While a broad range of benchmarks should appropriately be in scope, not all of them require the same scrutiny and not all administrators have, or need to have, the same practices and structures.

We acknowledge and support the discretionary ability of the regulators to grant exemptions under Proposed NI 25-102. We believe this power, as well as legal certainty and clarity, would be better served if the regulation provided for a framework of guiding principles that would inform the exercise of that discretion.

b) Equivalency

Similarly, TMX does not believe that Proposed NI 25-102 should go beyond the EU BMR regime. As mentioned above, the EU BMR equivalence assessment seems to be grounded in assessing if the third-country regime ensures compliance with the IOSCO Financial Benchmark Principles. The draft Implementing Decisions with respect to Singapore and Australia, the first jurisdictions to have gone through the equivalency assessment under the EU BMR, are informative as to what the European Commission will be looking at.[2] We do not believe that the EU BMR's objective is to impose regulation in third-country regimes that goes beyond the IOSCO Financial Benchmark Principles, and it is not reasonable to assume that equivalency will require that the third-country regime goes beyond the EU BMR itself. We are concerned that the Proposed NI 25-102 goes beyond the EU BMR in certain significant aspects. For example, Proposed NI 25-102 imposes significant formal obligations on benchmark users that are not contemplated in as much detail by

[1] See article 30 of the EU BMR.

[2] See European Commission (2019), 'Recognition of financial benchmarks in Australia', Implementing decision. Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1806384_en and European Commission (2019), 'Recognition of financial benchmarks in Singapore', Implementing decision. Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1806355_en

the EU BMR (nor at all by the IOSCO Financial Benchmark Principles, Australia's regime or Singapore's regime to our knowledge).

Separately, we note that while RBSL administers two important Canadian benchmarks, it is a UK-based company regulated by the FCA and is currently already approved in the EU by ESMA as it pertains to CDOR and CORRA. We also note that S&P Dow Jones Indices LLC has been endorsed in the EU under article 33 of the EU BMR and that the S&P/TSX indices are already recognized by ESMA.[3] Under the EU BMR, it is important to note that equivalence under article 30 is one of three options for non-EU benchmarks to obtain recognition in the EU, in addition to recognition of the administrator directly under article 32 and endorsement under article 33.

We understand that Canadian regulators may want to have direct oversight of benchmark administrators administering Canadian benchmarks and that ensuring Canada may be deemed equivalent, despite other recognition options, may be desirable. However, we encourage the CSA to consider already existing obligations and regimes applicable to foreign global benchmark providers and to ensure harmonization on a global level as much as possible.

c) Reducing Risk in Canada's Capital Markets

i. Striking the Right Balance Between Benchmark Strengthening and Regulatory Burden Is Important

We acknowledge regulating benchmarks is not an easy task. While stakeholders would agree that market participants need to be able to have confidence in a benchmark's integrity and reliability, the risks that excessive requirements or regulation could have unintended negative impacts, like reduced participation in the submission process and therefore reduced representativeness of a benchmark, should not be overlooked. Similarly, the risk of increasing the burden on benchmark administrators so much that this activity is deemed too risky or that the increased compliance costs get passed to end-users, especially in the context of a multitude of regulations in different jurisdictions, must be analyzed and addressed.

We believe the most crucial aspects to be addressed are appropriate transparency around the methodology and sound benchmark-setting governance process, particularly with respect to submission-based benchmarks. If regulation can ensure the strength of these aspects, it should then be left to users to assess whether the benchmark should be used and for which purpose.

As stated above, over the years, the IOSCO Financial Benchmark Principles have been mostly adopted as the international best practices. These principles focus on imposing obligations on administrators, who generally receive a benefit for their administration, as opposed to contributors (who are targeted through obligations on the administrators) or users. Moreover, while the administrator often receives compensation for its activities, it is important not to create an environment within which the regulatory risks of administering a benchmark disproportionately

[3] See the Third Country Benchmarks Register available at https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_bench_benchmarks

harm the commercial viability of the undertaking. What would be even worse than not regulating financial benchmarks in Canada would be to over-regulate them, to the point that the regulation itself would contribute to exacerbating the potential harms that the regulation is attempting to attenuate. We encourage the CSA to review its proposed obligations to be imposed on administrators, contributors and users to align them with the IOSCO Financial Benchmark Principles.

In particular, with respect to users targeted under section 22, we do not believe introducing obligations on these users in a benchmark regulation is appropriate. We believe that the regulatory framework already applicable to these entities covers the objective of this section, namely to mitigate the risks posed to these entities with respect to their use of benchmarks. The publication of best practices (either by the CSA or the administrators) would be a more proportional avenue, or at the very least, these obligations should be incorporated in the regulations governing these entities rather than in Proposed NI 25-102. Finally, if the CSA deems it necessary to regulate users in such a specific manner with respect to benchmarks, the language used should be aligned to the EU BMR article 28, paragraph 2.

B. TMX and Stakeholder Impacts

As currently drafted, several TMX entities could potentially be designated as administrators or targeted as contributors and users of benchmarks. In addition to the broader regulatory policy considerations above, we have analyzed the Proposed NI 25-102 from a compliance perspective. We have the following concerns.

a) Clarity and legal certainty

i. Harmonization of definitions

Unless justified by a Canada-specific consideration, we believe the definitions of the main concepts should be aligned with the IOSCO Financial Benchmark Principles definitions. For example, it is unclear to us:

- why the definition of benchmark differs slightly between Proposed NI 25-102 and the IOSCO Financial Benchmark Principles;
- why different terms were chosen under Proposed NI 25-102 to refer to the same concepts as the terms used under the IOSCO Financial Benchmark Principles; or
- why some foundational definitions are not incorporated into Proposed NI 25-102 (administration, for example).[4]

[4] In some cases, the term is defined in Proposed NI 25-102, but in a circular way. For example, Proposed NI 25-102 defines “benchmark administrator” as a person or company that administers a benchmark.

This creates interpretation challenges as we try to assess all of the impacts of this proposed regulation. All relevant terms should be clearly defined, in a manner consistent with the IOSCO Financial Benchmark Principles, unless a different definition is warranted in the Canadian context.

ii. Lack of legal certainty around conditions for designation, obligations, etc.

Proposed NI 25-102 does not establish the requirements for designation or the circumstances in which a benchmark or an administrator will be designated. While we acknowledge the Proposed Companion Policy provides some more detailed guidance, companion policies are not enforceable regulation. The regulation itself should provide for clear obligations as to which benchmarks and administrators may be required to obtain designation in Canada and under which conditions. The same comment is valid for the categories of benchmark created. This will allow legal certainty not only for the administrator, but also for the contributors to those benchmarks on which the regulation imposes obligations (as well as users, although we reiterate our comment that users shouldn't be directly regulated under Proposed NI 25-102).

We also note standards for some obligations that are unusual for securities regulations. For example, the standard of a reasonable person appears in various places to set obligation standards. Typically, regulations should create either clear obligations or establish principles within which the relevant regulatory authority may exercise some discretion. We are aware of the use of the reasonable standard in securities regulation with respect to public companies' disclosures. In this context, while the interpretation of a reasonable person's expectation may still lead to interpretation challenges, the standard is not surprising given that the disclosures are intended specifically for use by the public. By contrast, the introduction of a reasonable person standard in the manner in which it is used in Proposed NI 25-102 will create interpretation, compliance and enforcement challenges.

iii. Harmonization with other securities laws and regulations

Where concepts or principles referred to in Proposed NI 25-102 already exist in other securities laws or regulations, these concepts or principles should be referred to or imported into Proposed NI 25-102. Similarly, we would caution against creating new concepts in Proposed NI 25-102 that are not found elsewhere in securities laws generally.

For example, Section 5(4) defines independence for board members of an administrator with a unique set of criteria that are not aligned with the already existing principles of independence in National Instrument 52-110 Audit Committees ("**NI 52-110**"). Creating unique independence criteria is in contrast to many other securities law instruments and rules, including TMX entities' recognition orders and recognition decisions, which refer to NI 52-110, even when the content is not directly related to audit committees per se. We highlight, among others, sub-paragraph (c) that would make an independent director non-independent after five (5) years on the board. Specifically with respect to the CSA's question number 4 in the Notice, we recommend relying on NI 52-110 and we do not support adopting a reasonable person standard.

As well, we do not think it is appropriate to prevent the Chief Compliance Officer of an administrator to be compensated based on the financial performance of the administrator as contemplated under section 7(6). We agree that it is extremely important to not link the compensation solely to the performance of the benchmark itself, as contemplated under subparagraph (b), and we support this proposed prohibition. But subparagraph (a) is not the approach adopted in other securities legislation that mandates a Chief Compliance Officer role.[5] There is not a *de facto* conflict in linking the compensation of the Chief Compliance Officer with the overall financial performance of the administrator, which may have many other parts to its business that contribute to financial performance. In fact, overall financial performance should also reflect sound and efficient compliance. Preventing the Chief Compliance Officer to be compensated based on the financial performance of the administrator is not reasonable and may hinder benchmark administrators in recruiting qualified individuals to fill this important role in an environment where competition for talented compliance officers is becoming increasingly competitive.

We also invite the CSA to review the level of obligations imposed on the Chief Compliance Officer. It seems that certain provisions create standards or thresholds that are unusual. We note for example Section 7(3)(c) which requires the Chief Compliance Officer to advise the board of suspected non-compliance reasonably expected to create risks or that is part of a pattern of non-compliance. A duty to investigate and report instances of actual non-compliance would be more typical and appropriate. We also make the same comment with respect to section 11(3) that requires disclosure of a risk of a significant conflict of interest, section 12 in terms of reporting conduct that might involve manipulation or attempted manipulation and with respect to section 16(2) that requires the administrator to not use input data if it has any indication that the benchmark contributor doesn't comply with the code of conduct. Such vague standards create the potential for increased risks as opposed to reducing them. With respect to question number 5 in the Notice, we do not believe it is the role of a Chief Compliance Officer to assess compliance of the benchmark with the methodology. The role is to ensure the appropriate governance and internal control framework for compliance is in place.

Finally, as currently contemplated, we do not believe that the oversight committee provided for under section 8 and the powers entrusted to them are consistent with corporate law principles that, in most jurisdictions, put ultimate corporate oversight powers into the hands of the board of directors. We would expect that the day-to-day responsibilities for administration of benchmarks in most cases would be fulfilled by management rather than a board of directors, with the board or a committee of the board fulfilling an oversight role. Proposed NI 25-102 seems to contemplate almost the opposite scenario. We do not think the proposal is workable in practice.

This section also seems to go beyond what is contemplated under IOSCO Financial Benchmark Principle 5 - Internal Oversight. There could be overlap between the responsibilities of the management team, including the Chief Compliance Officer, and the Oversight Committee. We

[5] See for example National Instrument 24-102 Clearing Agency Requirements.

also question whether the Oversight Committee, which is an external committee, would be able to fulfill all of the obligations to the extent contemplated and what type of liability these obligations will create for Oversight Committee members. It also seems unusual to us to impose on such a committee obligations to report to securities regulators.

iv. Models for Designation and Ongoing Regulatory Oversight

The Notice refers to four options being considered for processing the designation and regulation of benchmarks and benchmark administrators by the CSA. TMX believes a non-coordinated review model would not be in the interest of any stakeholder. It is important that the CSA members coordinate among themselves the designation and oversight of benchmarks for the sake of efficient use of resources as well as consistency and clarity. The risk that two different regulatory authorities in Canada would take a different approach to the same benchmark is not desirable for any Canadian market participant.

Although TMX does not have a view in terms of which of the coordinated approaches among the three other options would be the best, we strongly suggest modifying Proposed NI 25-102 to ensure that the CSA will request public comments before issuing a designation order or decision on a specific benchmark. The Proposed NI 25-102 is so broad in scope that it is difficult at this point to contemplate and comment generally on the realm of impacts this proposed regulation could have, given that many of these impacts would be benchmark-specific. For example, real-estate market benchmarks which currently could be caught under the broad definition of "Benchmark", would not raise the same concerns, challenges and opportunities as CDOR and CORRA, the benchmarks we understand the CSA is immediately concerned with. It will be important to give the public an opportunity to comment on specific benchmark designations contemplated.

b) Contributor obligations

Generally, the IOSCO Financial Benchmark Principles do not impose obligations directly on contributors, but rather on administrators to impose a code of conduct and other obligations to the contributors. This approach recognizes that contributions are provided voluntarily by market participants who are not always regulated and not compensated for their contribution. Imposing a regulatory burden on contributors risks to disincentivize contributors, which in turn creates the risk of diluting the quality of the benchmark. We support regulation on contributors that makes it an offense to try to manipulate a benchmark or to provide data that the contributor knows is false, and we support regulation that imposes certain governance requirements on contributors. However, we believe that as currently drafted, Proposed NI 25-102 goes too far in imposing a set of detailed obligations directly on contributors, which could discourage contributors to contribute. If the cost of compliance is too high and outweighs the benefit of contributing, then contributors will cease to contribute, and benchmarks will be at risk of losing valuable input content. If the CSA feels strongly that imposing requirements on contributors directly is necessary, a principles-based approach rather than prescriptive obligations, may be a good alternative.

c) Exclusion of exchanges, clearing houses and transaction data as input data

As contemplated by the IOSCO Financial Benchmark Principles and the EU BMR, we submit that prices of single financial securities or instruments established by regulated exchanges, and prices produced exclusively for the purpose of risk management and settlement by regulated CCPs should not be considered benchmarks for purposes of the Proposed NI 25-102 and should explicitly be excluded, given notably the regulatory regime and oversight to which those entities are already subject. In the same vein, we also believe that exchanges and clearing houses should be specifically excluded from the definition of benchmark contributors as contemplated under the IOSCO Financial Benchmark Principles, to the extent that the data contributed are considered regulated-data.

Finally, as expressed under note 19 in the Notice, it is important that the Proposed NI 25-102 clearly reflects the concept that the providers of input data that is otherwise publicly available are not considered contributors under the Proposed NI 25-102. This may be done in a number of different ways, either by adapting relevant definitions or creating a specific exception.

d) Public data-based benchmarks

While the Notice gives some indication as to what a designated regulated-data benchmark is, we note that the regulation itself does not define what a designated regulated-data benchmark is. We believe complete definitions of designated regulated-data benchmark should be incorporated, as well as designated critical benchmark and designated interest rate benchmark.

Assuming the definition in the request for comments materials is incorporated in the regulation, we are of the view that limiting the input data to transaction data exclusively may be too limiting as currently defined. We point to IOSCO Principle 7 which provides:

> *"The data used to construct a Benchmark should be based on prices, rates, indices or values that have been formed by the competitive forces of supply and demand (i.e., in an active market) and be anchored by observable transactions entered into at arm's length between buyers and sellers in the market for the Interest the Benchmark measures. This Principle recognizes that Bona Fide observable transactions in active markets provide a level of confidence that the prices or values used as the basis of the Benchmark are credible. Principle 7 does not mean that every individual Benchmark determination must be constructed solely from transaction data. Provided that an active market exists, conditions in the market on any given day might require the Administrator to rely on different forms of data tied to observable market data as an adjunct or supplement to transactions. Depending upon the Administrator's Methodology, this could result in an individual Benchmark determination based predominantly, or exclusively, on bids and offers or extrapolations from prior transactions." [our emphasis]*

Based on the above, our view is that designated regulated-data benchmarks should rely not on transaction data as currently construed in the Proposed NI 25-102 but rather on data that is made available to the public, either free of charge or on payment.

Also, we agree that interest rates benchmarks typically do not pose the same challenges as the regulated-data benchmark. The creation and distribution of regulated-data benchmarks is also a highly competitive market. Undue pressures or limitations on global competition is therefore a further potential unintended consequence of benchmark regulation. It is therefore paramount that the Proposed NI 25-102 be in line with global standards in this space. We believe that exemptions from some of the requirements are completely appropriate and support this approach. We believe that designated regulated-data benchmarks should be subject to transparency of the methodology obligations, as well as internal controls obligations. Given that the benchmarks can be replicated and verified by third parties, we believe these obligations are the only ones necessary to ensure the appropriate checks and balances are in place. The exemption provided for under section 41 should therefore be broadened accordingly.

C. Conclusion

TMX believes that Proposed NI 25-102 should align as much as possible with the IOSCO Financial Benchmark Principles which have been adopted as global standards. Definitions and terms used should be harmonized as much as possible. Substance covered, in terms of scope and obligations, should be consistent. As indicated throughout this letter, to ensure consistency with global standards, the CSA should revisit in particular the following areas of Proposed NI 25-102:

- Obligations imposed on contributors should not be so significant that entities decide not to contribute to benchmarks: this would have a negative impact on the quality of benchmarks;

- Financial market infrastructures that are highly regulated should be clearly excluded from the definition of Benchmark Administrators: lack of certainty in this area will create unnecessary confusion;

- Providers of input data that is otherwise publicly available should be clearly excluded as contributors;

- The requirements for designation or the circumstances in which a benchmark or a benchmark administrator will be designated should be clearly set forth in the regulation, as well as conditions for the designation as a specific category of benchmark;

- Concepts should not depart from established securities and corporate law practices, namely:

- an external committee like the proposed Oversight Committee should not have powers over a company's board of directors,
- independence criteria for board members should not be expanded beyond accepted practices, as per NI 52-110,
- Chief Compliance Officers should not have their compensation circumscribed by legislation, and their obligations should not include mandatory reporting to the board based on suspicions alone, and
- Benchmark Administrators should not be held to a "reasonable person" standard for obligations that are highly technical in nature;

- Differences between submission-based benchmarks and public data-based benchmarks must be clearly acknowledged so as to not create an unnecessary regulatory burden on public data-based benchmarks; and
- Contemplated benchmark designation decisions or orders should be subject to a public comment process.

A principles-based approach that leaves flexibility to Canadian regulators to adopt a proportional application of the regulation, in light of the size and risks posed by each benchmark and/or administrator and the benchmark-setting process would be more desirable and effective. This is important not only for reducing unforeseen, unintended impacts of the Proposed NI 25-102 on Canadian markets, but also to ensure consistency of the Canadian regime with foreign frameworks. As many regulators develop and adopt their oversight regimes for benchmarks, it is important to minimize the potential for conflicts of laws and regulatory arbitrage. Canadian regulation that is as consistent as possible with the IOSCO Financial Benchmark Principles will ensure that Canada remains on the same level playing field as other jurisdictions and will lead to appropriate protections and likely greater compliance within the regime.

Sincerely,

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12 June 2019

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RE: Feedback on proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy Instrument 25-102

Dear Secretaries,

The Index Industry Association (IIA) is pleased to respond to Canada's request for comments on Feedback on proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy Instrument 25-102. The IIA has provided input and an ongoing dialog to most jurisdictions that have considered or proposed some form of regulation on benchmarks.

The IIA is an independent, not-for-profit organization representing the global index industry whose purpose is to represent independent index industry by working with market participants, regulators, and other representative bodies to promote sound practices that strengthen markets and serves the needs of investors. Many of the leading global independent index administrators are members of the IIA, including Bloomberg Indices, CBOE Holdings, the Center for Research in Security Prices, China Bond Pricing, FTSE Russell Group, Hang Seng Indexes, ICE Data Indices, IHS Markit, Morningstar, MSCI Inc., NASDAQ OMX, S&P Dow Jones Indices, STOXX, and Tokyo Stock Exchange. Our members administer approximately 3.7 million indexes which is estimated to be approximately 98% of all indexes globally. All IIA members are independent administrators meaning they neither trade the underlying component securities of their respective benchmarks nor do they directly create products for investor use. This model mitigates the real and perceived conflicts of interests by entities that do not separate these key functions. IIA members adhere to the IOSCO Principles for Financial Benchmarks Published in 2013 ("IOSCO Principles") and the IIA Best Practices (located on our website at [XXX].

The IIA appreciates the efforts the Canadian Securities Administrators (CSA) has undertaken to make a thorough review of the current and proposed international benchmark regulations. IIA believes the CSA should follow the IOSCO Principles as they are the global standard for index administrators and contributors and they serve as the basis on which other regulatory regimes are formed. Benchmark administrators have spent a significant amount of time and resources to adhere to the IOSCO Principles and to protect the integrity of their respective benchmark determination processes. The index industry is diverse and there are a wide variety of index offerings. The closer the CSA regulation is to the IOSCO Principles, the more consistent regulatory regimes will be globally which will ensure maximum participation from the index industry in Canada resulting in more choices for Canadian investors.

IIA believes regulators should limit any benchmark regulation to domestic, contribution-based, critical benchmarks. This approach is appropriate and consistent with how most other global regulators are implementing their regulation.

Markets work best when participants have transparency into how benchmarks and their related products will be regulated. Without this transparency, markets could become disconnected and liquidity could suffer making those benchmarks less relevant to investors. IIA would caution expanding the list of critical benchmarks to include regulated data benchmarks.

<u>Answers to Specific Questions in Annex C</u>

1. No Response

2. No Response

3. *Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples*.

The IIA does not believe this requirement is necessary or justifiable. Any requirement pertaining to the composition of an index administrator's board of directors or other oversight or governance body needs to be flexible and proportionate. Global index administrators need to select a structure most appropriate to their businesses. Just as the EU Benchmark Regulation does not specify the composition of the administrator's corporate board or replacing the board every five years, the Proposed Instrument should reflect the fact that board of directors may be responsible for several index families or even businesses beyond their index business. It will not be practical and will lead to fragmentation and inconsistency for global benchmark administrators to have unique boards of directors for each index or index family. IIA members alone administer 3.7 million indexes globally.

The IOSCO Principles rely heavily on the principles of proportionality. If CSA wants to mandate independent boards then it should focus on where there are inherent and/or clear conflicts of interests that cannot otherwise be mitigated through other appropriate controls. Independent benchmark administrators, ones who neither trade the underlying component securities nor directly create the products for investors do not have the same conflict of interests as self-indexed administrators. Requiring independent administrators to have independent boards will unnecessarily increase the costs for administration that will likely be passed on to investors.

Likewise, IIA believes that oversight committee members should not be restricted to an artificial, five year maximum term. IIA agrees voting members of the Committee should not be involved in the executive management of the benchmark administrator or the day-to-day production of benchmarks, but may be senior leaders of affiliated entities. Additionally, outside members with sufficient expertise in the index industry often have their own conflicts of interests. Their involvement in an oversight committee could adversely impact the independent nature of an index provider and managing their participation is enormously complex and challenging.

4. No response

5. *Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples*.

No, compliance officers perform a vital function making sure individuals adhere to policies, procedures and controls reasonably designed to comply with applicable regulation. Expanding the duties of a compliance officer to include the monitoring of individual benchmarks or families of benchmarks with its methodology is not desirable from an expertise view point and neither is it practical considering the sheer number of benchmarks many administrators provide. Oversight of the determination of a benchmark, or a family of benchmarks, requires specific skills and experience of the particular market which would not be appropriate to expect from compliance personnel. As stated earlier, many of the global providers administer tens of thousands or hundreds of thousands of indices and this would significantly dilute resources such as ensuring appropriate policies and processes, and accountability measures are in place to function properly.

Furthermore, we urge the CSA to revisit the concept of a compliance officer under the Proposed Instrument to allow greater flexibility for benchmark administrators to construct a governance and oversight function appropriate and proportionate to the benchmarks it administers. For example, both the IOSCO Principles and the EU Benchmark Regulation acknowledge that there may be multiple committees that together fulfill the requirements to monitor, assess and oversee compliance by the benchmark administrator with its policies, procedures, legal and regulatory requirements.

6. *Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual, other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.*

While it may be appropriate for compliance personnel to confirm that compensation policies conform to regulatory requirements broadening this principle to include the establishment of compensation levels is not appropriate because: (i) the definition of DBA individual is broad and could potentially include a sizeable population of individuals from varied disciplines; and (ii) it is unlikely that a compliance officer would have the necessary expertise and market insight to fulfill this function effectively. The risk of unattended consequences and unintended conflicts of interest would not be in the best interest of the administrators' clients and ultimately investors. It is also inconsistent with the IOSCO Principles and the EU BMR.

7. *Under Proposed NIv25-102, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the designated*

critical benchmark are provided to all benchmark users on a fair reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.

While none of the current benchmarks deemed critical under this proposal are administered by a member of the IIA, this is an important issue. The IIA does not believe that there are any obstacles faced by users to access data and information for benchmarks in Canada. IIA believes Canada has some of the most comprehensive anti-competition laws currently in effect and believes if an issue would ever arise, those well-established laws would be applied appropriately. This would be the most effective route of address than a complex, vague set of fair reasonable and non-discriminatory standards. Imposing FRAND-like standards is appropriate for consideration only when there is an accepted and documented history of market-access issues and this is not the case of access data and information for benchmarks. The value-chain for investors in the investment industry is quite complex and the relationships between market data providers, product providers, redistributors, and other stakeholders is extremely complex. An overly prescriptive regime like imposing FRAND only on benchmark administrators only addresses a very small piece of the value-chain. Benchmark administrators would be the only ones in the value-chain impacted by this restriction. This would unfairly impact benchmark administrators and does not address the costs and access rights to input data nor the product providers who take in the vast majority of the fees that investors pay. In the case of active portfolio managers, it is often that the investors' fees are over ten times those charged by portfolio managers passively tracking indices. Allowing the market mechanism to function naturally will ensure investors have the largest number of choices.

8. Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision?

The question presupposes that it is the decision of a contributor no longer willing to participate in providing input. IIA understands the logic if the contributor who provides the only input data, or there are very few other market participants decides for business reasons it wants to exit a market there could be a need to transition; however, the reason for not continuing may not always be in the contributor's control. Liquidity in markets, regulatory changes, and other conditions could dictate no price or input data is available or prices may no longer exist beyond their control. In that case, mandating something that is not available or not reliable may do more harm to market participants by providing unreliable and unrealistic prices. The scenario would be very fact dependent and IIA would caution against hard-wiring a one size fits all solution to the marketplace where the many variables are not known beforehand.

This question highlights the absurdity of including regulated data benchmarks as benchmarks that could potentially be designated critical. There are no "contributors" in the case of regulated data benchmarks as this regulation contemplates. Is the exchange the "contributor" in that scenario? The reason the EU did not allow regulated data benchmarks to be deemed critical is they acknowledged and understood the difference of risks between contributed benchmarks and those based on transparent, regulated markets. IIA urges the CSA to follow the proportionality principles found in the IOSCO Principles and in almost every other global regulator and not allow for regulated data benchmarks to be eligible to be deemed critical benchmarks.

A practical issue for adhering to this requirement would be for benchmark contributors not located in Canada and/or where equivalent benchmark regulation exists. In those cases, which is the majority of

countries in the world, it is not clear what authority CSA could legally force compliance of those contributors.

9. *Is the requirement in subsection 11(3) of Proposal NI 25-102 appropriate, particularly as it relates to a risk of a significant conflict of interest? Please explain with concrete examples*.

Disclosure should be limited to actual, significant conflicts, not a laundry list of potential conflicts of interest. If every potential risk of conflict of interest is included, it could create a problem similar to the long lists found in securities prospectuses that are rarely read and understood because of the sheer length of potential issues. Restricting the list to actual, significant risks may make the disclosure more meaningful.

10. *The notice states that the current intention of the CSA is to designate only RBSL as an administrator for CDOR and CORRA as RBSL's designated benchmarks. Are there any other benchmark administrators that you believe should be designated under Proposal NI 25-102?*

IIA does not believe any other benchmarks should be included. However, the CSA should provide greater clarity and transparency in terms of the assessment or method it will adopt to designate a benchmark. A failure to provide clear objective criteria to the market could inhibit investment, innovation and the smooth running of the Canadian financial market.

11. No response

12. *The Notice sets out the anticipated costs and benefits of Proposed NI 25-102. Do you believe the costs or benefits have not been identified in the analysis? Please explain with concrete examples.*

The example does not include one of the most significant costs and that is of dual supervision. Where Canada identifies benchmarks for inclusion that are also regulated, for example in the EU, like CDOR and CORRA, the benchmark administrator will have to comply in both jurisdictions. These costs will be passed to clients of the benchmark administrator and likely on to investors. The only remedy is not to have them used in the EU which would seem antithetical to having Canadian benchmarks used globally which is clearly not the intent of the regulation, but a potential unintended consequence. For this reason, IIA believes regulators should limit any benchmark regulation to domestic, contribution-based, critical benchmarks.

<u>Other Issues Identified Not Specifically Asked in Annex C</u>

There are several issues involving regulated data benchmarks that are not identified in Annex C that should be addressed. As mentioned in other places, it is inconsistent and disproportionate for CSA to have the authority and power to designate regulated data benchmarks as critical. CSA does not need to include them as critical to be deemed equivalent to the EU Benchmark Regulation since the EU expressly excludes regulated data benchmarks from being designated as critical. In addition, and as acknowledged by almost every other regulator, regulated data benchmarks are less susceptible to manipulation and have a far greater number of alternatives, and have thus been specifically excluded them from being deemed critical.

Permitting regulated data benchmarks to be designated critical is also not consistent with the proportionality principles in the IOSCO Principles. The first regulated data benchmark was compiled beginning in 1896 and IIA is not aware of any significant issues with independently administered regulated data benchmarks since then. Canadian regulators have done an excellent job of

regulating the exchanges and trading venues in which these products trade and clear and IIA sees no objective justification to potentially extend the designation of critical benchmarks to include regulated data benchmarks.

Another issue relates to the requirement that input data come "…entirely and directly…" from trading venues and exchanges. This language seems to be borrowed from the EU Benchmark Regulation Benchmark administrators are global in nature and take prices from over 200 recognized stock exchanges and trading venues. The only way this is made possible is to buy the data through data aggregators such as Thompson Reuters, ICE, or Bloomberg. They provide a purely technical link between trading venues and the benchmark administrators putting the data in a common format so it may be used. They do not change the underlying prices from the exchanges. As I am sure you are aware, this has been amended in the EU ESA Review because the EU realized there would be no regulated data benchmarks. The EU amended the language by removing "…and directly…". The EU also does not consider this technical service to be considered outsourcing under EU BMR Section 14.

Additionally, we would like to highlight is the inconsistency compared to all other global regulation pertaining to record retention. IOSCO and the EU BMR, along with others, require administrators to retain the information for 5 years not the 7 years proposed by the CSA. As mentioned before, benchmark administrators are global in nature and consistency is necessary across all jurisdictions. If different than the global standard, this will increase costs to investors with little or no benefit to investors.

A final point of inconsistency with the global standards are the proposed CSA forms (25-102F1 and 25-102F2). These forms request information on revenue and fee models (Specified Revenue item number 13 on Form F1 and Benchmark Distribution Model item number 3 of Form F2) which go well beyond any request for information globally. There is no justification for the reason this information is needed and is not relevant to help the CSA, or any regulator, determine benchmark risk or resource allocation which is the reason for benchmark regulation.

If I can clarify or provide any additional information to the staff, please do not hesitate to contact me.

Sincerely,
Richard H. Redding, CEO

S&P Dow Jones Indices

An S&P Global Division

12 June 2019

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorite des marches financiers
800, rue du Square Victoria, 4e étage
C.P. 246, Place Victoria
Montreal Quebec H4Z 1G3

RE: Feedback on proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy Instrument 25-102 (Proposed Instrument)

S&P Dow Jones Indices LLC (S&P DJI") is a leading provider of index-based innovation, data and research. We welcome the opportunity to provide comments to the Canadian Securities Administrators' (CSA) Notice and Request for Comment on the Proposed Instrument. We hope that our comments and suggestions on the Proposed Instrument are helpful.

In June 2012, S&P DJ was formed as a joint venture between S&P Global as the owner of S&P Indices and the Chicago Mercantile Exchange as the owner of Dow Jones Indexes. Combined, S&P Dow Jones Indices is the largest global resource for essential index-based solutions, data and research, and S&P DJI is home to iconic brands, such as the S&P 500® and the Dow Jones Industrial Average®. More assets are invested in products based on our indices than products based on indices from any other provider in the world. Since Charles Dow invented the first index in 1884,S&P DJI has been innovating and developing indices across the spectrum of asset classes helping to define the way investors measure and trade the markets. S&P DJI's mission is to bring independent, transparent and cost effective solutions to the global investment community. Headquartered in New York, S&P DJI employs over 500 professionals operating out of 25 offices worldwide. For more information, please visit www.spdji.com. We are an independent index provider. We do not issue financial instruments, do not participate in the markets which our benchmarks measure and have no vested interest in the value of any of our benchmarks.

As independent benchmark provider whose benchmarks are used as the basis for financial products, S&P DJI is fully supportive of the IOSCO Principles for Financial Benchmarks ("IOSCO Principles") and the objective of fostering integrity, transparency and efficiency of financial benchmarks. The IOSCO

Principles are very much in line with how S&P DJI transparently and independently govern its benchmarks. Indeed, S&P DJI had many of the practices, policies and procedures called for by the IOSCO Principles in place before they were published by IOSCO. On an annual basis, S&P DJI engages an internationally recognized audit firm to assess adherence to the IOSCO Principles and has received an unqualified reasonable assurance each year.

First and foremost, if the CSA believes it is necessary to pass benchmark regulation then S&P DJI believes the CSA should align its regulation with the concepts and requirements of the IOSCO Principles, as they are the global standard. A consistent approach will result in more choices for investors by encouraging broader participation in the Canadian market by qualified benchmark administrators.

In addition, the CSA's current approach to limit the Proposed Instrument to domestic, contribution-based benchmarks is appropriate and consistent with the response from most other regulators and policy-makers around the globe. The EU has taken a different approach by seeking to regulate a broader spectrum of benchmarks, which has led to some inconsistencies, confusion and delay with the implementation of their benchmark regulation.

Answer to Specific Questions in Annex C

Definition and Interpretation

1. *Does the proposed definition of "contributing individual" capture (or fail to capture) all of the arrangements between contributing individuals and administrators? If not, please explain with concrete examples.*

No response.

2. *Is the proposed interpretation of "control" appropriate? Please explain with concrete examples.*

No response.

Governance

3. *Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples.*

Any requirement pertaining to the composition of the board of directors (or any other governance or oversight function) should not be prescribed and needs to be flexible to allow benchmark administrators to select a structure most appropriate to their businesses.

This flexibility is recognized in both the EU Benchmark Regulation, the Australian Benchmark Regulation and the IOSCO Principles. The guiding principles that have been established in most legislative frameworks for benchmarks are proportionality and the avoidance of excessive administrative burden. None of the EU Benchmark Regulation, the Australian Benchmark Regulation or the IOSCO Principles specify the composition of the benchmark administrator's corporate board, the length of time that board directors may serve and the need for independent members. These requirements are disproportionate to the risks and overly burdensome for a benchmark administrator to manage.

The index industry is diverse and includes many global benchmark administrators. The proposed requirements are overly complex and unnecessary to protect the integrity of the benchmark determination process. Many benchmark administrators operate multiple index families globally. Effective compliance with this requirement would necessitate the establishment of separate benchmark administrators for specific designated benchmarks.

Finally, index governance is fairly specialized requiring candidates with sufficient expertise in the index industry who are typically employed elsewhere in the industry value-chain. Therefore, independent members may introduce conflicts of interest and S&P DJI believes outside members could adversely impact its status as an independent benchmark administrator and be challenging to manage.

4. *The determination of non-independence of members of the board of directors and the oversight committee by the board of directors of administrators as set out in paragraphs 5(4)(d), 32(2)(d) and 36(2)(d) of Proposed NI 25-102 includes a provision that if the director or oversight committee member has a relationship with the administrator that may, in the opinion of the board of directors, be reasonably expected to interfere with the exercise of the director's or oversight committee member's independent judgment, such director or oversight committee member would not be independent for purposes of Proposed NI 25-102. We are seeking comment on whether the CSA should replace the opinion of the board of directors with a "reasonable person" opinion in these paragraphs. Please explain with concrete examples.*

No response.

Administrator Compliance Officer

5. *Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples.*

Expanding the duties of a compliance officer to undertake the monitoring of an administrator's compliance with its benchmark methodology is not workable.

Most benchmark administrators operate thousands of individual benchmarks and the responsibility for monitoring and overseeing of the calculation of those benchmarks and the maintenance of their methodologies has been delegated to specific committees staffed by experienced index and financial market professionals. Requiring a benchmark administrator to re-write its oversight framework for its benchmarks would be counter-productive and disproportionate to the associated risks and will likely lead to greater risk and uncertainty.

In line with our response to Question 3, any requirement pertaining to the composition of any governance or oversight function should not be prescribed and needs to be flexible to allow benchmark administrators to select a structure most appropriate to their businesses. S&P DJI, for example, employs an oversight function consisting of multiple committees and functions, each performing a subset of the oversight responsibilities and tasks. On the one hand, there are functions and committees responsible for governing the methodologies and rules of our indices. This group, referred to as Index Governance, has the skills and expertise to assess and challenge the analytical or editorial decisions made during the benchmark determination process. On the other hand, there are functions and committees responsible for ensuring those who govern our indices and corresponding methodologies comply with our policies, procedures and

best practices. The criteria to select members of the various components of the oversight function focuses on the expertise and skills required.

Greater flexibility for benchmark administrators to construct a governance and oversight function appropriate and proportionate to the benchmarks it administers is of utmost importance. The current regulatory regimes S&P DJI operates under as well as the IOSCO Principles acknowledge that there may be multiple committees that together fulfill the requirements to monitor, assess and oversee compliance by the benchmark administrator with its methodologies, policies, procedures, legal and regulatory requirements.

6. *Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed NI 25-102), other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.*

No, we do not believe it is appropriate or desirable for the compliance officer to be involved in the establishment of compensation levels for any DBA individual, other than for its direct reports. The compliance function should ensure compensation policies adhere to regulatory requirements but should not set compensation levels. Compensation should be the responsibility of human resources and the business as they are best suited to determine the appropriate compensation level to attract and retain the necessary talent to operate in the index industry. It is unlikely that a compliance officer will have sufficient expertise and industry knowledge to contribute to this process.

Critical Benchmarks

7. *Under Proposed NI 25-102, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the designed critical benchmark are provided to all benchmark users on a fair, reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.*

No. We do not believe there is any justification for the CSA to mandate how corporate entities transact for license rights and information related to benchmarks. Intellectual property owners have the right to determine the commercial terms on which they license such intellectual property. “Fair, reasonable, transparent and non-discriminatory” pricing rules or requirements have the potential to interfere materially with the rights of index providers to set the terms of their licensing agreements.

In the event the CSA has identified a market failure or anticompetitive behavior in the index industry, it has existing competition laws and tools to prevent and/or punish any index providers and/or any other market participants from exploiting their market power, if any, in a way that might hinder effective competition. In addition, absent any evidence of a history of market failure or anticompetitive behavior, the introduction of any form of mandatory licensing regime and/or price controls is not justified. The index industry is diverse with many alternative suppliers of financial market indices so that index providers are forced to compete. The fact that index providers seek to legitimately protect their intellectual property through appropriate licensing regimes does not enable those providers to prevent other providers from offering an alternative, functionally equivalent benchmark. Regulated price control is rarely an appropriate tool in open and free markets and, as such, is seldom used in conjunction with open access

regimes. Price control is particularly disproportionate in circumstances where there is no clear monopoly or dominant position and, furthermore, where there is no evidence of historic abusive practices. We are not aware of any obstacles that users face in Canada to access data and information in relation benchmarks.

Finally, one must not overlook the disclosure requirements of the Proposed Instrument, specifically in relation to the benchmark methodology and benchmark statement and any changes or cessations thereto (Part 5). These requirements provide a significant amount of information to users and such information must be published by benchmark administrators. This requirement needs to be balanced with the need for benchmark administrators to protect their intellectual property and the intellectual property of the underlying data providers.

8. *Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision?*

This question highlights one issue related to designated regulated data benchmarks and the ability for a CSA to designate a regulated data benchmark as critical. In the context of designated regulated data benchmarks there is no 'contributor', so in circumstances where a designated regulated benchmark is also designed critical, it is unclear how the concept of compelling a contributor to provide input data would be applied. Furthermore, it also raises the question why the CSA has deemed it appropriate to have the power to classify regulated data benchmarks as critical. This is a departure from other jurisdictions, such as the EU, who have acknowledged and understood the different risks between contributed benchmarks and those benchmarks based on data from transparent and regulated markets. The authority to designate regulated data benchmarks as critical should be removed.

Conflict of Interest

9. *Is the requirement in subsection 11(3) of Proposed NI 25-102 appropriate, particularly as it relates to a risk of a significant conflict of interest? Please explain with concrete examples.*

Yes, it is appropriate to limit publication to significant conflicts of interest as it would be more effective for its intended audience. Expanding the requirement to include all possible or potential conflicts of interest will make it more difficult for users to assess those conflicts of interest.

Designated Benchmarks

10. *The notice states that the current intention of the CSA is to designate only RBSL as an administrator and CDOR and CORRA as RBSL's designated benchmarks. Are there any other benchmark administrators that you believe should be designated under Proposed NI 25-102? If so, please:*

(a) Identify the benchmark administrator,
(b) Identify any benchmark that the benchmark administrator administers that should also be designated, and
(c) Provide your rationale for why such designations are appropriate.

We do not believe any other benchmark administrator or benchmarks should be included. However, the CSA should provide greater clarity and transparency in terms of the assessment and/or method it will adopt to designate benchmark administrators and/or benchmarks in the future in order to avoid market disruption and ensure continued innovation in Canada's index industry.

11. If your organization is a benchmark administrator, please:

(a) *Advise if you intend to apply for designation under Proposed NI 25-102;*
(b) *Advise of any benchmarks you intend to also apply for designation under Proposed NI 25-102; and*
(c) *The rationale for your intention.*

We do not intend to voluntarily apply for designation as a benchmark administrator under the Proposed Instrument.

Anticipated Costs and Benefits

12. The Notice sets out the anticipated costs and benefits of Proposed NI 25-102 (in Ontario, additional detail is provided in Annex D). Do you believe the costs and benefits of Proposed NI 25-102 have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain with concrete examples.

The Proposed Instrument provides no acknowledgement or framework for those benchmark administrators based outside of Canada. Therefore, the example does not include one of the most significant costs which will be faced by those benchmark administrators subject to other benchmark regulations. Where the CSA designates benchmarks that are also regulated in the EU for example the benchmark administrator will be subject to dual supervision and have to comply with the regulation in both jurisdictions. Such costs can be reduced by reducing the scope of the Proposed Instrument so that it only captures critical, contribution-based benchmarks and/or replicating its requirements as close as possible to the IOSCO Principles or the requirements of other jurisdictions.

Other Issues Identified Not Specifically Asked in Annex C

Regulated Data

There are several issues involving designated regulated data benchmarks that are not identified in Annex C that should be addressed.

As mentioned above, it is inconsistent and disproportionate for the CSA to have the authority and power to designed regulated data benchmarks as critical. As acknowledged by most regulators/policy makers, regulated data benchmarks are less susceptible to manipulation since the underlying data is sourced from regulated exchanges, are more transparent through publicly available methodologies and have a far greater number of alternatives. Therefore, regulated data benchmarks have been specifically excluded from being deemed critical. Canadian regulators directly supervise exchanges and trading venues and/or have deemed foreign exchanges or trading venues as operating under similar regimes, so it is unclear why the CSA considers it necessary to allow regulated data benchmarks to be designated critical.

The CSA does not need to include them as critical to be deemed equivalent to the EU Benchmark Regulation, since the EU expressly excludes regulated data benchmarks from being designated as critical. In addition, permitting regulated data benchmarks to be designated critical is inconsistent with the proportionality principles in the IOSCO Principles.

Another issue relates to the requirement that regulated data benchmarks receive input data "entirely and directly" from trading venues and exchanges. This language seems to have been directly imported from the EU Benchmark Regulation. However, the EU recently amended the terminology in the EU Benchmark Regulation to remove the words "and directly" to ensure that the designation of regulated data benchmarks could be used as intended. Please refer to the recent EU ESA Review page 328. Benchmark administrators are global in nature and take prices from over 200 recognized stock exchanges and trading venues. The only way that it is possible to source data from such a large and diverse group is to acquire it from data aggregators, such as Thomson Reuters and Bloomberg. The data aggregators provide a technical means to receive the data in a common format so it may be used and calculated quickly and efficiently. The data aggregators do not change the underlying prices from the exchanges.

Where a data aggregator is used by a benchmark administrator to provide a technical means of receiving the input data from an exchange or trading venue, the practice should not be deemed an outsourcing to a service provider (and therefore within the auspices of Section 14) in the context of regulated data benchmarks. According to Section 14, outsourcing is where a benchmark administrator outsources to a service provider a function, service or activity in the provision of a designed benchmarks. By contrast, data aggregators act purely as a technical link to provide access to transaction data from exchanges and trading venues. The benchmark administrator then processes the input data according to its methodology to determine the benchmark.

Records Retention

There is some inconsistency between the records retention requirements included in the Proposed Instrument and those within regulations adopted in other jurisdictions. For example, the IOSCO Principles and the EU Benchmark Regulation require administrators to retain the information for 5 years and not the 7 years proposed by the CSA. As mentioned before, benchmark administrators operate global businesses and consistency is necessary across all jurisdictions. If different standards are implemented this will increase costs to investors with little or no benefit.

Designated Benchmark Administrator & Designated Benchmark Annual Form

A designated benchmark administrator is required to provide annual revenue received: (a) for determining a designated benchmark; (b) revenue from determining any other benchmarks administered by the designated benchmark administrator; (c) revenue for granting licenses or right to publish information about the designated benchmark; (d) revenue for granting licenses to any other benchmark administered by the designated benchmark administrator; and (e) fees it charges and a fee schedule describing the fees for the benchmark. The rationale for this requirement is unclear and in our view does not contribute toward protecting the integrity of any benchmark determination process.

Definitions

DBA Individual / benchmark individual – the additional definitions and requirements associated with the definition of DBA Individual and Benchmark Individual are cumbersome, disproportionate and

burdensome. It is unclear why the CSA has introduced these concepts. They do not reflect how most global benchmark administrators are organized.

Made available to the public (vis-à-vis definition of a benchmark) – what does it mean to be 'made available to the public? CSA to provide further guidance.

Benchmark Users – the definition is unclear and requires further detail to understand what users and products are in-scope of the Proposed Instrument.

If you have any questions on our response, or if you would like to discuss any points further please contact: Joe DePaolo, Chief Legal Officer, S&P DJI & Associate General Counsel, S&P Global, at joseph.depaolo@spglobal.com.

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June 11, 2019

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- and -

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Re: Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators and Companion Policy* (NI 25-102 and CP 25-102, respectively)

Neo Exchange Inc. ("NEO") appreciates the opportunity to comment on proposed NI 25-102 and CP 25-102.

Benchmarks are a critical part of the Canadian capital markets and we applaud the regulators for taking the initiative to ensure there is appropriate oversight over benchmarks and those that administer them. As a new stock exchange, we have witnessed first-hand the issues that can occur when a benchmark administrator has commercial interests that conflict with the interests of investors and public companies. It leads to anti-competitive behaviour.

In addition to what is already proposed, we would like to put forward that the S&P/TSX 60 Index and S&P/TSX Composite Index ("S&P/TSX Indices") should be regulated-data benchmarks, and that Standard & Poor's ("S&P") and the TMX Group ("TMX"), due to their significant influence on the design, should each be designated as a benchmark administrator. Both indices have become integral to the Canadian equity markets and are frequently utilized by Canadian investors, including millions of retail investors. We estimate that $150 – 200 billion is invested in products directly tracking these indices (e.g. ETFs, mutual funds, index-linked notes, etc.). In addition to this, asset managers (e.g. pension funds and other active managers) also use the indices as benchmarks and the entire universe of investment advisors commonly use these indices to measure performance for their retail clients. Thus, the total number of assets that utilize these indices in some way is undoubtedly in excess of the $400 billion threshold to be considered a critical benchmark in the proposed national instrument. Furthermore, it is not only the dollar amount tracked that should lead to such designations for the S&P/TSX Indices, but also the fact that these are key Canadian indices, each viewed as a significant tracker of the performance of Canadian publicly listed securities generally.

Implementing these designations would acknowledge the central role the S&P/TSX Indices play in Canada's capital markets and allow regulators to intervene and manage S&P and TMX accordingly as benchmark administrators.

Contravening the IOSCO Principles for Financial Benchmarks

The IOSCO Principles for Financial Benchmarks[1] and related guidance were put in place to address conflicts of interest in the benchmark-setting process, as well as transparency and openness when considering issues related to transition.

Through an initial analysis of these principles, we have identified a number of conflicts with how the Canadian benchmarks are administrated:

- Principle 3 - Conflicts of Interest for Administrators: *"[addresses] the documentation, implementation and enforcement of policies and procedures for the identification, disclosure, management and avoidance of conflicts of interest, including the disclosure of any material conflicts of interest to Stakeholders and any relevant Regulatory Authority. This framework should be appropriately tailored to the level of existing or potential conflicts of interest identified by the Administrator and should seek to mitigate existing or potential conflicts of interest created by the ownership or control structure or due to other interests arising from the Administrators' staff or wider group in relation to Benchmark determinations. This Principle is intended to address the vulnerabilities that create incentives for Benchmark manipulation.*"

  It is self-evident that the TMX has substantial influence over the S&P/TSX Indices composition, pricing, voting on constituents, etc. This clearly supports why the TMX should be designated as a benchmark administrator, and also indicates that transparency and mitigating measures are needed to ensure these indices are not subject to inappropriate restrictions, solely to protect the TMX's listing venues.

- Principle 6 - Benchmark Design: "*The design of a Benchmark should take into account generic design factors that are intended to result in a reliable representation of the economic realities of the Interest that the Benchmark seeks to measure and to eliminate factors that might result in a distortion of the price, rate, index or value of that Benchmark. The factors presented are generic and non-exclusive illustrations*".

  The administrators of the S&P/TSX Indices, by mandating that securities have to be listed on a TMX exchange, are clearly not taking into account generic design factors (i.e. non-biased selection of securities), nor respecting the non-exclusive nature of the selection.

- Principles 13 - Transition: *"[addresses] clearly written policies and procedures that address the need for possible cessation of a Benchmark, due to market structure change, product definition changes, or any other condition, which makes the Benchmark no longer representative of its intended function. These policies and procedures should be proportionate to the estimated breadth and depth of contracts and financial instruments that reference a Benchmark and the economic and financial stability impact that might result from the cessation of the Benchmark. The Administrator should take into account the views of Stakeholders and any relevant Regulatory and National Authorities in determining what policies and procedures are appropriate for a particular Benchmark. Administrators should encourage Subscribers and Stakeholders to have robust fall-back provisions in contracts or financial instruments that reference a Benchmark.*"

  We are not aware of <u>any</u> of the provisions under this principle being addressed within the frame of the S&P/TSX Indices.

- Principles 15 - Internal Controls over Data Collection: *"[addresses] appropriate internal controls over the Administrator's data collection and transmission processes – when an Administrator collects data directly from a Regulated Market, Exchange or other data aggregator, which address the process for selecting the*

[1] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf

source, collecting the data and protecting the integrity and confidentiality of the data."

By using pricing solely based on data collected from the TMX venues, but volumes from all marketplaces, the S&P/TSX Indices are a partial representation of the interest they represent and are subject to calculation issues as experienced during the TMX outage on April 28, 2018.

Contravening the spirit of the TMX Recognition Order

Under subsections a) and b) of Section 8 - FEES, FEE MODELS AND INCENTIVES of SCHEDULE 2 - TERMS AND CONDITIONS APPLICABLE TO TMX GROUP LIMITED, TMX GROUP INC., TSX INC., ALPHA LP AND ALPHA EXCHANGE, the Recognition Order[2] states that:

(a) The recognized exchange shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company; or

…

(b) Except with the prior approval of the Commission, the recognized exchange shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by the recognized exchange that is conditional upon the purchase of any other service or product provided by the recognized exchange or any affiliated entity; or

…

These provisions were put in place to reflect TMX Group's market power to ensure it would not use differential pricing or tied selling to preference its own venues. Preventing the S&P/TSX Indices from including securities listed on other Canadian stock exchanges is clearly not respecting the spirit of these sections of the Recognition Order. And is extremely anti-competitive.

Conclusions

The practice of restricting the constituents of these benchmarks to only those listed on the TSX needs to be urgently addressed. Instead, an objective methodology must be used. The fact that these benchmarks lack any transition policies and procedures is both contravening the IOSCO Principles for Financial Benchmarks and the spirit of the TMX Recognition Order.

Investors choosing to benchmark themselves against a particular index are doing so for a particular exposure, for which the listing exchange should be irrelevant (as is the case, for instance, with similar indices in the United States). Contrary to this principle, the TMX is leveraging its market power and ties eligibility for the S&P/TSX Indices to being listed on a TMX exchange. Therefore, no company currently included in the S&P/TSX Indices is able to list elsewhere than on the TSX without taking the risk of being removed from the S&P/TSX Indices. The result would be a massive sell-off, as the company's securities would be removed from funds and other products tracking the indices. It also becomes a major decision-making factor for any company seeking to be included in an S&P/TSX Index that will have to weigh the pros and cons of not being eligible for a benchmark index versus being listed on what may be a better exchange

[2] https://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20190221_224_tmx.htm

for its shareholders.

It is our understanding that under the contractual agreement between S&P and the TMX, the TMX has the discretion to approve the inclusion of companies in their indices even if they are listed elsewhere. However, this has yet to be the case and we believe that without appropriate regulatory oversight it will not happen. We also believe that any company that is even considering a listing on another stock exchange will be threatened with exclusion from the S&P/TSX Indices and the conversation will end there.

Designating S&P and TMX as benchmark administrators, and the S&P/TSX Indices as regulated-data benchmarks (or potentially even critical benchmarks) will put checks and balances in place to address some of the existing issues and to minimize the risk going forward that commercial interests are put ahead of the interests of investors and public companies.

These issues are not only of concern to competing exchanges, but have also been raised by the index user community including, as we understand it, the S&P/TSX Indices advisory committee. It appears there is a general view amongst index users that multiple Canadian national indices would not be optimal for the small Canadian securities markets and that requiring a more democratic governance model is the only way, in the foreseeable future, for exchange-agnostic benchmarks and their inherent benefits to be brought to the Canadian markets.

Although one can argue that other exchanges should just start their own "Canadian national indices" to compete with the S&P/TSX Indices, that is not realistic in today's marketplace. The size of our market and the long-established practices makes it simply unworkable. In other words, the TMX is leveraging a de facto monopoly to enable anti-competitive behaviors similar to those defined under a number of sections of the Competition Act[3].

Yours truly,

"Joacim Wiklander"

Joacim Wiklander
Chief Operating Officer
Neo Exchange Inc.

cc: marketregulation@osc.gov.on.ca
jos@neostockexchange.com
cindy@neostockexchange.com

[3] Part VIII - Matters Reviewable by Tribunal - Restrictive Trades Practices under the Competition Act; in particular the notions of Exclusive Dealing, Tied Selling, Market Restriction and Abuse of Dominant Position, at https://laws-lois.justice.gc.ca/eng/acts/c-34/page-21.html#docCont.

INCLUDES COMMENT LETTERS RECEIVED

Submission on Proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators

06/12/2019

Submission to the Canadian Securities Administrators

ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

Delivered via email

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The Canadian Bankers Association (CBA)[1] appreciates the opportunity to comment on the Canadian Securities Administrators' (CSA) Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy (together, the Proposal). We support the policy intent behind the Proposal, namely, to reduce risk in Canada's capital markets, thereby protecting Canadian investors and other Canadian market participants. We have set out below our comments on various aspects of the Proposal.

Limiting the Scope of Designated Benchmarks

We support the CSA's approach of designating only the Canadian Dollar Offered Rate (CDOR) and the Canadian Overnight Repo Rate Average (CORRA) as benchmarks. Further, we support the approach of specifically naming the benchmarks and administrators (Refinitiv Benchmark Services (UK) Limited for both CDOR and CORRA) subject to the Proposal. This targeted approach is much more definitive and gives the market greater certainty than the "catch and release" approach under the European Union's *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (EU BMR), which assumes all potential benchmarks and administrators are in scope unless otherwise explicitly stated.

We encourage the CSA to limit designated benchmarks to those that represent a significant component of the Canadian financial markets and for which the administrator is, or the majority of contributors to such benchmarks are, Canadian. With these two principles in mind, the Proposal should only apply to CDOR

[1] The CBA is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals. www.cba.ca.

and CORRA. In Principles for Financial Benchmarks, the International Organization of Securities Commissions (IOSCO) notes that implementation of the principles "should be proportional to the size and risks posed by each Benchmark and/or Administrator and the Benchmark-setting process."[2] Given the significant compliance requirements outlined in the Proposal, in our view, it would not be proportional to bring benchmarks into the scope of these rules unless they represent a material component of the Canadian financial markets (as is the case with CDOR and CORRA).

We have concerns with the CSA regulating foreign benchmarks in light of the experience implementing the EU BMR. Non-EU benchmark administrators have been, and may continue to be, hesitant to spend the time, money and effort to comply with the EU BMR. There was a significant risk that EU firms and investors were going to be cut off from access to financial products that reference non-EU benchmarks after January 1, 2020. This resulted in the European regulators agreeing to delay compliance with the EU BMR by third country administrators of benchmarks for two years.[3] Foreign benchmark administrators would be even less likely to expend the effort to comply with the Canadian benchmark rules given the relatively small size of the Canadian market.

Application of Proposal to Committed Rates

CDOR differs greatly from other interbank offered rates (IBORs) in that it is a committed rate (i.e., the rate at which a contributing bank is obligated to lend funds to corporate borrowers with existing committed credit facilities that reference CDOR, plus a stamping fee (if applicable)). CDOR is based on committed quotes provided by rate submitters, whereas most IBORs are based on indicated quotes (i.e., the quotes are not binding on the submitters). As noted in the Financial Stability Board (FSB) Report on Reforming Major Interest Rate Benchmarks, committed quotes are higher in the underlying data waterfall for benchmark rates and are the FSB's preference when actual transaction data is unavailable to underpin a rate.[4] In our view, the compliance requirements in the Proposal should consider this important feature of CDOR and committed rates should be subject to a less stringent application of the proposed rules.

Physical Separation and Secure Areas

In a few instances, the Proposal requires the physical separation of individuals responsible for the

[2] Principles for Financial Benchmarks Final Report, The Board of IOSCO, July 2013, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf, page 4
[3] https://www.risk.net/derivatives/6433251/banks-call-for-third-country-benchmark-fix-as-ec-delays-bmr
[4] Reforming Major Interest Rate Benchmarks, FSB, July 22, 2014, https://www.fsb.org/wp-content/uploads/r_140722.pdf, page 12

contribution of input data from others in the organization and the location of such contributing individuals in a "secure area". For example, section 25(2)(d)(i) requires a benchmark contributor to have policies, procedures and controls governing organizational separation of contributing individuals from employees whose responsibilities include transacting the underlying interest of the benchmark. Section 40(3)(f) requires a benchmark contributor to have policies, procedures and controls reasonably designed to ensure that there is a requirement that contributing individuals work in locations physically separated from interest rate derivatives traders. Further, the commentary in the Companion Policy on section 25(1)(a) provides that if the benchmark contributor identifies a conflict of interest involving other business activity, the contributor should ensure that contributing individuals are located in a secure area apart from persons that carry out the other business activity.

It is unclear what the terms "organizational separation", "physically separated" and "secure area" mean. Does "organizational separation" refer to physical separation, separation within the contributor's corporate organizational structure, or both? Alternatively, is the requirement simply that contributing individuals not be co-located with other employees? Or do these terms require a physically segregated area with restricted access as contemplated by section 2.3 of Ontario Securities Commission Policy 33-601 *Guidelines for Policies and Procedures Concerning Inside Information*? We note that some contributing individuals are dual-hatted and have other responsibilities including selling money market instruments, such as treasury bills. Such employees, therefore, require access to sales and trading staff and proximity to such staff is important to be efficient and respond to clients' needs in a fast-paced trading environment.

We understand that the CSA's intention may be to provide contributors with flexibility in how to implement the separation for avoidance of conflict, and not to prescribe what type of separation and what degree is necessary (i.e., whether individuals need to be in different buildings, on different floors, or in different sections of the same floor, etc.). This would be consistent with the new CDOR Code of Conduct which requires benchmark contributors to maintain controls for the identification and avoidance of conflicts of interest including potentially the organizational separation of contributing individuals from employees. We support giving contributors flexibility in interpreting the CSA provisions and recommend that the Proposal include more definitive language authorizing such flexibility.

Expert Judgment

Section 25(3)(b) of the Proposal provides that before contributing input data for a designated benchmark, a benchmark contributor must, if expert judgment is exercised in relation to input data, retain records that record the rationale for any decision made to use that expert judgment and the manner of the exercise of

the expert judgment. For benchmark contributors, "expert judgement" is defined under section 1.(1)(b) as "the discretion exercised by a benchmark contributor with respect to the contribution of input data".

We seek clarification regarding the types of records required by this section. While CDOR is a committed bank lending rate or executable rate, a degree of expert judgment is always applied. We would appreciate further detail as to whether the requirement is to address the circumstances in which expert judgment may be exercised in policies and procedures or whether the expectation is to record the rationale for the use of expert judgment in each and every daily submission. If the latter is required, this will place a significant burden, both in terms of gathering and tracking of expert input provided in relation to the contribution of input data and properly describing the discretion exercised by the bank expert as their judgement will be relied upon for a diverse set of submissions.

In addition to the above, we believe that the documentation of the use of expert judgement under Section 25(3) should be tailored to CDOR and CORRA and mirror the Submission Procedures under the new CDOR Code of Conduct.

Recordkeeping Requirements

Section 25(4) of the Proposal requires a benchmark contributor to keep certain records for a period of 7 years. This is longer than the requirement under the EU BMR (i.e., 5 years with the exception of records of telephone conversations or electronic communications, which are required to be held for 3 years). We propose that the time period for holding records of the items set out in section 25(4) be reduced to align with the EU BMR. Further, due to their sensitive nature, we believe that the records listed in section 25(4) should only be required to be made available to the administrator if the administrator requires them to comply with the Proposal or in connection with investigations by Canadian regulatory authorities. That is, there must be reasonable grounds for the administrator to have access to the records.

Section 25(4)(d) requires benchmark contributors to hold records relating to "a description of the potential for financial loss or gain of the benchmark contributor and each contributing individual to financial instruments that reference the designated benchmark for which it acts as a benchmark contributor." It is unclear how to satisfy the compliance obligations set out in this section. There are a number of variables to consider in calculating profit and loss as well as system and process needs. We would appreciate regulatory guidance in the Companion Policy. Related to this, section 25(5) requires benchmark contributors to make available such records to the benchmark administrator and any public accountant in connection with any assurance report under the Proposal. We are concerned that "descriptions of the

potential for financial loss or gain" could contain proprietary commercially sensitive information that contributors would not wish to share with third parties because of commercial sensitivities. As such, we suggest that section 25(4)(d) be either struck out or narrowed to apply only to the contributing individual. Alternatively, we recommend that this requirement be met in the context of identifying and mitigating conflicts of interest by amending section 25(4)(c) relating to the documentation of conflicts of interest as follows: "(c) all documentation relating to the identification and avoidance of conflicts of interest or mitigation of risk resulting from conflicts of interest, including the contributor's and each contributing individual's exposure to financial instruments that reference the designated benchmark for which it acts as contributor." The foregoing would align more closely with EU BMR requirements.

Input Data Sign-off

Section 25(2)(b) provides that a benchmark contributor must have a process for sign-off on input data by an individual holding a position senior to that of the contributing individual. We believe that this requirement is unwarranted because the individual contributor has the expertise to make the submission. Further, this requirement is impractical from a timing perspective, as it would unnecessarily slow down the submission process. The new CDOR code of conduct provides for an annual attestation by senior management, which we believe is sufficient to tie senior management to the approval of the submissions process.

Input Data Code of Conduct

Under section 24.(2)(f)(iv), a benchmark contributor would be required to establish and maintain systems and controls relating to the validation of input data before it is contributed to the benchmark administrator. Requiring pre-submission sign-off would impede the process for collecting and disseminating input data.

Compliance Officer

Section 26(2) provides that the compliance officer who monitors and assesses compliance by the contributor and its employees with the code of conduct must be able to directly access the contributor's board of directors. In our view, the requirement for direct access is impractical. Further, the compliance officer would lack the experience and expertise to make board submissions. We believe it would be more reasonable to require the compliance officer to escalate matters up through senior management. If an issue were to arise, the contributor's chief compliance officer could then present the matter directly to the board.

Under section 40.(6), a benchmark contributor's compliance officer would be required to report any compliance findings on a regular basis. We believe that the requirement should be to report significant issues, rather than findings, as this would otherwise be overly burdensome for an organization's compliance officer.

Assurance Report on Benchmark Contributor

Section 39 requires benchmark contributors to engage a public accountant to provide an assurance report within 6 months of the introduction of a code of conduct for contributors and every 2 years thereafter. This is a net new requirement that will be unduly onerous for contributors, when external audits are not required by the already comprehensive assurance provisions of either the CDOR contributors' code of conduct or the EU BMR in relation to CDOR. We believe that the requirements in sections 34 and 38 to provide an assurance report if requested to do so by the oversight committee are more reasonable and sufficient. Should there be an audit requirement, it would be more appropriate for the contributor to conduct the audit internally, as the internal audit function is better positioned to assess a contributor's compliance (this is consistent with the annual audit requirement under the CDOR code of conduct). Additionally, if an audit requirement is included, the results should only be made available to the regulators, not to the administrator.

Benchmark Administrator is a Public Authority

Section 4 of Part 1 of Annex D to the Proposal indicates that the "CSA has no current intention of designating benchmarks (or their administrators) that are administered by governments (including government statistical agencies), central banks, crown corporations and similar public authorities." We request that the CSA clarify in the Proposal that in the event a designated benchmark becomes administered by one of the foregoing public authorities, the requirements of the Proposal will no longer apply to such a benchmark. As noted in Annex D, these entities are already exempted from the EU BMR and "[i]n particular, central banks already meet principles, standards and procedures that ensure that they exercise their activities with integrity and in an independent and robust manner. It is therefore not necessary that such entities be subject to Proposed NI 25-102."

Written Plans Required if a Designated Benchmark Ceases

Section 22(1) requires certain users of designated benchmarks to establish and maintain a written plan of action to address a significant change to, or cessation of, a designated benchmark. Section 22(3) further provides that if a reasonable person would consider it appropriate, certain users must reflect that plan in

any security issued by that user, or derivative to which that user is a party, that references the designated benchmark. We request that the Proposal clarify that the foregoing requirements apply only to securities and derivatives that are entered into on or after the effective date of the Proposal. Users will generally not have the legal right to compel existing security-holders and derivative counterparties to agree to changes to the terms of such financial instruments.

Mandatory Contribution to a Designated Benchmark

As mentioned in Part 6 of the Companion Policy, securities legislation provides that a securities regulatory authority may require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. This may include providing information for the purpose of determining a designated critical benchmark. However, unlike Article 23 of the EU BMR, there is no limit on the period of time for which a person or company is mandated to provide such information nor specific criteria that must be met in order to continue or withdraw the mandatory provision of information. Article 23 of the EU BMR also specifies that contributors are not obligated to trade or commit to a trade.

It would be a significant hardship for persons and companies to be mandated to contribute to a designated benchmark and therefore required to comply with the Proposal as a contributor for an indeterminate period of time. This would entail considerable costs and resources and could expose these contributors to increased risk. We therefore request that the Proposal adopt similar requirements to those set out in Article 23 of the EU BMR. That is, the Proposal should: (i) set out the specific circumstances under which a person or company is required to provide information to a designated benchmark administrator; (ii) limit the mandatory provision of information by a person or company to a designated benchmark to a maximum of 24 months; (iii) require on a periodic basis (e.g., within one month and if, necessary, 12 months after contributors are required to provide information) an assessment against specified criteria to determine if continued mandatory contribution is necessary for another specific period of time; and (iv) confirm that contributors are not obligated to trade or commit to trades relating to the designated benchmark.

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Thank you for considering our comments on the Proposal. We look forward to further engagement on this issue.

REFINITIV™

June 12, 2019

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
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Dear Sirs/Mesdames:

Re: Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*

This letter responds to the Notice and Request for Comment dated March 14, 2019 of the Canadian Securities Administrators (the "**CSA**") on proposed National Instrument 25-102 – *Designated Benchmarks and Benchmark Administrators* (the "**Proposed Instrument**") and proposed Companion Policy 25-102 – *Designated Benchmarks and Benchmark Administrators* (the "**Proposed Companion Policy**").

Refinitiv Benchmark Services (UK) Limited ("**RBSL**") appreciates the opportunity to provide comments to the CSA. While we understand the CSA's motivation for the Proposed Instrument, we have practical concerns regarding how it will apply in a global context, without causing uncertainty, inefficiencies, overlap and potential conflicts with corresponding regulations in other jurisdictions for organizations like RBSL. These concerns are identified below under the headings "General Comments", which describes certain conceptual concerns, and "Specific Comments", which addresses particular issues for consideration. We have also responded to

certain questions posed by the CSA in Annex C of the Notice and Request for Comment, under the heading "Specific Responses".

GENERAL COMMENTS

1. Substituted Compliance for Benchmark Administrators

We understand that the CSA is seeking to establish its own comprehensive regime for benchmarks. However, for benchmark administrators like RBSL, we believe it is important that the applicable regulations in Canada recognize that other jurisdictions have, or may in the future have, corresponding regulations that address the very same subjects and substantive concerns. A benchmark administrator who operates in more than one regulated jurisdiction may be subject to differing requirements, applicable in relation to the very same subject matter and context. Such requirements may merely be additive or overlapping, or could be inconsistent, leaving the benchmark administrator with unsolvable conflicts. We believe that the CSA's objective of establishing a comprehensive regime, is not inconsistent with permitting an organization, such as RBSL, to satisfy applicable requirements by complying with the corresponding requirements of another recognized jurisdiction.

In our particular case, RBSL is an authorized "benchmark administrator" under the European Union's ("**EU**") *Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (the "**BMR**"). The BMR has overall regard to the principles for financial benchmarks (the "**IOSCO Principles**") established by the International Organization of Securities Commissions ("**IOSCO**") and accommodates flexibility in its principles-based application. The BMR also provides for the recognition of the requirements of other jurisdictions for equivalency purposes.

While the Proposed Instrument provides for a close correspondence to the language and approach of the BMR, there remain differences between the two regimes. In addition to those differences which are more readily identifiable (including those discussed below under the heading "Specific Comments") we are concerned with the potential for unnecessary duplication and practical misalignments in the application of the two regimes. This concern is driven in part by the fact that the BMR allows for significant proportionality in its application whereas, by contrast, the Proposed Instrument is much more prescriptive in nature and extrapolates the BMR's current directives into a static set of definitive, binding requirements. While we appreciate there are foundational differences that may motivate the need in Canada for precise and mandatory provisions, it is important to preserve flexibility in the application of requirements in order to eliminate inadvertent regulatory outcomes and misalignments or inefficiencies where the provisions of each regime would have an identical substantive effect.

Substituted compliance has been implemented by the CSA in various regulatory contexts, including (i) the Multijurisdictional Disclosure System implemented between Canada the United States pursuant to National Instrument 71-101 – *The Multijurisdictional Disclosure System*, (ii) National Instrument 94-102 – *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* and (iii) OSC Rule 91-507 *Trade Repositories and Derivatives Data*

Reporting. Given the global context of financial benchmark administration and the close correspondence between the requirements of Proposed Instrument and the BMR, we believe that the Proposed Instrument represents another clear candidate to which the CSA can effectively and appropriately apply substituted compliance. The case is particularly compelling where there is no uniquely Canadian issue or policy concern and where it can be demonstrated that the substantive requirements of the BMR adequately address the underlying policy concerns of the CSA.[1]

2. Principles-Based Approach and Use of the Companion Policy

Another way to lessen risk of conflicts as between the Proposed Instrument and other global regimes would be to acknowledge the global context in which benchmark administrators operate, and the fundamental importance of consistently applying the IOSCO Principles, in the Proposed Companion Policy. For example, the CSA could indicate in the final version of the companion policy that the Proposed Instrument will be interpreted and applied in a manner consistent with the IOSCO Principles.

A parallel approach was taken in the companion policy to National Instrument 24-102 – *Clearing Agency Requirements* ("**NI 24-102**"), which acknowledges the fundamental importance of IOSCO principles for financial market infrastructures (the "**PFMI**"). The CSA indicates in that companion policy that: "*together with the PFMI Principles,* [Part 3 of NI 24-102] *is intended to be consistent with a flexible and principles-based approach to regulation. In this regard, Part 3 anticipates that a clearing agency's rules, procedures, policies and operations will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its participants and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a clearing agency serves*."

SPECIFIC COMMENTS

In addition to the general issues discussed above, the Proposed Instrument deviates from the BMR in several important respects, which raise particular concerns for RBSL. These include:

1. Board-Level Requirements

Section 5 of the Proposed Instrument prescribes governance requirements at the board level of a designated benchmark administrator, including regarding a board's composition and member independence. Notably, subsection 5.(3) of the Proposed Instrument would require at least one-half of the members of a benchmark administrator's board of directors to be "independent" as such term is defined by the Proposed Instrument. The introduction of the sort of differing organizational level requirements, such as the board-level requirements contemplated by Section 5 of the Proposed Instrument, risks causing the fragmentation of benchmark administrators. This could in turn increase the cost of administering each benchmark; reduce

[1] The table in Appendix A to this letter sets out the substantive requirements of the BMR that are equivalent to the Proposed Instrument.

access to pools of knowledge and generally, lead to inconsistent board structures across multiple jurisdictions.

In the case of a global organization like RBSL, the organizational changes that would be required to comply would be significant and burdensome. In particular, compliance with the board-level requirements in Section 5 of the Proposed Instrument would necessitate a major reorganization of RBSL's board of directors (the "**RBSL Board**"), which oversees all of RBSL's activities, the majority of which would not involve Canada or the CDOR or CORRA benchmarks. Such activities include RBSL's administration of the WM/Reuters 4pm Closing Rates, which cover over 150 currency pairs and are the primary benchmarks used globally for foreign-exchange transactions. RBSL is also currently in the process of completing a migration plan whereby a number of additional benchmarks across multiple asset classes will come under RBSL's administration prior to January 1, 2020.

The RBSL Board is BMR-compliant. Among other things, we satisfy the requirements of Article 4 of the BMR relating to governance and the management of conflicts of interest. When these requirements are combined with the BMR's requirements for benchmark-specific and independent oversight committees, we believe that the BMR fully addresses the underlying policy objectives contemplated in the Proposed Instrument in relation to sound governance and the management of potential conflicts of interest.

We understand that board-level requirements in Section 5 of the Proposed Instrument are based on the provisions of National Instrument 25-101 – Designated *Rating Organizations* ("**NI 25-101**"), which applies to credit rating organizations ("**CROs**"). We further understand that this parallel was considered appropriate because of certain similarities in the regulatory circumstances that gave rise to the need for new regulations in the aftermath of the global financial events; namely, weaknesses in the governance structures of CROs that led to conflicts of interests in their rating assessments and played a role in a global financial crisis, and of benchmark administrators and contributors that undermined the reliability of the London inter-bank offered rate ("**LIBOR**"). We do not agree that it follows that the board-related requirements appropriate for CROs are equally appropriate for benchmark administrators. Among other things, the business models of a benchmark administrator and a CRO, and the corresponding potential for conflicts for interest, are demonstrably different.

CROs are in the business of selling and promoting the use of their individual credit ratings. Ratings serve an individualized purpose for securities issuers and directly impact an issuer's ability to raise funds and the cost of doing so. Ratings are also relied upon by investors, and to a certain extent, regulators, resulting in a situation where credit ratings serve a quasi-regulatory function in the market. In this context, a CRO's business incentives to promote its ratings to issuers and investors raises many potential sources of conflicts of interest, which apply across the CRO's business platform and that have no equivalence in the context of market-wide, objectively determined benchmarks.

In contrast, a benchmark administrator's business model focuses on the particular aspects of individualized benchmarks. Distinctions between benchmarks are important. Governance and

oversight considerations generally need to be tailored and focused on the unique attributes of the benchmark and its individualized methodology, rather than at the board level or having regard to a business model or motivations relevant to CROs. In that sense, many of the policy rationales which may be served by the imposition of board-level requirements for CROs, are more appropriately and effectively served by oversight committees. For example, while CDOR and LIBOR are both interest rate benchmarks, their respective compilation and calculation methodologies are fundamentally different. The specific governance and oversight for each must be geared to address the sources of possible conflict and potential for manipulation that stems from those methodologies. LIBOR is based on the borrowing rates, which contributing banks submit based on the level at which they are able to borrow money in the market. CDOR, in contrast, is based on the rates at which the contributing banks are willing to lend funds in the primary market for bankers' acceptances ("**BAs**"). For CDOR, this distinction acts as an inherent control on the potential for manipulation since, once published, a CDOR contributor will have to honour its contributed rate to market participants.[2]

2. Subsection 35.(1) of the Proposed Instrument

Subsection 35.(1) of the Proposed Instrument, which mandates that input data for a designated interest rate benchmark be used in a particular order of priority, does not reflect the practical realities applicable to various types of interest rate benchmarks, including CDOR and CORRA. In addition to input data received from benchmark contributors (as contemplated by Subsection 35.(1)), interest rate benchmarks may be determined using input data from execution platforms[3], price assessments[4] and/or from post-trade infrastructure such as settlement, clearing and reporting entities.[5] Moreover, it is typical for a single source of input data to be specified for any given benchmark. Even where multiple sources of input data may be used for a particular benchmark, in order to appropriately formulate any order of preferences for input data, the source of the input data must be distinguished from the nature of the input data itself.

As drafted, subsection 35.(1) of the Proposed Instrument appears to presuppose that an interest rate benchmark is representative of actual transactions in the underlying market. This is not always the case. CDOR, for example, as noted above, is based on rates at which the contributing banks are willing to lend funds in the primary market for BAs, and not a representation of underlying executed transactions. Furthermore, we note that the examples listed in subsections 35.(1)(a)(i) through (iii) of the Proposed Instrument are not compatible with any interest rate benchmark that is not an unsecured interbank deposit rate (e.g. CORRA), while the examples in subsection 35.(1)(a)(iv) would fundamentally change the nature of any benchmark, and should only generally be used, in the absence of all other inputs, to inform expert judgments.

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[2] The rate at which a contributing bank is committed to lend under its BA arrangements with its clients is generally the CDOR benchmark itself formed from the submissions, not at the submitted rate.

[3] E.g., CORRA, which uses transaction data from brokers.

[4] E.g., the Refinitiv/Tradeweb Constant Maturity Mortgage Index which is determined using price assessments from Thomson Reuters Pricing Service.

[5] E.g., SOFR in the USA, SONIA in the UK and EONIA in the EU.

In order to preserve the fundamental nature of any benchmark, we believe the general order of preference for the nature of the input data should be as follows:

(1) transactions in the underlying market represented by the benchmark,

(2) second, executable quotes in that same underlying market;

(3) indicative quotes in that same underlying market; and

(4) only where the input data in (1) through (3) is unavailable, market data from related markets to inform expert judgment to the extent possible.

The sort of expert judgment contemplated in (4) above will generally be needed in order to factor in differences such as a basis spread that might exist between the underlying market and the related market(s).

Where a benchmark is based on contributor submissions, a similar logic should be used by the contributors when forming their submissions. However, it is important to note that there are existing benchmarks that use variations of the general order of preference described above (generally as implemented by contributor(s) when making submissions rather than administrators) as circumstances vary from one underlying market to another. For example, some benchmarks use prescribed methods for deriving a suitable contribution from transactions that are not otherwise eligible owing to factors such as age or tenor before moving to executable or indicative quotes.

Perhaps more importantly, while an input data hierarchy of the type contemplated by subsection 35.(1) may be of use for certain interest rate benchmarks designated by the CSA in the future, it is not at all relevant for either CDOR or CORRA. For each of CDOR and CORRA, a single type of input data is used, from specified sources, and no hierarchy is applied by RBSL as administrator. As discussed above, input data for CDOR uses only contributions from a panel of the six contributing banks, which each represent the rate at which the applicable bank will be willing to lend funds to clients. Input data for CORRA is similarly limited to one source, being repo transaction data supplied by brokers. In respect of CORRA, also note that the term “a benchmark contributor’s transactions” in subsection 35.(1)(a) of the Proposed Instrument seems to imply that individual transaction data is required whereas, certain interest rate benchmarks, like CORRA, are based on volume-weighted averages and aggregate volumes data from the brokers. The final form of the Proposed Instrument (or the Proposed Companion Policy) should make clear that this type of aggregated data is also acceptable. Moreover, the concept of benchmark “contributors’” does not apply to CORRA due to the nature of the input data (being readily available).

Subsection 35.(1) of the Proposed Instrument is also an illustrative example of how the corresponding provisions in the BMR, which provide that “in general the priority of use of input data shall be”[6], are inherently more flexible than the Proposed Instrument, allowing room for

[6] See Annex I, point 1. Emphasis added

discretion on the part of the benchmark administrator in applying the requirement to a particular context.

In any event, we would be happy to work with the CSA in order to help ensure that any final provision takes into account the nuances of CDOR and CORRA as well as other types of interest rate benchmarks which may be designated in the future.

3. Proportionality & Comply or Explain

The BMR differentiates between significant and non-significant benchmarks and, for non-significant benchmarks, specifies certain articles of the BMR for which an administrator need not comply, provided this is publicly disclosed. This concept of proportionality is an important feature of the BMR and does not appear to be contemplated in the Proposed Instrument. For example, the concept of the "oversight committee", as drafted, appears to be a one-size fits all concept. By contrast, the BMR contemplates that the appropriate level of oversight for various benchmarks may differ. For example, for non-significant benchmarks, it has been recognised that the oversight function may be performed by one natural person rather than a committee.[7]

In the immediate term, such distinctions (and the related concept of proportionality) may not be critical, given the CSA's intention to only designate CDOR and CORRA, and each are expected to be designated as critical benchmarks. In the long-term, however, it may be advisable for the CSA to consider introducing this concept of proportionality in order to create a regime applicable for non-critical benchmarks that may be designated in the future.

4. Oversight Committees

a. Independence[8]

Subsection 36(2) of the Proposed Instrument prescribes a specific concept of independence as it relates to service on an oversight committee. We believe this concept is overly prescriptive and does not allow sufficient flexibility for informed judgment. For example, the Proposed Instrument would deem an oversight committee member to not be independent after 5 years of service. In our view, that would be counterproductive and inefficient. Sourcing subject matter experts in relation to affected markets is already difficult and the loss of continuity, expertise and knowledge regarding particular benchmarks and markets could be more disruptive and outweigh any theoretical gain that underlies the CSA's rotation proposal.

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[7] See Article 25(1), Article 26(1), Article 25(7) and Article 26(3) of the BMR for additional examples.

[8] As noted above, we do not believe it is appropriate or necessary to impose any of the board-level requirements contemplated in the Proposed Instrument, however, to the extent any such board-level requirements are contained in the final version of the Proposed Instrument, the view set out in this section in respect of the concept of independence, relates equally to the concept of independence contained in subsection 5.(4).

To the extent the CSA believes that the factors set out in subsection 36.(2) of the Proposed Instrument should be considered in either a determination of independence, or in a general determination of whether an oversight committee is appropriately constituted, we suggest that these factors be included in the Proposed Companion Policy (and not the Proposed Instrument itself) as factors which ***may*** be considered in such a determination.

Any independence requirements in the Proposed Instrument (or guidance within the Proposed Companion Policy) should allow for the application of a consistent test of independence for a benchmark administrator's various oversight committees, whether or not the primary regulator for such benchmark is the CSA, the United Kingdom's Financial Conduct Authority ("**FCA**"), the European Commission or otherwise. In the spirit of seeking consistency with the BMR, we refer the CSA to Article 1(2) of Commission Delegated Regulation (EU) 2018/1637 *(regulatory technical standards for the procedures and characteristics of the oversight function)* (the "**Oversight Function RTS**"), as published by the European Commission. Article 1(2) does not technically apply to interest rate benchmarks[9], but nonetheless provides helpful guidance with respect to how an oversight committee should be structured and provides that, in the case of a critical benchmark, the oversight function shall be carried out by a committee with at least two independent members, where an "independent member" is defined to mean a natural person "not directly affiliated with the administrator other than through their involvement in the oversight function, and shall have no conflicts of interest, particularly at the level of the relevant benchmark." Article 1(6) of the Oversight Function RTS further contemplates that the oversight function shall be separate from the management body in the sense that the positioning of the committee within the organisation must allow it to challenge and assess the decisions taken by the administrator. These two concepts are at the core of the BMR's concept of "independence" as it relates to the oversight function.

Regarding CDOR and CORRA, we note that the oversight committee is composed of independent members with no affiliation to RBSL, other than through their membership on the committee.

b. The concept of "monitoring" input data

Subsection 8.(8)(i)(ii)(A) of the Proposed Instrument contemplates that the monitoring of input data be undertaken by the oversight committee. In practice, the monitoring of the input data is done at the first line of defence level of the administrator itself (in the particular case of RBSL, by its operational staff), which then reports on the quality of the input data to the oversight committee (the second line of defence). The accuracy and depth of the monitoring done by the first line of defence is also further assessed by internal and external auditors (the third line of defence).

The oversight committee is tasked with challenging and overseeing how the benchmark is being administered in order to report to the RBSL Board and in some cases applicable

[9] The requirements relating to the oversight function for interest rate benchmarks are addressed separately in Annex I of the BMR.

regulatory authorities where there are suspicions that the administrator is not fulfilling its mission correctly. To that end, it is appropriate for the oversight committee to receive reports on the accuracy and monitoring of input data undertaken by the administrator so it can challenge and satisfy itself that the input data is accurate and representative of the markets it aims to represent. However, asking the oversight committee to monitor the input data feeding into the benchmark would fundamentally alter its role, undermining its second line of defence function as an independent check on the first-line monitoring.

While the language in subsection 8.(8)(i)(ii)(A) of the Proposed Instrument corresponds with the language in Article 5.3(g) of the BMR, we believe a drafting clarification is desirable here, in order to make clear that this particular requirement may be complied with by overseeing the monitoring of the input data, as opposed to performing the first-line monitoring function. This clarification could be included in either the Proposed Instrument or the Proposed Companion Policy.

c. Participation of the Board in Oversight Committee Meetings

Subsection 8.(2) of the Proposed Instrument restricts board members of a benchmark administrator from being members of the oversight committee.

This restriction appears to correspond with a similar restriction in Article 1(6) of the Oversight Function RTS, which provides that representatives "of the management body shall not be members or observers" of the oversight function (i.e. committee) of a critical benchmark. However, we note that Article 1(6) clarifies that such individuals who are precluded from being members of an oversight committee may nonetheless be invited from time to time to the oversight committee meetings, so long as they do so in a non-voting capacity. We believe a similar clarification would be a helpful addition to the Proposed Companion Policy.

5. Subsection 16.(2) – Refusal of input data based on "any indication" on non-adherence to contributor's code of conduct

Subsection 16.(2) of the Proposed Instrument provides that a designated benchmark administrator "must not use input data from a benchmark contributor if the designated benchmark administrator has any indication that the benchmark contributor does not adhere to" such benchmark contributor's code of conduct. The content of such code of conduct, as prescribed by the Proposed Instrument, includes a broad range of requirements including substantive procedures relating to the validation of input data as well as administrative items such as record-keeping requirements.

While we recognize that the language in subsection 16.(2) corresponds with Article 11.1(e) of the BMR, strict compliance with this requirement in the context of CDOR could result in unintended adverse consequences. For example, a benchmark administrator could receive an indication that some of the record-keeping requirements of a particular contributor's code of conduct are not being adhered to. Following subsection 16.(2), a benchmark administrator would then be required to refuse input data – in relation to CDOR, from one of the six CDOR-contributing

banks. The result could be disruptive for the markets, and disproportionate to any theoretical benefit from such internal issue identification.

We believe that the Proposed Instrument needs to be made more flexible in this regard. We suggest only requiring the benchmark administrator to refuse input data where it is aware of a "significant breach". Consistent with the use of such term in subparagraph 8(8)(i)(iii) of the Proposed Instrument, and the related discussion in the Proposed Companion Policy, such circumstance would only include non-adherence that would impact the integrity of or reputation of the benchmark.

SPECIFIC RESPONSES

3. Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples.

No. See discussion above under the subheading, "Board-Level Requirements".

5. Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples.

No. While we agree with the importance of monitoring compliance with methodologies, we believe that subsection 7.(3)(b)(iii) of the Proposed Instrument, which contemplates the monitoring by a designated compliance officer of the designated benchmark administrator with its own methodologies, is inappropriate. In practice, in the particular case of RBSL, we have determined through experience that it is the operational staff, not the compliance department, who are best equipped to report on this particular aspect of the business. RBSL's operations team (as the first line of defence) provides all relevant metrics to the oversight committee and the RBSL Board (the second line of defence) all of which is further reviewed by internal and external audits (the third line of defence). Since the compliance team does not participate in the actual calculation of the benchmarks, it would not be efficient or effective to ask a compliance officer to perform this particular function.

We refer the CSA to Article 7.2 of the BMR, which provides that an administrator shall designate an internal function with the necessary capability to review and report on the administrator's compliance with the benchmark methodology. In our experience, this approach, (i.e., allowing for the exercise of discretion by an administrator as to how to best match the capability and the purpose of the monitoring), works well.

6. Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed NI 25-102), other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation

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setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.

It is not RBSL's practice for the compliance function to be involved in the setting of compensation levels outside of reporting lines and we see no reason for doing so. In our view, conflicts of interest are better addressed through other governance processes and comprehensive control frameworks.

8. Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision.

We generally agree with this requirement and note that it aligns with the BMR. Given that the CDOR is not designated as a "critical benchmark" under the BMR, but will be so designated under the Proposed Instrument, we believe this requirement is especially desirable given that there is no alternative to CDOR. It is in the interest of the market to ensure continuity of the benchmark and avoid market disruption.

* * * * *

If you have any questions concerning these comments, please contact Stephan Flagel at stephan.flagel@refinitiv.com.

Best regards,

Chief Executive Officer of RBSL
Refinitiv Benchmark Services (UK) Limited

Appendix A

Section(s) of the Proposed Instrument	Comparable Provision(s) in the BMR
Section 6 (*Accountability framework requirements*)	Article 7 (*Accountability framework requirements*)
Section 8 (*Oversight committee*)	Article 5 (*Oversight function requirements*)
Section 9 (*Control framework*)	Article 6 (*Control framework requirements*)
Section 10 and 11 (*Governance requirements; Conflict of interest requirements*)	Article 4 (*Governance and conflict of interest requirements*)
Section 12 (*Reporting of infringements*)	Article 14 (*Reporting of infringements*)
Section 13 (*Complaint procedures*)	Article 9 (*Complaints-handling mechanism*)
Section 14 (*Outsourcing*)	Article 10 (*Outsourcing*)
Section 15 and 16 (*Input data; Contribution of input data*)	Article 11 (*Input data*)
Section 17 (*Methodology*)	Article 12 (*Methodology*)
Section 18 (*Proposed significant changes to methodology*)	Commission Delegated Regulation (EU) 2018/1641 (*regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology*)
Section 19 (*Disclosure of methodology*)	Commission Delegated Regulation (EU) 2018/1641 (*regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology*)

Section(s) of the Proposed Instrument	Comparable Provision(s) in the BMR
Section 20 (*Benchmark statement*)	Commission Delegated Regulation (EU) 2018/1643 (*regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark*)
Section 21 and 22 (*Changes to and cessation of a benchmark; Registrants, reporting issuer and recognized entities*)	Article 28 (*Changes to and cessation of a benchmark*)
Section 24 (*Code of conduct for benchmark contributors*)	Article 15 (*Code of conduct*)
Section 25 (*Governance and control requirements for benchmark contributors*)	Article 16 (*Governance and control requirements for supervised contributors*)
Section 27 (*Books and records*)	Article 8 (*Record-keeping requirements*)
Section 28 (*Administration of designated critical benchmark*)	Article 21 (*Mandatory administration of a critical benchmark*)
Section 29 (*Access*)	Article 22 (*Mitigation of market power of critical benchmark administrators*)
Section 31 (*Benchmark contributor to a designated critical benchmark*)	Article 23 (*Mandatory contribution to a critical benchmark*)
Section 35 (*Accurate and sufficient data*)	Annex I points 1 and 2 (*Interest Rate Benchmarks – Accurate and sufficient data*)
Section 36 (*Oversight committee*)	Annex I point 3 (*Interest Rate Benchmarks – Oversight function*)

MSCI'S FEEDBACK ON THE CANADIAN SECURITIES ADMINISTRATION REQUEST FOR COMMENTS ON THE PROPOSED NATIONAL INSTRUMENT 25-102 DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS AND COMPANION POLICY

MSCI

June 2019

INTRODUCTION

MSCI appreciates the opportunity to comment on the Canadian Securities Administrators' Request for Comments on the Proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy.

About MSCI

MSCI 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 indexes, ESG research and tools, and portfolio risk and performance analytics. MSCI is headquartered in New York, with research and commercial offices around the world.

MSCI's flagship equity indexes include the MSCI Global Equity Indexes and MSCI as been calculating indexes for more than 45 years. MSCI Global Equity Index families include country and regional indexes, size indexes (large cap, small cap, and micro-cap), sector indexes, style (value/growth) indexes, strategy indexes, thematic indexes and ESG indexes. MSCI also calculates custom indexes at the request of clients, by applying client screens and constraints to MSCI Global Equity Indexes.

MSCI Global Equity Indexes 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 indexes;
- broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally;
- stock exchanges to create equity index linked futures and options contracts; and
- CCPs to calculate the risks of its positions for index linked futures and options contracts.

During 2013 and 2014, MSCI implemented the IOSCO Principles, was externally audited during each of 2014, 2015 and 2016 for the MSCI equity indexes and select MSCI private real estate indexes, and posted the adherence statements and external audit reports on the Index Regulation page of www.msci.com. During 2017, 2018 and 2019, MSCI devoted those resources to implementing the BMR across MSCI's benchmark families. MSCI's current IOSCO adherence statements can be found on the Index Regulation page of www.msci.com.

On 5 March 2018, MSCI Limited, which is a UK subsidiary of MSCI Inc., was granted authorization by the UK FCA as a UK administrator under the EU benchmark regulation ("BMR") for the MSCI equity indexes. MSCI was the first major global equity index provider to become authorized under the BMR. We are currently implementing the BMR for the MSCI private real estate indexes.

MSCI'S FEEDBACK

General

We agree with the calibrated approach taken by the Canadian Securities Administrators (CSA) in focusing on a limited number of local benchmarks, which is consistent with most jurisdictions globally.

We also believe that consistency with the IOSCO Principles is important as the IOSCO Principles are the global standard.

If additional indexes were to be included in the National Instrument the future, we believe that it would be important for the CSA to obtain the views of market participants through a consultation because

- Different types of indexes measure different markets, many aspects of benchmark administration can be very different,
- Many proposals seem to be focused on Canadian entities, but may be unworkable or not feasible for multinational organizations,
- Many proposals focus on small administrators with single or a few benchmarks and would be disproportional or unworkable for administrators that calculate hundreds or thousands or hundreds of thousands of benchmarks.

To avoid unintended consequences, any regulation would need to take those differences into consideration. The IOSCO Principles accounts for these differences by embedding a key concept of "proportionality" through a "comply or explain" regime. We strongly recommend that the concept of proportionality be used in the National Instrument.

Feedback on Specific Questions/Sections

Question Number	MSCI response
3	We disagree with the proposal around board members. Board members have legal duties under local law. Requring additional board duties and responsibilities, and dictating board membership eligibility, board numbers and board tenure, causes conflicts with local law. It is also inconsistent with benchmark regulation globally. In other jurisdictions, the board should include individuals with decision making responsiblity in relation to benchmark administration. If the board has decision making authority for benchmark administration, then individual board members must have responsibility for benchmark administration (otherwise a board without requisite knowledge and experience will not be making informed decisions).
4	We disagree with the proposal that the legal entity board or oversight committee should be mandated to include external members. We believe that this introduces potential conflicts of interest into administration. By having employees serve these functions, the administrator can ensure those individuals are subject to their codes of conduct and ethics. Further, to the extent price sensitive information is involved, including external parties on the board could create issues with information sharing. Finally, it is also inconsistent with benchmark regulation globally. If every jurisdiction begins mandating different requirements for membership of boards and oversight committees for globally used benchmarks, benchmark administration by global adminstrators becomes difficult, if not impossible.

5	We believe that a committee oversight and governance structure is more appropriate and is consistent with global regulation. Committees can draw on areas of expertise across members. Committees avoid potential conflicts of interest of single individuals as well as any individual having the power to take unilateral decsions.
7	To assist the market and provide a level of certainty, we would recommend that the CSA provide some guidelines around what constitutes a designated critical benchmark. We believe that access/pricing restrictions should not apply if substitute benchmarks are available in the marketplace. By definition, we believe that a critical benchmark is not, and cannot be critical, if there are other options for users to choose, otherwise the regulation would be creating an unlevel playing field across competitors, forcing some administrators to license their benchmarks on a "fair reasonable and non-discriminiatory" basis, while allowing others to to license their benchmarks without those restrictions. It would also create a market disruption for benchmarks that are used and licensed to global clients, if they had to be licensed in Canada on "fair reasonable and non-discriminatory" basis, but without those restrictions outside of Canada.
8	It is unclear how these provisions would apply to, be enforceable against, contributors globally.
9	We support the CSA with the general requirement to disclose conflicts of interest, but requiring disclosures down to the benchmark level would not be feasible for administrators that calculate hundreds of thousands of indexes.
Other	Article 16(3)(a) assumes there may be other sources for the data. For some asset classes, there may not be other sources for the data. Article 19(2) – Forty-five days notice may not be appropriate if there market circumstances that require changes. Further, we believe that the regulator or securities regulatory authority should be informed of an implementation simultaneously with the market. Article 24(ix) – As some indexes may have hundreds or thousands of contributors, it is unclear how the requirement for the individual at the administrator could reasonably have direct access all of the benchmark contirbutors' boards of directors or how that could be enforced globally. Article 25 – We believe that this article is disproportionate to many types of indexes, in particular, those that rely on voluntary contributions from data contibutors that may not be regulated finanical services entities. The unintended consequence is that prescriptive requirements may dissuade contributors from contributing to the benchmark. Benchmarks provide transparency, which is particularly important in private markets that are traditionally opaque. Without contributions, there will be no benchmark, and that ultimately reduces transparency in private markets. Because of that risk, we note that the equivalent requirement in the EU benchmark regulation is subject to the proportionality principle and may be waived.

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ISDA Safe, Efficient Markets

Via email: comment@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

June 12, 2019

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Dear Sirs and Mesdames,

Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy

The International Swaps and Derivatives Association, Inc. ("**ISDA**" or "**we**")[1] welcomes the opportunity to provide comments on Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and the related Companion Policy (collectively, "**NI 25-102**" or the "**Proposed Rule**") published by the Canadian Securities Administrators (the "**CSA**") on March 14, 2019. Terms not defined in this letter will have the same meanings given to them in the Proposed Rule.

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 71 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter @ISDA.

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ISDA supports the introduction of rules regulating financial benchmarks in Canada that are consistent with the IOSCO Financial Benchmark Principles. We see this as critical, particularly as such rules will reduce risks in Canadian financial markets and will allow Canadian designated benchmarks to be eligible for an equivalence determination in the EU, allowing them to be used by EU institutional market participants.

A. Limiting the scope of designated benchmarks

ISDA strongly supports the approach under the Proposed Rule that a benchmark administrator (and its associated benchmarks) should only be designated where the benchmarks have a significant connection to Canada and are sufficiently important to the financial markets in Canada, and submits that this approach should also apply whenever a benchmark administrator applies for designation. The notice accompanying the Proposed Rule also states that the CSA may designate other administrators and their associated benchmarks in the future on public interest grounds, including where the CSA becomes aware of activities of a benchmark administrator, contributor or user that raise concerns that align with certain regulatory risks in respect of such parties, and conclude that the administrator and benchmark in question should be designated. ISDA submits that any such designation should be made only where such concerns relate to the safety of, or confidence in, Canadian financial markets. Further, the CSA notice accompanying the Proposed Rule (the "**CSA Notice**") should expressly state this.

ISDA also supports the intention of the CSA, as set out in the CSA Notice, to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks under NI 25-102. Specifically naming RBSL, CDOR and CORRA provides certainty in the Canadian market. Limiting designated benchmarks only to those which represent a significant component of the Canadian financial markets and for which the administrator of, or majority of contributors to, such benchmarks are Canadian is critical, given the size of the Canadian financial market, relative to other markets, such as Europe and the United States. In the IOSCO Financial Benchmark Principles, IOSCO notes that implementation of the principles should be proportional to "the size and risks posed by each Benchmark and/or Administrator and the Benchmark-setting process."[2] Given the significant compliance requirements outlined in NI 25-102, it would not be proportional to bring benchmarks into the scope of these rules unless they represent a material component of the Canadian financial markets. Such an approach is appropriate for Canada, as opposed to the "catch and release" approach under the EU BMR, which assumes all potential benchmarks and administrators are in scope unless otherwise explicitly stated.

[22] See Page 4 of the IOSCO Financial Benchmark Principles.

B. Clarifying the Scope of the NI 25-102

Our experience with the EU BMR has shown that it is extremely important that the Proposed Rule is clear with respect to whether a benchmark, an administrator, a contributor or a user is in scope. Under the EU BMR, many concerns have been raised with respect to the uncertainty of the scope of that rule, including the fact that certain terms are used without providing adequate guidance, such as the meaning of the phrase "made available to the public" in the definition of "benchmark", and what constitutes the "use of a benchmark". While many of those concerns are not applicable in the context of NI 25-102, there are two concerns raised with respect to the EU BMR which we believe should be considered under the Proposed Rule. First, we submit it would be useful to add commentary to clarify that the determination of initial margin and variation margin under derivatives contracts would not constitute the use of a benchmark as a reference under NI 25-102, whether such benchmark is used to calculate interest payable on margin delivered, or whether such benchmark is used to determine the amount of margin to be delivered in the first place. This interpretation is consistent with how the "use of a benchmark" is interpreted by the European Securities and Markets Authority under the EU BMR.[3] Secondly, the draft Companion Policy provides that one factor in determining whether a benchmark would be considered a "critical benchmark" is whether the benchmark is used as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value in Canada of at least $400 billion. ISDA is of the view that additional guidance should be provided as to how a regulator or securities regulatory authority will be determining the "value" of such instruments, contracts and performance of investment funds for this purpose.

C. Consultation Period Required Before Designating an Administrator or Benchmark

As demonstrated in the implementation of the EU BMR, ISDA has concerns about a domestic regulator regulating foreign benchmark administrators and their associated benchmarks. Some non-EU benchmark administrators were unaware of, or hesitant to devote the resources, time and expenses required to be compliant with the EU BMR. There was a significant risk that EU firms and investors were going to be disallowed from issuing, or investing in, products which reference certain non-EU benchmarks after January 1, 2020. This resulted in the European regulators agreeing to delay the compliance with the

[3] European Securities and Markets Authority, *Questions and Answers on the Benchmarks Regulation (BMR),* ESMA70-145-11, Version 13, 23 May 2019 at page 18, available here. The answer in paragraph 5.11 on page 18 states expressly that the use of an index to calculate interest payable on collateral amounts does not constitute "use of a benchmark" under the EU BMR. ISDA understands that ESMA will be providing further clarity that benchmarks used to determine the amount of collateral payable in the first instance would also not constitute "use of a benchmark" under the EU BMR, for example, a benchmark used in a risk-based model to determine the margin amount, or a benchmark used in determining the market value of margin delivered.

EU BMR by third country administrators for two years. Foreign benchmark administrators would be even less likely to take on the effort to comply with the Canadian benchmark rules given the relatively small size of the Canadian market, negatively affecting liquidity and market access in Canada. ISDA therefore urges the CSA to require under the Proposed Rule that a minimum 90 day consultation period apply prior to the CSA designating any other administrator or benchmark under the Proposed Rule.

D. Exception for Certain Administrators

ISDA submits that should the Bank of Canada (or any other federal government agency or office) assume administrator duties for CDOR or CORRA, or any other designated benchmark under NI 25-102, the administrator requirements under NI 25-102 should not apply. It would not be appropriate for the CSA to regulate the activities of the Canadian central bank.

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We would welcome the opportunity to discuss these and any related issues further with the CSA.

Yours truly,

Katherine Darras

General Counsel

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June 12, 2019

VIA ELECTRONIC MAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o:
Me Anne-Marie Beaudoin
Corporate Secretary
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Re: Comments on Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Proposed Companion Policy 25-102

Dear Sir or Madam:

I. INTRODUCTION

On behalf of The Canadian Commercial Energy Working Group (the "**Working Group**"), Eversheds Sutherland (US) LLP submits this letter in response to the request for public comment from the Canadian Securities Administrators ("**CSA**") on Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* ("**Proposed NI 25-102**") and the related Proposed Companion Policy 25-102 ("**Proposed Benchmark CP**") (collectively, the "**Proposed Instrument**").[1] The Working Group

[1] *See* CSA Notice and Request for Comment on Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Proposed Companion Policy 25-102 (Mar. 14, 2019)

welcomes the opportunity to provide comments on the Proposed Instrument and looks forward to working with Canadian regulators throughout the rulemaking process, including with respect to any future proposals relating to commodity benchmarks.

The Working Group is a diverse group of commercial firms that are active in the Canadian energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. The Working Group considers and responds to requests for comment regarding developments with respect to the trading of energy commodities, including derivatives, in Canada.

II. COMMENTS OF THE WORKING GROUP

The Working Group appreciates the efforts of the Canadian regulators to minimize misconduct relating to benchmarks and generally supports the contemplated framework in the Proposed Instrument. In an effort to help ensure a workable framework, the Working Group respectfully offers the comments provided herein, which are intended to facilitate a paradigm that provides an appropriate level of oversight without imposing undue burdens on benchmark contributors and benchmark users.

As the CSA is aware, under the Proposed Instrument, benchmark contributors[2] would be subject to general requirements and additional requirements if they contributed to designated critical benchmarks or designated interest rate benchmarks. With respect to regulated-data benchmarks,[3] benchmark contributors would be subject to a narrower set of requirements.[4] Separately, the Proposed Instrument would impose certain obligations on a benchmark user[5] if all the following apply: (i) the benchmark user uses a designated benchmark; (ii) the cessation of the designated benchmark could have a significant impact on the benchmark user, a security issued by the benchmark user, or any derivative to which the benchmark user is a party; and (iii) the benchmark user is (a) a registrant, (b) a reporting issuer, (c) a recognized exchange, (d) a recognized quotation and trade reporting system, or (e) a recognized clearing agency within the meaning of National Instrument 24-102 *Clearing Agency Requirements*.[6]

The Working Group is generally supportive of the regulatory framework that the Proposed Instrument would establish. However, by incorporating the suggested modifications and concepts discussed herein, the CSA could establish a more workable framework for

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("**CSA Notice**"), https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/03/5451911-v1-CSA_Notice_and_Request_for_Comment_of_NI_25-102.ashx.

[2] As used herein, "**benchmark contributors**" refers to persons or companies that contribute certain data used to determine the designated benchmarks.

[3] A regulated-data benchmark may be designated as such if it is determined by the application of certain formulas, including input data contributed entirely and directly from a recognized exchange or recognized quotation and trade system in Canada or an exchange or quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction. *See* Proposed Benchmark CP at Section 1(1) (pgs. 76-77).

[4] *See* Proposed NI 25-102 at Section 41 (regarding regulated-data benchmarks, providing exemptions for benchmark contributors from certain of the requirements (*e.g.*, exempt from appointing a compliance officer and maintaining a specified governance and control framework)); *see also* CSA Notice at 15.

[5] As used herein, "**benchmark users**" refers to users of designated benchmarks if all of the criteria listed above applies.

[6] Proposed NI 25-102 at Section 22.

benchmark regulation without compromising its objectives of reducing risk in Canada's capital markets and protecting Canadian investors and Canadian market participants.[7] In addition, given that the CSA is expecting to propose revisions in the future to the Proposed Instrument to incorporate requirements relating to commodity benchmarks, the Working Group respectfully requests that the CSA consider the comments herein as it drafts any such proposals.

A. A Principles-Based Approach Should Be Used.

The CSA should use a principles-based approach with respect to its benchmark regulation regime. A principles-based approach will provide the flexibility necessary: (i) to allow market participants to adopt compliance policies and procedures that are appropriately tailored for their specific business and size; and (ii) to allow regulators and market participants to adapt to changing technology and evolving market practices.

The Proposed Instrument generally strikes a good balance in providing the needed flexibility, but the Working Group has identified certain areas below where the CSA should provide continued flexibility.

- ***Company Structure, Staffing, and Corporate Governance.*** The Proposed Instrument includes requirements related to company structure, staffing, and corporate governance.[8] The Working Group notes that preserving flexibility in these areas helps ensure that certain market participants are not disadvantaged as a result of previous decisions in entity formation or corporate organization.

- ***Compliance Policies and Procedures.*** The Proposed Instrument is generally prescriptive with respect to the kinds of compliance policies and procedures that would be required.[9] Given the nature of the regulatory subject, this approach is understandable. However, the Working Group would encourage the CSA to ensure that a benchmark contributor has the flexibility to implement the required policies and procedures in a manner that is best suited for its business and operations.

- ***Benchmark User Obligations.*** The Working Group appreciates that the Proposed Instrument provides flexibility in the decision-making process for benchmark users. Specifically, the Working Group appreciates that the proposed obligations regarding contingency planning for benchmark users has a reasonable person standard.[10]

In addition to using a principles-based approach, the CSA should consider making changes to the Proposed Instrument to address the specific issues identified below.

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7 *See* CSA Notice at 6 (discussing the substance and purpose).

8 *See, e.g.*, Proposed NI 25-102 at Section 26(1) (proposing obligations on a benchmark contributor with respect to a compliance officer and function) and Section 24(2)(f)(ix) (proposing obligations on a benchmark contributor with respect to access to the board of directors for certain personnel).

9 *See, e.g.*, Proposed NI 25-102 at Section 24 (discussing the code of conduct that would be imposed on benchmark contributors) and Section 25 (discussing control requirements for benchmark contributors).

10 *See, e.g.*, Proposed NI 25-102 at Section 22(2)-(3).

B. The Proposed Instrument's Recordkeeping Requirements Are too Broad and Overly Burdensome.

The Proposed Instrument's recordkeeping requirements are overly broad and would be burdensome for a few reasons. *First*, the scope of the proposed recordkeeping requirement is too broad. For example, the Proposed Instrument, among other things, would require benchmark contributors to keep "records ***relating to***" the following: communications ***in relation to*** the contribution of input data; ***all*** information used by the benchmark contributor to make each contribution; and ***all*** documentation relating to the identification and avoidance of conflicts of interest or mitigation of risks resulting from conflicts of interest.[11] (emphasis added). The proposed scope could be read to cover back-office activities related to benchmark contributions and input data, which are largely mechanical in nature, and the burden associated with keeping such records would not be offset by the minimal probative value provided by those records. Further, it is not clear if the proposed standard would impose an obligation on benchmark contributors to create and keep voice recordings of relevant communications, which would be costly and burdensome.

Second, there are issues with certain content that would be subject to the recordkeeping requirement. Specifically, the proposed requirement for benchmark contributors to retain records that record the rationale for any decision made to use expert judgment in relation to input data and the manner of the exercise of the expert judgment in relation to input data should be removed.[12] The Proposed Instrument's proposed requirement would effectively require benchmark contributors to keep records showing their analytical and decision-making process, which (i) is sensitive and proprietary, (ii) may not normally be retained or in writing, and (iii) would be extremely broad and burdensome. In short, it would not be reasonably feasible to retain records showing the rational for "any decision" made in this context.

To address these issues, the CSA should revise the Proposed Instrument in the following manner:

- Limit the scope of recordkeeping obligations imposed on benchmark contributors to relevant information (not all information) pertaining to the actual submission to the benchmark administrator (not all surrounding circumstances).

- Do not require benchmark contributors to document their analytical or decision-making process.

- Make clear that benchmark contributors and benchmark users are not required to make or retain voice records of phone calls or voicemail under the recordkeeping obligations.

If these issues are not addressed, the burdens may cause some benchmark contributors to refrain from contributing, thus reducing the stability and accuracy of the relevant benchmark.

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11 *See* Proposed NI 25-102 at Section 25(4).

12 Proposed NI 25-102 at Section 25(3).

C. A Person or Company Should Not Be Compelled to Become a Benchmark Contributor.

The Proposed Instrument contemplates that a regulator could require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark in certain circumstances.[13] Even if a person or company is required by a regulator to provide such information, the person or company would still be a benchmark contributor and would be subject to the provisions of the Proposed Instrument applicable to benchmark contributors.[14]

Given the extensive nature of the proposed obligations, a person or company should not be compelled to come under this regulatory regime. If, however, the CSA decides to maintain its position regarding compelling a person or company to be a benchmark contributor, then the person or company that is being compelled should not be subject to the full set of regulatory obligations that would otherwise apply to voluntary benchmark contributors.

D. Benchmark Administrators Should Not Have Quasi-Regulator Status.

The Working Group is concerned that the Proposed Instrument would effectively grant benchmark administrators quasi-regulator status. For example, in certain circumstances, if required by a benchmark administrator's oversight committee, a benchmark contributor would be obligated to engage a public accountant to provide a compliance report, in accordance with specifications provided by the benchmark administrator's oversight committee.[15] This is a cause for concern as benchmark administrators, which may be private entities with a profit-making motive, would have extensive access into the business operations of benchmark contributors.

As an alternative, the Working Group suggests that the extensive oversight and monitoring that benchmark contributors would be subject to by benchmark administrators could be replaced by a requirement for benchmark contributors to make authorized representations regarding compliance measures.

E. Benchmark Administrators Should Be Required to Consider Input from Benchmark Contributors.

Benchmark administrators should be required to consider input from benchmark contributors. Given the role that benchmark administrators would have in imposing certain standards on benchmark contributors, the Working Group thinks it is important for the Proposed Instrument to be modified to require benchmark administrators to consider the input from benchmark contributors prior to imposing or changing obligations on benchmark contributors.

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13 Proposed Benchmark CP at Part 6 (pg. 86).

14 Proposed Benchmark CP at Part 6 (pg. 86).

15 *See* Proposed NI 25-102 at Section 24(2)(g).

III. CONCLUSION

The Working Group appreciates this opportunity to provide input on the Proposed Instrument and respectfully requests that the comments set forth herein are considered.

If you have any questions, please contact the undersigned.

Respectfully submitted,
/s/ Alexander S. Holtan
Alexander S. Holtan
Blair Paige Scott

London Stock Exchange Group

***BY ELECTRONIC MAIL*: comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca**

June 12, 2019

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Alberta Securities Commission
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Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
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Re: Proposed National Instrument 25-102 and Proposed Companion Policy 25-102; Designated Benchmarks and Benchmark Administrators

Dear Sirs/Mesdames:

London Stock Exchange Group ("LSEG") welcomes the opportunity to respond to the Canadian Securities Administrators ("CSA" or "Administrators") proposed National Instrument and Companion Policy 25-102 ("Proposal") for the designation and regulation of benchmarks and benchmark administrators.[1] LSEG is a global financial market infrastructure group providing products and services across our capital markets, information services, post trade services and technology divisions. LSEG businesses include a regulated benchmark administrator, FTSE Russell. Benchmarks are also used by clients of our capital markets and post trade businesses.

FTSE Russell is one of the world's largest multi-asset index, analytics and data solutions providers. FTSE Canada fixed income indexes are used by investors as a measure of performance for a broad range of CAD debt markets, offering over 40 years of history. FTSE International Limited is an authorized

[1] https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20190314_25-501_commodity-futures-act.htm

Benchmark administrator, regulated by the UK Financial Conduct Authority (FCA) under the EU Benchmark Regulation ("EU BMR") Article 34.

LCH Group is an international, multi-asset class group of clearing houses, or central counterparties ("CCPs"), that manage risks of many diverse portfolios of cleared derivatives. LCH Ltd's SwapClear service has been designated as systemically important by the Bank of Canada ("BoC") and is recognized as a clearing agency by the Ontario Securities Commission ("OSC") and Autorité des marchés financiers ("AMF").[2] LCH has been pleased to serve as an Observer on the Canadian Alternative Reference Rate Working Group ("CARR").[3]

We elaborate on the following points in our responses to the questions in Annex C below:

1. **Governance –** A robust governance framework protects the integrity of benchmarks and is a key pillar of benchmark regulation. It is important that governance approaches adhere to the IOSCO Principles on Financial Benchmarks ("IOSCO Principles").[4] IOSCO is clear that an independent oversight function is required where conflicts arise due to ownership structures.

2. **Administrator Compliance Officer** – The administrator compliance officer role is important for adherence to all applicable benchmark regulations. Responsibilities for setting compensation levels should remain with the Board, and compliance with internal methodologies is more appropriately managed within the broader oversight function, in line with the IOSCO Principles.

3. **Critical Benchmarks** – If FRAND requirements are deemed necessary, they should align with similar requirements under the EU BMR.

4. **Conflicts of Interest** – We agree that administrators should establish, document, implement and enforce policies for the identification, disclosure and management of conflicts of interest as set out in the IOSCO Principles and EU BMR.

5. **Anticipated Costs and Benefits** – In light of the evolving contemplation, development and implementation of benchmark regulations in other jurisdictions, we believe it is important for outcome-based assessments of equivalence, under principles of proportionality, to be agreed and implemented to avoid unnecessary duplication and costs.

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[2] LCH Group is the leading multi-asset class and multi-national group of clearing houses, serving major international exchanges and platforms as well as a range of OTC markets. LCH Group clears a broad range of asset classes including securities, exchange-traded derivatives, foreign exchange derivatives, interest rate swaps, credit default swaps, and euro and sterling denominated bonds and repos. LCH Group Limited is majority owned by the London Stock Exchange Group.

[3] LCH is an observer in the Canadian Alternative Reference Rate Working Group (CARR), to support Canada's reform of the Rates Markets benchmarks. https://www.bankofcanada.ca/markets/canadian-alternative-reference-rate-working-group/

[4] Principles for Financial Benchmarks, IOSCO, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf (last visited May 9, 2019).

Responses to Specific Questions in Annex C

Governance

3. *Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples.*

We support the objectives of this regulation to ensure that benchmarks are produced in a transparent and reliable manner and contribute to well-functioning and stable markets and investor protection. FTSE Russell has been supportive of the IOSCO Principles and has been publishing IOSCO compliance statements since 2014. We have been closely engaged throughout the development and implementation of the EU BMR and related initiatives in other jurisdictions. We believe consistency with IOSCO Principles and, where appropriate, the EU BMR requirements should be a key consideration in the development of a Canadian regime for the designation and regulation of benchmarks and benchmark administrators.

It is important for an administrator to have appropriate governance arrangements to protect the integrity of the benchmark and to address conflicts of interest. In line with IOSCO Principles, this should include an oversight function to review and provide challenge which can include independent members. However, we do not believe it would be proportionate or appropriate to require a board of directors of which at least half must be independent. This is not line with IOSCO Principles and EU BMR which focus on the role and responsibilities of the oversight function. We note that EU BMR requires two independent directors on the oversight committee only for critical benchmarks.

…

Administrator Compliance Officer

5. *Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples*.

We agree that an administrator should have in place an accountability framework that provides evidence of compliance with relevant regulations. EU BMR requires that for critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and EU BMR at least annually. For non-critical benchmarks, we suggest that the internal accountability framework and control functions should monitor the administrator's compliance with benchmark methodologies. The role of the compliance officer should include ensuring that the first line of defense and business internal controls on methodology compliance are appropriate and are followed.

6. *Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed NI 25-102), other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.*

Remuneration should be set by the administrator's Board and Remuneration Committee in line with best practice. We believe that compliance can have a role in the overall discussion on how compensation can be a tool to manage conduct and conflicts of interest within the organization. IOSCO is clear that an administrator's conflicts of interest framework should ensure that staff who participate in the benchmark determination are not directly or indirectly rewarded or incentivised by the levels of the benchmark.

Critical Benchmarks

7. *Under Proposed NI 25-102, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the designated critical benchmark are provided to all benchmark users on a fair, reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.*

Under the Proposal, an administrator of a designated critical benchmark must take reasonable steps to ensure that this benchmark is provided on a FRAND basis, which is in line with EU BMR approach. Although the scope of the Proposal is limited, we believe as a general policy matter it would be disproportionate to extend FRAND requirements to non-critical designated benchmarks.

8. *Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision.*

From the perspective of an index provider and working with benchmark users , we would support the inclusion of a requirement for critical benchmark contributors to continue to provide data for a period of time following a decision to cease contributions. We propose including a fixed time period with review clauses (rather than leaving it open ended) to give flexibility for adjustment. We note that the EU BMR allows authorities to compel contributions to a critical benchmarks for up to 24 months.

Conflicts of Interest

9. *Is the requirement in subsection 11(3) of Proposed NI 25-102 appropriate, particularly as it relates to a risk of a significant conflict of interest? Please explain with concrete examples.*

We agree that administrators should establish, document, implement and enforce policies for the identification, disclosure and management of conflicts of interest as set out in this regulation, IOSCO Principles and EU BMR. We would recommend clarification regarding a "significant conflict of interest" and "promptly publish". We note that IOSCO Principles set out that administrators should "disclose any material conflicts of interest to their users and any relevant Regulatory Authority, if any."

…

Anticipated Costs and Benefits

12. *The Notice sets out the anticipated costs and benefits of Proposed NI 25-102 (in Ontario, additional detail is provided in Annex D). Do you believe the costs and benefits of Proposed NI 25-102 have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain with concrete examples*.

We believe that consistency with the IOSCO Principles and EU BMR requirements will help to ensure additional significant costs are not incurred by those currently in compliance with these requirements. LSEG has broadly supported harmonization of regulatory requirements across jurisdictions to promote consistency for market participants. In light of the evolving contemplation, development and implementation of benchmark regulations in other jurisdictions outside of Canada and the EU, we believe it is important for outcome-based assessments of equivalence, under principles of proportionality, to be agreed at bilateral and multi-lateral levels to avoid duplicative and overlapping requirements on a global basis.

* * *

LSEG is grateful for the opportunity to comment on the Proposal. Please do not hesitate to contact us regarding any questions raised by this submission or to discuss our comments in greater detail.

Yours sincerely,

Jonathan Jachym

Global Head of Regulatory Strategy
Head of Government Relations, Americas
London Stock Exchange Group

cc: Paul Bowes, Country Head, FTSE Russell Canada
John Horkan, COO and Head of North America, LCH Group

IIACACCVM
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Wednesday, June 12, 2019

Via Email

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Ontario Securities Commission
Autorité des marchés financiers
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Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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RE: CSA Proposed NI 25-102 - Designated Benchmarks and Benchmark Administrators

The Investment Industry Association of Canada ("IIAC" or "Association") appreciates the opportunity to provide comments on the Canadian Securities Administrators (CSA) Proposed National Instrument 25-102 - *Designated Benchmarks and Benchmark Administrators* (the Proposal) that will provide guidelines for benchmarks, administrators of these benchmarks and for users and contributors of these benchmarks.

A working group comprised of IIAC Members active in fixed income markets assisted in our review of the Proposal and the drafting of this response.

Position Summary and IIAC Recommendations

General Comments

We are generally supportive of the Proposal recognizing the importance of having financial benchmarks that are viewed as being free of conflicts of interest and that accurately capture arm's length market rates. While the Proposal largely draws from the European Union's (EU) benchmark regulations we believe that opportunities exist to better calibrate the Proposal for the uniqueness of the Canadian market without detracting from the CSA's objective of having Canada's framework recognized as "equivalent" under the EU's "third country regime" benchmark regulation.

Benchmarks Covered by the Proposal

The CSA only plans to designate CDOR and CORRA, and its administrator Refinitiv Benchmark Services Limited (RBSL) under the Proposal. One of the specific questions raised by the CSA is whether there are any benchmarks other than CDOR and CORRA, or benchmark administrators other than RBSL, that should be designated under the Proposal. We believe that only benchmarks that are material to the functioning of Canada's financial markets, and the bodies that administer them, be designated under the Proposal. The CSA has quantified the importance of CDOR and CORRA by providing statistics on the notional value of financial instruments pegged to these two benchmarks. In our view, no current benchmarks other than CDOR and CORRA warrant designation.

The CSA should, however, provide some clarification on the rules for adding or removing a benchmark, and its administrator, from NI 25-102. For example, will measures other than notional value of financial contracts outstanding be factored into the CSA decision?

IIAC Members also point out that the structure of both CDOR and CORRA should be taken into consideration regarding the application of Proposal. Specifically, CORRA is based on transaction data from trades in domestic repo markets. CDOR, unlike other interbank offered rates, is a committed rate at which benchmark contributors lend funds to corporate borrows with existing credit facilities. The reliance of data anchored by observable transactions (CORRA), or committed quotes (CDOR), are recognized by IOSCO as being of higher quality than benchmarks relying on indicative quotes[1].

[1] Principles for Financial Benchmarks Final Report, IOSCO, July 2013

The structure of CDOR and CORRA, therefore, could warrant a less onerous application of the Proposal on contributors, administrator and oversight committee.

Record Retention

IIAC Members expressed concern around the Proposal's requirement for benchmark contributors to retain records for 7 years. This is considerably longer than the requirement under the EU BMR (3-5 years). The CSA fails to provide its rationale for the 7-year period. Given the structure of CDOR and CORRA outlined previously, we believe it appropriate to reduce the record retention period to align with the EU BMR.

Expert Judgement and Physical Separation of data Contributors

IIAC Members also request clarification around what constitutes expert judgement (Section 25(3)(b) of the Proposal) and when expert judgement should be used. With respect to CDOR, our Members view is that expert judgement can based on several factors including; i) Market data - T-Bill rates and OIS rates ii) economic factors and iii) executional data iv) dealers' inventories and v) other factors.

IIAC also question's the Proposals requirement for the physical separation of individuals responsible for the benchmark rate submission and that such individuals be located in an area that is "secure". In theory we can understand the rationale behind this CSA proposal but it in practice could be difficult and work contrary to fostering expert judgement. Individuals responsible for the contribution of benchmarks have a need for market views that can feed into the expert judgement of the contributor. The CSA should also understand that the individuals responsible for the rate submission are also carrying out many other activities on behalf of their firm which may require them to be physically located near select peers or departmental functions. Individuals on the trading floor, therefore, should not be precluded from having responsibility for submitting their firm's contribution to the benchmark.

Withdraw of a Benchmark

The IIAC also recommends additional details surrounding the mechanism of how a benchmark could be removed from designation. For example, how much notice would be given to market participants and would rate contributors and administrators be given a reasonable amount to of time to analyze the withdraw of a benchmark and submit comments.

External Assurance Reports

Our Members also commented that the Proposal's requirement for an external assurance reports (Section 39) may be onerous, costly and adds little value over what can be done via the contributors' internal audit functions. We recommend that the requirement for an external audit be modified to only require an external audit when the Oversight Committee of the Administrators determines there is a need for one.

We also wanted clarification on the authority an administrator has to make the determination that a contributor is not adhering to the code of conduct required on benchmark submissions. For example, does the administrator have unilateral authority to make this determination.

Closing

We respectfully request that the CSA consider the recommendations and requests for clarification made in this comment letter as our members have a vested interest to fully understand and be able to comply with the proposed changes in benchmark administration and regulation.

Yours Sincerely,

Todd Evans
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April 30, 2019

BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
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Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

Re: Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy (collectively, the "Proposed Instrument")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to provide general comments on the Proposed Instrument that would regulate benchmarks, their administrators, contributors and certain benchmark users.

[1] The CAC is an advocacy council for CFA Societies Canada, representing over 17,000 Canadian charterholders, of the 12 Member Societies across Canada. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

[2] CFA Institute is a global, not-for-profit professional association of over 166,000 investment analysts, advisers, portfolio managers, and other investment professionals in 163 markets, of whom more than 159,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 152 member societies in 74 markets. For more information, visit www.cfainstitute.org.

We are generally supportive of the provisions contained in the Proposed National Instrument, mainly given the prior instances of benchmark manipulation cited in the CSA Notice and Request for Comment. We found the statistics cited with respect to the notional value of financial instruments that are derived from the two domestically important benchmarks, CDOR and CORRA, particularly impactful. We are also supportive of this iteration of benchmark regulation because the stated intention of the CSA is in part to have the EU recognize the Canadian regime as being equivalent under the EU BMR, which would allow EU market participants to continue to use any designated Canadian benchmarks. Given the global nature of our markets, it is important that Canadian benchmarks not be subject to a myriad of overlapping global rules and that any rules conform to the IOSCO Financial Benchmark Principles.

Generally, the CAC favours the use of benchmarks that are free from conflicts of interest and are based off of inputs where prices are determined from liquid, transparent and efficient markets. This added transparency and governance will also serve to foster investor confidence by improving the reliability of benchmark figures.

As CFTC Chairman Giancarlo recently explained:

> "The fact is that there is no longer a liquid market in unsecured inter-bank term lending underpinning LIBOR. Based on statistics shared by the Federal Reserve Board, there are less than six to seven transactions per day at market rates to support one-and three-month LIBOR across all the submitting banks. Longer maturities have fewer than these. For three-month LIBOR - the standard reference rate in the derivatives markets - on most days, there is less than $1 billion of borrowings among the largest banks; on many less days, we see less than $100 million. For one-month LIBOR, the median daily number of actual borrowing transactions which are observable in the marketplace in Q2 2018 was five."[3]

We think it is important to ensure that contributions to a benchmark do not diminish its quality, especially considering that a benchmark based on insufficient sample sizes or that no longer appropriately represents its underlying market may set the value in a vast array of financial instruments by a large multiple.

One of the IOSCO principles related to benchmark quality deals with benchmark design, and indicates that the benchmark should take into account, amongst a number of other factors, the size and liquidity of the applicable market, as well as the relative size of the underlying market in relation to the volume of trading in the market that references the applicable benchmark. The contributions to the benchmark should also be based on values formed by forces of supply and demand, and "be anchored by observable

[3] Remarks of Chairman J. Christopher Giancarlo, Nov. 29, 2018, before 2018 Financial Stability Conference, Federal Reserve Bank of Cleveland, Office of Financial Research, Washington, D.C. online: https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo61#_ftn5

transactions entered into at arm's length between buyers and sellers in the market for the [Interest] the [Benchmark] measures in order for it to function as a credible indicator of prices, rates, indices or values". [4]

The CFA Institute Global Investment Performance Standards (GIPS®)[5], are global recognized standards for calculating and presenting investment performance. Global performance standards, which rely in large part on the integrity of input data, require investment advisers to measure their performance in such as a way as to enable investors to compare performance among firms and ensure that the output is presented fairly. By analogy, global standards for contributing and calculating benchmarks can also help provide assurance to users of benchmarks of their comparability and quality.

We recognize that while the CSA currently intends to designate only CDOR and CORRA as critical benchmarks, the regime has to be flexible enough to accommodate future designated benchmarks. We would favour further research to identify alternatives that are consistent with the IOSCO principles. For example, perhaps future regulation should apply more broadly to include the underlying benchmarks used in many ETFs and other structured products. To the extent that there is any information that can be publicly disclosed to the market about benchmarks that may be subject to designation, it would help users prepare their documents and processes well in advance of any such designation and help prevent commercial impediments to alternative benchmarks.

We agree that it is important that the governance framework for administrators include robust policies designed to mitigate conflicts of interest, which are pronounced when a benchmark contributor, administrator and user are the same entity or within the same corporate family. We are of the view that all designated benchmarks be required to obtain an assurance report from a qualified public accountant on the administrator's compliance with key sections of the Proposed National Instrument, at least once every 12 months.

With respect to the proposed potential models for regulatory oversight of benchmarks and their administrators, our preference would be to utilize a model which replicates the approach used for exchanges and other marketplaces, or failing that, the passport model in a manner that mirrors the model currently successfully being used by DROs and CROs. We are concerned that the use of a non-coordinated review model could result in an unworkable patchwork of unharmonized regulation, where some jurisdictions enact rules that would satisfy the EU BMR and others might not.

As a further general comment, in addition to regulating certain benchmarks and their administrators, additional consideration should be given to more oversight on the

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[4] "Principles for Financial Benchmarks" *The International Organization of Securities Commissions* (IOSCO) (July 2013), online: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf

[5] "Global Investment Performance Standards (GIPS)," *CFA Institute* (December 2014), online: https://www.cfainstitute.org/-/media/documents/code/gips/gips-standards-2010.ashx

use of benchmarks by investors, even for benchmarks which are not ultimately designated benchmarks. There have been many articles written on the increasing use of esoteric benchmarks by investors, the composition of which are unlikely to be fully understood by users[6]. Even if those benchmarks are not of systemic importance to the Canadian capital markets, it may be worth further research as to whether additional investor education or disclosure by benchmarks and products derived from benchmark references are warranted.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for Canadian CFA Institute Societies*

The Canadian Advocacy Council for Canadian CFA Institute Societies

[6] David Allison, "Exotic Indexes: Built to Sell or Built to Last?" (3 April 2019), *Continuing Education for CFA Institute Members* (blog), online: https://blogs.cfainstitute.org/investor/2019/04/03/indexed-annuities-the-exotic-side-of-indexing/

April 22, 2019

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Via email

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Alberta Securities Commission
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Manitoba Securities Commission
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Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
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Superintendent of Securities, Yukon
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Dear Sirs/Mesdames:

Re: Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy (collectively, the "Proposed Instrument")

RBC Global Asset Management Inc. ("RBC GAM", or "we") is a wholly-owned subsidiary of Royal Bank of Canada and provides a broad range of investment management services and solutions to investors across Canada, including through a variety of mutual funds. As at January 31, 2019, RBC Global Asset Management had over $316.5 billion in assets under management.

We are generally supportive of the provisions contained in the Proposed Instrument. Demand for benchmark-linked investment products has grown tremendously in recent years. Today, hundreds of trillions of dollars have been invested in products tied to interest rate and foreign exchange rate indexes. In late 2018, it was estimated that more than $200 trillion had been invested in US dollar LIBOR-linked investment products alone, with 95% of that being in various types of derivatives (Remarks of Hon. Christopher Giancarlo, before Financial Stability Conference, Federal Reserve Bank of Cleveland, Office of Financial Research, Washington, D.C., November 29, 2018).

We think that regulators should be prepared to address data integrity especially when benchmark inputs come from the parties who may have a financial interest linked to how the benchmarks perform. Conflicts of interest in benchmark creation and administration can be substantial. Outsourcing benchmark administration to a regulated third-party with appropriate disclosures in our view reduces some of those risks. Transparent inputs and methodologies should result in less risk than those that are not and ensure that benchmark inputs and calculation methodologies are readily auditable.

RBC GAM favours the use of benchmarks that are free from conflicts of interest and are based on inputs where prices are captured from liquid, transparent and efficient markets.

We also think it is important to ensure that contributions to a benchmark do not diminish its quality, especially considering that a benchmark based on insufficient sample sizes or that no longer appropriately represents its underlying market may set the value in a vast array of financial instruments.

We encourage regulators in Canada to continue to engage with market participants and their European counterparts to develop a comprehensive regulatory regime that is focused on benchmark governance, quality, methodology and accountability. Where appropriate, regulators should consider adopting clear minimum standards for transparency around, and governance of, the administration of benchmarks. We agree with the CSA's intention to implement a comprehensive regime for the designation and regulation of benchmarks and include specific requirements for designated critical benchmarks, and the designation and regulation of persons or companies that administer such benchmarks. Defining CDOR and CORRA as designated benchmarks (each expected to be designated as a critical benchmark and an interest rate benchmark) is a step in the right direction. We hope that the regime is flexible enough to accommodate future designated benchmarks. To the extent that there is information that can be publicly disclosed to the market about benchmarks that may be subject to designation, it would assist users preparing their documents and processes well in advance of any such designation and help prevent commercial impediments to the selection of alternative benchmarks. We also suggest that the definition of "Benchmark Contributor" be included in the Proposed Instrument as it is currently not provided.

In addition, consideration should be given to having an annual independent audit of compliance of benchmark administrators with the administrator's benchmark methodology (similar to GIPS verification which applies to investment managers). Finally, the Proposed Instrument introduces requirements for the benchmark contributor to notify the administrator if it decides to cease contributing. The questions also ask if benchmark contributors should be required to provide data for a period of time. We are concerned that these requirements may deter firms from being or becoming benchmark contributors.

We thank you for the opportunity to provide these comments. If you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,

Daniel E. Chornous, CFA
Chief Investment Officer

cc. Larry Neilsen, Chief Compliance Officer, RBC Global Asset Management Inc.
Nicole C. Lee, Assistant General Counsel, RBC Global Asset Management Inc.
Milos Vukovic, V.P., Investment Policy, RBC Global Asset Management Inc.