

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.bsc.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

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>.

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.

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

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.

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

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

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

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

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>.

- 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
- 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

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

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>.

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.

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:

- 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

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>.

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>.

- 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.

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

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.

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,
 - (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.

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.

- **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).

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

¹⁹Note 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.

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

- 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

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*.

- 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 uncertainty²¹ 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.

In Ontario, Annex D sets out the OSC's more detailed description of the anticipated costs and benefits of Proposed NI 25-102.

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:

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.

- 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.

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.

Local Matters

Where applicable, Annex D provides additional information required by the local securities legislation.

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
C.P. 246, Place Victoria
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
- Annex D Local Matters (where applicable)

Questions

Please refer your questions to any of the following:

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Ontario Securities Commission
416-593-8079
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ANNEX A

**PROPOSED NATIONAL INSTRUMENT 25-102 *DESIGNATED BENCHMARKS AND
BENCHMARK ADMINISTRATORS***

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 policies 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 to 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

**PROPOSED COMPANION POLICY 25-102 *DESIGNATED BENCHMARKS AND
BENCHMARK ADMINISTRATORS***

COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

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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 these 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 benchmark 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.