CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy

April 29, 2021

Introduction

The following members of the Canadian Securities Administrators (the **CSA** or **we**) are adopting Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102**) and Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **CP**):

- British Columbia Securities Commission
- Alberta Securities Commission
- Financial and Consumer Affairs Authority of Saskatchewan
- Ontario Securities Commission
- Autorité des marchés financiers
- Financial and Consumer Services Commission, New Brunswick
- Nova Scotia Securities Commission

We expect that as the other CSA members introduce and enact the required amendments to their securities legislation that give them the authority to regulate benchmarks and benchmark administrators, benchmark contributors and benchmark users (including authority to designate benchmarks and benchmark administrators), they will adopt MI 25-102.

The text of MI 25-102 and the CP is contained in Annex C and Annex D, respectively, of this Notice and will also be available on websites of applicable CSA members, including:

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

In some jurisdictions, Ministerial approvals are required for the implementation of MI 25-102 and the CP. Subject to obtaining all necessary approvals, MI 25-102 will come into force and the CP will come into effect on July 13, 2021.

Commodity Benchmarks

Today, we are also publishing a separate notice of proposed amendments to MI 25-102 and the CP regarding commodity benchmarks. The notice of proposed amendments will also be available on the websites of the CSA members listed above and the comment period will end on July 28, 2021.

Substance and Purpose

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 adopt a securities regulatory regime for benchmarks and their administrators, contributors and certain of their users.

MI 25-102 will 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,

- 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 who are already regulated in some capacity under Canadian securities legislation (**benchmark users** or **users**).

Background

On March 14, 2019, the CSA published a Notice and Request for Comment (the **March 2019 Notice**) proposing MI 25-102 and the CP.[1] As detailed in the March 2019 Notice, 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. Following the LIBOR controversies:

- the International Organization of Securities Commissions (**IOSCO**) published the *Principles for Oil Price Reporting Agencies*[2] and the *Principles for Financial Benchmarks*[3] (together, the **IOSCO Principles**);

- Canadian financial sector regulators pursued certain measures to reduce risk, such as:

[1] Available online at https://fcnb.ca/sites/default/files/2020-02/25-102-CSAN-2019-03-14-E.pdf.
[2] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf.
[3] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.

- encouraging contributors to the Canadian Dollar Offered Rate (**CDOR**) to develop a voluntary code of conduct that addresses some of the conflicts of interest issues that could lead to manipulation of submission-based benchmarks, and

- arranging for Refinitiv Benchmark Services (UK) Limited (**RBSL**) to agree to follow certain procedures to strengthen the integrity of CDOR and the Canadian Overnight Repo Rate Average (**CORRA**); and

- the European Union (**EU**) adopted *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (**EU BMR**).[4]

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

- there is a need to regulate CDOR and its administrator (i.e., RBSL) in light of the significant reliance placed by users and other market participants on CDOR;

- there is a need for the ability to regulate benchmark administrators and benchmark contributors due to the risk of benchmark-related misconduct that could adversely impact:[5]

  - 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;

- such a regime would ensure the continuity of a viable designated critical benchmark by requiring certain benchmark contributors to provide information in relation to the designated critical benchmark for use by the designated benchmark administrator; and

[4] Available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN.
[5] See, for example, the enforcement actions taken in the UK alone: https://www.fca.org.uk/markets/benchmarks/enforcement.

- such a regime is necessary to reflect international developments in the regulation of benchmarks, including the IOSCO Principles and the fact that certain other major jurisdictions have either introduced benchmark regulations or taken measures to regulate key benchmarks or their methodologies.[6]

As discussed in more detail below:

- In Canada, RBSL is currently the administrator of a key domestically important benchmark, CDOR. Currently, the intention of the CSA is to designate only RBSL as a benchmark administrator, and only CDOR as a designated critical benchmark and a designated interest rate benchmark, under MI 25-102.[7]

- CSA staff no longer intend to recommend that CORRA be designated as a critical benchmark and an interest rate benchmark at this time as the Bank of Canada is its current benchmark administrator.

- The CSA may designate other administrators and their associated benchmarks in the future on public interest grounds.

- The CSA is seeking to have the EU recognize MI 25-102 as "equivalent" under the EU BMR in the event that other Canadian benchmarks would like the benefit of a Canadian domestic regime that has been recognized as equivalent by the EU.

CDOR

Currently, the intention of the CSA is to designate only RBSL as an administrator, and only CDOR as a designated critical benchmark and a designated interest rate benchmark, under MI 25-102. This intention is based on the significant reliance placed by users and other market participants on CDOR, which is used in various financial instruments with a notional value of at least $10.9 trillion dollars.[8] This figure is approximately five times larger than the gross domestic product for Canada in 2019.[9]

For CDOR, we believe that the following risks should be minimized:

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

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[6] 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* (December 18, 2019), online: https://www.fsb.org/wp-content/uploads/P181219.pdf.

[7] 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. Additional information on CDOR can be found at: https://www.refinitiv.com/en/financial-data/financial-benchmarks/interest-rate-benchmarks/canadian-interest-rates.

[8] 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-financial-markets-size-scope-september-17-2018.pdf.

[9] See, for example: https://www.international.gc.ca/economist-economiste/statistics-statistiques/annual_ec_indicators.aspx?lang=eng.

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

If one of these events were to occur, the loss of confidence that Canadian capital markets would suffer and the costs that would be borne by Canadian financial markets (including investors) could be significant.

CORRA

In the March 2019 Notice, we indicated that the CSA also intended to designate CORRA as a critical benchmark and an interest rate benchmark. At the time of the March 2019 Notice, RBSL was the administrator of CORRA. Subsequently, on July 16, 2019, the Bank of Canada announced that it intended to become the administrator of CORRA when enhancements to CORRA were implemented in 2020. Those enhancements to CORRA have since taken effect and the Bank of Canada is now the administrator of CORRA.

Since central banks are exempted from the EU BMR and assuming that the Bank of Canada will continue to comply with the IOSCO Principles for Financial Benchmarks in respect of CORRA, at this time CSA staff do not expect to recommend that the Bank of Canada be designated as a benchmark administrator or that CORRA be designated as a designated benchmark.

However, given the expected importance of CORRA to capital markets in Canada, there may be possible situations in the future where CSA staff may recommend that CORRA be designated as a designated benchmark (and if relevant, that the Bank of Canada be designated as a benchmark administrator) for specific purposes. For example, if in the future CSA staff had concerns that a firm was directly or indirectly providing incomplete or inaccurate transaction data for purposes of CORRA and the firm was not otherwise subject to appropriate CSA regulation, staff of a securities regulatory authority may want to conduct a compliance review of the firm. Under applicable securities legislation in certain CSA jurisdictions, the securities regulatory authority in a jurisdiction may decide to designate CORRA as a designated benchmark (and the Bank of Canada as its designated benchmark administrator) for the purpose of allowing staff of the securities regulatory authority to rely on the provisions in its securities legislation for conducting compliance reviews of a "market participant" (which includes, in certain jurisdictions, 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 designated benchmark).

As a second example, securities legislation in applicable jurisdictions provides that the securities regulatory authority may, in response to an application by the regulator, or, in Alberta and 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. If in the future the Bank of Canada encountered problems in obtaining transaction data from firms for purposes of determining CORRA on a daily basis, the securities regulatory authority in a jurisdiction may decide to designate CORRA as a designated benchmark (and the Bank of Canada as its designated benchmark administrator) for the purpose of allowing the securities regulatory authority in the jurisdiction to make an order requiring certain market participants to provide transaction data to the Bank of Canada for the purpose of determining CORRA.

There may be other situations or specific purposes in the future where CSA staff may recommend that CORRA be designated as a designated benchmark and that the Bank of Canada be designated as a benchmark administrator.

If CORRA were designated as a designated benchmark for a purpose, the Bank of Canada could, if necessary, be granted exemptive relief from having to comply with certain or all requirements in MI 25-102 applicable to a designated benchmark administrator. In the latter case, only the requirements in MI 25-102 applicable to certain benchmark contributors to CORRA and benchmark users of CORRA might apply (unless additional exemptive relief was granted).

Despite the current intention to no longer designate CORRA, the policy rationale for MI 25-102 continue. In particular,

- In the wake of the LIBOR scandal, there is still a need to:
    - regulate RBSL and CDOR, and
    - have the ability to regulate other benchmarks or categories of benchmarks in the future on public interest grounds, as discussed in more detail below.

- Given the EU equivalence deadline of January 1, 2024, there is a need to have MI 25-102 recognized as "equivalent" by the EU under the EU BMR in the event that other Canadian benchmarks would like the benefit of a Canadian domestic regime that has been recognized as equivalent by the EU.

Benchmarks other than CDOR and CORRA

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 a 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, 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 also refer to the separate notice of proposed amendments to MI 25-102 and the CP regarding commodity benchmarks for circumstances in which a CSA jurisdiction may designate commodity benchmarks in the future.

EU Equivalence

Most of the provisions of the EU BMR came into effect on January 1, 2018. The EU BMR 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, 2024. In other words, a benchmark produced outside of the EU cannot be used by EU supervised entities after December 31, 2023, 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.[10]

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 an EU member state in accordance with the requirements set out in the EU BMR. This process is not relevant for purposes of MI 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

[10] ESMA's Benchmarks Register can be found online at https://www.esma.europa.eu/databases-library/registers-and-data.

with the requirements set out in the EU BMR but is not relevant for purposes of MI 25-102.

- *Equivalence* – where an equivalence 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 equivalence 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 equivalence 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 equivalence 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 equivalence 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.

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 MI 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, prior to Brexit, RBSL secured such authorization from the United Kingdom's (**UK**) Financial Conduct Authority), 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 the EU equivalence deadline (i.e., January 1, 2024) 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) 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.

Therefore, the CSA is seeking a decision that would recognize MI 25-102 as equivalent for the purposes of EU BMR.

UK Equivalence

In addition, in connection with Brexit, the UK has adopted a UK version of the EU BMR (the **UK BMR**). Consequently, the CSA is also seeking a UK equivalence decision under the UK BMR. 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 MI 25-102 after a UK equivalence deadline of January 1, 2026 (which is later than the EU equivalence deadline). We expect that a positive EU equivalence decision would lead to a positive UK equivalence decision.

Summary of Changes

Annex A includes a summary of notable changes made to the version of MI 25-102 published for comment in the March 2019 Notice (**Proposed NI 25-102**). As these changes are not material, we are not publishing the changes for a further comment period.

In response to comments, we also made various changes to the version of the CP published for comment in the March 2019 Notice (the **Proposed CP**) in order to provide additional guidance.

Summary of Written Comments Received by the CSA

The comment period for the March 2019 Notice ended on June 12, 2019. We received 13 comment letters. We have considered the comments received and thank all of the commenters for their input. The names of the commenters and a summary of their comments, together with our responses, are contained in Annex B. The comment letters can be viewed on the websites of each of the:

- Alberta Securities Commission at www.albertasecurities.com,
- Autorité des marchés financiers at www.lautorite.qc.ca, and
- Ontario Securities Commission at www.osc.gov.on.ca.

Regulatory Model for Designation and Ongoing Regulatory Oversight of Benchmarks and Benchmark Administrators

In the March 2019 Notice, we noted that we were considering four options for processing the designation and regulation of benchmarks and benchmark administrators and for ongoing regulatory oversight. We have decided to use a regulatory model similar to that used for exchanges, self-regulatory organizations, clearing houses, trade repositories and matching services utilities.

To establish this regulatory model, we intend to enter into a memorandum of understanding (**MoU**) that sets out a lead/co-lead authority model. Under this model, each designated benchmark and benchmark administrator will have one or more CSA members that function as its lead authority or co-lead authorities and are primarily responsible for its oversight. Each designated benchmark and benchmark administrator will also have one or more "reliant authorities", which are CSA members that are also engaged in its oversight but rely on the lead authority or co-lead authorities for primary oversight. The MoU will provide that where there are co-lead authorities, the number of co-lead authorities should be limited to two or three in order to ensure the efficiency and effectiveness of oversight.

This regulatory model will allow for the effective oversight of designated benchmarks and benchmark administrators while limiting the number of CSA members by which they are designated and with which they will interact.

Subject to required approvals, the MoU is expected to be published on May 6, 2021 and come into effect on July 5, 2021.

For CDOR and RBSL, the Ontario Securities Commission and Autorité des marchés financiers will be co-lead authorities.

Local Matters

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

Contents of Annexes

This Notice includes the following annexes:

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Annex B	Summary of Comments and CSA Responses
Annex C	Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*
Annex D	Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators*

Questions

Please refer your questions to any of the following:

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ANNEX A

SUMMARY OF NOTABLE CHANGES TO PROPOSED NI 25-102

Section Reference in Proposed NI 25-102	Section Reference in MI 25-102	Summary of Change
1(1) – "limited assurance report on compliance" and "reasonable assurance report on compliance"	Same as Proposed NI 25-102	Revised definitions to include references to International Standards on Assurance Engagements so that assurance reports can be prepared in accordance with either Canadian Standards on Assurance Engagements or International Standards on Assurance Engagements.
5 [*Board of directors*]	n/a	Removed section 5 in response to comments on the independence requirements for the board of directors of a designated benchmark administrator.
7(6)	6(6) and 10(1)(d)	In response to comments, clarified the restrictions on payments or other financial incentives provided by a designated benchmark administrator to its compliance officer or any DBA individual that reports directly to that officer. A corresponding requirement was added to the conflict of interest policies and procedures requirement in paragraph 10(1)(d).
8(3)	n/a	In response to comments, removed the requirement for the oversight committee of a designated benchmark administrator to assess decisions of the board of directors with regards to compliance with securities legislation.
12(1) and (3)	11(1) and (3)	Revised the requirements regarding reporting of contraventions to also require reports for the provision or attempted provision of false or misleading information in respect of a designated benchmark.
n/a	18(3)	In response to comments, added subsection 18(3) to accommodate situations where it may not be possible for a designated benchmark administrator to 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.
n/a	20(1)	Added a requirement for a designated benchmark administrator to provide reasonable notice if it decides to cease providing a benchmark.

25(4)(a) and 40(4)(d)	24(4)(a) and 39(4)(d)	In response to comments, added language to clarify that records of telephone conversations are required to be kept by benchmark contributors.
n/a	30(2)	Added requirement for a benchmark contributor to a designated critical benchmark to continue to provide input data for up to 6 months after notifying the benchmark administrator that it will cease contributing input data. We also added guidance in the CP, including that we expect the period for which a benchmark contributor must continue contributing input data will be as short as practical while ensuring that the designated critical benchmark still accurately represents that part of the market or economy the designated benchmark is intended to represent.
32(2)(c) and 36(2)(c)	n/a	In response to comments, removed restriction that would have deemed a member of the oversight committee of a designated critical benchmark or a designated interest rate benchmark to no longer be independent after 5 years of service.
35 [*Accurate and sufficient data*]	34 [*Order of priority of input data*]	In response to comments, removed specified order to priority of input data for designated interest rate benchmarks. We also added corresponding guidance in the CP.
40(3)(d)	39(3)(d)	Revised a requirement for disciplinary procedures so it would apply to the provision or attempted provision of false or misleading information in respect of a designated interest rate benchmark.

ANNEX B

SUMMARY OF COMMENTS AND CSA RESPONSES

A. List of Commenters

1. The Canadian Advocacy Council for Canadian CFA Institute Societies
2. RBC Global Asset Management Inc.
3. Neo Exchange Inc.
4. Index Industry Association
5. S&P Dow Jones Indices LLC
6. International Swaps and Derivatives Association, Inc.
7. Investment Industry Association of Canada
8. The Canadian Commercial Energy Working Group
9. Refinitiv Benchmark Services (UK) Limited (**RBSL**)
10. Canadian Bankers Association
11. TMX Group Limited
12. London Stock Exchange Group
13. MSCI Inc.

B. Defined Terms

In this Annex,

"CP" means the final version of Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* published with the Notice.

"March 2019 Notice" means the CSA notice and request for comment dated March 14, 2019 relating to Proposed MI 25-102.

"MI 25-102" means the final version of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* published with the Notice.

"Notice" means this notice relating to MI 25-102 and CP.
"Proposed MI 25-102" means the version of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* published for comment on March 14, 2019 as National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*.

Other terms defined in the Notice have the same meaning if used in this Annex.

C. Proposed Multilateral Instrument 25-102 and Companion Policy 25-102

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
General comments			
1	General support for the proposed rule	Several commenters expressed their general support of Proposed MI 25-102. Two of these commenters noted that they favour the use of benchmarks that are free from conflicts of interest and are based on inputs where prices are captured from liquid transparent and efficient markets. One of these commenters specifically agreed with the CSA's intention to implement a comprehensive regime for the designation and regulation of benchmarks, including specific requirements for designated critical benchmarks, and the designation and regulation of persons or companies that regulate such benchmarks. Three other commenters agreed with the calibrated approach taken by the CSA in focusing on a limited number of benchmarks, which is consistent with most jurisdictions globally. These commenters also submitted	We thank the commenters for their comments in support of Proposed MI 25-102. We note that MI 25-102 is, in part, based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider MI 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. As previously indicated, currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation. We will use our regulatory discretion to only designate benchmarks, which may include Canadian benchmarks that are regulated in a foreign jurisdiction, where such designation is in the public interest. We do understand that imposing inappropriate or unnecessarily burdensome requirement is

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		that consistency with the IOSCO Principles is important as they are the global standard. One commenter expressed that it understood the CSA's motivation for Proposed MI 25-102, but it had practical concerns regarding how it would apply in the global context without causing uncertainty, inefficiencies, overlap and potential conflicts with corresponding regulations in other jurisdictions. One commenter submitted that even worse than not regulating financial benchmarks in Canada would be to over-regulate them, to the point that the regulation itself would contribute to exacerbating the potential harms that the regulation is attempting to attenuate. The commenter encouraged the CSA to review its proposal and align the obligations to be imposed on administrators, contributors and users with the IOSCO Principles.	problematic and will consider regulatory burden before making any decision to designate a benchmark. Consequently, we don't believe that MI 25-102 will result in over-regulation of benchmarks in Canada. While we have revised certain provisions in Proposed MI 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, to comply with MI 25-102.
2	Proposed designation of RBSL, CDOR and CORRA	One commenter was of the view that the structure of CDOR and CORRA could warrant a less onerous application of Proposed MI 25-102 on contributors, administrator and oversight committee. In support of this, the commenter noted that CORRA is based on transaction data from trades in domestic repo markets and CDOR is a committed rate at which benchmark contributors lend funds to corporate borrowers with existing credit facilities. The commenter observed that IOSCO has recognized that benchmarks anchored by	***Designation approach*** We thank the commenters for their comments in support of the "designation" approach to benchmark regulation in Proposed MI 25-102. ***CORRA*** Certain provisions in MI 25-102 would not apply to benchmarks, like CORRA, that are determined using

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		observable transactions (e.g., CORRA) or committed quotes (e.g., CDOR) are of higher quality than benchmarks relying on indicative quotes. Another commenter also submitted that benchmarks based on committed rates (e.g., CDOR) should be subject to a less stringent application of the proposed rules. Three commenters expressed their support for the designation of CDOR and CORRA as benchmarks. Two of these commenters also noted their support of the CSA's approach of naming the benchmarks and administrator it intended to designate as it gives the market greater certainty than a "catch and release" approach that would assume all potential benchmarks and administrators are in scope unless otherwise explicitly stated.	input data that is reasonably available to the administrator. However, as noted in the Notice, we don't currently intend to designate CORRA as a designated benchmark since the Bank of Canada is now acting as the benchmark administrator of CORRA. ***CDOR*** Certain provisions in MI 25-102 would apply to benchmarks, like CDOR, that are determined using input data from contributors that is not reasonably available to the administrator. • Such contributions of input data may involve the use of expert judgment and should therefore be subject to additional regulation (since the LIBOR scandal involved manipulations of this type of input data). • However, in response to the comments, we have included additional guidance in the CP.
3	Future designation of other benchmarks and benchmark administrators	Several commenters asked the CSA to provide greater clarity and transparency in terms of the assessment or method it will adopt for designating and de-designating a benchmark and its administrator. For example: • Will measures other than notional value of financial contracts outstanding be factored into the CSA's decision? • Before de-designating a benchmark, how much notice would be given to market participants and	As previously indicated, currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. It is expected that RBSL and CDOR will be designated soon after MI 25-102 comes into force. We have provided additional guidance in the CP on what procedures (including advance notice to the market) may be followed by a CSA jurisdiction before:

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		would contributors and administrators be given a reasonable amount of time to analyze the de-designation of a benchmark and submit comments? • For determining whether a benchmark is critical, how would the CSA determine the value of financial instruments, financial contracts and investment funds that use the benchmark as a reference? Two commenters urged the CSA prescribe that a public consultation period apply prior to the CSA designating any other administrator or benchmark under Proposed MI 25-102. One of the commenters suggested a minimum consultation period of 90 days. Two other commenters noted that to the extent there is any information that can be publicly disclosed about benchmarks that may be subject to designation, it would help users prepare their documents and processes well in advance of any such designation and help prevent commercial impediments to alternative benchmarks.	• designating another benchmark administrator or benchmark, • changing the category of designation of a benchmark from designated benchmark to designated critical benchmark, or • suspending, revoking or cancelling the designation or amending or revoking the terms and conditions of a benchmark administrator or a benchmark.
4	EU equivalency	One commenter submitted that it is critical for Canadian designated benchmarks to be eligible for an equivalence determination in the EU as it allows them to be used by EU international market participants. One commenter was of the view that opportunities exist to better calibrate Proposed MI 25-102 for the uniqueness of the Canadian market without detracting	As indicated in the March 2019 Notice, we are seeking to have the EU recognize MI 25-102 as "equivalent" for purposes of the third country regime for benchmarks under the EU BMR. We note that: • MI 25-102 is based on the EU BMR, which in turn is based on the IOSCO Principles.

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		from the objective of having Canada's framework recognized as "equivalent" under the EU's "third country regime" benchmark regulation. One commenter was concerned that Proposed MI 25-102 goes beyond EU BMR in certain significant respects and was of the view that it is not reasonable to assume that equivalency will require that the third-party country regime go beyond EU BMR. The commenter expressed that it understands that the CSA may want to have direct oversight of benchmark administrators administering Canadian benchmarks and that ensuring Canada may be deemed equivalent may be desirable, but it encouraged the CSA to consider already existing obligations and regimes applicable to foreign global benchmark providers and to ensure harmonization on a global level as much as possible. One commenter questioned why different terms were chosen under Proposed MI 25-102 to refer to the same concepts under the IOSCO Principles as this creates interpretation challenges as market participants try to assess the impacts of the proposed regulation.	Consequently, we consider MI 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. • MI 25-102 and the EU BMR are rules and therefore need to comply with applicable legislative drafting requirements, while the IOSCO Principles do not. • For Canadian legislative drafting purposes, MI 25-102 uses different language than the EU BMR. However, the language in MI 25-102 is comparable to the language in the EU BMR. • Currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation, which may include benchmarks used by EU market participants. Consequently, we don't believe that MI 25-102 will result in over-regulation of benchmarks in Canada. • While we have revised certain provisions in Proposed MI 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, or other designated benchmark administrators to comply with MI 25-102.

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5	Potential models for designation and ongoing regulatory oversight of benchmarks and benchmark administrators	One commenter noted its preference would be for the CSA to use a model that replicates the approach used for exchanges and other marketplaces or, failing that, the passport model in a manner that mirrors the model used for designated rating organizations. Another commenter submitted that a non-coordinated review model would not be in the interest of any stakeholder and the risk that two different regulatory authorities in Canada would take a different approach to the same benchmark is not desirable for any Canadian market participant.	As indicated in the Notice, • The CSA has decided to pursue a Memorandum of Understanding (**MOU**) model for the process for the designation of benchmarks and benchmark administrators and for ongoing regulatory oversight after MI 25-102 comes into force. • The MOU model will be similar to that used for exchanges, self-regulatory organizations, clearing houses, trade repositories and matching service utilities. • Under the MOU model, the OSC and AMF would be co-lead regulators for RBSL and CDOR. Only the OSC and AMF would designate RBSL as an administrator and CDOR as a designated benchmark (which is expected to be designated as a critical benchmark and an interest rate benchmark) after MI 25-102 comes into force.
6	General concerns relating to costs of compliance	Several commenters expressed concerns with the cost of compliance given the differences among Proposed MI 25-102, the EU BMR and the IOSCO Principles. The commenters made several suggestions as to how this could be addressed by the CSA: • ***Substituted compliance*** **-** Permit an administrator to satisfy the requirements of MI 25-102 by complying with the corresponding requirements of another recognized jurisdiction. The concept of substituted compliance is used by the CSA in National	As noted above, • MI 25-102 is based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider MI 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. • MI 25-102 and the EU BMR are rules and therefore need to comply with applicable legislative drafting requirements, while the IOSCO Principles do not.

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		Instrument 71-101 *The Multijurisdictional Disclosure System*, National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* and OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*. • ***Principles-based approach*** **-** Use a principles-based approach to provide the flexibility necessary to allow market participants to adopt compliance policies and procedures that are appropriately tailored for their specific business and size and to allow regulators and market participants to adapt to changing technology and evolving market practices. • ***Use of companion policy*** **-** Indicate in the final version of the Companion Policy that MI 25-102 will be interpreted and applied in a manner consistent with the IOSCO Principles, similar to the approach taken in Companion Policy 24-102 *Clearing Agency Requirements*. • ***Proportionality*** **-** Introduce a concept of proportionality. For example, EU BMR differentiates between significant and non-significant benchmarks and, for non-significant benchmarks, the administrator need not comply with certain requirements provided this is publicly disclosed. In other instances, non-significant benchmarks may be able to satisfy requirements differently. For example, the oversight committee in Proposed MI 25-102 is a one-size fits all concept whereas EU BMR contemplates that the appropriate	• For Canadian legislative drafting purposes, MI 25-102 uses different language than the EU BMR. However, the language in MI 25-102 is comparable to the language in the EU BMR. • Currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation, which may include benchmark used by EU market participants. Consequently, we don't believe that MI 25-102 will result in over-regulation of benchmarks in Canada. • While we have revised certain provisions in Proposed MI 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, or other designated benchmark administrators to comply with MI 25-102. ***Substituted compliance*** In general, when a provision in a CSA rule allows a market participant to comply with a comparable provision under the laws of foreign jurisdiction rather than a provision in the CSA rule, it is because the market participant has a limited connection to Canada (a **substituted compliance provision**).

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		level of oversight for various benchmarks may differ and, for non-significant benchmarks, the oversight function may be performed by one individual rather than a committee. One commenter was of the view that Proposed MI 25-102 generally strikes a good balance in providing the needed flexibility but that it could be improved in the following areas: • Company structure, staffing and corporate governance (e.g., sections 24(2)(f)(ix) and 26(1) of Proposed MI 25-102) – preserving flexibility in these areas helps ensure that certain market participants are not disadvantaged as a result of previous decision in entity formation or corporate organization. • Compliance policies and procedures (e.g., sections 24 and 25 of Proposed MI 25-102) – Proposed MI 25-102 is generally prescriptive to the kinds of compliance policies and procedures that would be required, which is an understandable approach given the nature of the regulatory subject, but the commenter encouraged the CSA to ensure a benchmark contributor has the flexibility to implement the required policies and procedures in a manner best suited for its business and operations. • Benchmark user obligations (e.g., sections 22(2) to (3) of Proposed MI 25-102) – the commenter appreciated that Proposed MI 25-102 provides flexibility in the decision-making process for	We don't believe that it's appropriate to include a substituted compliance provision in MI 25-102, since it is a "designation" regime rather than a "registration" or "licensing" regime. In addition, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated benchmark or designated benchmark administrator. Certain CSA jurisdictions intend to designate RBSL as a benchmark administrator and CDOR as its designated benchmark given the significant reliance placed by users and other market participants in Canada on CDOR. Given this connection to Canada, it would not be appropriate for RBSL to rely on a substituted compliance provision in respect of CDOR. Furthermore, if a non-EU registered benchmark administrator of another Canadian benchmark applied for designation under MI 25-102 so that it would have the benefit of a Canadian regime that has been recognized as equivalent by the EU, it would not be appropriate for such an administrator to rely on a substituted compliance provision. ***Non-significant benchmarks*** We don't believe that MI 25-102 needs to include provisions with lower requirements for non-significant benchmarks since it is a "designation" regime rather than a "registration" or "licensing" regime. In addition,

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		benchmark users and, specifically, that the proposed obligations regarding contingency planning for benchmark users has a reasonable person standard.	as previously noted, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated benchmark or designated benchmark administrator.
7	Proposed exemptions	Two commenters submitted that Proposed MI 25-102 should not apply if a benchmark is administered by a government, government statistical agency, central bank, crown corporation or similar public authority. One of these commenters noted that such entities are exempted from EU BMR. Another commenter submitted the following exemptions should be added: • Prices of single financial securities or instruments established by regulated exchanges, and prices produced exclusively for the purpose of risk management and settlement by regulated CCPs should not be considered benchmarks. • Exchanges and clearing houses should not be benchmark contributors to the extent that the data contributed are considered regulated-data. • Providers of input data that is otherwise publicly available should not be considered benchmark contributors. • Section 41 of Proposed MI 25-102 should be broadened to exempt designated regulated-data benchmarks from obligations other than those related to transparency of the methodology and	***Exemptions*** Since Canadian securities legislation does not require that all benchmarks and benchmark administrators be designated, it does not need to include exemptions from designation. We do not intend to designate a benchmark or benchmark administrator where such designation would not be in the public interest. In addition, as previously noted, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated benchmark or designated benchmark administrator. As indicated in the Notice, we don't currently intend to designate the Bank of Canada as a benchmark administrator or CORRA as its designated benchmark. We have also added language to the CP indicating that where public authorities (for example, national statistics agencies, universities or research centres) contribute data to, or provide or have control over the provision of, a benchmark for public policy purposes, we would generally not designate such a benchmark as

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		internal controls because the benchmarks can be replicated and verified by third parties.	a "designated benchmark" or its administrator as a "designed benchmark administrator". ***Contributors of input data*** Subsection 1(3) of MI 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person or company referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 MI 25-102. Given the above language, we don't propose to provide additional exemptions in MI 25-102 from the meaning of "benchmark contributor".

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			However, we have revised the CP to provide additional guidance on this matter. ***Regulated-data benchmarks*** We did not revise section 41 of Proposed MI 25-102 (section 40 of MI 25-102) since it reflects comparable provisions in the EU BMR. In addition, as previously noted, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated benchmark or designated benchmark administrator.
Specific questions of the CSA			
8	*Definitions and Interpretation* - 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.	None of the commenters provided a specific response to this question.	We have made no substantive changes to the definition of "contributing individual" but have clarified that it is an individual who contributes input data, as an employee or agent, on behalf of a benchmark contributor.
9	Definitions and Interpretation - Is the proposed interpretation of "control" appropriate? Please explain with concrete examples.	None of the commenters provided a specific response to this question.	We have revised the interpretation of "control" to include a paragraph to address when the second person is a trust. A person or company (first person) is considered to control another person or company

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			(second person) if the second person is a trust and the first person is a trustee of the trust.
10	*Governance* - 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.	Several commenters submitted that this requirement is not appropriate. Three commenters submitted that any requirement pertaining to the composition of the board of directors, or any other governance or oversight function, should not be prescribed and needs to be flexible to allow benchmark administrators to select a structure most appropriate to their business. This flexibility is recognized in the EU BMR, the Australian Benchmark Regulation and the IOSCO Principles. The commenters submitted the following: • Many benchmark administrators operate multiple index families globally and effective compliance with this requirement would necessitate the establishment of separate benchmark administrators for specific designated benchmarks. • Board members have legal duties under local law and requiring additional board duties and responsibilities, and dictating board membership eligibility, board numbers and board tenure, causes conflicts with local law and is inconsistent with benchmark regulation globally. • In other jurisdictions, the board should include individuals with decision making authority in relation to benchmark administration. If the board has decision making authority for benchmark	We have removed this requirement from MI 25-102 and included additional language in the CP on provisions in MI 25-102 that will foster independence in the oversight of a designated benchmark and the proper management of potential conflicts of interest, which include: • subsection 6(6) – a designated benchmark administrator must not provide a payment or other financial incentive to a compliance officer referred to in subsection 6(1), or any DBA individual who reports directly to the officer, if the payment or other financial incentive would create a conflict of interest; • subsections 7(2) and (3) – a designated benchmark administrator must establish an oversight committee, the members of which must not be members of the board of directors; • subsections 7(4) and (9) – the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator and, if the oversight committee becomes aware that the board of directors 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;

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		administration, then individual board members must have responsibility for benchmark administration (otherwise a board without requisite knowledge and experience will not be making informed decisions). • Index governance is fairly specialized requiring candidates with sufficient expertise who are typically employed elsewhere in the industry value-chain and, as a result, independent members may introduce conflicts of interest and outside members could adversely impact an administrator's independent status and be challenging to manage. • The IOSCO Principles rely heavily on the concept of proportionality and if the CSA wants to mandate independent boards it should focus on inherent or clear conflicts of interest that cannot otherwise be mitigated through other appropriate controls. • Independent administrators who do not trade in the underlying component securities nor directly create products for investors do not have the same conflicts of interest as self-indexed administrators and should not be required to have independent boards as it will unnecessarily increase costs for administration, which will likely be passed on to investors. One commenter submitted that consistency with the IOSCO Principles and, where appropriate, EU BMR requirements should be a key consideration in the development of a Canadian regime and noted that the IOSCO Principles are clear that an independent oversight function is required where conflicts arise due	• subsection 10(1) – a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to, among other things, ensure that any expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised and protect the integrity and independence of the provision of a designated benchmark; • subsection 12(2) – a designated benchmark administrator must conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint; and • subsections 31(1) and 35(1) – for a designated critical benchmark and a designated interest rate benchmark, respectively, at least half of the members of the oversight committee of the designated benchmark administrator must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator. ***Effect of enactment of MI 25-102*** As noted above, • MI 25-102 is a "designation" regime rather than a "registration" or "licensing" regime. • Currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as

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		to ownership structures and that EU BMR requires two independent directors on the oversight committee only for critical benchmarks. One commenter observed that the proposed requirements were based on those in National Instrument 25-101 *Designated Rating Organizations* but was of the view that board-related requirements appropriate for credit rating organizations (**CROs**) are not equally appropriate for benchmark administrators because the business models and corresponding conflicts of interest are demonstrably different. CROs are in the business of selling and promoting the use of their individual credit ratings, which directly impact an issuer's ability to raise funds and the cost of doing so and are relied upon by investors and, to a certain extent, regulators, whereby they serve a quasi-regulatory function in the market. There are no equivalent conflicts of interest in the context of market-wide, objectively determined benchmarks.	a benchmark administrator and only CDOR as its designated benchmark. Consequently, we don't think the enactment of MI 25-102 will result in global benchmark administrators having any immediate or significant need to establish separate benchmark administrators.
11	*Governance* - 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 MI	One commenter disagreed with the proposal that the legal entity board or oversight committee should be mandated to include external members because: • it would introduce potential conflicts of interest into administration, • by having employees serve these functions, the administrator can ensure those individuals are subject to their codes of conduct and ethics,	As noted above, we will not be preceding with the independence requirements for the board of directors of a designated benchmark administrator that were proposed in paragraph 5(4)(d) of Proposed MI 25-102. However, we will be proceeding with the independence requirement for: • the oversight committee for a designated critical benchmark that was proposed in paragraph

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	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 MI 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.	• to the extent price sensitive information is involved, including external parties on the board could create issues with information sharing, • it is inconsistent with benchmark regulation globally, • if every jurisdiction begins mandating different requirements, benchmark administration for globally used benchmarks becomes difficult if not impossible. Another commenter submitted that Proposed MI 25-102 should not introduce a new concept of independence but should use the existing criteria found in National Instrument 52-110 *Audit Committees*. Also, the commenter did not support adopting a reasonable person standard and was of the view that where this standard is used elsewhere in Proposed MI 25-102, it will create interpretation, compliance and enforcement challenges. The commenter noted that where this standard is used elsewhere in securities legislation it is appropriate in the context (e.g., in the context of public companies' disclosure, the disclosures are intended for use by the public).	32(2)(d) of Proposed MI 25-102 (paragraph 31(2)(c) of MI 25-102), and • the oversight committee for a designated interest rate benchmark that was proposed in paragraph 36(2)(d) of Proposed MI 25-102 (paragraph 35(2)(c) of MI 25-102). We do not believe that it be unduly onerous for a designated benchmark administrator to comply with these requirements.
12	*Administrator Compliance Officer* - Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark	Several commenters submitted that this would be inappropriate or unworkable. Most benchmark administrators operate thousands of individual benchmarks and the responsibility for monitoring and overseeing the calculation of benchmarks has been delegated to operational teams. The role of the compliance officer is to ensure the appropriate	We thank the commenters for their comments. MI 25-102 does not contain a provision that specifically requires the compliance officer of a designated benchmark administrator to monitor the administrator's compliance with its own benchmark methodology.

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	methodology? Please explain with concrete examples.	governance and internal control framework are in place and are followed. In one commenter's experience, the approach taken by Article 7.2 of EU BMR works well as it allows an administrator to exercise discretion as to how to best match the capability and purpose of the monitoring. One commenter submitted that a committee and governance structure is more appropriate and is consistent with global regulation. The commenter noted that committees can draw on areas of expertise across members and avoid potential conflicts of interest of single individuals as well as any individual having the power to take unilateral decisions. With respect to critical benchmarks, one commenter observed that EU BMR requires that an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and EU BMR at least annually.	Several requirements in MI 25-102 foster a designated benchmark administrator's compliance with its own benchmark methodology, including: • paragraph 5(1)(b) – a designated benchmark administrator must establish, document, maintain and apply an accountability framework that documents policies and procedures that are reasonably designed to, for each designated benchmark it administers, ensure and evidence that the designated benchmark administrator follows the methodology applicable to the designated benchmark; • paragraph 6(3)(b) – at least once every 12 months, the compliance officer must submit a report to the designated benchmark administrator's board of directors that describes whether the designated benchmark administrator has followed the methodology applicable to each designated benchmark it administers; • paragraph 8(4)(a) – a designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that benchmark contributors comply with the standards for input data in the methodology of the designated benchmark; • paragraph 16(1)(c) – the accuracy and reliability of a methodology, with respect to determinations

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			made under it, must be capable of being verified including, if appropriate, by back-testing; and • paragraph 18(1)(c) – a designated benchmark administrator must publish the process for the internal review and the approval of the methodology and the frequency of such reviews. We have included guidance in the CP that, when complying with these requirements, a designated benchmark administrator should generally attempt to ensure that compliance with a benchmark methodology is monitored by staff that are independent of staff that determine and apply the methodology.
13	*Administrator Compliance Officer* - Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed MI 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	One commenter saw no reason for the compliance function to be involved in the setting of compensation levels outside reporting lines. It submitted that conflicts of interest are better addressed through other governance processes and comprehensive control frameworks. Two commenters submitted that it is not appropriate or desirable for the compliance officer to be involved in the establishment of compensation levels for any DBA individual, other than its direct reports. While it may be appropriate for compliance personnel to confirm that compensation policies conform to regulatory requirements, broadening this principle to include the establishment of compensation levels would not be appropriate because it is unlikely the compliance	We thank the commenters for their comments. We have retained the requirement that was proposed in paragraph 7(4)(b) of Proposed MI 25-102 (paragraph 6(4)(b) of MI 25-102) regarding a compliance officer's involvement in the determination of compensation for any DBA individuals that do not directly report to the compliance officer. We have added guidance to the CP that we expect that a designated benchmark administrator will consider compliance, including past compliance issues and how compensation policies may be used to manage conflicts of interest, when establishing compensation policies and determining compensation of any DBA individuals and we do not consider this to be

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	example, reduce conflicts of interest? Please explain with concrete examples.	personnel would have the necessary expertise and market insight and the definition of "DBA individual" is broad and could potentially include a sizeable portion of individuals from varied disciplines. One commenter was of the view that remuneration should be set by the administrator's Board and Remuneration Committee in line with best practice and compliance can have a role in the overall discussion on how compensation can be a tool to manage conduct and conflicts of interest within the organization. The commenter noted the IOSCO Principles are clear that an administrator's conflicts of interest framework should ensure that staff who participate in the benchmark determination are not directly or indirectly rewarded or incentivised by the levels of the benchmark.	prohibited by paragraph 6(4)(b) of MI 25-102 even if the compliance officer is providing input in relation to a DBA individual. We have also added paragraph 10(1)(d) of MI 25-102, which requires a designated benchmark administrator to establish, document, maintain and apply policies and procedures reasonably designed to ensure that the compliance officer, or any DBA individual that reports directly to the compliance officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affect the integrity of the benchmark determination.
14	*Critical Benchmarks* - Under Proposed MI 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	One commenter noted the proposed requirement with respect to administrators of designated critical benchmarks is in line with EU BMR. The commenter was of the view that it would be disproportionate to extend this requirement to non-critical designated benchmarks. Two commenters submitted that there is no justification for the CSA to mandate how corporate entities transact for license rights and information related to benchmarks as intellectual property owners have the right to determine the commercial terms on which they license such intellectual property. In the event that the CSA has	We thank the commenters for their comments. We have retained the access requirement that was proposed in section 29 of Proposed MI 25-102 (section 28 of MI 25-102), which only applies to the administrator of a designated critical benchmark and reflects a similar requirement in the EU BMR. We consider the access requirement to be appropriate for a designated critical benchmark. We don't believe that it will be unduly onerous for an administrator of a designated critical benchmark to comply with the requirement.

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	to all benchmark users for all designated benchmarks? Please explain with concrete examples.	identified a market failure or anticompetitive behaviour in the index industry, the commenter noted that there are existing competition laws and tools to prevent or punish any index providers or other market participants from exploiting their market power. The commenter was of the view that price control is particularly disproportionate in circumstances where there is no clear monopoly or dominant position and, furthermore, where there is no evidence of historic abusive practices and that it was not aware of any obstacles that users face in Canada to access data and information in relation to benchmarks. The commenter also submitted that the requirements for disclosure, especially in relation to the benchmark methodology, benchmark statement and any changes or cessations thereto, need to be balanced with the need for benchmark administrators to protect their intellectual property and the intellectual property of the underlying data providers. One commenter submitted that access/pricing restrictions should not apply if substitute benchmarks are available in the marketplace. The commenter was of the view that, by definition, a benchmark is not, and cannot be, a critical benchmark if there are other options for users to choose, otherwise Proposed MI 25-102 would be creating an unlevel playing field across competitors, forcing some administrators to license their benchmarks on a fair, reasonable and non-discriminatory basis, while allowing others to license their benchmarks without those restrictions. Also, the	

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		proposed requirements would create market disruption for benchmarks used by and licensed to global clients, if they had to be licensed in Canada on a fair, reasonable and non-discriminatory basis, but could be licensed outside of Canada without those restrictions.	
15	*Critical Benchmarks* - 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 MI 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.	One commenter submitted that it generally agrees with this requirement and that it aligns with the EU BMR. It noted that this requirement is especially desirable when there is no alternative to a particular benchmark as it is in the interest of the market to ensure continuity of the benchmark and avoid market disruption. One commenter expressed support for the requirement and proposed including a fixed time period with review clauses (rather than leaving it open ended) to give flexibility for adjustment. The commenter noted that EU BMR allows authorities to compel contributions to a critical benchmark for up to 24 months. One commenter submitted that the reason a benchmark contributor ceases to provide input data may not be within its control. For example, liquidity in markets, regulatory changes and other conditions could dictate no price or input data is available or prices may no longer exist. The commenter understood the logic that there could be a need for transition if the contributor was the only provider, or one of very few providers, of input data but cautioned against prescribing a one size fits all	We have revised section 31 of Proposed MI 25-102 (section 30 of MI 25-102) to require the benchmark contributor to continue to provide data for up to six months after providing the notice contemplated by that section. We don't believe that it will be unduly onerous for a benchmark contributor to comply with this provision. We have also added guidance to the CP on this requirement. However, if a benchmark contributor was unable to comply with this requirement, it could apply for exemptive relief. We note that in Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario and Saskatchewan, securities legislation provides that a securities regulatory authority may make an order requiring the benchmark contributor to continue to provide data for a longer period. Section 30 of MI 25-102 is not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt this provision.

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		solution to the marketplace where many variables are not known beforehand. One commenter was concerned that this requirement may deter firms from being or becoming benchmark contributors. Two commenters submitted that it was unclear how these provisions would apply to and be enforceable against contributors globally.	
16	*Conflicts of Interest* – Is the requirement in subsection 11(3) of Proposed MI 25-102 appropriate, particularly as it relates to a *risk* of a significant conflict of interest? Please explain with concrete examples.	Two commenters submitted that it is appropriate to limit publication to actual, significant conflicts of interest as it would be more effective and meaningful for its intended audience as expanding the requirement would make it more difficult for users to assess those conflicts of interest. Another commenter agreed that administrators should establish, document, implement and enforce policies for the identification, disclosure and management of conflicts of interest but requested clarification regarding the terms "significant conflict of interest" and "promptly publish". The commenter noted that the IOSCO Principles set out that administrators should "disclose any material conflicts of interest to their users and any relevant Regulatory Authority, if any". One commenter supported the general requirement to disclose conflicts of interest but was of the view that	We have substantially retained the language in subsection 11(3) of Proposed MI 25-102 (subsection 10(3) of MI 25-102). We don't believe that it will be unduly onerous for an administrator of a designated critical benchmark to comply with the requirement. We don't propose to limit the requirement to "actual, significant" conflicts of interest. Such a limit would be problematic as the conflict would need to crystallize before the publication contemplated by subsection 10(3) of MI 25-102. Only requiring publication of significant conflicts of interest once they have crystallized would not be appropriate. We have added a reasonable person standard in paragraph 10(3)(a) of MI 25-102 to introduce an objective test, rather than a subjective test, regarding the significance of the risk of harm to any person or company arising from the conflict of interest, or

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		requiring disclosure down to the benchmark level would not be feasible for administrators that calculate hundreds of thousands of indexes.	potential conflict of interest. We have added guidance to the CP on the use of "reasonable person".
17	*Designated Benchmarks* – 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 MI 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.	One commenter was of the view that only benchmarks that are material to the functioning of Canada's financial markets, and the bodies administering them, be designated and, in the commenter's view, no current benchmarks other than CDOR and CORRA warrant designation. Another commenter submitted that Standard & Poor's and TMX should each be designated as a benchmark administrator and that the S&P/TSX 60 Index and the S&P/TSX Composite Index should each be designated as a regulated-data benchmark. The commenter estimated that the total value of assets using these indices in some way is in excess of $400 billion and they are key Canadian indices, each viewed as a significant tracker of the performance of Canadian publicly listed securities generally. This commenter was of the view that these benchmarks were not being administered in accordance with the IOSCO Principles or within the spirit of the TMX's recognition order.	As previously indicated, currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation. We will use our regulatory discretion to only designate benchmarks, which may include Canadian benchmarks that are regulated in a foreign jurisdiction, where such designation is in the public interest. We do not currently plan to designate any of the S&P/TSX indices as designated benchmarks. As a result of risks arising from the LIBOR scandal, we are currently focusing on interest rate benchmarks in Canada, rather than stock indices. It is beyond the scope of this rule-making project to determine whether the S&P/TSX indices comply with the IOSCO Principles or are within the spirit of the TMX's recognition order.
18	*Designated Benchmarks* – If your organization is a benchmark administrator, please:	One commenter, an administrator of benchmarks used in Canada, stated that it does not intend to voluntarily apply for designation as a benchmark administrator under Proposed MI 25-102.	We thank the commenter for their comment.

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	(a) advise if you intend to apply for designation under Proposed MI 25-102, (b) advise of any benchmark you intend to also apply for designation under Proposed MI 25-102, and (c) the rationale for your intention.		
19	*Anticipated Costs and Benefits* – The Notice sets out the anticipated costs and benefits of Proposed MI 25-102 (in Ontario, additional detail is provided in Annex D). Do you believe the costs and benefits of Proposed MI 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.	One commenter submitted that consistency with the IOSCO Principles and EU BMR requirements will help ensure additional significant costs are not incurred by those currently in compliance with these requirements. In light of the evolving contemplation, development and implementation of benchmark regulations in other jurisdictions outside of Canada and the EU, the commenter believes it is important for outcome-based assessments of equivalence, under principles of proportionality, to be agreed and bilateral and multi-lateral levels to avoid duplicative and overlapping requirements on a global basis. Two commenters submitted that one of the most significant costs will be dual supervision because there is no acknowledgement or framework for those benchmark administrators outside of Canada. For example, if the CSA designates a benchmark that is also regulated in the EU, the administrator will have to comply with both regimes. They suggested that such	As noted above, • MI 25-102 is based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider MI 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. • MI 25-102 and the EU BMR are rules and therefore need to comply with applicable legislative drafting requirements, while the IOSCO Principles do not. • For Canadian legislative drafting purposes, MI 25-102 uses different language than the EU BMR. However, the language in MI 25-102 is comparable to the language in the EU BMR. • As noted above, we don't believe that it's appropriate to include a substituted compliance provision in MI 25-102, since it is a "designation" regime rather than a "registration" or "licensing" regime.

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		costs can be reduced by reducing the scope of Proposed MI 25-102 so that it only captures critical, contribution-based benchmarks or replicating its requirements as close as possible to the IOSCO Principles or the requirements of other jurisdictions.	• Currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation, which may include benchmark used by EU market participants. Consequently, we don't believe that MI 25-102 will result in over-regulation of benchmarks in Canada. • While we have revised certain provisions in Proposed MI 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, or other designated benchmark administrators to comply with MI 25-102.
National Instrument 25-102 Designated Benchmarks and Benchmark Administrators			
20	Definitions of types of benchmarks	One commenter submitted that Proposed MI 25-102 should include definitions of "regulated-data benchmark", "interest rate benchmark" and "critical benchmark". Assuming the definition of "regulated-data benchmark" from the CP is used, the commenter was of the view that limiting input data to transaction data exclusively may be too limiting and IOSCO Principle 7 acknowledges that an administrator may rely on different forms of data tied to observable market data as an adjunct or supplement to transactions.	As noted above, MI 25-102 is a "designation" regime rather than a "registration" or "licensing" regime. Consequently, we think the following definitions in MI 25-102 are appropriate, provide sufficient flexibility and do not need to be further defined: • designated critical benchmark, • designated interest rate benchmark, and • designated regulated-data benchmark. We note that the CP provides further guidance on these terms, while providing for sufficient flexibility.

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			Like the EU BMR, MI 25-102 draws a distinction between: • regulated-data benchmarks (which are not based on input data from benchmark contributors), and • benchmarks that are based on input data from benchmark contributors. This distinction is recognized in section 41 of Proposed MI 25-102 (section 40 of MI 25-102) which provides that regulated-data benchmarks do not have to comply with certain provisions applicable to benchmarks based on input data from benchmark contributors. As noted above, subsection 1(3) of MI 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person or company referred to in (ii) above for the purpose of determining a benchmark.

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21	DBA individuals and benchmark individuals	One commenter was unclear why the CSA introduced the concepts of "DBA individual" and "benchmark individual". The commenter was of the view that these definitions and the requirements associated with the definitions are cumbersome, disproportionate and burdensome and do not reflect how most global benchmark administrators are organized.	We disagree with the commenter. • The definitions of "benchmark individual" and "DBA individual" in MI 25-102 are appropriate for the provisions in which they are used. • The definition of "benchmark individual" represents a narrower class of persons than the definition of "DBA individual". • There are some provisions in MI 25-102 that should only apply to benchmark individuals, in order to limit regulatory burden.
22	Critical regulated-data benchmarks	Two commenters submitted that the authority to designate regulated-data benchmarks as critical should be removed. The commenters noted that this authority is a departure from other jurisdictions, such as the EU, who have acknowledged and understood the different risks between contributed benchmarks and those benchmarks based on data from transparent and regulated markets. EU BMR expressly excludes regulated-data benchmarks from being designated as critical and to do so would be inconsistent with the proportionality principles in the IOSCO Principles. The commenters also noted that there is no contributor in the context of a regulated-data benchmark so it was unclear how the concept of compelling a contributor to provide input data for a critical regulated-data benchmark, such as in section 31 of Proposed MI 25-102, would be applied.	As noted above, MI 25-102 is a "designation" regime rather than a "registration" or "licensing" regime like the EU BMR. Consequently, we think the following definitions in MI 25-102 are appropriate, provide sufficient flexibility and do not need to be further defined: • designated critical benchmark, and • designated regulated-data benchmark. Although we currently have no plans to do so, we would like to preserve the flexibility in MI 25-102 of designating a regulated-data benchmark as a "critical benchmark". ***Contributors of input data*** As noted above, subsection 1(3) of MI 25-102 provides that input data is considered to have been "contributed" if

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			(a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person or company referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 MI 25-102. We have revised CP to provide additional guidance on this matter.
23	Regulated-data benchmarks to receive input data entirely and directly from trading venues and exchanges	Two commenters submitted that the requirement that regulated-data benchmarks receive input data "entirely and directly" from trading venues and exchanges seems to have been imported from EU BMR but this terminology was recently amended. EU BMR removed the words "and directly", which accommodates the use	We have revised the guidance in the CP on the definition of "designated regulated-data benchmark" to remove the words "and directly".

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		of data aggregators. Benchmark administrators take prices from over 200 recognized stock exchanges and trading venues and the only way this is possible is to acquire the data from data aggregators who act purely as a technical link so the practice should not be deemed an outsourcing to a service provider (i.e., it should not be subject to section 14 of Proposed MI 25-102).	We have revised the CP to provide guidance on section 14 of Proposed MI 25-102 (section 13 of MI 25-102) in response to the comment.
24	External assurance reports for benchmark administrators	One commenter was of the view that all designated benchmarks should be required to obtain an assurance report from a qualified public accountant on the administrator's compliance with key sections of Proposed MI 25-102, at least once every 12 months. Another commenter suggested that the CSA consider requiring an annual independent audit of compliance of benchmark administrators with the administrator's benchmark methodology (similar to CFA Institute Global Investment Performance Standards (**GIPS**) verification which applies to investment managers).	MI 25-102 contains provisions for assurance reports on the designated benchmark administrator of: • a designated critical benchmark (section 32), and • a designated interest rate benchmark (section 36). These provisions are based on corresponding provisions in the EU BMR. Given concerns about the costs of obtaining assurance reports and regulatory burden, we don't propose to expand these requirements as suggested by the commenters. We consider the requirements in section 32 and 36 of MI 25-102 to provide sufficient assurance reports in respect of a benchmark administrator.
25	External assurance reports for benchmark contributors	One commenter was of the view that the requirement in section 39 of Proposed MI 25-102 may be onerous, costly and add little value over what can be done via the contributor's internal audit functions. The commenter recommended that the requirement be modified such that an external audit would only be required when the oversight committee of the benchmark administrator determined there is a need for one.	MI 25-102 contains provisions for assurance reports on a benchmark contributor to: • a designated critical benchmark (section 33), and • a designated interest rate benchmark (sections 37 and 38). These provisions are based on corresponding provisions in the EU BMR. We have retained these

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		Another commenter submitted that section 39 of Proposed MI 25-102 was a net new requirement that will be unduly onerous for contributors, when external audits are not required by the already comprehensive assurance provisions of the CDOR contributors' code of conduct or EU BMR in relation to CDOR. The commenter suggested: • The requirements in sections 34 and 38 of Proposed MI 25-102 to provide an assurance report if requested to do so by the oversight committee are more reasonable and sufficient. • Should there be an audit requirement, it would be more appropriate for the contributor to conduct the audit internally and the results should only be made available to the regulators and not to the administrator.	provisions since we consider them to be appropriate. We don't consider them to be unduly onerous. We don't consider that an internal audit would be sufficient alternative. We consider it appropriate for the benchmark administrator to be provided with a copy of the assurance reports. Sections 33, 37 and 38 of MI 25-102 are not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt these provisions.
26	Scope of record keeping requirements for benchmark contributors	One commenter submitted that the proposed record keeping requirements are overly broad and would be burdensome for the following reasons: • The proposed scope could be read to cover back-office activities related to benchmark contributions and input data, which are largely mechanical in nature and the burden associated with keeping such records would not be offset by the minimal probative value they would provide. • It is not clear if the proposed requirements would require benchmark contributors to create and keep voice recordings of relevant communications, which would be costly and burdensome.	MI 25-102 contains record keeping requirements for: • a benchmark administrator (Part 7), • a benchmark contributor to a designated benchmark (subsection 24(4)), and • a benchmark contributor to a designated interest rate benchmark (subsection 39(4)). We have revised subsections 24(4) and 39(4) to explicitly refer to telephone conversations for greater certainty and have added guidance in the CP. These provisions are based on corresponding provisions in the EU BMR. We have retained these

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		• Benchmark contributors would effectively be required to keep records showing their analytical and decision-making process, which is sensitive and proprietary, may not normally be retained in writing and would be extremely broad and burdensome. The commenter suggested that the CSA do the following, otherwise some benchmark contributors may refrain from contributing: • Limit the scope of record keeping obligations imposed on benchmark contributors to relevant information (not all information) pertaining to the actual submission to the benchmark administrator (not all surrounding circumstances). • Not require benchmark contributors to document their analytical or decision-making process. • Make clear that benchmark contributors and benchmark users are not required to make or retain voice records of phone calls or voicemail under the record keeping obligations. The commenter was of the view that if the issues it raised are not addressed, the burdens may cause some benchmark contributors to refrain from contributing, thus reducing the stability and accuracy of the relevant benchmark. Another commenter requested that the CSA provide guidance in the Companion Policy as to how a benchmark contributor would satisfy the requirement in	provisions since we consider them to be appropriate. We don't consider them to be unduly onerous. In particular, given the LIBOR scandal, we consider it appropriate for benchmark contributors to document their analytical and decision-making process. However, we have included additional guidance in the CP to address certain matters raised by the commenters. Subsections 24(4) and 39(4) of MI 25-102 are not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt these provisions.

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		section 25(4)(d) of Proposed MI 25-102 to keep records relating a description of the potential for financial loss or gain. The commenter was also concerned that this information could contain proprietary commercially sensitive information and suggested the following alternatives, which would align more closely with EU BMR: • the requirement be narrowed, • the requirement only apply to the contributing individual, or • the requirement could be met in the context of identifying and mitigating conflicts of interest by amending proposed section 25(4)(c). The commenter also submitted that, due to their sensitive nature, the records listed in section 25(4) of Proposed MI 25-102 should only be required to be made available to the administrator if it required them to comply with the rule or in connection with an investigation by a Canadian securities regulatory authority.	
27	Record retention period for benchmark contributors and benchmark administrators	Two commenters expressed concern over the requirement for benchmark contributors to retain records for 7 years as the EU BMR requirement is 5 years except for records of telephone conversations or electronic communications, which are required to be held for 3 years. The commenters suggested the requirement should be aligned with EU BMR.	MI 25-102 contains a 7-year record keeping requirement for: • a benchmark contributor to a designated benchmark (subsection 24(4)), • a benchmark administrator (paragraph 26(4)(a)), and • a benchmark contributor to a designated interest rate benchmark (subsection 39(4)).

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		Two other commenters noted that the requirement for benchmark administrators to retain records for 7 years is inconsistent with the EU BMR requirement, which is 5 years, and this inconsistency will increase costs to investors with little or no benefit.	The 7-year requirement is reflected in other CSA rules applicable to market participants. We don't believe that it would be unduly onerous for designated benchmark administrators and contributors to a designated benchmark to comply with these requirements. Subsections 24(4) and 39(4) of MI 25-102 are not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt theses provisions.
28	Benchmark administrator must not use input data from benchmark contributor if it has any indication the benchmark contributor does not adhere to the code of conduct	One commenter submitted that strict compliance with section 16(2) of Proposed MI 25-102 could result in unintended consequences because the prescribed content of the code of conduct includes a broad range of requirements. For example, the administrator could receive an indication that some of the record keeping requirements of a particular contributor's code of conduct are not being adhered to and would then be required to refuse that contributor's input data. The commenter suggested only requiring the benchmark administrator to refuse input data where it is aware of a "significant breach", meaning a breach that would impact the integrity or reputation of the benchmark. Another commenter asked for clarification about whether a benchmark administrator has unilateral authority to make a determination that a benchmark	In response to the comments, we revised subsection 16(2) of Proposed MI 25-102 (subsection 15(2) of MI 25-102) to refer to a "significant breach" of the code of conduct. We also provided guidance in the CP on the interpretation of "significant breach". Subsection 15(2) now provides that: *"A designated benchmark administrator must not use input data from a benchmark contributor if* *(a) a reasonable person would consider that the benchmark contributor has breached the code of conduct referred to in section 23, and* *(b) a reasonable person would consider that the breach is significant."*

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		contributor is not adhering to the code of conduct required in respect of input data.	The use of the "reasonable person" standard addresses concerns about "unilateral authority".
29	Benchmark administrator's oversight of benchmark contributors	One commenter was concerned that Proposed MI 25-102 would effectively grant benchmark administrators quasi-regulator status. For example, in certain circumstances, a benchmark administrator's oversight committee could require a benchmark contributor to engage a public accountant to provide a compliance report in accordance with its specifications. This is a concern because benchmark administrators, which may be private entities with a profit-making motive, would have extensive access into the business operations of benchmark contributors. The commenter suggested as an alternative that the extensive oversight and monitoring that benchmark contributors would be subject to by benchmark administrators could be replaced by a requirement for benchmark contributors to make authorized representations regarding compliance measures. This commenter also suggested that benchmark administrators should be required to consider input from benchmark contributors prior to imposing or changing obligations on benchmark contributors given the role that benchmark administrators would have in imposing certain standards on benchmark contributors.	We acknowledge that a designated benchmark administrator has certain responsibilities in relation to benchmark contributors in certain circumstances. As noted above, MI 25-102 contains provisions for assurance reports on a benchmark contributor to: • a designated critical benchmark (section 33), and • a designated interest rate benchmark (sections 37 and 38). These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. We don't consider them to be unduly onerous. Sections 33, 37 and 38 of MI 25-102 are not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt these provisions.
30	Obligations of benchmark contributors	One commenter submitted that Proposed MI 25-102 goes too far in imposing a set of detailed obligations	MI 25-102 contains requirements that apply to a benchmark contributor to:

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		directly on contributors, which could discourage contributors to contribute. The IOSCO Principles do not impose obligations directly on contributors but rather on administrators to impose a code of conduct and other obligations on their contributors. If the CSA feels strongly about imposing requirements directly on contributors, a principles-based approach rather than prescriptive obligations may be a good alternative.	• a designated benchmark (Part 6), • a designated critical benchmark (section 30), and • a designated interest rate benchmark (section 39). These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. As noted above, we are seeking to have the EU recognize MI 25-102 as "equivalent" for purposes of the third country regime for benchmarks under the EU BMR. We don't consider these provisions to be unduly onerous. Certain of these provisions are not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt these provisions.
31	Code of conduct for benchmark contributors	One commenter submitted that the requirement under section 24(2)(f)(iv) of Proposed MI 25-102 for pre-submission sign-off of input data would impede the process for collecting and disseminating input data. Regarding section 24(2)(f)(ix) of Proposed MI 25-102, one commenter submitted that some indexes may have hundreds or thousands of contributors so it is unclear how the individual at the administrator could reasonably have direct access to all of the benchmark contributors' boards of directors or how that could be enforced globally.	In response to the comment, we have revised the CP to provide additional guidance on compliance with subparagraph 24(2)(f)(iv) of Proposed MI 25-102 (subparagraph 23(2)(f)(v) of MI 25-102). As regards the comment on subparagraph 24(2)(f)(ix) of Proposed MI 25-102 (subparagraph 23(2)(f)(x) of MI 25-102), we revised the provisions to clarify that it refers to an officer of the benchmark contributor, not the benchmark administrator.

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			Furthermore, we revised the CP to note that the code of conduct requirement in subsection 24(1) of Proposed MI 25-102 (section 23(1) of MI 25-102) only applies if a designated benchmark is determined using input data from benchmark contributors. As noted above, subsection 1(3) of MI 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person or company referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 MI 25-102.
32	Governance and control requirements for benchmark contributors	***General*** One commenter submitted that section 25 of Proposed MI 25-102 is disproportionate to many types of indexes,	***General*** The requirements in section 25 of Proposed MI 25-102 (section 24 of MI 25-102) are based on corresponding

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		in particular, those that rely on voluntary contributions from data contributors that may not be regulated financial services entities. The unintended consequence is that prescriptive requirements may dissuade contributors from contributing to the benchmark, which may ultimately reduce transparency in private markets. The commenter noted that the equivalent requirement in EU BMR is subject to the proportionality principle and may be waived. ***Sign-off on Input Data*** One commenter submitted that the requirement in section 25(2)(b) of Proposed MI 25-102 for a benchmark contributor to have a process for sign-off on input data is unwarranted because the individual contributor has the expertise to make the contribution and the requirement is impractical from a timing perspective, as it would unnecessarily slow down the submission process. The commenter suggested that an annual attestation by senior management, such as that required by the CDOR code of conduct, is sufficient to tie senior management to the approval of the submission process. ***Physical Separation of Individuals Responsible for Submission*** One commenter questioned the requirement for the physical separation of individuals responsible for the benchmark rate submission and that such individuals be located in an area that is "secure". Also, the requirement	requirements in the EU BMR and we consider them to be appropriate. However, we revised the CP to note that the code of conduct requirement in subsection 24(1) of Proposed MI 25-102 (section 23(1) of MI 25-102) only applies if a designated benchmark is determined using input data from benchmark contributors. As noted above, subsection 1(3) of MI 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person or company referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 MI 25-102.

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		could work contrary to fostering expert judgment because individuals responsible for the contribution of benchmarks have a need for market views. The commenter was of the view that individuals on the trading floor should not be precluding from having responsibility for submitting their firm's contribution to the benchmark. Another commenter was unclear of the meaning of "organizational separation", "physically separated" and "secure area", specifically: • Does "organizational separation" refer to physical separation, separation within the contributor's organization structure, or both? • Is the requirement simply that contributing individuals not be co-located with other employees? • Do these terms require a physically segregated area with restricted access as contemplated by section 2.3 of OSC Policy 33-601 *Guidelines for Policies and Procedures Concerning Inside Information*? The commenter supported giving contributors flexibility in complying with these requirements and recommended that MI 25-102 include more definitive language authorizing such flexibility. Both of these commenters submitted that contributing individuals may have other responsibilities, which may require them to by physically located near select peers	Section 24 of MI 25-102 is not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt this provision. ***Sign-off on Input Data*** In response to the comment, we have revised the CP to provide additional guidance on compliance with subsection 25(2) of Proposed MI 25-102 (subsection 24(2) of MI 25-102). ***Physical Separation of Individuals Responsible for Submission*** In response to the comments, we have revised the CP to provide additional guidance on compliance with subparagraph 25(2)(d)(i) of Proposed MI 25-102 (subparagraph 24(2)(d)(i) of MI 25-102).

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		or department functions, including sales and trading staff.	
33	Expert judgment	***Meaning of expert judgment*** One commenter requested clarification around what constitutes expert judgment and when expert judgment should be used. The commenter noted that with respect to CDOR expert judgment can be based on several factors including: • market data (e.g., T-Bill rates and OIS rates), • economic factors, • executional data, • dealers' inventories, and • other data. ***Record keeping*** Another commenter requested the CSA provide clarification regarding the types of records required to be retained under section 25(3)(b) of Proposed MI 25-102, specifically whether the requirement is to address the circumstances in which expert judgment may be exercised in policies and procedures or whether the expectation is to record the rationale for the use of expert judgment in each and every daily submission. The commenter submitted that if the latter is required, it would place a significant burden both in terms of gathering and tracking of expert input. The commenter also submitted that the documentation of the use of expert judgment under section 25(3) should be tailored	***Meaning of expert judgment*** In response to the comment, we have revised the CP to provide additional guidance on references to "expert judgment" in MI 25-102. ***Record keeping*** In response to the comment, we have revised the CP to provide additional guidance on compliance with paragraph 25(3)(b) of Proposed MI 25-102 (paragraph 24(3)(b) of MI 25-102). Given the problems uncovered in the LIBOR scandal, we believe the requirement should apply if expert judgement is exercised in relation to input data. We don't believe that the requirements are unduly onerous. For example, where appropriate, a code of conduct for benchmark contributors can include templates or other methods to efficiently record matters relating to the exercise of expert judgment in relation to input data.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		to CDOR and CORRA and mirror the submission procedures under the CDOR code of conduct.	
34	Quality of input data	Two commenters expressed that it is important to ensure that contributions to a benchmark do not diminish its quality, especially considering that a benchmark based on insufficient sample sizes or that no longer appropriately represents its underlying market may set the value in a vast array of financial instruments. One commenter noted that one of the IOSCO Principles related to benchmark quality deals with benchmark design and indicates certain factors that a benchmark should take into account. This commenter was of the view that global standards for contributing and calculating benchmarks can help provide assurance to users of benchmarks of their comparability and quality and noted that the CFA Institute GIPS are global recognized standards for calculating and presenting investment performance.	MI 25-102 includes several requirements that reflect the importance of a designated benchmark accurately and reliably representing that part of the market or economy it is intended to record, including: • subsection 14(3) - if a reasonable person would consider that the input data results in a designated benchmark that does not accurately and reliably represent that part of the market or economy the benchmark is intended to represent, 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 it accurately and reliably represents that part of the market or economy it is intended to represent; (b) cease to provide the designated benchmark; and • paragraph 16(1)(a) – a designated benchmark administrator must not follow a methodology for determining a designated benchmark unless it is sufficient to provide a benchmark that accurately and reliably represents that part of the market or economy the benchmark is intended to represent.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
			In addition, for a designated critical benchmark, section 29 of MI 25-102 requires the designated benchmark administrator to, 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 and reliably represent that part of the market or economy the designated critical benchmark is intended to represent.
35	Verification of input data from front office of a benchmark contributor or an affiliate	One commenter submitted that section 16(3)(a) of Proposed MI 25-102 assumes there may be other sources for the input data but for some asset classes there may not be.	In response to the comment, we have revised the CP to provide additional guidance on compliance with paragraph 16(3)(a) of Proposed MI 25-102 (paragraph 15(4)(a) of MI 25-102).
36	Order of priority for use of input data by designated interest rate benchmark	One commenter submitted that this requirement does not reflect the practical realities applicable to various types of interest rate benchmarks, including CDOR and CORRA, because: • In addition to input data received from benchmark contributors, interest rate benchmarks may be determined using input data from execution platforms, price assessments or from post-trade infrastructure such as settlement, clearing and reporting entities. • It is typical for a single source of input data to be specified for any given benchmark. • Even where multiple sources of input data may be used, in order to appropriately formulate an order of	We have revised section 35 of Proposed MI 25-102 (section 34 of MI 25-102) and added guidance in the CP to reflect the comments. ***Input data from benchmark contributors*** Furthermore, we revised the CP to note that the requirements in section 34 of MI 25-102 only apply if a designated interest rate benchmark is determined using input data from benchmark contributors. As noted above, subsection 1(3) of MI 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		preference, the source of the data must be distinguished from the nature of the input data. • It presupposes that an interest rate benchmark is representative of actual transactions in the underlying market, which is not always the case (e.g., CDOR). • The examples listed in section 35(1)(a)(i)-(iii) are not compatible with any interest rate benchmark that is not an unsecured bank deposit rate (e.g., CORRA). • The examples in section 35(1)(a)(iv) would fundamentally change the nature of any benchmark and should generally only be used in the absence of all other inputs to inform expert judgments. The commenter noted that EU BMR provides flexibility in this regard by using the following language: "in general the priority of use of input data shall be". The commenter suggested the general order of preference for the nature of input data should be: (1) transactions in the underlying market represented by the benchmark (2) executable quotes in that same underlying market (3) indicative quotes in that same underlying market (4) only where the input data in (1)-(3) is unavailable, market data from related markets to inform expert judgment to the extent possible	(i) the designated benchmark administrator, or (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person or company referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 MI 25-102.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		The commenter submitted that an input data hierarchy may be of use for certain interest rate benchmarks that may be designated by the CSA in the future, but it is not at all relevant for CDOR or CORRA as they each use a single type of input data. For CORRA, the input data is readily available so the concept of benchmark contributors does not apply.	
37	Regulator or securities regulatory authority may require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so	Two commenters submitted that given the extensive nature of the proposed obligations, a person or company should not be compelled to be a benchmark contributor. One of the commenters suggested that if the CSA maintains this position, the person or company being compelled should not be subject to the full set of regulatory obligations that would otherwise apply to voluntary benchmark contributors. The other commenter requested that the CSA adopt similar requirements to those set out in Article 23 of EU BMR, specifically: • Set out the specific circumstances under which a person or company is required to provide information to a designated benchmark administrator. • Limit the mandatory provision of information to a maximum of 24 months. • Require on a periodic basis (i.e., within one month and, if necessary, 12 months after the contributor was required to provide information) an assessment	As noted above, revised section 31 of Proposed MI 25-102 (section 30 of MI 25-102) will require a benchmark contributor to a designated critical benchmark to continue to provide data for up to six months after notifying 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. Also, as noted above, under securities legislation of certain jurisdictions a securities regulatory authority may make an order requiring the benchmark contributor to continue to provide data for a longer period if the securities regulatory considers it in the public interest to do so. Section 30 of MI 25-102 is not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt this provision.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		against specified criteria to determine if continued mandatory contribution is necessary for another specified period of time. • Confirm that contributors are not obligated to trade or commit trades relating to the designated benchmark.	
38	Compliance officer of benchmark contributor	One commenter submitted that the requirement in section 26(2) of Proposed MI 25-102 that the compliance officer be able to directly access the contributor's board of directors is impractical and that the compliance officer would lack the experience and expertise to make board submissions. The commenter suggested that it would be more reasonable to require the compliance officer to escalate matters up through senior management and the contributor's chief compliance officer could present matters directly to the board. This commenter also submitted that the requirement under subsection 40(6) should be to report significant issues, rather than findings, as this would be otherwise overly burdensome.	We have revised subsection 26(2) of Proposed MI 25-102 (subsection 25(2) of MI 25-102) to include alternative language that permits the chief compliance officer of a benchmark contributor to present matters to the board of directors. We have also made a corresponding change to the code of conduct requirements in subparagraph 23(2)(f)(x) of MI 25-102. However, we have also added guidance to the CP to clarify that where the designated officer under subparagraph 25(1) of MI 25-102 and the chief compliance officer are different persons, each must be provided with direct access to the benchmark contributor's board of directors. We have revised subsection 40(6) of Proposed MI 25-102 (subsection 39(6) of MI 25-102) to address the comment. Sections 25 and 39 of MI 25-102 are not currently being adopted in Québec as certain amendments to the *Securities Act* (Québec) are required to adopt these provisions.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
39	Designated benchmark administrator must provide written notice to regulator or securities regulatory authority of a proposed significant change to the methodology of a benchmark at least 45 days before its implementation	One commenter submitted that 45 days' notice may not be appropriate if there are market circumstances that require changes and that the regulator or securities regulatory authority should be informed of the implementation simultaneously with the market.	We have added a subsection (3) to provide certain exceptions to the 45-day notice requirement in subsection 19(2) of Proposed MI 25-102 (section 18(2) of MI 25-102).
40	Role of oversight committee	***Monitoring input data*** One commenter submitted that it is not practical for the oversight committee to monitor input data. In practice, the monitoring of input data is done by the administrator's operational staff (first line of defence), which then reports on the quality of the input data to the oversight committee (second line of defence). The accuracy and depth of the monitoring done by the first line of defence is also further assessed by internal and external auditors (third line of defence). The commenter noted that the proposed language corresponds to Article 5.3(g) of EU BMR but recommended the CSA make a drafting clarification to make clear that this requirement may be complied with by overseeing the monitoring of the input data, as opposed to performing the first-line monitoring function. ***Role of oversight committee*** Another commenter submitted that the powers entrusted to the oversight committee are not consistent with corporate law principles that, in most jurisdictions, put	***Monitoring input data*** We have added guidance in the CP regarding subsection 8(8) of Proposed MI 25-102 (subsection 7(8) of MI 25-102) to address the matters raised by the commenter. ***Role of oversight committee*** The requirements for an oversight committee in section 8 of Proposed MI 25-102 (section 7 of MI 25-102) are based on corresponding requirements in the EU BMR and we consider them to be appropriate. We note that the benchmark administrator of CDOR has established an oversight committee for that benchmark. In any event, MI 25-102 recognizes the appropriate role of the board of directors of a designated benchmark administrator in respect of the oversight committee: • Subsection 7(4) provides that the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the benchmark administrator.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		ultimate corporate powers into the hands of the board of directors. The commenter noted that the proposal seems to go beyond was is contemplated under the IOSCO Principles and is not workable in practice for the following reasons: • Day-to-day responsibilities for administration of benchmarks in most cases would be fulfilled by management, with the board or a committee of the board fulfilling oversight, but the proposal seems to contemplate almost the opposite. • There could be overlap between responsibilities of the management team, including the chief compliance officer, and the oversight committee. • The oversight committee is an external committee so it may not be able to fulfill all the obligations to the extent contemplated and it is not clear what type of liability these obligations create for oversight committee members. • It seems unusual to impose on obligations to report to securities regulators on such a committee.	• Subsection 7(6) provides that the board of directors of the benchmark administrator must appoint the members of the oversight committee. • Subsection 7(7) provides that the board of directors of the benchmark administrator must approve policies and procedures regarding the structure and mandate of the oversight committee.
41	Independence requirements for members of oversight committee	One commenter submitted that oversight committee members should not be restricted to an artificial, five-year maximum term. This commenter agreed that voting members of the oversight committee should not be involved in the executive management of the benchmark administrator or the day-to-day production of the benchmarks but was	In response to the comments, we have made certain changes to the independence requirements for: • the oversight committee for a designated critical benchmark that was proposed in subsection 32(2) of Proposed MI 25-102 (subsection 31(2) of MI 25-102), and • the oversight committee for a designated interest rate benchmark that was proposed in subsection

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		of the view that they should be permitted to be senior leaders of affiliated entities. The commenter noted that outside members with sufficient expertise in the index industry often have their own conflicts of interest and their involvement in an oversight committee could adversely impact the independent nature of an index provider and managing their participation is enormously complex and challenging. Another commenter submitted that the requirements are overly prescriptive and do not allow sufficient flexibility for informed judgment. For example, the deemed loss of independence after 5 years of service would be counterproductive and inefficient. Sourcing subject matter experts is already difficult, and the loss of continuity, expertise and knowledge could be more disruptive and outweigh a theoretical gain underlying the proposal. The commenter recommended that the CSA move these independence factors to the Companion Policy as factors that may be considered in a determination of independence. The commenter also recommended that the CSA harmonize any independence requirements with EU BMR to allow for the application of a consistent test of independence for a benchmark administrator's various oversight committees, regardless of whether the primary regulator for the benchmark is in Canada, the UK or the EU.	36(2) of Proposed MI 25-102 (subsection 35(2) of MI 25-102). In particular, we deleted the provision that an oversight committee member is not "independent" if they have served on the oversight committee for more than 5 years in total. We note that at least half of the members of the oversight committee are required to be independent of the benchmark administrator and any affiliated entity of the benchmark administrator.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
42	Participation of board members in oversight committee meetings	One commenter asked the CSA to clarify that, despite subsection 8(2) of Proposed MI 25-102, board members may be invited from time to time to oversight committee meetings, so long as they do so in a non-voting capacity. The commenter noted that a regulatory technical standard under the EU BMR allows for this despite having a similar restriction that board members cannot be oversight committee members.	We have revised the CP to include guidance that addresses the comment raised by the commenter.
43	Obligations of chief compliance officer of a benchmark administrator	One commenter submitted that the CSA should review the obligations imposed on the chief compliance officer of an administrator as several obligations have unusual or vague standards that create the potential for increased risks as opposed to reducing them. Specifically: • section 7(3)(c) – chief compliance officer to advise the board of suspected non-compliance instead of actual non-compliance, • section 11(3) – disclosure of a risk of significant conflict of interest, • section 12 – reporting conduct that might involve manipulation or attempted manipulation, and • section 16(2) – administrator must not use input data if it has any indication that the benchmark contributor does not comply with the code of conduct. The commenter was also of the view that it is not appropriate to prevent the chief compliance officer of an administrator from being compensated based on the	We have revised subsection 16(2) of Proposed MI 25-102 (subsection 15(2) of MI 25-102) in response to this comment. We have not revised the other provisions cited by the commenter. We do not believe that it would be appropriate to limit the language in these provisions to incidents of conflicts of interest, manipulation or non-compliance that have crystallized.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		financial performance of the administrator as this does not present a *de facto* conflict of interest. This restriction is not reasonable and may hinder administrators in recruiting qualified individuals in an environment where competition for talented compliance officers is becoming increasingly competitive. The commenter agreed that the chief compliance officer's compensation should not be linked to the performance of a benchmark.	We have revised subsection 7(6) of Proposed MI 25-102 (subsection 6(6) of MI 25-102) to reflect the comments of the commenter.
44	Requirement for benchmark administrators to designate a compliance officer	One commenter urged the CSA to revisit the concept of a compliance officer under Proposed MI 25-102 to allow greater flexibility for benchmark administrators to construct a governance and oversight function appropriate and proportionate to the benchmarks it administers. For example, the IOSCO Principles and EU BMR acknowledge there may be multiple committees that together fulfill the requirements to monitor, assess and oversee compliance by the benchmark administrator with its policies, procedures, legal and regulatory requirements.	We believe the requirement for a "compliance officer" in subsection 7(1) of Proposed MI 25-102 (subsection 6(1) of MI 25-102) is appropriate.
45	Certain users of designated benchmarks required to have written plans to address cessation of designated benchmark	***Effective date*** One commenter requested that the CSA clarify that subsections 22(1) and (3) only apply to securities and derivatives that are entered into on or after the effective date of MI 25-102, as users will generally not have the legal right to compel existing securityholders and derivative counterparties to agree to changes to the terms of such financial instruments.	***Effective date*** We have revised section 22 of Proposed MI 25-102 (section 21 of MI 25-102) to address the concerns raised by the commenter.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		Application of requirement Another commenter submitted that it is not appropriate to introduce obligations on benchmark users. The commenter suggested several alternatives: • The CSA or benchmark administrators could publish best practices for users. • The obligations should be incorporated in the regulations governing benchmark users rather than Proposed MI 25-102. • Any obligations should align with EU BMR article 28, paragraph 2.	***Application of requirement*** We believe that the requirement in section 22 of Proposed MI 25-102 (section 21 of MI 25-102) is appropriate. We note that the requirement only applies to registrants, reporting issuers and recognized entities that are currently regulated by CSA jurisdictions.
Appendix A to National Instrument 25-102 – Definitions Applying in Certain Jurisdictions			
46	Definition of "benchmark"	One commenter asked the CSA to provide further guidance on what it means for a price, estimate, rate, index or value to be "made available to the public". Another commenter submitted it was unclear why the definition differs slightly from that in the IOSCO Principles.	The phrase "made available to the public" is commonly used in securities law and we don't believe it is necessary to add guidance to the CP regarding its meaning. We note that certain jurisdictions have a definition of "benchmark" in their Securities Act, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of MI 25-102.
47	Definition of "benchmark administrator"	One commenter noted that the definition is circular and questioned why the foundation definition of "administration" was not included in Proposed MI 25-102.	We note that certain jurisdictions have a definition of "benchmark administrator" in their Securities Act, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of MI 25-102.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
			We don't believe it is necessary to define "administration" for the purposes of MI 25-102.
48	Definition of "benchmark contributor"	One commenter suggested that the definition of "benchmark contributor" should be included in MI 25-102.	We note that certain jurisdictions have a definition of "benchmark contributor" in their Securities Act, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of MI 25-102.
49	Definition of "benchmark user"	One commenter stated that the definition is unclear and requires further detail to understand what users and products are within the scope of Proposed MI 25-102. Another commenter submitted that the CSA should add commentary to clarify that the determination of initial margin and variation margin under derivatives contracts would not constitute the use of a benchmark as a reference under Proposed MI 25-102, whether such benchmark is used to calculate interest payable on margin delivered or the amount of margin to be delivered in the first place. The commenter submitted that this interpretation would be consistent with how ESMA interprets the "use of a benchmark" under EU BMR.	We note that certain jurisdictions have a definition of "benchmark user" in their Securities Act, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of MI 25-102. We don't believe it is necessary to further define "benchmark user" for the purposes of MI 25-102. As noted above, MI 25-102 is a "designation" regime rather than a "registration" or "licensing" regime.
Form 25-102F1 *Designated Benchmark Administrator Annual Form*			
50	Item 13 – Specified Revenue	Two commenters were of the view that the rationale for this requirement is unclear and that it does not contribute toward protecting the integrity of the benchmark determination process.	We believe that Item 13 is appropriate. We don't believe that is would be unduly onerous for a designated benchmark administrator to comply with this requirement.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
Form 25-102F2 *Designated Benchmark Annual Form*			
51	Item 3 – Benchmark Distribution Model	Two commenters were of the view that the rationale for this requirement is unclear and that it does not contribute toward protecting the integrity of the benchmark determination process.	We believe that Item 3 is appropriate. We don't believe that is would be unduly onerous for a designated benchmark administrator to comply with this requirement.
General comments not specifically related to Proposed National Instrument 25-102			
52	Additional research and investor education	One commenter suggested that additional consideration should be given to more oversight of the use of benchmarks by investors, even benchmarks that are not ultimately designated benchmarks, as there have been many articles written on the increasing use of esoteric benchmarks by investors, the composition of which are unlikely to be fully understood by users. This commenter noted that even if such benchmarks are not of systemic importance to the Canadian capital markets, it may be worth further research as to whether additional investor education or disclosure by benchmarks and products derived from benchmark references are warranted.	We thank the commenter for their comment. However, the additional research suggested by the commenter is beyond the scope of the current CSA rule-making project for MI 25-102.

ANNEX C

MULTILATERAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

Note: The text box in this Instrument located after subsection 1(6) refers to terms defined in securities legislation. This text box does not form part of this Instrument.

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" includes, 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, as an employee or agent, on behalf of a benchmark contributor;

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

"CSAE 3001" means Canadian Standard on Assurance Engagements 3001 *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 of a designated benchmark administrator who performs services

on behalf of the designated benchmark administrator;

"designated benchmark" means a benchmark that is designated for the purposes of this Instrument by a decision of the securities regulatory authority;

"designated benchmark administrator" means

(a) in Québec, a benchmark administrator that is subject to securities legislation by a decision of the securities regulatory authority, and

(b) in every other jurisdiction, a benchmark administrator that is designated for the purposes of this Instrument by a decision of the securities regulatory authority;

"designated critical benchmark" means a benchmark that is designated for the purposes of this Instrument as a "critical benchmark" by a decision of the securities regulatory authority;

"designated interest rate benchmark" means a benchmark that is designated for the purposes of this Instrument as an "interest rate benchmark" by a decision of the securities regulatory authority;

"designated regulated-data benchmark" means a benchmark that is designated for the purposes of this Instrument as a "regulated-data benchmark" by a decision of the 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 input data;

"input data" means data in respect of any measurement of one or more assets, interests or elements, including, but not limited to, the value or price of the asset, interest or element, if that data is contributed, or otherwise obtained, by a designated benchmark administrator for the purpose of determining a designated benchmark;

"ISAE 3000" means International Standard on Assurance Engagements 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, as amended from time to time;

"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 the applicable subject requirements,

if the report is prepared in accordance with CSAE 3000 and CSAE 3530 or ISAE 3000, or

(b) a public accountant's limited assurance report, on the compliance of a person or company with the applicable subject requirements, if the report is prepared in accordance with CSAE 3001 and CSAE 3531 or ISAE 3000;

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

"methodology" means a document describing 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 the applicable subject requirements, if the report is prepared in accordance with CSAE 3000 and CSAE 3530 or ISAE 3000, or

(b) a public accountant's reasonable assurance report, on the compliance of a person or company with the applicable subject requirements, if the report is prepared in accordance with CSAE 3001 and CSAE 3531 or ISAE 3000;

"subject requirements" means

(a) paragraphs 32(1)(a) and (b),

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

(c) paragraphs 36(1)(a) and (b),

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

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

"transaction data" means the data in respect of a price, rate, index or value representing transactions

(a) between persons or companies each of which is not an affiliated entity of one another, and

(b) occurring 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, input data is considered to have been contributed to a designated benchmark administrator if

(a) it is not reasonably available to

(i) the designated benchmark administrator, or

(ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and

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

(4) For the purposes of this Instrument, a designated benchmark administrator is considered to have provided a designated benchmark if any of the following apply:

(a) the administrator collects, analyzes, processes or otherwise uses the input data for the purposes of determining the benchmark;

(b) the administrator determines the benchmark through the application of the methodology applicable to the benchmark;

(c) the administrator administers any other arrangements for determining the benchmark.

(5) Subject to subsections (6), (7) and (8), Appendix A contains definitions of terms used in this Instrument.

(6) Subsection (5) does not apply in Alberta, New Brunswick, Nova Scotia, Ontario or Saskatchewan.

Note: In Alberta, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the terms in Appendix A are defined in securities legislation.

(7) In British Columbia, the definitions of "benchmark" and "benchmark contributor" in the *Securities Act* (British Columbia) apply to this Instrument.

(8) In Québec, the definitions of "benchmark" and "benchmark administrator" in the *Securities Act* (Québec) apply to this Instrument.

(9) In this Instrument, a person or company is an affiliated entity of another person or company if either of the following applies:

(a) one is the subsidiary of the other;

(b) each is a subsidiary of, or controlled by, the same person or company.

(10) For the purposes of paragraph (9)(b), a person or company (first person) controls 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 that, 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 a 50% interest in the partnership;

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

(d) the second person is a trust and the first person is a trustee of the trust.

PART 2
DELIVERY REQUIREMENTS

Information on a designated benchmark administrator

2.(1) In this section, the following terms have the same meaning as in section 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 in respect 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 consider describes the designated benchmark administrator's organization, structure and administration of

benchmarks, including, for greater certainty, a description of its policies and procedures required under this Instrument, conflicts of interest and potential conflicts of interest, any person or company referred to in section 13 to which a designated benchmark administrator has outsourced a function, service or activity in the provision of a designated benchmark, benchmark individuals, the officer referred to in section 6 and sources of revenue, and

(b) annual financial statements for the designated benchmark administrator's most recently completed financial year that include all of the following:

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

(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 the purposes of paragraph (3)(b), if a 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, if any, immediately preceding the most recently completed financial year;

(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, and

(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 be prepared in accordance with, Form 25-102F1 *Designated Benchmark Administrator Annual Form* and must be delivered

(a) on or before the 30th day after the designated benchmark administrator is designated, and

(b) 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 inaccurate, and a reasonable person would consider the inaccuracy to be significant, the designated benchmark administrator must promptly deliver a completed amended Form 25-102F1 *Designated Benchmark Administrator Annual Form* that includes the accurate 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, for greater certainty, its procedures, methodologies and distribution model, and

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

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

(a) on or before the 30th day after the designated benchmark is designated, and

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

(3) If any of the information delivered by a designated benchmark administrator under paragraph (1)(a) in respect of a designated benchmark it administers becomes inaccurate, and a reasonable person would consider the inaccuracy to be significant, the designated benchmark administrator must promptly deliver a completed amended Form 25-102F2 *Designated Benchmark Annual Form* that includes the accurate information.

Submission to jurisdiction and appointment of agent for service of process

4.(1) A designated benchmark administrator must, if the designated benchmark administrator is incorporated or organized under the laws of a foreign jurisdiction, submit to the non-exclusive jurisdiction of the judiciary and quasi-judicial and other administrative bodies of the local jurisdiction and appoint an agent for service of process in Canada in a jurisdiction in which the designated benchmark administrator is designated**.**

(2) The submission to jurisdiction and appointment required under subsection (1) must be prepared in accordance with Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and must be delivered on or before the 30th day after the designated benchmark administrator is designated.

(3) A designated benchmark administrator, or a benchmark administrator referred to in subsection (4), must deliver an amended Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* containing updated information at least 30

days before the effective date of any change that would result in a change to the information provided in the Form.

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

PART 3
GOVERNANCE

Accountability framework requirements

5.(1) A designated benchmark administrator must establish, document, maintain and apply an accountability framework of policies and procedures that are reasonably designed to

(a) ensure and evidence compliance with securities legislation relating to benchmarks, and

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

(2) An accountability framework referred to in subsection (1) must specify how the designated benchmark administrator complies with each of the following:

(a) Part 7;

(b) subsection 2(5), paragraph 18(1)(c), sections 32 and 36 and subsection 39(7) as they relate to internal review or audit, a public accountant's limited assurance report on compliance or a reasonable assurance report on compliance;

(c) the policies and procedures referred to in section 12.

Compliance officer

6.(1) A designated benchmark administrator must designate an officer to be responsible for monitoring and assessing compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks.

(2) A designated benchmark administrator must not prevent or restrict 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 accountability framework referred to in section 5, the control framework referred to in section 8 and securities legislation relating to benchmarks;

(b) at least once every 12 months, submit a report to the designated benchmark administrator's board of directors that describes

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

(ii) compliance by the designated benchmark administrator and its DBA individuals with the accountability framework referred to in section 5, the control framework referred to in section 8 and securities legislation relating to benchmarks, and

(iii) whether the designated benchmark administrator has followed the methodology applicable to each designated benchmark it administers;

(c) submit a 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 relating to benchmarks and any of the following apply:

(i) a reasonable person would consider that the suspected non-compliance, if actual, poses a significant risk of financial loss to a benchmark user or to any other person or company;

(ii) a reasonable person would consider that the suspected non-compliance, if actual, poses a significant risk of harm to the integrity of capital markets;

(iii) a reasonable person would consider that the suspected non-compliance, if actual, 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;

(b) the determination of compensation for any DBA individuals, other than for a DBA individual who 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) A designated benchmark administrator must not provide a payment or other financial incentive to an officer referred to in subsection (1), or any DBA individual who reports directly to the officer, if the payment or other financial incentive would create a conflict of

interest.

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

(8) 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

7.(1) In this section, "oversight committee" means the committee referred to in subsection (2).

(2) A designated benchmark administrator must establish and maintain a committee to oversee the provision of a designated benchmark.

(3) The oversight committee must not include any individual who is a member of 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 a 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 every 12 months and consider if any changes to the methodology are required;

(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 8;

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

(e) oversee any person or company referred to in section 13 to which a designated benchmark administrator has outsourced a function, service or activity in the provision of the designated benchmark, including calculation agents and 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 its meetings;

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

(i) oversee the designated benchmark administrator's establishment, documentation, maintenance and application of the code of conduct referred to in section 23,

(ii) monitor each of the following:

(A) the input data;

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

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

(iii) take reasonable measures regarding any breach of the code of conduct referred to in section 23 to mitigate the impact of the breach and prevent additional breaches in the future, if a reasonable person would consider that the breach is significant, 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 23, if a reasonable person would consider that the breach is significant.

(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 misconduct by the designated benchmark administrator in relation to the provision of a designated benchmark, if a reasonable person would consider that the misconduct is significant;

(b) any misconduct by a benchmark contributor in respect of a designated benchmark that is based on input data from the benchmark contributor, if a reasonable person would consider that the misconduct is significant;

(c) any input data that

(i) a reasonable person would consider 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 carry out its, and their, actions and duties under this Instrument with integrity.

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

Control framework

8.(1) In this section, "control framework" means the policies, procedures and controls referred to in subsections (2), (3) 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), a 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 23 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 security incident or any systems issue relating to a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant.

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

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

Governance requirements

9.(1) A designated benchmark administrator must establish and document its organizational structure.

(2) The organizational structure referred to in subsection (1) must establish well-defined 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 the individual, 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 approved by a manager of the designated benchmark administrator.

Conflicts of interest

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

(a) identify and eliminate or manage 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 the exercise of expert judgment by the benchmark administrator or DBA individuals is independently and honestly exercised,

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

(d) ensure that an officer referred to in section 6, or any DBA individual who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affect the integrity of the benchmark determination, and

(e) ensure that each of its benchmark individuals is not subject to undue influence, undue pressure or conflicts of interest, including, for greater certainty, 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 adversely affect the integrity of the benchmark determination,

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

(iii) does not contribute to a determination of a designated benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator, and

(iv) is subject to policies and procedures to prevent the exchange of information that might affect a designated benchmark with the following, except as permitted under the policies and procedures of the designated benchmark administrator:

(A) any other DBA individual if that individual is involved in an activity that results in a conflict of interest or a potential conflict of interest,

(B) a benchmark contributor or any other person or company.

(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 administrator relating to the designated benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated benchmark.

(3) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated benchmark

(a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and

(b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.

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

(a) take into account the nature and categories of the designated benchmarks it administers and the risks that each designated benchmark poses to capital markets and benchmark users,

(b) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under Part 5, and

(c) identify and eliminate or manage conflicts of interest, including, for greater certainty, 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) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in subsection (4), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

Reporting of contraventions

11.(1) A designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed to detect and promptly report to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve the following:

(a) manipulation or attempted manipulation of a designated benchmark;

(b) provision or attempted provision of false or misleading information in respect 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 securities legislation relating to benchmarks to the officer referred to in section 6.

(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 the following:

(a) manipulation or attempted manipulation of a designated benchmark;

(b) provision or attempted provision of false or misleading information in respect of a designated benchmark.

Complaint procedures

12.(1) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures reasonably designed to ensure that the designated benchmark administrator receives, investigates and resolves complaints relating to a designated benchmark, including, for greater certainty, complaints in respect of each of the following:

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

(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 any person or

company 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;

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

Outsourcing

13.(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 any 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 relating to benchmarks.

(2) A designated benchmark administrator that outsources 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 that

(a) the person or company performing the function or activity or providing the service has the ability, capacity, and any authorization required by law, to perform the outsourced function or activity, or provide the service, reliably and effectively,

(b) the designated benchmark administrator maintains records documenting the identity and the tasks of the person or company performing the function or activity or providing the service and that those records are available in a manner that permits them to be provided to the regulator or, in Québec, the securities regulatory authority, in a reasonable period,

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

(i) imposes service level requirements on the person or company,

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

(iii) requires the person or company to disclose to the designated benchmark administrator any development that may have a significant impact on the

person or company's ability to perform the outsourced function or activity, or provide the outsourced service, in compliance with applicable law,

(iv) requires the person or company to cooperate with the regulator or securities regulatory authority regarding a compliance review or investigation involving the outsourced function, service or activity,

(v) allows the designated benchmark administrator to directly access

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

(ii) the business premises of the person or company, and

(vi) requires the person or company to keep sufficient books, records and other documents to record its activities relating to the designated benchmark and to provide the designated benchmark administrator with copies of those books, records and other documents on request,

(d) the designated benchmark administrator takes reasonable measures if the administrator becomes aware of any circumstances indicating that the person or company to which a function, service or activity is outsourced might not be performing the outsourced function or activity, or providing the outsourced service, in compliance with this Instrument or with the agreement referred to in paragraph (c),

(e) the designated benchmark administrator conducts reasonable supervision of the outsourced function, service or activity and manages any risks to the designated benchmark administrator or to the accuracy or reliability of the designated benchmark resulting from the outsourcing,

(f) the designated benchmark administrator retains the expertise that a reasonable person would consider necessary to conduct reasonable supervision of the outsourced function, service or activity and to manage any risks to the designated benchmark administrator or to the accuracy or reliability of the designated benchmark resulting from the outsourcing, and

(g) the designated benchmark administrator takes steps, including developing contingency plans, that a reasonable person would consider necessary to avoid or mitigate operational risk related to the person or company performing the function or activity or providing the service.

(3) A designated benchmark administrator that outsources a function, service or activity in the provision of a designated benchmark must ensure that the regulator or securities regulatory authority has reasonable access to

(a) the applicable books, records and other documents of the person or company performing the function or activity or providing the service, and

(b) the applicable business premises of the person or company performing the function or activity or providing the service.

PART 4
INPUT DATA AND METHODOLOGY

Input data

14.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that all 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 and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) the input data will continue to be reliably available;

(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, reliable 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, reliable and complete and that include all of the following:

(a) criteria for determining who may act as benchmark contributors and contributing individuals;

(b) a process for determining benchmark contributors and contributing individuals;

(c) a process for assessing a benchmark contributor’s compliance with the code of conduct referred to in section 23;

(d) a process for applying measures that a reasonable person would consider

appropriate in the event of a benchmark contributor failing to comply with the code of conduct referred to in section 23;

(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, reliability and completeness.

(3) If a reasonable person would consider that the input data results in a designated benchmark that does not accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent, 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 and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(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 under paragraph (3)(a) or (b).

(5) A designated benchmark administrator must publish both 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

15.(1) For the purpose of paragraph 14(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

(a) a reasonable person would consider that the benchmark contributor has breached the code of conduct referred to in section 23, and

(b) a reasonable person would consider that the breach is significant.

(3) If the circumstances referred to in subsection (2) occur, and if a reasonable person would consider it to be appropriate, a designated benchmark administrator must obtain alternative representative data in accordance with the policies and procedures referred to in subsection 16(3).

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

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

(b) ensure that the benchmark contributor has in place internal oversight and verification procedures that a reasonable person would consider adequate.

(5) In this section, "front office" means any department, division or other internal grouping of a benchmark contributor, or any employee or agent of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the benchmark contributor.

Methodology

16.(1) A designated benchmark administrator must not follow 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 represent;

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

(c) the accuracy and reliability of the methodology, with respect to determinations made under it, 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 is capable of being verified as being accurate, reliable and complete.

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

(a) when it is prepared, takes into account all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to represent,

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

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

(3) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures 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 represent, and

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

Proposed significant changes to methodology

17.(1) In this section, "significant change" means a change that a reasonable person would consider to be significant.

(2) A designated benchmark administrator must not implement a significant change to a methodology for determining a designated benchmark, unless all of the following apply:

(a) the designated benchmark administrator has published notice of the proposed significant change to the methodology of a designated benchmark;

(b) the designated benchmark administrator has provided a means for benchmark users and other members of the public to comment on the proposed significant change and its effect on the designated benchmark;

(c) the designated benchmark administrator has published

(i) any comments received, unless the commenter has requested that its comments be held in confidence,

(ii) the name of each commenter, unless a commenter has requested that its name be held in confidence, and

(iii) the designated benchmark administrator's response to the comments that are

published;

(d) the designated benchmark administrator has published notice of implementation of any significant change to the methodology of the designated benchmark.

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

(a) the notice under paragraph (2)(a) must be published on 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 publication of comments under paragraph (2)(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 notice under paragraph (2)(d) must be published sufficiently before the effective date of the change to provide benchmark users and other members of the public with reasonable time to consider the implementation of the significant change.

PART 5
DISCLOSURE

Disclosure of methodology

18.(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 might need in order to carry out its responsibilities as a benchmark contributor, and

(ii) a reasonable benchmark user might 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 represent;

(b) an explanation of all of the elements of the methodology, including, for greater certainty, the following:

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

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

(iii) the criteria used by the designated benchmark administrator to select 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) a description of the benchmark contributors and the criteria used to determine the eligibility of a benchmark contributor;

(vi) a description of the constituents of the designated benchmark and the criteria used to select and give 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 that identify 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 and reliably represent that part of the market or economy the designated benchmark is intended to represent, 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 if transaction data may

be inaccurate, unreliable or incomplete;

(xiii) a description of the roles of any third parties involved in data collection for, or in the 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 approval of the methodology and the frequency of such reviews and approvals;

(d) the process referred to in section 17 for making significant changes to the methodology;

(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 referred to in section 17 at least 45 days before the significant change is implemented.

(3) Subsection (2) does not apply with respect to a proposal to make a significant change to a methodology of a designated benchmark referred to in section 17 if

(a) the proposal is intended to be implemented within 45 days of the decision to make the change,

(b) the proposal is intended to preserve the integrity, accuracy or reliability of the designated benchmark or the independence of the designated benchmark administrator, and

(c) the designated benchmark administrator promptly, after making the decision to make the significant change, provides written notice to the regulator or securities regulatory authority of the proposed significant change.

Benchmark statement

19.(1) In this section, "benchmark statement" means a written statement that includes all of the following:

(a) a description of that part of the market or economy the designated benchmark is intended to represent, including, for greater certainty, the following:

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

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

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

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

(b) an explanation of the circumstances in which the designated benchmark might, in the opinion of a reasonable person, not accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent;

(c) information that sets out all of the following:

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

(ii) the circumstances in which expert judgment would be exercised by the designated benchmark administrator or any benchmark contributor;

(iii) the job title of the individuals who are authorized to exercise expert judgment;

(d) whether the expert judgment referred to in paragraph (c) will be evaluated by the designated benchmark administrator or the benchmark contributor and the parameters that will be used to conduct the evaluation;

(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) an explanation of all key terms used in the statement that relate to the designated benchmark and its methodology;

(h) the rationale for adopting the methodology for determining the designated benchmark;

(i) the procedures for the review and approval of the methodology of the designated benchmark;

(j) a summary of the methodology of the designated benchmark, including, for greater certainty, the following, if applicable:

(i) a description of the types of input data to be used;

(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 criteria for rebalancing the constituents of the designated benchmark;

(vi) any other restrictions or limitations on the exercise of expert judgment;

(k) the procedures that govern the provision of the designated benchmark in periods of market stress or when transaction data might be inaccurate, unreliable or incomplete, and the potential limitations of the designated benchmark during those periods;

(l) 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;

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

(2) No later than 15 days after the designation of a designated benchmark, the designated benchmark administrator of the designated benchmark must publish a benchmark statement.

(3) A designated benchmark administrator must, with respect to each designated benchmark it administers, review the applicable benchmark statement at least every 2 years.

(4) If there is a change to the information required under this section in a benchmark statement, and if a reasonable person would consider the change to be significant, the designated benchmark administrator must promptly update the benchmark statement to reflect the change.

(5) If the benchmark statement is updated under subsection (4), the designated benchmark

administrator must promptly publish the updated benchmark statement.

Changes to and cessation of a designated benchmark

20.(1) A designated benchmark administrator must not cease to provide a designated benchmark, unless the designated benchmark administrator has provided notice of the cessation on a date that provides benchmark users and other members of the public with reasonable time to consider the impact of the cessation.

(2) A designated benchmark administrator must publish, simultaneously with the benchmark statement referred to in subsection 19(2), the procedures it will follow in the event of a significant change to the methodology or provision of the designated benchmark it administers, or the cessation of the designated benchmark, including procedures for advance notice of the implementation of a significant change or a cessation.

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

Registrants, reporting issuers and recognized entities

21.(1) If a person or company uses a designated benchmark, and if a significant change to the methodology or provision of the benchmark, or the cessation of the benchmark, could have a significant impact on the person or company, 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 will take in the event of any of the following:

(a) a significant change to the methodology or provision of the designated benchmark;

(b) a cessation of the designated benchmark.

(2) Subsection (1) does not apply unless the person or company is any 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*.

(3) Subsection (1) does not apply with respect to a security issued or a derivative entered into

before the date this Instrument comes into force.

(4) If a reasonable person would consider it 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 as substitutes for the designated benchmark, and

(b) indicate why the substitution would be suitable.

(5) If a reasonable person would consider it appropriate, a person or company referred to in subsection (1) must refer to the plan referred in subsection (1) 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

22. If, under this Instrument, a designated benchmark administrator is required 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 include the document or information on the designated benchmark administrator's website in a prominent manner and, for greater certainty, free of charge.

PART 6
BENCHMARK CONTRIBUTORS

Code of conduct for benchmark contributors

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

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

(a) a description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with sections 14 and 15;

(b) the method by which a benchmark contributor will confirm the identity of each contributing individual who might contribute input data;

(c) the method by which the designated benchmark administrator will confirm the identity of a benchmark contributor and any contributing individual;

(d) the procedures that a benchmark contributor will use to determine who is suitable

to be authorized as a contributing individual;

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

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

(i) procedures for contributing input data;

(ii) specifying whether input data is transaction data;

(iii) confirming whether input data conforms to the designated benchmark administrator's requirements;

(iv) procedures for the exercise of expert judgment in contributing input data;

(v) if the designated benchmark administrator requires the validation of input data before it is contributed, the requirement;

(vi) a requirement to maintain records relating to its activities as a benchmark contributor;

(vii) a requirement that the benchmark contributor report to the designated benchmark administrator any instance when a reasonable person would consider that a contributing individual, acting on a behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate, unreliable or incomplete;

(viii) a requirement to identify and eliminate or manage conflicts of interest and potential conflicts of interest that may affect the integrity, accuracy or reliability of the designated benchmark;

(ix) a procedure for the designation of an officer of the benchmark contributor who is to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct and securities legislation relating to benchmarks;

(x) a requirement that the benchmark contributor's officer referred to in subparagraph (ix) and the benchmark contributor's chief compliance officer not be prevented or restricted from directly accessing the benchmark contributor's board of directors.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to, at least once every 12 months and promptly after any change to the code of conduct referred to in subsection (1), assess

whether each benchmark contributor to a designated benchmark that it administers is complying with the code of conduct.

Governance and control requirements for benchmark contributors

24.(1) Except in Québec, 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) input data contributed by the benchmark contributor is not affected by any conflict of interest or potential conflict of interest involving the benchmark contributor or its employees, officers, directors or agents, if a reasonable person would consider that the input data might be inaccurate, unreliable or incomplete;

(b) if expert judgment is exercised by the benchmark contributor in contributing input data, the benchmark contributor exercises the expert judgment independently, in good faith and in compliance with the code of conduct referred to in section 23.

(2) Except in Québec, a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the accuracy, reliability and completeness of each contribution of input data, 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 23;

(b) who may contribute input data, including, as applicable, a process for approval by an individual holding a position senior to that of a contributing individual;

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

(d) the identification and elimination or management of conflicts of interest and potential conflicts of interest, including, for greater certainty,

(i) policies, procedures and controls that are reasonably designed to keep separate, operationally or otherwise, contributing individuals from employees or agents whose responsibilities include transacting in a contract, derivative, instrument or security that uses the designated benchmark for reference;

(ii) policies, procedures and controls that are reasonably designed to prevent contributing individuals from receiving compensation or other financial incentive from which conflicts of interest arise, including for greater certainty, conflicts of interest that adversely affect the accuracy, reliability and completeness of each contribution of input data.

(3) Except in Québec, before a benchmark contributor contributes input data for a designated benchmark, the benchmark contributor must

(a) establish, document, maintain and apply policies and procedures reasonably designed to establish criteria, including any restrictions or limitations, for the exercise 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 exercise that expert judgment, the rationale applied in the exercise of the expert judgment and the manner of the exercise of the expert judgment.

(4) Except in Québec, a benchmark contributor that contributes input data for 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 all of the following:

(a) communications, including, for greater certainty, telephone conversations, in relation to the contribution of input data;

(b) all information used or considered by the benchmark contributor in making each contribution, including details of contributions made and the names of contributing individuals;

(c) the records relating to expert judgment referred to in paragraph 3(b);

(d) all documentation relating to the identification and elimination or management of conflicts of interest and potential conflicts of interest;

(e) 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;

(f) 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 required under this Instrument.

(5) Except in Québec, a benchmark contributor that contributes input data for a designated benchmark must

(a) cooperate with the designated benchmark administrator in the review and supervision of the provision of the designated benchmark, including, for greater certainty, cooperation in connection with any limited assurance report on compliance or reasonable assurance report on compliance required under this Instrument, and

(b) make available the records kept in accordance with subsection (4) to all of the following:

(i) the designated benchmark administrator;

(ii) a public accountant involved with the preparation of a limited assurance report on compliance or reasonable assurance report on compliance required under this Instrument.

Compliance officer for benchmark contributors

25.(1) Except in Québec, a benchmark contributor that contributes input data for a designated benchmark must designate an officer of the benchmark contributor who is to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section 23, this Instrument and securities legislation relating to benchmarks.

(2) Except in Québec, a benchmark contributor must not prevent or restrict the officer referred to in subsection (1) and its chief compliance officer from directly accessing the benchmark contributor's board of directors or a member of the board of directors.

PART 7
RECORD KEEPING

Books, records and other documents

26.(1) A designated benchmark administrator must keep the books, records and other documents that are necessary to account for 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 books, records and other documents of the following:

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

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

(c) the methodology of each designated benchmark administered by the designated benchmark administrator;

(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 or methodologies;

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

(g) all documents relating to a complaint;

(h) communications, including, for greater certainty, 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 referred to in subsection (2) in a form that

(a) identifies the manner in which the determination of a designated benchmark was made, and

(b) enables 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.

(4) A designated benchmark administrator must retain the books, records and other 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, whichever is later,

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

(c) in a manner that permits those books, records and other documents to be provided promptly on request 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

27.(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 for how the designated critical benchmark can be transitioned to another designated benchmark administrator or cease to be provided.

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

(a) the provision of the designated critical benchmark has been transitioned to another 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) 12 months have elapsed from the submission of the plan referred to in paragraph (1)(b), unless, before the expiration of the period, the regulator or securities regulatory authority has provided written notice that the written notice has been extended.

Access

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

Assessment

29. A designated benchmark administrator of a designated critical benchmark must, at least once every 2 years, submit to the regulator or securities regulatory authority an assessment of the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated critical benchmark is intended to represent.

Benchmark contributor to a designated critical benchmark

30.(1) Except in Québec, if a benchmark contributor to a designated critical benchmark decides it will cease contributing input data, it must promptly notify in writing the designated benchmark administrator that administers the designated critical benchmark.

(2) Except in Québec, a benchmark contributor that is required to give notice under subsection (1) must continue contributing input data until the earlier of

(a) the date referred to in subparagraph (3)(b)(ii), and

(b) 6 months after the notice referred to in subsection (1) is received by the designated benchmark administrator that administers the designated critical benchmark.

(3) 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,

(i) 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 and reliably represent that part of the market or economy the designated benchmark is intended to represent, and

(ii) notify in writing the benchmark contributor of the date after which the designated benchmark administrator no longer requires the benchmark contributor to contribute input data, if that date is less than 6 months after the date the designated benchmark administrator received the notice referred to in subsection (1).

Oversight committee

31.(1) For a designated critical benchmark, at least half of the members of the oversight committee referred to in section 7 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 a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be expected to interfere with the exercise of the member's independent judgment.

(3) The oversight committee referred to in section 7 must

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

(b) hold at least one meeting every 4 months.

Assurance report on designated benchmark administrator

32.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, either a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated critical benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with sections 5, 8 to 16 and 26, and

(b) following of the methodology applicable to the designated critical benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once every 12 months.

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

Assurance report on benchmark contributor

33.(1) Except in Québec, if required by the oversight committee referred to in section 7 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, either a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and its

(a) compliance with section 24, and

(b) following of the methodology applicable to the designated critical benchmark.

(2) Except in Québec, a benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

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

(c) the regulator or securities regulatory authority.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Order of priority of input data

34. For the purposes of subsection 14(1) and paragraph 14(5)(a), if a designated interest rate benchmark is based on a contribution of input data from a benchmark contributor, input data for the determination of the designated interest rate benchmark must be used by the designated benchmark administrator in accordance with the order of priority specified in the methodology of the designated interest rate benchmark.

Oversight committee

35.(1) For a designated interest rate benchmark, at least half of the members of the oversight committee referred to in section 7 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 a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be expected to interfere with the exercise of the member's judgment.

(3) The oversight committee referred to in section 7 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 at least one meeting every 4 months.

Assurance report on designated benchmark administrator

36.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, in respect of each designated interest rate benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with sections 5, 8 to 16, 26 and 34, and

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

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 23 and subsequently once every 2 years.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report referred to in subsection (1), publish 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

37.(1) Except in Québec, if required by the oversight committee referred to in section 7 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, either a limited assurance report on compliance or a reasonable assurance report on compliance, regarding the conduct of the benchmark contributor and its

(a) compliance with sections 24 and 39, and

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

(2) Except in Québec, the benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

(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

38.(1) Except in Québec, a benchmark contributor to a designated interest rate benchmark must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, 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

(a) compliance with sections 24 and 39,

(b) following of the methodology of the designated interest rate benchmark, and

(c) following of the code of conduct referred to in section 23.

(2) Except in Québec, a benchmark contributor must ensure an engagement referred to in subsection (1) occurs for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 23 and subsequently once every 2 years.

(3) Except in Québec, the benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

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

(c) the regulator or securities regulatory authority.

Benchmark contributor policies and procedures

39.(1) Subsections (2) to (7) do not apply to a person or company except in respect of a designated interest rate benchmark.

(2) Except in Québec, a contributing individual of the benchmark contributor and a manager of that contributing individual must provide a written statement to the benchmark contributor and the designated benchmark administrator that the contributing individual and the manager will comply with the code of conduct referred to in section 23.

(3) Except in Québec, a benchmark contributor must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the following:

(a) that 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) that there are internal procedures governing contributions of input data and the approval of contributions of input data, including keeping a record for each daily or other contribution of input data that shows:

(i) how the procedures were applied, and

(ii) all qualitative and quantitative factors, including market data and expert judgment, used for each contribution of input data;

(d) that there are disciplinary procedures to address the following conduct of a person or company, including, for greater certainty, a person or company that is external to the process governing contributions of input data:

(i) the manipulation or attempted manipulation of a designated benchmark, or the failure to report the manipulation or attempted manipulation of a designated benchmark, to which the person or company is a benchmark contributor;

(ii) the provision or attempted provision of false or misleading information in respect of a designated benchmark, or the failure to report the provision or attempted provision of false or misleading information in respect of a designated benchmark, to which the person or company is a benchmark contributor;

(e) that there are conflict of interest identification and management procedures and communication controls, both within the benchmark contributor's organization and among benchmark contributors and other third parties, reasonably designed to avoid any external influence over those responsible for contributing input data, if a reasonable person would consider that the external influence might adversely affect the accuracy, reliability or completeness of the input data;

(f) that 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 conflict of interest or a potential conflict of interest, if a reasonable person would consider that the exchange of that information might adversely affect the accuracy, reliability or completeness of the input data contributed by a benchmark contributor;

(h) that there are requirements to avoid collusion

(i) among benchmark contributors, and

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

(i) that there are measures to prevent, or limit, any person from exercising influence over the way a contributing individual contributes input data, if a reasonable person would consider that the influence might adversely affect the accuracy, reliability or completeness of the input data;

(j) the removal of any direct connection between the remuneration of an employee involved in the contribution of input data and the remuneration of, or revenues generated by, a person or company engaged in another activity, if a conflict of interest exists or might arise in relation to the other activity;

(k) that there are controls to identify a reverse transaction subsequent to the

contribution of input data.

(4) Except in Québec, a benchmark contributor must keep, for a period of 7 years from the date the record was made or received by the benchmark contributor, whichever is later, records of all of the following:

(a) all details of contributions of input data that a reasonable person would consider relevant to demonstrate the accuracy, reliability and completeness of the input data;

(b) the process governing input data determination and the approval of contributions of input data, including the records referred to in paragraph (3)(c);

(c) the name of each contributing individual and the individual's responsibilities;

(d) any communications, including, for greater certainty, telephone conversations, 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 an exposure to interest rate fixings in respect of input data, if a reasonable person would consider that the exposure is significant;

(h) the written statements referred to in subsection (2);

(i) the policies, procedures and controls referred to in subsection (3).

(5) Except in Québec with respect to benchmark contributors, a benchmark contributor and a designated benchmark administrator must keep their records in a medium that allows records to be accessible and with a documented audit trail.

(6) Except in Québec, the benchmark contributor's officer referred to in section 25 or the benchmark contributor's chief compliance officer must report all the following to the benchmark contributor's board of directors on a reasonably frequent basis:

(a) breaches of the code of conduct referred to in section 23;

(b) the failure to follow or apply the policies, procedures and controls referred to in subsection (3);

(c) reverse transactions subsequent to the contribution of input data.

(7) Except in Québec, a benchmark contributor that contributes input data to a designated interest rate benchmark must conduct, on a reasonably frequent basis, internal reviews of the benchmark contributor's input data and procedures.

(8) Except in Québec, a benchmark contributor to a designated interest rate benchmark must make available the information and records kept in accordance with subsection (4) to each of the following:

(a) the designated benchmark administrator in connection with the assessment under subsection 23(3) or for the purposes of paragraph 24(5)(a);

(b) a public accountant involved with the preparation of a limited assurance report on compliance or reasonable assurance report on compliance required under this Instrument.

DIVISION 3 – DESIGNATED REGULATED-DATA BENCHMARKS

- **Non-application to designated regulated-data benchmarks**

40. A designated regulated-data benchmark is exempt from the following:

(a) subsections 11(1) and (2);

(b) subsection 14(2);

(c) subsections 15(1), (2) and (3);

(d) sections 23, 24 and 25;

(e) paragraph 26(2)(a).

PART 9
DISCRETIONARY EXEMPTIONS

- **Exemptions**

41.(1) The regulator or 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**

42.(1) This Instrument comes into force on July 13, 2021.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after July 13, 2021, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

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

Definitions Applying in Certain Jurisdictions
(subsections 1(5) to (8))

"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, including, for greater certainty, either free of charge or on payment, and

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

  (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 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 6 of the Instrument and the oversight committee referred to in section 7 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 and potential conflicts of interest.

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

(a) Describe any conflict of interest or potential conflict of interest that arises 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 identify and eliminate or manage each conflict of interest or potential 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 8 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, Records and Other Documents
Describe the designated benchmark administrator's policies and procedures regarding record keeping.

Item 10. Outsourcing
Describe the designated benchmark administrator's policies and procedures regarding outsourcing and disclose the following information about any person or company referred to in section 13 of the Instrument to which a designated benchmark administrator has outsourced a function, service or activity in the provision of a designated benchmark (the "provider") and the individuals who supervise the provider:

- the identity of the provider and each of its key individual contacts;
- the total number of individuals who supervise the provider;
- a general description of the minimum qualifications required of the provider for any outsourcing;
- a general description of the minimum qualifications required of individuals who supervise the provider 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);

- a general description of the minimum qualifications required of the supervisors of benchmark individuals, 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 6 of the Instrument:

- name;
- employment history;
- post-secondary education;
- whether employed full-time or part-time by the designated benchmark administrator.

Item 13. Specified Revenue
Disclose the following 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;
- 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 under 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 incorporated into and form 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 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 the following, 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 incorporated into and form 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 the designated benchmark administrator (the "DBA"):

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

3. Address of principal place of business of the DBA:

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

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

6. Agent's address in Canada for service of process:

7. Name, email address, phone number and fax number of contact person of the 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 (a "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 proceeding any alleged lack of jurisdiction to bring a proceeding.

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

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

   (b) any judicial, quasi-judicial and other 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 D

COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

PART 1
GENERAL COMMENTS

Introduction

This companion policy (the "Policy") provides guidance on how the Canadian Securities Administrators ("we") interpret various matters in Multilateral 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

Designation of Benchmarks and Benchmark Administrators

Securities legislation provides for the designation of a benchmark and a benchmark administrator. In all Canadian jurisdictions that have adopted the Instrument, 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 Alberta, British Columbia and Québec, the securities regulatory authority may make the designation on its own initiative. In Québec, the decision of the securities regulatory authority to designate a benchmark has the legal effect of the benchmark administrator becoming subject to the *Securities Act* (Québec). "Regulator" and "securities regulatory authority" are defined in National Instrument 14-101 *Definitions*.

We expect that a regulator may apply to a securities regulatory authority to request the designation of a benchmark or benchmark administrator, or in Alberta, British Columbia or Québec, the securities regulatory authority may make the designation on its own initiative, on public interest grounds, including where:

- a benchmark is sufficiently important to financial markets in Canada, or
- we become aware of activities of a benchmark administrator, benchmark contributor or benchmark user that raise public interest concerns and conclude that the administrator and benchmark in question should be designated.

Where the regulator intends to apply for the designation of a benchmark or benchmark administrator, or in Alberta, British Columbia or Québec, the securities regulatory authority intends to make the designation on its own initiative, we generally expect to give the affected benchmark administrator reasonable notice of our intention and the reasons for it. In addition, in certain jurisdictions, securities legislation provides the benchmark administrator with an opportunity to be heard and, where necessary, to provide documents before the securities

regulatory authority makes its decision. Furthermore, we would generally not expect that a designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Categories of Designation

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 requirements in the Instrument that generally 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 provisions for designated benchmarks administrators and benchmark contributors in respect of designated regulated-data benchmarks. In addition to these specific exemptions, given the interpretation provided by subsection 1(3) of the Instrument as to when input data is considered to have been "contributed", as described later in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed would not apply to a benchmark that is designated as a regulated-data benchmark.

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 more than one designation. For example,

(a) a designated interest rate benchmark may also be designated as a designated critical benchmark, and
(b) 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 or benchmark administrator, a securities regulatory authority will issue a decision document that may designate 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.

If we consider it would be in the public interest, or not be prejudicial to the public interest, to do so, we may also apply for a change in the designation of a designated benchmark. In some jurisdictions, such a change may be made by the securities regulatory authority without

application. For example, if a designated benchmark is initially designated as a designated interest rate benchmark but over time it becomes more significant to Canadian financial markets, we may apply for it to also be designated as a critical benchmark. If this were to occur, securities legislation in certain jurisdictions would provide the designated benchmark administrator with an opportunity to be heard and, where necessary, to provide documents before a decision to make such a change is made. Accordingly, we would not expect that a change in the category of designation would be made without reasonable notice being provided to the affected benchmark administrator. Furthermore, we would generally not expect that a change in the category of designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Suspending, Revoking or Cancelling a Designation or Amending or Revoking Terms and Conditions

Securities legislation also provides that a securities regulatory authority may cancel or revoke, and in Alberta and Québec the securities regulatory authority may also suspend, the designation of a designated benchmark administrator or designated benchmark or may amend or revoke the terms and conditions relating to designation. However, before doing so, securities legislation in certain jurisdictions provides the benchmark administrator with an opportunity to be heard or a right to be heard and, where necessary, to provide documents. Accordingly, we would not expect a designation would be cancelled, revoked or suspended or that terms or conditions would be amended or revoked without reasonable notice being provided to the affected benchmark administrator. Additionally, in jurisdictions where the regulator may apply to the securities regulatory authority for the cancellation or revocation of a designation of a designated benchmark administrator or designated benchmark or the amendment or revocation of terms and conditions, we would not expect to make such an application unless it would be in the public interest. Furthermore, we would generally not expect that a cancellation or revocation of a designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

"Designated critical benchmark" is a benchmark that is designated for the purposes of the Instrument as a "critical benchmark" by a decision of the 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 securities regulatory authority may recommend that 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 instruments or 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 instruments or 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 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 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 for the purposes of the Instrument as an “interest rate benchmark” by a decision of the 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 securities regulatory authority may recommend that 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 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 for the purposes of the Instrument as a "regulated-data benchmark" by a decision of the securities regulatory authority. Benchmark administrators of 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 securities regulatory authority may recommend that 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, or almost entirely, 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 13 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 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 data, economic factors, 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 any measurement of one or more assets, interests or elements that is contributed, or otherwise obtained, by a designated benchmark administrator for the purpose of determining a designated benchmark. For example, input data may include estimated prices, quotes, committed quotes or other values.

The reference to "or otherwise obtained" would include the following scenarios where data is "reasonably available" (within the meaning of s. 1(3) of the Instrument) on a source's website (free of charge or behind a paywall):

- "Active" scenario – the source takes deliberate action to provide the data to a benchmark administrator.
- "Passive" scenario – the source simply publishes the data and is not aware that the benchmark administrator is using it as input data.

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) or the applicable International Standard on Assurance Engagements (IASE). The CSAE and ISAE 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 parties 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".

Subsection 1(3) – Interpretation of contribution of input data

There are provisions in the Instrument that apply to (i) all input data or (ii) only input data that is contributed.

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

(a) it is not reasonably available to

(i) the designated benchmark administrator, or

(ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and

(b) it is provided to the designated benchmark administrator or the other person or company referred to in subparagraph (a)(ii) 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 or another person or company, other than the benchmark contributor, 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.

Where a benchmark administrator engages the services of an agent to aggregate input data from multiple sources, we would not consider this input data to be contributed by the data aggregator, as an agent of the benchmark administrator, provided that the input data is collected from one or more reasonably available sources.

Input data for regulated-data benchmarks would generally not be considered to be contributed because the nature of this data is that it is reasonably available and not created for the purpose of determining the benchmark.

Subsections 1(5) to (8) – Definitions of benchmark, benchmark administrator, benchmark contributor and benchmark user in Appendix A

Subsection 1(5) 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(6) indicates that subsection 1(5) does not apply in Alberta, New Brunswick, Nova Scotia, Ontario or Saskatchewan. In these jurisdictions, the terms in Appendix A are defined in securities legislation.
- Subsection 1(7) provides that, in British Columbia, the definitions of "benchmark" and "benchmark contributor" in the *Securities Act* (British Columbia) apply.
- Subsection 1(8) provides that, in Québec, the definitions of "benchmark" and "benchmark administrator" in the *Securities Act* (Québec) apply.

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 measurement of one or more assets, interests or elements, including, but not limited to, the value or price of the asset, interest or element.

Public authorities

Where public authorities (for example, national statistics agencies, universities or research centres) contribute data to, or provide or have control over the provision of, a benchmark for public policy purposes, we would generally not designate such a benchmark as a "designated benchmark" or its administrator as a "designed benchmark administrator". In this regard, we would generally consider a "public authority" to include a government, a government agency or an entity performing public functions, having public responsibilities or providing public services under the control of a government or a government agency.

Use of "reasonable person"

Certain provisions of the Instrument use the concept of a "reasonable person" to introduce an objective test, rather than a subjective test. In these provisions, the test will turn on what a "reasonable person" would believe, consider, conclude or determine or what the opinion of a "reasonable person" would be, in the circumstances.

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.

Subsection 2(8) – Information on designated benchmark administrator

Subsection 2(8) requires that certain information be provided on Form 25-102F1 *Designated Benchmark Administrator Annual Form* and delivered on or before the 30th day after the designated benchmark administrator is designated. A benchmark administrator that provided a completed Form 25-102F1 with their application for designation does not need to re-file the form within the 30 day period after designation.

Subsection 3(2) – Information on designated benchmark

Subsection 3(2) requires that certain information be provided on Form 25-102F2 *Designated Benchmark Annual Form* and delivered on or before the 30th day after the designated benchmark is designated. A benchmark administrator that provided a completed Form 25-102F2 with their application for designation does not need to re-file the form within the 30 day period after designation.

Subsection 4(2) – Submission to jurisdiction and appointment of agent for service of process

Subsection 4(2) requires that certain information be provided on Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and delivered on or before the 30th day after the designated benchmark administrator is designated. A benchmark administrator that provided a completed Form 25-102F3 with their application for designation does not need to re-file the form after designation.

PART 3
GOVERNANCE

Board of directors

The Instrument has various obligations for the board of directors of a designated benchmark administrator. The Instrument does not include requirements as to the composition of the board of directors as this will be generally dictated by the corporate laws under which the benchmark administrator is organized. In addition to independence requirements under applicable corporate or other laws with respect to the composition of the board of directors of the benchmark administrator, there are several provisions of the Instrument that foster independence in the oversight of a designated benchmark and the proper management of potential conflicts of interest, including:

- **subsection 6(6)** – a designated benchmark administrator must not provide a payment or other financial incentive to a compliance officer referred to in subsection 6(1), or any DBA individual that reports directly to the officer, if the payment or other financial incentive would create a conflict of interest. Such a payment would compromise the independence of the compliance officer or the DBA individual;
- **subsections 7(2) and (3)** – a designated benchmark administrator must establish an oversight committee, the members of which must not be members of the board of directors;
- **subsections 7(4) and (9)** – the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator and, if the oversight committee becomes aware that the board of directors 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;
- **subsection 10(1)** – a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to, among other things, ensure that any expert judgment exercised by the benchmark administrator or DBA

individuals is independently and honestly exercised and protect the integrity and independence of the provision of a designated benchmark;

- **subsection 12(2)** – a benchmark administrator must conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint; and
- **subsections 31(1) and 35(1)** – for a designated critical benchmark and a designated interest rate benchmark, respectively, at least half of the members of the oversight committee of the designated benchmark administrator must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

Subsection 6(1) – Reference to securities legislation relating to benchmarks

Subsection 6(1) of the Instrument refers to "securities legislation relating to benchmarks", which would include the Instrument and benchmark provisions in local securities legislation. "Securities legislation" is defined in National Instrument 14-101 *Definitions*.

Paragraph 6(4)(b) – Determining compensation for DBA individuals

Paragraph 6(4)(b) of the Instrument prohibits the compliance officer of a designated benchmark administrator from participating in the determination of compensation for any DBA individuals, other than for a DBA individual who reports directly to the compliance officer. We expect that a designated benchmark administrator will consider compliance, including past compliance issues and how compensation policies may be used to manage conflicts of interest, when establishing compensation policies and determining compensation of any DBA individuals and we do not consider this to be prohibited by paragraph 6(4)(b) of the Instrument, even if the compliance officer is providing input in relation to a DBA individual.

Subsection 7(3) – Oversight committee must not include members of board of directors

While subsection 7(3) of the Instrument prohibits the oversight committee from including individuals that are members of the board of directors of the designated benchmark administrator, we do not consider this provision to prohibit a member of the board of directors from being invited, when appropriate, to an oversight committee meeting, provided that the member of the board of directors does not perform or influence the independent performance of the roles of the oversight committee set out in section 7 of the Instrument.

Subsection 7(7) – Information relating to a designated benchmark

We consider that the reference to "information relating to a designated benchmark" in subsection 7(7) of the Instrument would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

Subsection 7(8) – Required actions for oversight committee of a designated benchmark administrator

Subsection 7(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 7(8)(e) – Calculation agents and dissemination agents

Paragraph 7(8)(e) of the Instrument requires the oversight committee of a designated benchmark administrator to oversee any service provider involved in the provision 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.

We understand that a designated benchmark administrator may establish lines of supervision of service providers as contemplated by section 13 of the Instrument, where supervision is performed by certain DBA individuals and the oversight committee receives and reviews reports on this supervision. We would consider an oversight committee to satisfy its obligations under paragraph 7(8)(e) of the Instrument if it oversees the supervision of the service providers referred to in the paragraph, for example, through the receipt and review of regular reporting from those responsible for the supervision contemplated by section 13 of the Instrument.

Subparagraph 7(8)(i)(ii) – Monitoring of input data

Subparagraph 7(8)(i)(ii) of the Instrument requires the oversight committee of a designated benchmark administrator to monitor the input data, the contribution of input data by the benchmark contributor, and the actions of the designated benchmark administrator in challenging or validating contributions of input data. We understand that a designated benchmark may have several lines of monitoring where real-time monitoring is performed by certain DBA individuals and the oversight committee receives and reviews reports on this monitoring. We would consider an oversight committee to satisfy its obligations under subparagraph 7(8)(i)(ii) of the Instrument if it oversees the monitoring of items in the subparagraph, for example, through the receipt and review of regular reporting from those responsible for real-time monitoring.

Subparagraph 7(8)(i)(iii) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference in subparagraph 7(8)(i)(iii) of the Instrument to a "breach" of a code of conduct that is "significant" would include non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark or the designated benchmark administrator.

Section 8 – Control framework

Section 8 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, except in Québec, subsection 24(2) of the Instrument requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy, reliability 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 8(2) of the Instrument and the controls provided for under subsection 24(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 8(2) of the Instrument, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 24(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 8(5) – Reporting of significant security incident or systems issue

Subsection 8(5) of the Instrument provides that a designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any security incident or any systems issue relating to a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant. 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 senior management ultimately accountable for technology.

Subsection 10(2) – Conflict of interest requirements for designated benchmark administrators

Subsection 10(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 administrator relating to a designated benchmark, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated benchmark.

We expect that, when contemplating the nature and scope of such a conflict of interest, a designated benchmark administrator would consider a variety of matters, including 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 11(1) – Reporting of contraventions

Subsection 11(1) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed to detect and promptly report 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, or
- provision or attempted provision of false or misleading information in respect 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 12(2)(c) – Complaint procedures

Paragraph 12(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.

We expect that, in establishing the policies and procedures for complaints relating to the designated benchmark required by subsection 12(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 12(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 13 – Outsourcing

Section 13 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.

Section 13 does not apply to the oversight committees contemplated by the Instrument.

Paragraph 13(2)(c) – Written agreement for outsourcing

Paragraph 13(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 agreement that covers the matters set out in subparagraphs 13(2)(c)(i) to (vi). We consider the reference to "written agreement" to include one or more written agreements.

Where a benchmark administrator of a designated regulated-data benchmark uses the services of an agent to facilitate delivery of aggregate input data from multiple sources, we would not consider this to be outsourcing a function, service or activity in the provision of the designated benchmark. While such an arrangement would not be subject to section 13 of the Instrument, the benchmark administrator would still be required to comply with other applicable provisions of the Instrument, including the accountability framework in section 5 and the control framework in section 8, so it should have appropriate agreements in place with the agent.

PART 4
INPUT DATA AND METHODOLOGY

Subsection 15(2) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference in subsection 15(2) of the Instrument to a "breach" of a code of conduct that is "significant" would include non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark or the designated benchmark administrator.

Subsection 15(3) – Requirement to obtain alternative representative data

Subsection 15(3) of the Instrument provides that, in the event of a breach referred to in subsection 15(2), if a reasonable person would consider it to be appropriate, a designated benchmark administrator must obtain alternative representative data in accordance with the guidelines referred to in subsection 16(3) of the Instrument. However, those guidelines may contemplate the circumstances in which the designated benchmark administrator may conclude that the other benchmark contributors from which it obtained input data are a sufficient representative sample of benchmark contributors for purposes of subsection 15(1) of the Instrument.

Subsection 15(4) – Verification of input data from front office of a benchmark contributor

Paragraph 15(4)(a) of the Instrument requires that, if input data is contributed from any front office of a benchmark contributor, or an affiliated entity that performs any activities that relate to or might affect the input data, the designated benchmark administrator must obtain information from other sources, if reasonably available, that confirms the accuracy and completeness of the input data in accordance with the benchmark administrator's policies and procedures.

There may be instances where there are no other sources of information reasonably available to the designated benchmark administrator to confirm the accuracy and completeness of the input data. We expect the designated benchmark administrator to consider the steps it would take to confirm the accuracy and completeness of such input data in such instances when establishing the policies, procedures and controls required under section 8 of the Instrument.

Subsection 15(5) – Front office of a benchmark contributor

Subsection 15(5) of the Instrument provides that "front office" of a benchmark contributor or an applicable affiliated entity 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 affiliated entity.

Paragraph 16(1)(e) – Capability to verify determination under the methodology

Paragraph 16(1)(e) of the Instrument provides that a determination under the methodology of a designated benchmark must be capable of being verified as being accurate, reliable and complete.

A determination under a methodology that is based on information such as input data would be verified as being accurate, reliable 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, reliable 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.

In the case of an interest rate benchmark, we recognize that any verification done by a designated benchmark administrator or a public accountant would require access to the records of benchmark contributors pursuant to subsection 39(8) of the Instrument and may only be feasible if based on samples of rates on certain dates.

Paragraph 16(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph 16(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 represent.

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 represent.

Subsection 17(2) – Proposed or implemented significant changes to methodology

Subsection 17(2) of the Instrument provides that a designated benchmark administrator must provide for public notice of and comment on a proposed or implemented significant change to the methodology of a designated benchmark.

As part of the methodology disclosure required under section 18, paragraph 18(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.

In general, we would consider a change to the methodology of a designated benchmark to be significant if, in the opinion of a reasonable person, it would have a significant effect on the provision of the designated benchmark (within the meaning of subsection 1(4) of the Instrument).

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.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the proposed or implemented change to the methodology of a designated benchmark on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subparagraph 18(1)(b)(v) – Methodology disclosure

As part of the methodology disclosure required under section 18, subparagraph 18(1)(b)(v) of the Instrument provides that a designated benchmark administrator must publish a complete explanation of all elements of the methodology, including the benchmark contributors and the criteria used to determine eligibility of a benchmark contributor. This disclosure would include a list of existing benchmark contributors and may include a description of persons who may be benchmark contributors in the future.

Compliance with methodology

Several requirements in the Instrument foster a designated benchmark administrator's compliance with its own benchmark methodology, including:

- paragraph 5(1)(b) – a designated benchmark administrator must establish, document, maintain and apply an accountability framework of policies and procedures that are reasonably designed to, for each designated benchmark it administers, ensure and evidence that it follows the methodology applicable to the designated benchmark;
- paragraph 6(3)(b) – at least once every 12 months, the compliance officer must submit a report to the designated benchmark administrator's board of directors that describes whether the designated administrator has followed the methodology applicable to each designated benchmark it administers;
- paragraph 8(4)(a) – a designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that benchmark contributors comply with the standards for input data in the methodology of the designated benchmark;
- paragraph 16(1)(c) – the accuracy and reliability of a methodology, with respect to determinations made under it, must be capable of being verified, including, if appropriate, by back-testing; and
- paragraph 18(1)(c) – a designated benchmark administrator must publish the process for the internal review and approval of the methodology and the frequency of such reviews and approvals.

When complying with these requirements, a designated benchmark administrator should generally attempt to ensure that compliance with a benchmark methodology is monitored by staff that are independent of staff that determine and apply the methodology.

PART 5
DISCLOSURE

Subsection 19(1) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 19(1)(a) through (m) 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 represent and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph 19(1)(a) – Applicable part of the market or economy for purposes of the benchmark statement

Paragraph 19(1)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of that part of the market or economy the designated benchmark is intended to represent. This relates to the benchmark's purpose.

For example, an interest rate benchmark may be intended to represent 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.

Subsection 20(2) – Significant change to designated benchmark

Subsection 20(2) of the Instrument provides that a designated benchmark administrator must publish the procedures it will follow in the event of a significant change to or the cessation of a designated benchmark it administers, including procedures for advance notice of the implementation of a significant change or a cessation. We would consider a change in the person or company acting as the benchmark administrator of a designated benchmark to be an example of a significant change. Consequently, we would expect the designated benchmark administrator's procedures to include procedures in the event of a change in the administrator of a designated benchmark it administers, including procedures for advance notice of the change in administrator.

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 30 and 33 of the Instrument), and

- benchmark contributors to a designated interest rate benchmark (see sections 37, 38 and 39 of the Instrument).

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 Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario and Saskatchewan, securities legislation provides that the securities regulatory authority may, in response to an application by the regulator or, in Alberta or British Columbia, 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 subsection 1(3) of the Instrument.

Certain provisions in the Instrument relating to benchmark contributors have not been adopted in Québec as amendments to the *Securities Act* (Québec) are required to adopt these provisions.

Subsection 23(1) – Code of conduct for benchmark contributors

The requirement in subsection 23(1) of the Instrument for a designated benchmark administrator to 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 only applies if a designated benchmark is determined using input data from benchmark contributors. Subsection 1(3) of the Instrument sets out when input data is considered to have been contributed and Part 1 of this Policy provides further guidance on subsection 1(3) of the Instrument and when input data is considered to have been contributed.

Subparagraph 23(2)(f)(v) – Validation of input data before contribution

In considering any requirement for procedures, systems and controls under subparagraph 23(2)(f)(v), we expect a designated benchmark administrator 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. For example, depending on the specific nature of the designated benchmark, it may be appropriate to require an individual with appropriate knowledge holding a position senior to that of the contributing individual to sign-off on input data before it is contributed to the designated benchmark administrator.

Subparagraph 23(2)(f)(vii) – Input data that is inaccurate, unreliable or incomplete

Subparagraph 23(2)(f)(vii) of the Instrument requires that a code of conduct for a benchmark contributor include a reporting requirement for any instance when a reasonable person would consider that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate, unreliable 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, unreliable 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.

Subparagraph 23(2)(f)(x) – Access to board of directors

Subparagraph 23(2)(f)(x) of the Instrument requires that a code of conduct for a benchmark contributor include a requirement that the benchmark contributor's designated officer referred to in subparagraph 23(2)(f)(ix) and the benchmark contributor's chief compliance officer not be prevented or restricted from directly accessing the benchmark contributor's board of directors. In some instances, the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance officer will be the same person. However, if they are different persons, each must be provided with direct access to the benchmark contributor's board of directors. However, we realize that there may be situations where the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance officer may jointly or separately report to the benchmark contributor's board of directors on a matter.

Subsection 23(3) – Assessment of compliance with code of conduct

In establishing the policies and procedures required under subsection 23(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 24(1)(a) – Conflict of interest requirements for benchmark contributors

Except in Québec, paragraph 24(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 input data contributed by the benchmark contributor is not affected by any conflict of interest or potential conflict of interest involving the benchmark contributor and its employees, officers, directors or agents, if a reasonable person would consider that the input data might be inaccurate, unreliable or incomplete.

We expect that, when establishing these policies and procedures, 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 24(2) – Accuracy, reliability and completeness of input data

In establishing the policies, procedures and controls required under subsection 24(2) of the Instrument, subject to any requirements set out in the code of conduct established under section 23 of the Instrument, 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, reliability and completeness of input data. For example, depending on the specific nature of the designated benchmark, it may be appropriate to require an individual with appropriate knowledge holding a position senior to that of the contributing individual to sign-off on input data before it is contributed to the designated benchmark administrator.

In addition, as contemplated by subparagraph 24(2)(d)(i) of the Instrument, the extent of organizational separation of contributing individuals from employees whose responsibilities include transacting in a contract, derivative, instrument or security that uses the designated benchmark for reference should be appropriate to avoid the conflicts of interest or mitigate the risks resulting from conflicts of interest. Depending on the specific nature of the designated benchmark and the related conflicts of interest and risks, this may involve restricting access to certain information or restricting access to certain areas of the organization.

Subsection 24(3) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 24(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.

As described in Part 1 of this Policy, expert judgment may involve various activities. Except in Québec, paragraph 24(3)(b) of the Instrument requires that, if expert judgment is exercised in relation to input data, the benchmark contributor must retain records that record the rationale for any decision made to exercise that expert judgment, the rationale applied in the exercise of the expert judgment and the manner of the exercise of the expert judgment. The records should take into consideration the benchmark contributor's policies and procedures for the exercise of expert judgment.

Subsection 24(4) – Record keeping by benchmark contributor

The reference to "communications" in paragraph 24(4)(a) of the Instrument includes telephone conversations, email and other electronic communications. We consider this to require a benchmark contributor to a designated benchmark to keep audio recordings of all phone conversations and voicemail messages in relation to the contribution of input data. Furthermore, a benchmark contributor to a designated benchmark should retain records of call logs and notes of phone conversations or voicemail messages in relation to the contribution of input data.

The records kept by a benchmark contributor under subsection 24(4) of the Instrument may be required to be made available to the designated benchmark administrator under subsection 24(5). Given that the records may contain confidential, sensitive or proprietary information, we expect that a designated benchmark administrator will only request such records in connection with the review and supervision of the provision of the designated benchmark and will take appropriate steps to ensure the confidential treatment of such information.

Section 25 – Compliance officer for benchmark contributors

Except in Québec, subsection 25(1) of the Instrument provides that a benchmark contributor that contributes input data for a designated benchmark must designate an officer to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section 23, the Instrument and securities legislation relating 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.

Except in Québec, subsection 25(2) of the Instrument requires a benchmark contributor to not prevent or restrict the designated officer referred to in subsection 25(1) and the benchmark contributor's chief compliance officer from directly accessing to the benchmark contributor's board of directors. In some instances, the designated officer under subparagraph 25(1) and the chief compliance officer will be the same person. However, if they are different persons, each must be provided with direct access to the benchmark contributor's board of directors. However, we realize that there may be situations where the designated officer under subparagraph 25(1) and the chief compliance officer may jointly or separately report to the benchmark contributor's board of directors on a matter.

PART 7
RECORD KEEPING

Section 26 – Record keeping by designated benchmark administrator

The reference to "communications" in paragraph 26(2)(h) of the Instrument includes telephone conversations, email and other electronic communications. We consider this to require a designated benchmark administrator to keep audio recordings of all phone conversations and voicemail messages with benchmark contributors in relation to the contribution of input data. Furthermore, a designated benchmark administrator should retain records of call logs and notes of phone conversations or voicemail messages with benchmark contributors in relation to the contribution of input data.

In addition to the record keeping requirements in the Instrument, securities legislation generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with securities law of the jurisdiction.

PART 8
DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Section 30 – Ceasing to contribute input data to a designated critical benchmark

Except in Québec, section 30 of the Instrument provides the process for a benchmark contributor to cease to contribute input data to a designated critical benchmark. After the benchmark contributor has provided notice to the designated benchmark administrator that it will cease to contribute input data, subsection 30(2) of the Instrument requires the benchmark contributor to continue contributing input data for a period not exceeding 6 months. This is to provide a transition to protect the accuracy and integrity of the designated critical benchmark.

Subparagraph 30(3)(b)(ii) of the Instrument permits the designated benchmark administrator to notify the benchmark contributor that it must continue contributing input data for a period of less than 6 months. We expect that a designated benchmark administrator will determine the date of expiry of this period by considering the assessment, submitted to the regulator or securities regulatory authority under subparagraph 30(3)(b)(i) of the Instrument, of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent. We also expect that the period for which a benchmark contributor must continue contributing input data will be as short as practical while ensuring that the designated benchmark still accurately represents that part of the market or economy the designated benchmark is intended to represent.

Securities legislation in certain jurisdictions also provides the securities regulatory authority with the ability to require a benchmark contributor to provide information to a designated benchmark administrator in relation to a designated benchmark if it would be in the public interest or not prejudicial to the public interest to do so.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Section 34 – Order of priority of input data

Section 34 of the Instrument requires that, if a designated interest rate benchmark is based on a contribution of input data from a benchmark contributor, input data for the determination of the designated interest rate benchmark must be used by the designated benchmark administrator in accordance with the order of priority specified in the methodology of the designated interest rate benchmark. We would generally expect that the methodology of such a designated interest rate benchmark would use the following types of input data, as applicable, in the order of priority set out below:

(a) a benchmark contributor's transaction data in the underlying market that the designated interest rate benchmark intends to represent;

(b) if the input data referred to in paragraph (a) is not available, executable quotes in the market described in paragraph (a);

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

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

(e) in any other case, expert judgments.

We consider an "executable quote" (also known as 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.

A designated interest rate benchmark may be based on contributions of input data from benchmark contributors that represent the interest rate at which the benchmark contributor is willing to lend funds to its customers.

In the context of section 34 of the Instrument, for the purposes of subsections 14(1) and (3) of the Instrument, input data for a designated interest rate benchmark may be adjusted, if contemplated by the methodology for the designated interest rate benchmark, to more accurately represent that part of the market or economy that the designated interest rate benchmark is intended to represent, 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.

Subsection 36(1) – Assurance report for designated interest rate benchmark

Subsection 36(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 7, 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 following of the methodology of each designated interest rate benchmark it administers.

We note that the report required by subsection 36(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph 6(3)(b) of the Instrument. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph 6(3)(b) and with the requirement in subsection 36(1).

Subsection 39(4) – Record keeping by benchmark contributor

The reference to “communications” in paragraph 39(4)(d) of the Instrument includes telephone conversations, email and other electronic communications. We consider this to require a benchmark contributor to a designated benchmark to keep audio recordings of all phone conversations and voicemail messages in relation to the contribution of input data. Furthermore, a benchmark contributor to a designated benchmark should retain records of call logs and notes of phone conversations or voicemail messages in relation to the contribution of input data.