CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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

June 29, 2023

Introduction

Today, the securities regulatory authorities (collectively, the **Authorities** or **we**) of the Canadian Securities Administrators (the **CSA**) in British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia, Yukon and Northwest Territories (the **Participating Jurisdictions**) are adopting amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102** or the **Instrument**) and changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **CP**).

Together, the amendments to the Instrument and the changes to the CP are referred to as the **Amendments**. The Amendments incorporate provisions for a securities regulatory regime for commodity benchmarks and their administrators.

The text of the Amendments is contained in Annex B and Annex C of this Notice and will also be available on websites of the Participating Jurisdictions, 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
www.yukon.ca
justice.gov.nt.ca

In some Participating Jurisdictions, Ministerial approvals are required for the implementation of the Amendments. Subject to obtaining all necessary approvals, the Amendments will come into force on September 27, 2023.

Substance and Purpose

Currently, MI 25-102 provides a comprehensive regime for the designation and regulation of specific financial benchmarks and their administrators, and the regulation of contributors and of certain users. An overview of this regime was provided in the April 29, 2021 CSA Notice of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy.

On April 29, 2021, we also published separately under CSA Notice and Request for Comment Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **2021 CSA Request for Comment Notice**) the proposed amendments to MI 25-102 (the **Proposed Amendments**) and the changes to the CP (**the Proposed Changes** and, with the Proposed Amendments, the **Proposals**) regarding commodity benchmarks and administrators of commodity benchmarks.

The Amendments will implement a comprehensive regime for:

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

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

Further details about the rationale for the Amendments are available in the 2021 CSA Request for Comment Notice, specifically pages 4 and 5 under the heading of "Substance and Purpose".

Background

As outlined in the March 14, 2019 CSA Notice and Request for Comment on Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy (the **March 2019 CSA Notice**),[1] in 2012, allegations of manipulation of the London inter-bank offered rate (**LIBOR**) led to the loss of market confidence in the credibility and integrity of not only LIBOR, but also in financial benchmarks in general. Although not on the scale of the

[1] Available online at https://www.fcnb.ca/sites/default/files/2020-02/25-102-CSAN-2019-03-14-E.pdf

LIBOR scandal, there have also been examples of manipulation or attempted manipulation of energy price indexes to benefit positions on futures exchanges.[2]

Following the LIBOR controversies, the International Organization of Securities Commissions (**IOSCO**) published the *Principles for Oil Price Reporting Agencies* (the **IOSCO PRA Principles**),[3] setting out principles intended to enhance the reliability of oil price assessments that are referenced in derivative contracts subject to regulation by IOSCO members. This was followed by the publication in July 2013 of the *Principles for Financial Benchmarks* (together with the IOSCO PRA Principles, the **IOSCO Principles**). Although both sets of IOSCO Principles reflect similar concerns regarding the need for safeguards to ensure the integrity of benchmarks, the IOSCO PRA Principles were developed to focus on the specifics of the underlying physical oil markets.[4] Even though the IOSCO PRA Principles were developed in the context of oil price reporting agencies (**PRAs**) in oil derivatives markets, IOSCO has encouraged the adoption of these principles more generally to any commodity derivatives contract that references a PRA-assessed price without regard to the nature of the underlying commodity.[5]

Subsequent to the publication of the IOSCO Principles, the European Union (**EU**) adopted the *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (**EU BMR**).[6] A detailed overview of the EU BMR was provided in the March 2019 CSA Notice.

We are of the view that adopting the commodity benchmark provisions in the Amendments will codify international best practices, as articulated under the IOSCO PRA Principles.

Currently, the Authorities do not intend to designate any administrators of commodity benchmarks. However, the Authorities may designate administrators and their associated commodity benchmarks in the future on public interest grounds, including where:

- a commodity benchmark is sufficiently important to commodity markets in Canada, or
- the Authorities become aware of activities that raise concerns that align with the regulatory risks identified below in respect of such parties and conclude that the administrator and commodity benchmark in question should be designated.

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[2] For specific examples, see footnote 87 within IOSCO's September 2011 Final Report on the *Principles for the Regulation and Supervision of Commodity Derivatives Markets*, available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD358.pdf.

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

[4] See the IOSCO September 2014 Report on the *Implementation of the Principles for Oil Price Reporting Agencies*, specifically Chapter 1, pages 1 and 2, available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD448.pdf.

[5] See page 7, *supra* note 2.

[6] The EU BMR that came into force on June 30, 2016 is available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN; the 2016 regulations have been amended as summarized at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R1011-20220101&from=EN.

Summary of Written Comments Received by the CSA

The comment period for the 2021 CSA Request for Comment Notice ended on July 28, 2021. We received five comment letters. We have considered the comments received and thank all commenters for their input.

Annex A includes the names of the commenters and a summary of their comments, together with our responses.

The comment letters can be viewed on the websites of each of the:

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

Summary of Changes to the Proposals

For details of all changes made, Annex B and Annex C contain the Amendments and Changes.

Notable changes include:

(1) Definition of "commodity benchmark"

We have removed the definition of "commodity benchmark" from section 40.1 of the Proposed Amendments and added the substance of that definition to the definition for "designated commodity benchmark" in subsection 1(1) of the Instrument. In addition, we have removed the reference to a commodity that is intangible from the definition in the Instrument. We also revised the guidance in the CP regarding the scope of the definition, to clarify that we consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and that we may include other intangible products, such as certain crypto assets, that develop as international markets evolve.

(2) Definitions of "front office" and "front office employee"

For clarity, we have split the definition of "front office" into two definitions: "front office" and "front office employee". Since the definitions are used in both section 15 of the Instrument and section 40.10 of the Proposed Amendments (section 40.9 of the Amendments), the definitions were moved to subsection 1(1) of the Instrument. We have also included additional guidance in the CP regarding the meaning of both terms. These changes were made for clarity but do not affect the substance of the requirements where these definitions are used.

(3) Scope of MI 25-102

We added language to sections 40.3 [*Control framework*] (section 40.4 of the Proposed Amendments) and 40.10 [*Governance and control requirements*] (section 40.11 of the Proposed Amendments) of the Instrument to clarify that those provisions apply to the business operations of a designated benchmark administrator only in so far as those operations involve the administration and provision of a designated commodity benchmark.

(4) Publication of information

We added guidance in Part 8.1 [*Designated Commodity Benchmarks*] of the CP regarding our expectations for how a designated benchmark administrator may satisfy the requirements in the Part 8.1 of the Instrument to publish information relating to a designated commodity benchmark. We generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification. However, we recognize that a news release generally will not be necessary for each determination of a designated commodity benchmark under section 40.8 of the Instrument.

(5) Types of input data

Subparagraph 40.5(2)(a)(i) of the Proposed Amendments required a designated benchmark administrator to establish, document and publish how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information to determine a designated commodity benchmark.

For clarity, while subparagraph 40.4(2)(a)(i) of the Amendments still requires a designated benchmark administrator to establish, document and publish how it uses input data to determine a designated commodity benchmark, we have removed the reference to "the volume of transactions, concluded and reported transactions, bids, offers and any other market information" from the Amendments and revised the guidance in section 40.4 [*Methodology to ensure the accuracy and reliability of a designated commodity benchmark*] of the CP to clarify our general expectations regarding the priority given to different types of input data in the methodology of a designated commodity benchmark.

(6) Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

We added guidance in paragraph 40.4(2)(j) [*Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark*] of the CP on our expectation that, where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. In addition, we have clarified that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

Local Matters

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

Contents of Annexes

This Notice includes the following annexes:

Annex A: Summary of Comments and CSA Responses

Annex B: Amendments to MI 25-102

Annex C: Changes to CP

In certain jurisdictions, this Notice also includes:

Annex D: Local matters (where applicable)

Questions

Please refer your questions to any of the following:

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ANNEX A

SUMMARY OF COMMENTS AND CSA RESPONSES

A. List of Commenters

1. Argus Media Limited
2. S&P Global Platts
3. ICE NGX Canada Inc.
4. Fastmarkets
5. The Canadian Commercial Energy Working Group

B. Defined Terms

In this Annex,

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

"April 2021 Notice" means the CSA notice and request for comment dated April 29, 2021 relating to the Proposed Amendments to MI 25-102.

"Final Amendments" means the final version of the amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and the final version of the changes to 25-102 CP relating to commodity benchmarks, published simultaneously with this June 2023 Notice.

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

"June 2023 Notice" means this notice relating to the Final Amendments.

"Proposed Amendments" means, collectively, the Proposed Amendments to MI 25-102 and the Proposed Changes to 25-102 CP.

"Proposed Amendments to MI 25-102" means the proposed amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* relating to commodity benchmarks published for comment on April 29, 2021.

"Proposed Changes to 25-102 CP" means the proposed changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* relating to commodity benchmarks published for comment on April 29, 2021.

Other terms defined in this June 2023 Notice have the same meaning if used in this Annex.

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

General Comments

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
1.	General support for alignment with the EU BMR and the IOSCO Principles	Overall, the commenters expressed their general support for aligning the Canadian regime for the designation and regulation of commodity benchmarks with the EU BMR and the IOSCO Principles.	We thank the commenters for their comments in support of alignment with the EU BMR and the IOSCO Principles.
2.	Differences between the Proposed Amendments to MI 25-102 and the EU BMR and the IOSCO Principles	Four commenters submitted that they have concerns with any differences that may exist as between the Proposed Amendments to MI 25-102, on the one hand, and the EU BMR and the IOSCO Principles on the other. A number of provisions contained in the Proposed Amendments to MI 25-102 go beyond the EU BMR in certain significant respects and are disproportionate and inappropriate.	The Proposed Amendments to MI 25-102 are, in part, based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider the Proposed Amendments to MI 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. For Canadian legislative drafting purposes, MI 25-102 uses different language than the EU BMR. However,

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		With regard to the provisions in the Proposed Amendments to MI 25-102 which relate to governance, control and reporting obligations applicable to commodity benchmarks, one commenter noted that while the development of both the IOSCO Principles and the EU BMR also began by considering whether to merge financial and commodity benchmark regimes, both decided after extensive analysis and consultation to retain separate regimes. Two commenters also submitted that even in those areas of the Proposed Amendments to MI 25-102 where there is no intention to diverge substantively from the IOSCO Principles, the CSA's text should avoid extensive rewriting of the IOSCO Principles, which regulators and market participants already understand and PRAs already have implemented. They questioned whether the frequent minor variations from the IOSCO text were necessary, offering that a more complete alignment with the IOSCO Principles could lend greater credibility and international recognition to a Canadian commodities benchmark	the language in MI 25-102 is comparable to the language in the EU BMR. Currently, securities regulatory authorities in Canada do not intend to designate any benchmarks or benchmark administrators as designated commodity benchmarks or administrators of designated commodity benchmarks, respectively. However, we will consider designating commodity benchmarks for which an administrator has applied for designation based on an assessment of the factors outlined in the application. In addition, we may use our regulatory discretion to designate commodity benchmarks where such designation is in the public interest. We do understand that imposing inappropriate or unnecessarily burdensome requirements is problematic and will consider regulatory burden before making any decision to designate a commodity benchmark. Consequently, while we have revised certain provisions in the Proposed Amendments to MI 25-102 to address certain comments we have received, we do not believe that the Final Amendments will be unduly onerous for designated

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		regime.	commodity benchmark administrators in Canada.
3.	Level of oversight and burden of compliance	One commenter was of the view that the Proposed Amendments to MI 25-102 provide an appropriate level of oversight without imposing undue burdens on commodity benchmark contributors and users. This commenter also expressed that they were pleased that the Proposed Amendments to MI 25-102 generally relieved commodity benchmark contributors and users from obligations that are not necessarily appropriate in the commodities context. One example is that commodity benchmark contributors would not be required to comply with governance and control requirements or designate a compliance officer. However, the commenter went on to caution the CSA against adding regulatory obligations on contributors to commodity benchmarks, noting that if participation rates in price index formation are too low, the resulting prices may not accurately represent market realities. One commenter submitted that the	We thank the commenters for their comments regarding the need to avoid imposing undue burdens on commodity benchmark contributors and users. See also our response to Item 2 above.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		Proposed Amendments could be improved by reducing the regulatory burden through a combination of a risk-based approach to regulating designated regulated-data commodity benchmarks, and a more principles-based approach that aligns with the EU BMR.	
4.	Voluntary designation option	One commenter supported the CSA proposal to offer a voluntary designation option for administrators of commodity benchmarks, but suggested this option could be extended to other third country jurisdictions and not, as is proposed, limited only to the EU.	We thank the commenter for their comment.
5.	No imposition of obligations on contributors	One commenter supported the approach taken in the Proposed Amendments to MI 25-102, submitting that the imposition of obligations on contributors could have material adverse consequences for the representativeness of any commodities benchmark designated under MI 25-102. Specifically, this commenter submitted that there is concern among participants in certain commodity markets that participation rates in price index formation are in danger of being low enough to raise concerns that the resulting prices may not accurately	We thank the commenter for their support. The Proposed Amendments, like the IOSCO Principles and Annex II of the EU BMR, do not have specific requirements for benchmark contributors to designated commodity benchmarks, largely because of the voluntary nature of market participants' contributions of input data and the concern that overregulation of potential contributors could discourage such participants from providing their data. We believe the Final

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		represent market realities; to the extent that additional regulatory obligations are imposed on contributors to such benchmarks, that concern would likely be exacerbated. See also the summarized comments in Items 12, 16 and 21 below.	Amendments establish a regime for the regulation of commodity benchmarks that appropriately addresses considerations and concerns while also addressing the potential risks of commodity benchmarks.

Scope of MI 25-102

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
6.	Jurisdictional nexus with Canadian jurisdictions	Several commenters were unclear as to what the jurisdictional nexus is for being in scope of MI 25-102, submitting that while the CSA has laid out that there must be an impact on Canadian commodity and/or financial markets, unlike the EU BMR there does not seem to be a requirement that financial instruments based on a benchmark are traded on a Canadian trading venue. See also the summarized comments in Item 20 below.	As previously indicated, currently, securities regulatory authorities in Canada do not intend to designate any administrators of commodity benchmarks. However, securities regulatory authorities in Canada may designate administrators and their associated commodity benchmarks in the future on public interest grounds, including where: • a commodity benchmark is sufficiently important to commodity markets in Canada, or • securities regulatory authorities in

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
			Canada become aware of activities of a benchmark administrator that raise concerns that align with the regulatory risks identified below in respect of such parties and conclude that it is in the public interest for the administrator and commodity benchmark to be designated.
7.	Benchmark and benchmark administrator designation	Two commenters believe the CSA should provide greater clarity and transparency in terms of the assessment and/or method it will adopt to designate benchmark administrators and/or benchmarks in the future in order to avoid market disruption and ensure continued innovation in Canada's benchmarking industry. One commenter recommended that the CSA provide guidance with respect to the minimum thresholds of absolute transaction volume or estimated proportionate volume of the relevant market that a commodity benchmark represents. One commenter submitted that they expect that the CSA will publish notice of any application for designation of a commodity benchmark or for designation of a benchmark administrator of a	Currently, securities regulatory authorities in Canada do not intend to designate any benchmarks or benchmark administrators as designated commodity benchmarks or administrators of designated commodity benchmarks, respectively. However, we will consider applications for designation. In the future, we will use our regulatory discretion to designate benchmarks, which may include Canadian benchmarks that are regulated in a foreign jurisdiction, where such designation is in the public interest. We have revised the guidance in 25-102 CP to clarify that 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, regardless of who applies for the designation.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		commodity benchmark, regardless of whether the application for designation is made or initiated by the benchmark administrator, by the relevant regulator or securities regulatory authority, or by any other person.	
8.	Regulated-data benchmarks	While recognizing the foundational role of the IOSCO Principles in the evolution of regulatory oversight of commodities benchmarks, one commenter was of the view that the IOSCO Principles are directed primarily toward survey-style, "assessed" benchmarks. Some of the potential for manipulation of these survey-style assessed benchmarks is inherently mitigated in respect of benchmarks that are determined based on transactions executed on an exchange by: (a) the source of input data (i.e., transactions executed on the exchange); (b) the fact that trading on the exchange is monitored for market manipulation; and (c) the processes for systematically collecting the input data and systematically calculating the benchmark. Accordingly, this commenter believes the proposed provisions for regulated-data commodity benchmarks are generally appropriate for commodity benchmarks	We thank the commenter for their comment.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		determined on the basis of transactions executed on an exchange.	
9.	Benchmark individuals	Another commenter indicated that the term "benchmark individual", as defined in s.1.(1), would include the journalists who produce PRA price assessments as well as the market commentaries, news and other information. Many PRAs do not have a separate dedicated team of "benchmark individuals" who focus exclusively, or even primarily, on the provision of benchmarks; instead all journalists can be expected at various times to participate in the provision of benchmarks, with the result that the governance and other requirements that the CSA are proposing to add from the regime for administrators of financial benchmarks could cover their entire editorial operation.	We thank the commenter for their comment. We do understand that imposing inappropriate or unduly onerous requirements is problematic and will consider regulatory burden before making any decision to designate a benchmark or benchmark administrator. 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 commodity benchmark or designated commodity benchmark administrator.
10.	Definition of "commodity benchmark"	One commenter does not think that a distinction between intangible and tangible commodities in the definition of "commodity benchmark" is appropriate. Rather, this commenter suggested including in the definition benchmarks based on products that are closely related to the functioning of the physical	In response to this comment, we have revised the definition for "commodity benchmark" in the Final Amendments to remove the reference to a commodity that is "intangible". In addition, we have revised 25-102 CP to provide additional guidance regarding

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		commodity market, in a like manner as benchmarks on the related physical commodities, citing examples including: (a) environmental commodities such as carbon credits, emissions offsets and renewable energy certificates; (b) transportation and capacity commodities such as shipping capacity, pipeline capacity and, in the power markets, financial transmission rights, congestion revenue rights and similar instruments; (c) storage commodities such as natural gas storage and carbon capture storage; and (d) weather and climate.	the scope of the definition of "commodity benchmark." If designation is requested or in the public interest, we will assess, on a case-by-case basis, benchmarks and indices on other products.
11.	Non-assessed benchmarks – adding exemptions from certain requirements (Part 8.1)	One commenter encouraged the CSA to contemplate that exemptions from certain requirements in Part 8.1 may be appropriate for a designated commodity benchmark that is determined based on physically settled transactions executed via regulated brokers where the transaction data is inputted and calculated systematically and the methodology does not involve expert judgment in the ordinary course.	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 commodity benchmark or designated commodity benchmark administrator.

Comments Relating to Specific Parts or Sections

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
12.	S.11 *Reporting of Contraventions*	Several commenters were opposed to the requirements to report contraventions under s.11, and pointed to the approach set out in s.2.4(d) of the IOSCO Principles, as applied by the EU, which approach requires PRAs to escalate any suspicions of abuse within the contributor's organization and not to the regulator. They submitted that the CSA should take into account: (a) constitutional protections applicable to journalists and their sources; (b) the voluntary nature of contributions to PRA benchmarks and the potential adverse effect that the third-party reporting obligations on PRAs could have on contributions; (c) both IOSCO and the EU have extensively considered (a) and (b) in drafting the IOSCO Principles and EU BMR Annex II, respectively; and (d) the requirement is disproportionate in that price contributions can often appear anomalous, but for entirely legitimate reasons rather than abuse. One commenter pointed out that the corresponding requirement in the EU BMR applies neither to regulated data	We thank the commenters for their comments. We have retained the requirements to report contraventions from s.11 of the Proposed Amendments to MI 25-102 because we do not believe that it would be appropriate to limit the language in s.11 to contraventions that have crystallized. We note that existing s.11 of MI 25-102 already applies to financial benchmarks that are designated. However, we recognize that the IOSCO Principles for Financial Benchmarks, the IOSCO Principles for Price Reporting Agencies and the EU BMR distinguish between financial benchmarks and commodity benchmarks with respect to the reporting of contraventions to regulators. If and to the extent that s.11 would impose inappropriate or unduly onerous obligations on a particular administrator of a commodity benchmark that is designated or applies to be designated, or that could otherwise adversely affect the voluntary contribution of input data, Part

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		benchmarks nor to commodity benchmarks, and asked the CSA to align with the EU BMR by exempting designated commodity benchmarks from the application of s.11(1), or in the alternative, to limit the scope of ss.11(1) and (2) by focusing the requirement on monitoring the input data for the designated commodity benchmark(s) that are administered by the designated benchmark administrator.	9 of MI 25-102 provides the authority to grant discretionary exemptions.
13.	S.19 *Benchmark statement*	While acknowledging that the proposed approach is to apply certain baseline requirements to designated commodity benchmarks in a standardized manner across all types of designated benchmarks, one commenter was of the view that certain requirements in s.19 are duplicative, overly granular and are inappropriate for the regulation of commodity benchmarks and in particular regulated data commodity benchmarks. This commenter urged the CSA to provide additional guidance in 25-102 CP on the expected detail or content of each of the required fields. In addition, this commenter encouraged the CSA to either: (a) exempt a designated regulated data commodity benchmark from the	The provisions pertaining to benchmark statements are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate in our market and do not consider them to be unduly onerous. 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 commodity benchmark or designated commodity benchmark administrator.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		application of s.19; or (b) create a distinct, streamlined provision in Part 8.1 that would apply to designated commodity benchmarks, with appropriate exemptions for designated regulated data commodity benchmarks. The commenter offered that option (b) could be streamlined as follows: • S.19(1)(a)(ii)(B) - This provision requires a designated benchmark administrator to indicate, in writing, the dollar value of the part of the market or economy the designated benchmark is intended to represent. This commenter interpreted this as requiring the benchmark administrator to make a written statement on the size of the overall relevant market - including all market activity that is not included in the data on which the benchmark is determined. Absent publicly available data, this commenter was of the view that it is inappropriate to require a benchmark administrator to specify the size of a market for which it does not have full information. The administrator of a benchmark based on executed transactions has	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		information on the size of market activity represented by those transactions; it may not, however, have information on transactions that are executed outside of its market and for which public reporting is not available. For the purposes of this requirement, different benchmark administrators may use different measures of the relevant market or their proportion thereof, which makes comparison difficult. This commenter continued on to state that if their interpretation was incorrect and the requirement is to publicly state the dollar value of the part of the market that is included in the calculation of the benchmark, and not the dollar value of the overall market, they encouraged the CSA to clarify this in 25-102 CP, or at least in the public summary of responses to the comments on the Proposed Amendments to MI 25-102. • S.19(1)(b) - This provision requires a benchmark administrator to explain the circumstances in which the designated benchmark might, in the opinion of a reasonable person, not	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent. The commenter submitted that this provision is an unnecessary regulatory burden in respect of a designated regulated data commodity benchmark. If the benchmark administrator clearly discloses (a) the methodology; and (b) the market activity represented in each determination of the benchmark, market participants will have sufficient information to make their own determination of whether the benchmark adequately represents the part of the market that the designated benchmark is intended to represent. • S.19(1)(c) - The requirements of this paragraph are duplicative of the requirements relating to disclosure of the methodology. This commenter acknowledged the value to be gained by the market from setting out the methodology, including methodology related to the exercise of expert judgement; however, they thought duplicative disclosure requirements do not add additional value for	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		market participants and create an additional risk of divergence between documents. • S.19(1)(e) - This provision requires the benchmark statement to provide 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. This commenter submitted that the benefit of this requirement to designated commodity benchmark users does not outweigh the additional regulatory burden. In light of the requirement in s.17(2) to publish and seek comment on any significant change to the methodology of a designated commodity benchmark, it is unclear what additional risk s.19(1)(e) is intended to mitigate. The users of a designated commodity benchmark are sophisticated market participants that will carefully select their preferred benchmark from a number of pricing tools available in the market. These sophisticated users are capable of determining on their own that	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		changes to or the cessation of a benchmark may be necessary.	
14.	S.40.3 *Provisions of MI 25-102 not applicable to designated commodity benchmarks*	One commenter suggested that the CSA could improve the readability of the Proposed Amendments to MI 25-102 by specifying in s.40.3 that Divisions 2 and 3 of Part 8 are not applicable to designated commodity benchmarks. See also the summarized comments in Item 20 below.	We thank the commenter for their comments. We agree that Divisions 2 and 3 of Part 8 generally will not be applicable to designated commodity benchmarks, but we already consider this intent to be sufficiently clear in the Proposed Amendments to MI 25-102 and therefore we are retaining the proposed language.
15.	S.40.4 *Control Framework*	One commenter submitted that requiring a benchmark administrator to re-write its control and oversight frameworks for benchmarks designated by the CSA would be counter-productive and disproportionate to the associated risks. In addition, this commenter submitted that requirements pertaining to governance or oversight functions should not be inconsistent with existing regulatory frameworks and need to be sufficiently flexible to allow benchmark administrators to select a structure most appropriate for their businesses, rather than prescribed regardless of the type of commodity benchmark or organizational structure of the existing benchmark	We thank the commenter for their comments regarding the control framework described under s.40.4 of the Proposed Amendments to MI 25-102. We have added clarification to MI 25-102 that s.40.3 (s.40.4 in the Proposed Amendments to MI 25-102) applies to a designated benchmark administrator's operations only to the extent that those operations are related to the administration and provision of the applicable designated commodity benchmark. We have otherwise retained these provisions since we consider them to be appropriate for the Canadian market and do not consider them to be unduly

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		administrator. One commenter offered that the guiding principles established in most international legislative regimes for control frameworks relating to benchmarks are proportionality and the avoidance of excessive administrative burden. This commenter described its governance structure and control framework and submitted that due to the complexity of physical commodity markets and the non-standardized nature of many transactions, the ability to properly monitor data inputs is best managed by individuals with market expertise and good knowledge of the requirements of the methodology employed to generate an assessment or index, operating under flexible regulatory regimes rather than what is set forth in the Proposed Amendments to MI 25-102. Several commenters stated this requirement is not present in either the IOSCO Principles or the EU BMR Annex II and is not appropriate. They submitted that they are already subject to a rigorous external audit against the IOSCO Principles, and that such annual	onerous. 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 commodity benchmark or designated commodity benchmark administrator.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		published audits should provide the CSA and stakeholders in the markets with sufficient reassurance. One of these commenters stated, in relation to the requirements contained in s.40.4, that the CSA should be able to rely on PRAs implementing appropriate controls and procedures as necessary and proportionate, keeping in mind that their benchmark activities: (a) take place in a competitive benchmark market characterized by product substitutability from competing suppliers; (b) do not pose systemic risks; and (c) represent a small percentage of a PRA's overall activities and business income. This commenter concluded by submitting that the CSA should not interfere in the governance of media companies.	
16.	S.40.8 *Quality and integrity of the determination of a designated commodity benchmark*	S.40.8(2)(a) - One commenter was of the view that the default expectation of a methodology should be that all executed transactions that qualify as input data for a particular determination should be included in the determination. The commenter encouraged the CSA to state this expectation in s.40.8(2)(a) or in the	We thank the commenters for their comments regarding s.40.8 of the Proposed Amendments to MI 25-102 (s.40.7 of the Final Amendments). We added guidance in paragraph 40.4(2)(j) [*Circumstances in which transaction data may be excluded in the*

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		related guidance in 25-102 CP. Ss.40.8(2) and 40.10(1)(f)(iii) - One commenter suggested a retreat from participation in the price assessment and index formation process could occur if benchmark administrators are required to make a judgement call in identifying communications that might involve manipulation or attempted manipulation of a designated commodity benchmark. This commenter submitted that a more calibrated approach is contained in the IOSCO Principles, which provide that PRAs are to identify anomalous data, as opposed to suspicious data. Ss.40.8(2)(d) and (e) - One commenter was of the view that the policies and procedures required under these paragraphs are not relevant in respect of designated regulated data commodity benchmarks. To streamline the compliance burden, the commenter encouraged the CSA to explicitly exempt these types of designated commodity benchmarks from the application of these paragraphs.	*determination of a designated commodity benchmark*] of the CP on our expectation that, where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. We note that s.6(d) of Annex II of the EU BMR requires commodity benchmark administrators to establish and employ procedures to identify anomalous or suspicious data and keep records of decisions to exclude transaction data from the administrator's benchmark calculation process. Therefore, we have retained these provisions since we consider them to be aligned with the EU BMR.
17.	S.40.10 *Integrity of the process for*	One commenter believed that s.40.10 is	We thank the commenter for their

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	contributing input data	not relevant or appropriate to designated regulated data commodity benchmarks, as all the input data for such benchmarks are from transactions executed on an exchange and collected systematically. To streamline the compliance burden, the commenter encouraged the CSA to exempt designated regulated data commodity benchmarks from the application of this section. In the alternative, the commenter urged the CSA to clarify their expectations in 25-102 CP regarding how s.40.10 would apply in respect of a designated commodity benchmark determined solely on the basis of transactions executed via regulated brokers where the transaction data is collected systematically for input into the determination of the designated commodity benchmark.	comment. In response to this comment, we have added additional guidance to 25-102 CP to clarify that s.40.9 (s.40.10 in the Proposed Amendments to MI 25-102) would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-data benchmark.
18.	S.40.11 *Governance and control requirements*	One commenter encouraged the CSA to review specifically the paragraphs in s.40.11(3) with an eye to appropriately reducing the regulatory burden in respect of a designated commodity benchmark. One commenter submitted that ss.40.11(3)(a) and (c) go beyond what is required to establish a regulatory regime	We have added clarification to MI 25-102 that s.40.10 (s.40.11 in the Proposed Amendments to MI 25-102) applies to a designated benchmark administrator's operations only to the extent that those operations are related to the administration and provision of the applicable designated commodity benchmark. We have otherwise retained

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		that satisfies the dual objectives of the CSA, namely to promote the continued provision of commodity benchmarks that are free from manipulation and to facilitate a determination of equivalence with certain foreign regulations. Specific requirements in respect of, for example, succession planning, are not required under the EU BMR, and inappropriately place the CSA in the position of regulating the effective management of a designated benchmark administrator's human resources. The commenter also submitted that the requirement in s.40.11(3)(e) is unduly burdensome in a normal course determination of a designated regulated data commodity benchmark, where the input data (i.e., executed transactions) is collected systematically for input into the determination. By normal course, this commenter was referring to each determination where the minimum volume thresholds set out in the methodology disclosed under s.40.5 are met and no expert judgement or alternative data was involved in the determination. The commenter encouraged the CSA to adopt a risk-	these provisions since we consider them to be appropriate for the Canadian market and do not consider them to be unduly onerous. 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 commodity benchmark or designated commodity benchmark administrator, particularly with respect to a benchmark dually designated as a commodity and regulated-data benchmark that is based solely on executed transactions and no expert judgment is exercised in the determination. In addition, if applicable to an application for designation, we will consider whether it is appropriate to allow a benchmark administrator to group benchmarks into families of benchmarks for the purposes of satisfying various requirements in MI 25-102. For clarity, we may give consideration to whether it is appropriate to treat more than one benchmark as being a family of benchmarks if the benchmarks are calculated using the same

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		based approach to balance the benefit of senior level approvals of determinations and processes with the regulatory burden imposed by requiring senior level approval of each determination. This is particularly relevant where the same input data and processes are used to calculate a benchmark family. Specifically, this commenter encouraged the CSA to clarify that, for a designated regulated data commodity benchmark where the input data (i.e., executed transaction data) is collected systematically for input into the determination, senior-level approval of each determination: (a) may be made at the benchmark family level, rather than at the level of each specific designated benchmark within the same market and calculated based on the same input data; and (b) is required at the level of each specific designated benchmark on an exceptions basis only - i.e., in the case of a particular determination that was based on alternative data, expert judgement or any other input permitted under the methodology as disclosed under s.40.5, including as a result of transaction volume that does not meet the minimum volume thresholds set out in the	input data and process and such benchmarks provide measure of the same or similar market or economic reality.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		methodology. One commenter submitted that it is neither practical, nor desirable, to impose on an editorial operation a governance regime that has been designed for financial firms, particularly as the provision of benchmarks is a relatively small part of a PRA's overall editorial activities. This commenter also suggested that the external audits carried out and published annually in accordance with the IOSCO PRA Principles, should provide the CSA and stakeholders in the markets with sufficient reassurance. Another commenter urged the CSA to remain mindful that references to "benchmark individuals" in s.40.11(3) are references to the journalists who produce PRA price assessments. Regarding ss.40.11(1) and (2), this commenter respectfully asked the CSA not to intervene in the organizational structures of what are editorial operations, but rather to leave this to the PRAs who have extensive experience in producing editorially-based services. The commenter submitted that their journalists operate according to a code of	

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		conduct that sets rigorous standards appropriate for an editorial operation, and that this code of conduct is reviewed and updated as necessary, and supported by a continuous program of training. Regarding the provisions in s.40.11(3), the commenter submitted that while these sections are intended to mirror ss.2.5 to 2.8 of the IOSCO Principles and are therefore, in principle, appropriate, the CSA has redrafted these provisions to align them more closely to the language used for financial benchmarks. The commenter pointed out that their preference is to retain IOSCO's language as the EU BMR has done in Annex II. The commenter submitted that the IOSCO text was carefully crafted to take into account the particular characteristics of PRAs and their price assessment activities.	

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19.	S.40.14 *Assurance report on designated benchmark administrator*	One commenter submitted that the 10-day publication period contained in s.40.14(3) is unreasonably short, noting that both the EU BMR and UK BMR require publication within three months after the audit is completed. The commenter encouraged the CSA to align the required publication timing to the corresponding requirement in the EU BMR and UK BMR, in respect of designated commodity benchmarks or at least certain types thereof, taking a risk-based approach.	We have retained this provision since we consider it to be appropriate for the Canadian market and do not consider it to be unduly onerous. However, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may be inappropriate or overly onerous for a particular designated commodity benchmark or designated commodity benchmark administrator.

Specific Questions of the CSA

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
20.	*Interpretation* - The definition for "commodity benchmark" excludes a benchmark that has, as an underlying interest, a currency or a commodity that is intangible. Is the scope of the proposed definition, and the guidance in the CP, appropriate to cover the commodity benchmark industry in Canada? Please explain with concrete examples.	Several commenters urged the CSA to align their definition for "commodity benchmark" with the EU BMR, and suggested that for a commodity benchmark to become subject to the Canadian regime it must also be "used" for defined financial services purposes, such as those listed in EU BMR Article 3(7). The commenters submitted that the current definition is not clear and leads to	We have revised the definition for "commodity benchmark" in the Final Amendments to remove the reference to a commodity that is "intangible". In addition, we have revised 25-102 CP to provide additional guidance regarding the types of benchmarks that we may potentially consider to be commodity benchmarks. If designation is requested

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		regulatory uncertainty. Therefore, they argued that the definition should be clarified to indicate that an established linkage, beyond mere publication of a price assessment for information purposes, but to some kind of trading purpose, is required to fulfil the definition, in alignment with the IOSCO Principles and the EU BMR. One commenter believed it is important for administrators of commodity benchmarks to have a consistent set of regulations for designated commodity benchmarks based on trades in the physical commodity and those based on trades in products that are closely related to the functioning of the physical commodity market. The commenter did not think that whether a particular commodity is intangible or can be delivered digitally are appropriate characteristics for distinguishing between: (a) instruments and products that are closely related to the functioning of the physical commodity market; and (b) crypto-currencies and other digital assets that are not closely related to the functioning of a physical commodity market. The commenter cited the	or in the public interest, we will assess, on a case-by-case basis, benchmarks and indices on other products. Pursuant to the definitions for "benchmark" in Appendix A to MI 25-102 and in the respective securities acts of Ontario, Québec, British Columbia and Alberta, the use of a benchmark as a reference is a factor in determining whether the benchmark properly falls within the scope of MI 25-102.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		following examples of products that are actively traded and are closely related to the functioning of the physical commodity market: • environmental commodities such as carbon credits, emissions offsets and renewable energy certificates; • transportation and capacity commodities such as shipping capacity, pipeline capacity and, in the power markets, financial transmission rights, congestion revenue rights and similar instruments; • storage commodities such as natural gas storage and carbon capture storage; and • weather and climate. This commenter submitted that a benchmark based on any of the above, if regulated, should be regulated as a designated commodity benchmark in line with a benchmark for the physical commodity market to which it closely relates.	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
21.	*Applicable Requirements from the Financial Benchmarks Regime* - Despite a different proposed regime for commodity benchmarks, the [securities regulatory authorities in Canada] expect that certain requirements, applicable to financial benchmarks, would also be applicable, sometimes with minor modifications, to commodity benchmarks. These include, for example, the requirements to report contraventions (section 11), the requirement for a control framework (section 40.4), and governance and control requirements (section 40.11). Are these requirements appropriate in the context of commodity benchmarks? Please explain with concrete examples.	Several commenters strongly opposed these requirements and stated that the application of applicable requirements from the financial benchmarks regime was disproportionate, unworkable, and in breach of constitutional protections for journalism, citing the requirements to report contraventions (s.11), the requirement for a control framework (s.40.4), and the governance and control requirements (s.40.11). The CSA should consider that: (a) PRAs operate in a competitive information market where substitute products are generally available; (b) PRAs have no "skin in the game"; (c) PRA benchmarks do not pose systemic risks; (d) revenues generated from benchmarks are not material in the overall context of PRA publishing revenues; and (e) most widely used commodity benchmarks are produced by journalists. Commenters emphasized the risk that regulatory intervention could discourage the voluntary contributions to PRA benchmarks, leading in turn to less reliable benchmarks. They submitted that this was why neither the IOSCO Principles nor the EU BMR impose	We thank the commenters for their comments. As previously indicated, if and to the extent that these requirements are inappropriate or unduly onerous for a particular benchmark or benchmark administrator or that could otherwise adversely affect the voluntary contribution of input data, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions.

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		obligations on contributors to commodity benchmarks (on the basis of a detailed review by both IOSCO and the EU). They pointed to a statement from the Ofgem, the UK energy regulator: "*Some types of regulation may introduce risks to the process. In particular, greater regulatory scrutiny of the information flows could introduce a perception of risk (irrespective of whether the risk is real) to those providing the information. Regulation should increase the quality of the information provided, but could reduce the willingness of parties to provide it. Information is provided on a voluntary basis and the simplest way to mitigate this risk may be to withdraw cooperation and decline to provide it. This in turn can lead to a breakdown in the quality of the price assessment process, with negative consequences for the market and for consumers*." One of these commenters also stated that PRAs are editorial entities staffed by journalists, and that it is not the role of journalists to report their sources to the CSA, or to have to configure their editorial systems and controls to facilitate the following (as the CSA suggests): "we	

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		expect 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." The commenter asked the CSA to uphold safeguards for journalists, which are essential to their vital role in bringing transparency to commodity markets. Another commenter submitted that a set of baseline requirements applied in a standard manner in respect of all designated benchmarks, regardless of type of benchmark, will promote consistency and best practices among benchmark administrators. However, this commenter also stated that certain of the standard requirements are unnecessarily prescriptive and difficult to comply with, at least in respect of regulated data commodity benchmarks.	
22.	*Dual Designation as a Commodity Benchmark and a Critical Benchmark* - Where the underlying commodity is gold, silver, platinum or palladium, a benchmark dually designated as a commodity benchmark and a critical	One commenter suggested that the CSA simply follow the approach adopted in the IOSCO Principles and the EU BMR. One commenter was of the view that multiple designations could cause market	We thank the commenters for their comments. We have retained the concept and prospect of dual designation as a commodity benchmark and critical

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	benchmark would be subject to the requirements applicable to critical financial benchmarks, rather than critical commodity benchmarks. Do you think that there are benchmarks in Canada that could be dually designated as critical commodity benchmarks where the underlying is gold, silver, platinum or palladium, and is there a need to provide for the specific regulation of such benchmarks?	confusion and be very difficult for benchmark administrators to administer. The criteria for designating a commodity benchmark as "critical" are also unclear and do not appear consistent with the EU BMR. In response to the question posed by the CSA, this commenter also stated they were not aware of any such benchmarks.	benchmark. We consider this approach to be appropriate for the Canadian market because it supports the reduction of market risk, thereby protecting Canadian investors and other Canadian market participants. We disagree with the commenter's views that this approach will cause market confusion or that it will be overly onerous to administer.
23.	*Dual Designation as a Commodity Benchmark and a Regulated-Data Benchmark* - Subsection 40.2(4) provides for certain exemptions for benchmarks dually designated as commodity and regulated-data benchmarks, where such benchmarks are determined from transactions in which the transacting parties, in the ordinary course of business, make or take physical delivery of the commodity. Is carving out such a subset of dually-designated benchmarks necessary for appropriate regulation of commodity benchmarks in Canada? If so, are the exemptions provided for, which generally mirror exemptions for regulated-data benchmarks from Parts 1 to 8 requirements, appropriate? Please	One commenter suggested that the CSA simply follow the approach adopted in the IOSCO Principles and the EU BMR. One commenter responded to the question in the negative, submitting that it is inconsistent and disproportionate for the CSA to have powers to designate regulated data benchmarks as commodity benchmarks and *vice versa*. This commenter suggested that the EU BMR has created discrete regulation applicable to each, since the two are considered mutually exclusive. This commenter saw no rationale for a dual designation regime, which could cause market confusion and would be very difficult for benchmark administrators to implement	We thank the commenters for their comments. We have retained the concept and prospect of dual designation as a regulated-data benchmark and commodity benchmark. We consider this approach to be appropriate for the Canadian market because it supports the reduction of market risk, thereby protecting Canadian investors and other Canadian market participants. We disagree with the commenter's views that this approach will cause market confusion or that it will be overly onerous to administer.

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	explain with concrete examples.	and administer. There is a lack of clarity in the parameters for regulated-data benchmarks determined from transactions where, in the ordinary course of business, parties make or take physical delivery of the commodity. Many physical commodity price assessments are markets where parties take physical delivery, regardless of whether the data are regulated. This commenter continued on to state that while it is true that certain commodity benchmarks use regulated data, all dimensions of a commodity market combine to represent value of the underlying commodity and hence dual designation is unnecessary and cumbersome, with an unclear regulatory objective. This commenter recommended that given the reduced regulatory burden placed on regulated data benchmarks under the EU BMR, it would be more straightforward to have a regime that applies to commodity benchmarks regardless of whether they use regulated data. Another commenter strongly agreed with the proposed dual designation approach. The commenter thought this risk-based approach appropriately reduces	In addition, a party applying for designation as a designated commodity benchmark administrator may apply for exemptive relief from certain requirements in MI 25-102 if such requirements would present an undue administrative burden to the commodity benchmark administrator and exemptions from such requirements would not be prejudicial to the public interest in the specific circumstances.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		regulatory burden in those areas while still appropriately addressing the regulatory concerns applicable to survey-style indices that are based on assessments of bilateral, OTC transaction information. Some of the same safeguards are present in commodity benchmarks determined based on physically settled transactions executed via regulated broker, where the benchmark methodology does not involve expert judgement in the ordinary course. Specifically, the type of input data and the systematic processes for collecting input data and calculating the benchmark can be helpful mitigants against some of the selective reporting issues and potential attempted manipulation that may occur with a survey-style, assessed benchmark. Nevertheless, the commenter believed that designated regulated data commodity benchmarks should be exempted from the application of certain additional provisions. Further, this commenter encouraged the CSA to consider flexibility in the application of s.40.2(3), in order to facilitate appropriate, risk-based regulation under Part 8.1 of benchmarks based on trading in	

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		financially-settled products directly tied to the pricing or functioning of a physical commodity market.	
24.	*Input Data* - We have distinguished between input data that is "contributed" for the purposes of [MI 25-102] (see subsection 1(3)), and data that is otherwise obtained by the administrator. Certain provisions in Part 8.1 impose requirements on a designated benchmark administrator if input data is "contributed", whereas other obligations are imposed irrespective of how input data is obtained. Where the word "contributed" is not specifically used or implied, we mean all the input data, not only "contributed" data. Taking into consideration the obligations imposed on designated benchmark administrators of commodity benchmarks, through the use or lack of use of "contributed", are the obligations imposed under the provisions of Part 8.1 appropriate? Please explain with concrete examples.	Several commenters suggested that the CSA simply follow the approach adopted in IOSCO Principle 2.2 and the EU BMR, and queried whether the variations from the IOSCO text were necessary. One of these commenters pointed out that its objective is to ensure that all input data used by its editors to inform price assessments is of the highest quality, and therefore its focus is on controls and management of input data, rather than whether it is contributed or non-contributed.	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.
25.	*Input data* - The guidance on paragraph 40.8(2)(a) of [Proposed Changes to 25-102 CP] states that, where consistent with	One commenter suggested that the CSA simply follow the approach adopted in IOSCO Principle 2.2.	We thank the commenters for their comments regarding order of priority of use of input data in the Proposed

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	the methodology, we expect the administrator to give priority to input data in a certain order. Does the order of priority of use of input data for purposes of determination of a commodity benchmark, as stated in [Proposed Changes to 25-102 CP], reflect the methodology used for your commodity benchmarks? Are there any other types of input data that should be specified in the order of priority?	One commenter referred to the description of how they prioritized data, as contained in their assessments methodology guide found on their website, and submitted that their approach is sound and consistent with regulatory objectives, including under the IOSCO Principles and the EU BMR.	Amendments to MI 25-102. These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. However, we have revised the guidance in section 40.4 of 25-102 CP to clarify our general expectations regarding the priority given to different types of input data in the methodology of a designated commodity benchmark.
26.	*Methodology* - Under the Proposed Amendments, designated administrators are expected to ensure that particular requirements are met whenever their methodology is implemented and a designated benchmark is determined. Are the elements of the methodology that we propose to regulate, specifically within section 40.5, sufficiently clear such that an administrator would be able to comply with the requirements?	Several commenters suggested that the CSA simply follow the approach adopted in the IOSCO Principles and queried whether the variations from the IOSCO text were necessary. One of these commenters pointed out that s.40.5(1) is vague and seemingly tautological. In order to maintain confidence in a benchmark, an administrator's priority is to follow a published methodology and to regularly examine its methodologies for the purpose of ensuring they reliably reflect the physical market under assessment, and any change should take into account the views of relevant users. The	We thank the commenters for their comments regarding the elements of the methodology that we propose to regulate in the Proposed Amendments to MI 25-102. These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate.

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		commenter submitted that it follows this approach, which is consistent with the IOSCO Principles and the EU BMR approach, which require transparency and market consultation when material changes are being made to a benchmark methodology.	
27.	*Conflicts of Interest* - Paragraphs 40.13(1)(a), (b) and (d) mirror the conflict of interest requirements under paragraphs 10(1)(a), (b) and (d) of [MI 25-102], to ensure that certain overarching requirements apply to all designated benchmark administrators. Is this approach appropriate? Do commodity benchmark administrators face potential conflicts of interest that are not addressed by these or the other conflict of interest provisions?	Several commenters did not believe that it is appropriate to amend the conflict of interest provisions in the IOSCO Principles to align them more closely with the regime for financial benchmarks. The PRA editorial model is not susceptible to conflicts of interest as financial benchmarks often are, because PRAs have no financial interest in whether market prices rise or fall, as their service revenues are subscription-based. They submitted that the CSA should instead implement the proportionate approach taken in the IOSCO Principles, as the EU BMR has done in Annex II. They stated that approach worked well and there was no reason to amend it. One commenter believed it is appropriate to identify and avoid conflicts of interest where an individual directly involved in the provision of a commodity benchmark	We thank the commenters for their comments regarding the conflict of interest requirements that we propose in the Proposed Amendments to MI 25-102. These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate.

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		may be compromised due to a personal relationship or personal financial interests, the objective being to protect the integrity and independence of the provision of the benchmark. This commenter stated that they maintain and strictly enforce their conflicts of interest policy, as is required under the IOSCO Principles and EU BMR.	
28.	*Assurance Report on Designated Benchmark Administrator* – Subsection 40.14(2) requires a designated benchmark administrator of a designated commodity benchmark, whether or not the benchmark is also designated as a critical benchmark, to engage a public accountant to provide a limited or reasonable assurance report on compliance once in every 12-month period. In contrast, pursuant to subsection 36(2), an administrator of a designated interest rate benchmark is required to engage a public accountant to provide such a report, once in every 24-month period, albeit a report is required 6 months after the introduction of a code of conduct for benchmark contributors. Given the general risks raised by the activities of administrators of commodity	Several commenters suggested the CSA follow the approach adopted in the EU BMR by providing for the alternative option of an assurance report based on compliance with IOSCO Principles, because it would not be feasible, or proportionate, for designated commodity benchmark administrators to have to undergo separate audits annually against both the IOSCO Principles and Canada's benchmark regime. The commenters indicated that although they may not find it reasonable for administrators of commodity benchmarks to be required to undergo annual audits, when administrators of interest rate benchmarks are required to do so (only) every 2 years, this is the internationally-accepted practice.	We thank the commenters for their comments regarding the assurance report requirements in the Proposed Amendments to MI 25-102. However, we have retained the requirements in s.40.13(2) (s.40.14(2) in the Proposed Amendments to MI 25-102) because we consider them to be appropriate for the Canadian market. A party applying for designation as a designated commodity benchmark administrator may apply for exemptive relief from certain requirements in MI 25-102 if such requirements would present an undue administrative burden to the commodity benchmark administrator and exemptions from such requirements would not be prejudicial to the public interest in the specific circumstances.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	benchmarks versus of interest rate benchmarks, are the proposed requirements appropriate? Please explain your response.	One commenter was of the view that a designated regulated data commodity benchmark should not be subject to a more frequent reasonable assurance report requirement than is applied to designated financial benchmarks. In such case, there is less likelihood of manipulation of the underlying transaction data. Accordingly, this commenter submitted that the additional regulatory burden of a more frequent assurance report requirement for designated regulated data commodity benchmarks would outweigh any incremental benefit to users of a designated regulated data commodity benchmark.	
29.	*Concentration Risk* – Pursuant to subsection 20(1), designated benchmark administrators of designated commodity benchmarks would be subject to certain obligations when they cease to provide a designated commodity benchmark. However, market users may potentially have more limited benchmarks to utilize for purposes of their transactions (concentration risk) where a designated benchmark administrator that administers a number of designated commodity	Several commenters did not believe that additional requirements are necessary to address concentration risk as PRAs operate in a competitive information market where product substitutability is generally available. One commenter also submitted that, as per the EU BMR, a benchmark administrator should be required to maintain a certain level of continuity, but such an approach should be proportional.	We thank the commenters for their comments regarding concentration risk. As a result of these comments, we do not believe that further changes to the provisions in the Proposed Amendments to MI 25-102 are appropriate.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	benchmarks unexpectedly delays in providing or ceases to provide those benchmarks. Do you think that additional requirements should be added under Part 8.1 to address this concentration risk? If yes, what requirements should be added?	The commenter also offered that the CSA should avoid excessive administrative burden on administrators whose benchmarks pose less cessation risk to the wider financial system, including where there are alternatives available from competitors, which they considered to be generally the case with regard to commodity benchmarks. One commenter was of the view that a market participant who utilizes a benchmark for purposes of their transactions bears the responsibility to ensure it has made provision for a fallback, or backup, benchmark in its contracts.	
30.	*Designated Benchmarks* – If your organization is a benchmark administrator of commodity benchmarks, please: (a) advise if you intend to apply for designation under MI 25-102, (b) advise of any benchmark you intend to also apply for designation under MI 25-102, and (c) indicate the rationale for your intention.	None of the commenters had the immediate intention of applying for designation in Canada. However, one commenter indicated that the best approach for the CSA would be to pursue full alignment with the IOSCO Principles, which would make the Canadian regime more attractive. One commenter thought it was unclear what contracts the benchmark administrator must have with Canada in	See our response to Item 6 above.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		order for the measures to apply, and whether contracts with market participants other than in the EU are in scope. Another commenter submitted that the proposed voluntary designation option could, in principle, prove attractive for administrators of commodity benchmarks seeking international regulatory credibility for their benchmarks, but that the Canadian benchmark regime would have to be aligned closer to the IOSCO Principles than is currently proposed for this to be a viable option.	
31.	*Anticipated Costs and Benefits* – The Notice sets out the anticipated costs and benefits of the Proposed Amendments (in Ontario, additional detail is provided in Annex F). Do you believe the costs and benefits of the Proposed Amendments have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain and/or identify furthers costs or benefits.	One commenter suggested that the Proposed Amendments to MI 25-102 provide no acknowledgement or framework for those benchmark administrators based outside of Canada and, as a result, fail to consider one of the most significant costs which will be faced by those benchmark administrators subject to other benchmark regulations, being costs associated with dual supervision and complying with regulation in multiple jurisdictions. The commenter stated that such costs can be reduced by either: (a) explicitly excluding	We thank the commenters for their comments regarding the anticipated costs of complying with the requirements of Proposed Amendments to MI 25-102. However, we do not currently intend to designate any commodity benchmarks or benchmark administrators of commodity benchmarks and, if a benchmark administrator of a commodity benchmark were to apply for designation, we expect the benchmark administrator would have determined that the benefits of doing so would outweigh the costs.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		commodity benchmarks; or (b) making the requirements as close as possible to the IOSCO Principles and EU BMR to reduce administrative burden and implementation costs. Another commenter submitted that the anticipated costs and benefits analysis does not adequately assess expected potential costs. They explained that the brief discussion relies in large part on: (a) intention to not designate any commodity benchmarks; and (b) the Proposed Amendments to MI 25-102 being based on the IOSCO Principles which are directed primarily toward assessed, survey-style commodity benchmarks. If an analysis of anticipated costs and benefits is to be provided, the commenter suggested the analysis should focus on the costs of seeking designation of a benchmark administrator and a commodity benchmark and ongoing compliance with MI 25-102. With respect to the further analysis provided as local matters in Ontario, the commenter noted that the analysis focuses on incremental costs to a benchmark administrator that is already subject to regulation in the EU or UK, and not on the anticipated costs to a	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		commodity benchmark administrator located in Canada that is not already subject to regulation in the EU or UK. One commenter submitted that the Notice and the anticipated costs and benefit analysis appear to not anticipate the potential competitive impact of establishing a regime for regulating designated commodity benchmarks, even where there is no current intention to designate a commodity benchmark. The commenter suggested that it should be anticipated that the establishment of a regulatory regime may elicit applications for regulatory oversight for competitive purposes, particularly absent an indication of minimum absolute or proportionate transaction volume thresholds in order for the CSA to consider an application for designation.	

ANNEX B

AMENDMENTS TO
MULTILATERAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

1. Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators is amended by this Instrument.

2. Subsection 1(1) is amended

(a) by adding the following definitions:

"designated commodity benchmark" means a benchmark that is

(a) determined by reference to or an assessment of an underlying interest that is a commodity other than a currency, and

(b) designated for the purposes of this Instrument as a "commodity benchmark" by a decision of the securities regulatory authority;

"front office" means any department, division or other internal grouping that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;

"front office employee" means any employee or agent that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;***, and***

(b) in the definition of "subject requirements" by

(i) deleting "and***" at the end of paragraph (d),***

(ii) replacing ";***" with "***, and***" at the end of paragraph (e), and***

(iii) adding the following paragraph

(f) paragraphs 40.13(1)(a) and (b);**.**

3. Subsection 6(3) is amended

(a) by repealing paragraph (a) and substituting the following:

(a) in the case of a benchmark

(i) that is not a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8, and

(ii) that is a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3;**,** ***and***

(b) by repealing subparagraph (b)(ii) and substituting the following:

(ii) in the case of a benchmark that is not a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8,

(ii.1) in the case of a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and**.**

4. Subparagraph 13(2)(c)(v) is amended by replacing the lettering of clauses "(i)***" and "***(ii)***" with "***(A)***" and "***(B)***".***

5. Section 15 is amended

(a) in subsection (4) by adding ", or front office employee,***" after "***from any front office***", and***

(b) by repealing subsection (5).

6. Paragraph 39(3)(e) is amended by replacing "conflict of interest identification and management procedures and communication controls,***" with "***measures to identify and eliminate or manage conflicts of interest, including, for greater certainty, communications controls,***".***

7. Section 40 is repealed and the following substituted:

Provisions of this Instrument not applicable in relation to designated regulated-data

benchmarks

40. The following provisions do not apply to a designated benchmark administrator or a benchmark contributor in relation to a designated regulated-data benchmark:

(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)**..**

8. The following Part is added:

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

Provisions of this Instrument not applicable in relation to dual-designated benchmarks

40.1.(1) Sections 30 to 33 do not apply to a designated benchmark administrator in relation to a benchmark that is

(a) a designated commodity benchmark, and

(b) a designated critical benchmark.

(2) This Part does not apply to a designated benchmark administrator in relation to a designated commodity benchmark if

(a) the benchmark is a designated critical benchmark, and

(b) the underlying interest of the benchmark is gold, silver, platinum or palladium.

(3) Subsection (4) applies to a designated benchmark administrator in relation to a designated commodity benchmark if all of the following apply:

(a) the benchmark is determined from input data arising from transactions of the commodity that is the underlying interest of the benchmark;

(b) the commodity is of a type in respect of which parties to the transactions referred to in paragraph (a), in the ordinary course of business, make or take

physical delivery of the commodity;

(c) the benchmark is a designated regulated-data benchmark.

(4) The following provisions do not apply in the circumstances referred to in subsection (3):

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

(b) section 40.8;

(c) section 40.9, other than subparagraph (f)(ii);

(d) paragraph 40.11(2)(a);

(e) section 40.13.

Provisions of this Instrument not applicable in relation to designated commodity benchmarks

40.2. The following provisions do not apply to a designated benchmark administrator, a benchmark contributor or any other person or company specified in the provisions in relation to a designated commodity benchmark:

(a) Part 3, other than subsection 5(1) and sections 6, 11, 12 and 13;

(b) Part 4, other than section 17;

(c) sections 18 and 21;

(d) Part 6;

(e) Part 7.

Control framework

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

(2) Without limiting the generality of subsection (1), with respect to the provision of a designated commodity benchmark, a designated benchmark administrator must ensure that its policies, procedures and controls address 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) contingencies in the event of a disruption to the provision of the designated commodity benchmark or the process applied to provide the designated commodity benchmark.

Methodology

40.4.(1) A designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless

(a) the methodology is sufficient to provide a designated commodity benchmark that accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market that the benchmark is intended to represent, and

(b) the accuracy and reliability of the designated commodity benchmark are verifiable.

(2) A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of the designated commodity benchmark, including, for greater certainty, all of the following:

(a) all criteria and procedures used to determine the designated commodity benchmark, including the following, as applicable:

(i) how input data is used;

(ii) the reason that a reference unit is used;

(iii) how input data is obtained;

(iv) identification of how and when expert judgment may be exercised;

(v) any model, method, assumption, extrapolation or interpolation that is used for analysis of the input data;

(b) the procedures reasonably designed to ensure that benchmark individuals exercise expert judgment in a consistent manner;

(c) the relative importance assigned to the criteria used to determine the designated commodity benchmark, including, for greater certainty, the type of input data used and how and when expert judgment may be exercised;

(d) any minimum requirement for the number of transactions or for the volume for each transaction used to determine the designated commodity benchmark;

(e) if the methodology of the designated commodity benchmark does not require a minimum number of transactions or minimum volume for each transaction used to determine the designated commodity benchmark, an explanation as to why a minimum number or volume is not required;

(f) the procedures used to determine the designated commodity benchmark in circumstances in which the input data does not meet the minimum number of transactions or the minimum volume for each transaction required in the methodology of the designated commodity benchmark, including, for greater certainty,

(i) any alternative methods used to determine the designated commodity benchmark, including, for greater certainty, any theoretical estimation models, and

(ii) if no transaction data exists, procedures to be used in those circumstances;

(g) the time period during which input data must be provided;

(h) the means used to contribute the input data, whether electronically, by telephone or by other means;

(i) the procedures used to determine the designated commodity benchmark if one or more benchmark contributors contribute input data that constitutes a significant proportion of the total input data for the determination of the designated commodity benchmark, including specifying what constitutes a significant proportion of the total input data for the determination of the benchmark;

(j) the circumstances in which transaction data may be excluded in the determination of the designated commodity benchmark.

Additional information about the methodology

40.5. A designated benchmark administrator must, with respect to the methodology of a designated commodity benchmark, publish all of the following:

(a) the rationale for adopting the methodology, including, for greater certainty,

(i) the rationale for any price adjustment techniques, and

(ii) a description of why the time period for the acceptance of input data is adequate for the input data to accurately and reliably represent the value of the underlying interest of the designated commodity benchmark;

(b) the process for the internal review and the approval of the methodology referred to in section 40.6 and the frequency of those reviews and approvals;

(c) the process referred to in section 17 for making significant changes to the methodology.

Review of methodology

40.6. A designated benchmark administrator must, at least once every 12 months, carry out an internal review and approval of the methodology of each designated commodity benchmark that it administers to ensure that the designated benchmark administrator complies with subsection 40.4(1).

Quality and integrity of the determination of a designated commodity benchmark

40.7.(1) A designated benchmark administrator must specify, and document and publish a description of, the commodity that is the underlying interest of a designated commodity benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the quality and integrity of each determination of a designated commodity benchmark, including for greater certainty, policies and procedures reasonably designed

(a) to ensure that input data is used in accordance with the order of priority specified in the methodology of the designated commodity benchmark,

(b) to identify transaction data that a reasonable person would conclude is anomalous or suspicious,

(c) to ensure that the designated benchmark administrator maintains records of each decision, including the reasons for the decision, to exclude transaction data from the determination of the designated commodity benchmark,

(d) so that a benchmark contributor is not discouraged from contributing all of its input data that meets the designated benchmark administrator’s criteria for the determination of the designated commodity benchmark, and

(e) to ensure that benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.

Transparency of determination of a designated commodity benchmark

40.8. A designated benchmark administrator must publish for each determination of a designated commodity benchmark, as soon as reasonably practicable, all of the following:

(a) an explanation of how the designated commodity benchmark was determined, including, for greater certainty, all of the following:

(i) the number of transactions and the volume for each transaction;

(ii) with respect to each type of input data

(A) the range of volumes and the average volume,

(B) the range of prices and the volume-weighted average price, and

(C) the approximate percentage of each type of input data to the total input data;

(b) an explanation of how and when expert judgment was used in the determination of the designated commodity benchmark.

Integrity of the process for contributing input data

40.9. A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure the integrity of the process for contributing input data for a designated commodity benchmark, including, for greater certainty, all of the following:

(a) criteria for determining who may contribute input data;

(b) procedures to verify the identity of a benchmark contributor and a contributing individual and the authorization of the contributing individuals to contribute input data on behalf of the benchmark contributor;

(c) criteria for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;

(d) criteria for determining the appropriate contribution of transaction data by the benchmark contributor;

(e) if transaction data is contributed from any front office, or front office employee, of a benchmark contributor, or of an affiliated entity of a benchmark contributor, procedures to confirm the reliability of the input data, and the criteria upon which the reliability is measured, in accordance

with its policies;

(f) procedures to

(i) identify any communications between contributing individuals and benchmark individuals that might involve manipulation or attempted manipulation of the determination of the designated commodity benchmark for the benefit of any trading position of the benchmark contributor, any contributing individual or third party,

(ii) identify any attempts to cause a benchmark individual not to apply or follow the designated benchmark administrator's policies, procedures and controls,

(iii) identify benchmark contributors or contributing individuals that engage in a pattern of contributing transaction data that a reasonable person would consider is anomalous or suspicious, and

(iv) ensure that the appropriate supervisors within the benchmark contributor are notified, to the extent possible, of questions or concerns by the designated benchmark administrator.

Governance and control requirements

40.10.(1) A designated benchmark administrator must establish and document its organizational structure in relation to the provision of a designated commodity benchmark.

(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 the designated commodity benchmark, and include, if applicable, segregated reporting lines, to ensure that the designated benchmark administrator complies with the provisions of this Instrument.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the integrity and reliability of the determination of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to ensure

(a) that each of its benchmark individuals has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual,

(b) that the provision of the designated commodity benchmark can be made on a consistent and regular basis,

(c) that succession plans exist to ensure the designated benchmark

administrator follows the policies and procedures described in paragraphs (a) and (b) on an ongoing basis,

(d) that each of its benchmark individuals is subject to management and supervision to ensure that the methodology of the designated commodity benchmark is properly applied, and

(e) that the approval of an individual holding a position senior to that of a benchmark individual is obtained before each publication of the designated commodity benchmark.

Books, records and other documents

40.11.(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 commodity benchmarks.

(2) A designated benchmark administrator must keep books, records and other documents of all of the following:

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

(b) each decision to exclude a particular transaction from input data that otherwise met the requirements of the methodology applicable to the determination of a designated commodity benchmark, and the rationale for doing so;

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

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of the designated commodity 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.

(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 commodity

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.

Conflicts of interest

40.12.(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 expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to

(i) ensure that the provision of a designated commodity benchmark is not influenced by the existence of, or potential for, financial interests, relationships or business connections between the designated benchmark administrator or its affiliates, its personnel, clients and any market participant or persons connected with them,

(ii) ensure that each of its benchmark individuals does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator, including, for greater certainty, outside employment,

travel and acceptance of entertainment, gifts and hospitality provided by the designated benchmark administrator's clients or other commodity market participants,

(iii) keep separate, operationally, the business of the designated benchmark administrator relating to the designated commodity 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 commodity benchmark, and

(iv) ensure that each of its benchmark individuals does not contribute to a determination of a designated commodity 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,

(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 affects the integrity of the benchmark determination,

(e) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under sections 19, 20, 40.4, 40.5 and 40.8, and

(f) identify and eliminate or manage conflicts of interest that exist between the provision of a designated commodity benchmark by the designated benchmark administrator, including all benchmark individuals who participate in the determination of the designated commodity benchmark, and any other business of the designated benchmark administrator.

(2) A designated benchmark administrator must ensure that its other businesses have appropriate policies, procedures and controls designed to minimize the likelihood that a conflict of interest will adversely affect the integrity of the provision of a designated commodity benchmark.

(3) In establishing an organizational structure, as required under subsections 40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities of each person or company involved in the provision of a designated commodity benchmark administered by the designated benchmark administrator do not cause a conflict of interest or a potential conflict of interest.

(4) 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 commodity 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.

(5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in paragraph (1)(e), 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.

Assurance report on designated benchmark administrator

40.13.(1) A designated benchmark administrator must engage a public accountant to provide a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated commodity benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with subsection 5(1) and sections 11 to 13, 40.3, 40.4, 40.6, 40.7, and 40.9 to 40.12, and

(b) following of the methodology applicable to the designated commodity 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 provided for in subsection (1), publish the report and deliver a copy of the report to the regulator or securities regulatory authority**..**

9. (1) This Instrument comes into force on September 27, 2023.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 27, 2023, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX C

CHANGES TO
COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

1. Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators is changed by this Document.

2. Part 1 is changed

(a) in the first bullet of the second paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "or commodity***" after "***financial***",***

(b) in the third paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "regardless of who applies for the designation,***" after "***Furthermore,***",***

(c) by adding after the second paragraph under the subheading of "Categories of Designation" the following paragraph

Designated commodity benchmarks, benchmarks dually designated as commodity and regulated-data benchmarks or dually designated as commodity and critical benchmarks are subject to the requirements as specified under Part 8.1 of the Instrument.**,**

(d) in the second sentence of the third paragraph under the subheading of "Categories of Designation" by

(i) replacing "or***" with "," before "***a designated regulated-data benchmark***", and***

(ii) adding "or a designated commodity benchmark***" before the period,***

(e) in the bullets of the third paragraph under the subheading of "Categories of Designation"

(i) by deleting "*and****" in the first bullet,***

(ii) by replacing "*.****" with "***, but not if it is a commodity benchmark,***" in the second bullet, and***

(iii) by adding after the second bullet the following two bullets:

- a designated commodity benchmark may also be designated as a designated regulated-data benchmark, and

- a designated commodity benchmark may also be designated as a designated critical benchmark.**,**

(f) in the fourth paragraph under the subheading of "Categories of Designation" by

(i) replacing " or***" with ","*** ***before "***a regulated-data benchmark***", and***

(ii) adding "or a commodity benchmark***" before the period,***

(g) by adding the following under the heading "Definitions and Interpretation"

Subsection 1(1) – Definition of designated commodity benchmark

The Instrument defines a "designated commodity benchmark" to ensure, to the extent possible, a consistent interpretation of this term across the various CSA jurisdictions, despite possible differences in statutory definitions of "commodity". The definition specifically excludes a benchmark that has, as an underlying interest, a currency.

By "commodity benchmark", we generally mean a benchmark based on a commodity with a finite supply that can be delivered either in physical form or by delivery of the instrument evidencing ownership of the commodity. We consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark based on these intangible commodities as a "commodity benchmark" for the purposes of the Instrument.

Subsection 1(1) – Definitions of front office and front office employee in relation to a benchmark contributor

"Front office" is used in the context of a benchmark contributor, or of an affiliated entity of a benchmark contributor, and means any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of the benchmark contributor or the affiliated entity of the benchmark contributor. "Front office employee" is used in the same context and means any employee or agent of a benchmark contributor, or of an affiliated entity of a benchmark contributor, who performs any of those functions. In general, we consider front office employees to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.**,**

(h) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark"

However, if a designated commodity benchmark is also designated as a critical benchmark, then subsections 40.1(1) and (2) of the Instrument will specify the requirements applicable to such a benchmark.**,**

(i) in the first sentence of the second paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark" by adding "or commodity***" before "***markets***", and***

(j) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated regulated-data benchmark"

However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections 40.1(3) and (4) of the Instrument will specify the requirements applicable to such a benchmark**..**

3. Part 4 Input Data and Methodology is changed

(a) by adding "or front office employee***" after "***from front office***" in the subheading of "Subsection 15(4) – Verification of input data from front office of a benchmark contributor",***

(b) by adding "or front office employee***" after "***from any front office***" in the first paragraph under the subheading "Subsection 15(4) – Verification of input data from front office or front office employee of a benchmark contributor", and***

(c) by deleting the following

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**..**

4. The Companion Policy is changed by adding the following part

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

Publication of information

Under Part 8.1, there are several provisions that require a designated benchmark administrator to publish information relating to a designated commodity benchmark, including:

- subsection 40.4(2) - the elements of the methodology of the designated commodity benchmark;
- section 40.5 - the rationale for adopting the methodology, the process for internal review and approval of the methodology, and the process for making significant changes to the methodology;
- subsection 40.7(1) - a description of the commodity that is the underlying interest of the designated commodity benchmark;
- section 40.8 - an explanation of each determination of the designated commodity benchmark;
- subsection 40.12(4) - a description of a conflict of interest, or a potential conflict of interest, in respect of the designated commodity benchmark; and
- section 40.13 - the publication of a limited assurance report or a reasonable assurance report.

For the purposes of Part 8.1, we generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification in these contexts. However, we recognize that a news release generally will not be necessary for the explanation of each determination of a designated commodity benchmark required under section 40.8. 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 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 applicable information on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subsections 40.1(1) and (2) – Dual designation as a commodity benchmark and a critical benchmark

A designated commodity benchmark may also be designated as a critical benchmark and, in such case, would still be subject to the requirements under Part 8.1. As there are no specific requirements under Part 8.1 for benchmark contributors, such dually-designated benchmarks would not be subject to the requirements under sections 30 to 33 of the Instrument.

If the underlying commodity is gold, silver, platinum or palladium, then rather than being subject to the requirements under Part 8.1, the requirements under Parts 1 to 8 would apply.

Subsections 40.1(3) and (4) – Dual designation as a commodity benchmark and a regulated-data benchmark

If a commodity benchmark is designated as a regulated-data benchmark, then it is not subject to Part 8.1, rather the requirements under Parts 1 to 8 would apply. However, some commodity benchmarks may be determined from transactions where the parties, in the ordinary course of business, make or take physical delivery of the commodity, and those same commodity benchmarks may also meet the requirements for regulated-data benchmarks. Generally, these transactions would also be arm's length transactions. Regulated-data benchmarks determined from such transactions would more closely resemble commodity benchmarks, rather than financial benchmarks, and they would be dually designated as commodity and regulated-data benchmarks. Benchmark administrators of such dually-designated benchmarks would be subject to the requirements under Part 8.1.

However, as provided by subsection 40.1(4), such benchmark administrators would be exempted from certain policy and control requirements relating to the process of contributing input data, from the requirement to publish certain explanations for each determination of the benchmark, and from the requirement for an assurance report. The exemptions under subsection 40.1(4) are meant to ensure that administrators of benchmarks dually designated as commodity and regulated-data benchmarks receive comparable treatment under Part 8.1 as administrators of designated regulated-data benchmarks under Parts 1 to 8.

Given the interpretation provided by paragraph 1(3)(a) of the Instrument as to when input data is considered to have been "contributed", as described earlier 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 dually designated as a commodity benchmark and a regulated-data benchmark. Examples include the requirements in paragraphs 40.4(2)(g), (h) and (i), paragraphs 40.7(2)(d) and (e) and section 40.9.

For clarity, we would not designate a regulated-data benchmark that is also a commodity benchmark, whether dually designated as such or only as a regulated-data benchmark, as a critical benchmark.

Section 40.2 – Non-application to designated commodity benchmarks

Physical commodity markets have unique characteristics which have been taken into account in determining which requirements should be imposed on designated benchmark administrators in respect of designated commodity benchmarks. Consequently, section 40.2 includes a number of exemptions from certain requirements for such benchmark administrators, either because some are not suitable or because more appropriate substituted requirements are provided under Part 8.1 of the Instrument. Requirements that are relevant to designated benchmark administrators of designated commodity benchmarks

have been excepted from the exemptions in section 40.2, and include, among others, the requirements for:

- policies and procedures as set out in subsection 5(1),
- a compliance officer as set out in section 6,
- reporting on contraventions in section 11,
- policies and procedures regarding complaints, as set out in section 12,
- outsourcing under section 13,
- the publishing of a benchmark statement under section 19, and
- providing notice of changes to and cessation of a benchmark, as provided under section 20.

In addition to the guidance provided in this Policy with respect to paragraph 12(2)(c), we expect disputes as to pricing determinations that are not formal complaints to be resolved by the designated benchmark administrator of a commodity benchmark with reference to its appropriate standard procedures. In general, we would expect that if a complaint results in a change in price, whether the complaint is formal or informal, then the details of that change in price will be communicated to stakeholders as soon as possible.

With respect to section 13, for the purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Paragraph 19(1)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market the designated benchmark is intended to represent. This relates to the benchmark's purpose. A commodity benchmark may be intended to reflect the characteristics and operations of the referenced underlying physical commodity market and may be used as a reference price for a commodity and for commodity derivative contracts.

Section 40.4 – Methodology to ensure the accuracy and reliability of a designated commodity benchmark

We expect that the methodology established and used by a designated benchmark administrator will be based on the applicable characteristics of the relevant underlying interest of the designated commodity benchmark for that part of the market that the designated commodity benchmark is intended to represent, such as the grade and quality of the commodity, its geographical location, seasonality, etc., and will be sufficient to provide an accurate and reliable benchmark. For example, the methodology for a crude oil benchmark should reflect the following, but not be limited to, the specific crude grade (e.g., sweet or heavy), the location (e.g., Edmonton or Hardisty), the time period within which transactions are concluded during the trading day, and the month of delivery.

We further expect that, where consistent with the methodology of the designated commodity benchmark, priority will be given to input data in the order of priority set out below:

(a) concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;

(b) if the input data referred to in paragraph (a) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, bids and offers in the market described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, any other information relating to the market described in paragraph (a) that is used to determine the designated commodity benchmark; and

(d) in any other case, expert judgments.

Subparagraph 40.4(2)(a)(ii) – Specific reference unit used in the methodology

The specific reference unit used in the methodology will vary depending on the underlying commodity. Examples of possible reference units include barrels of oil or cubic meters (m^3) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

Paragraph 40.4(2)(c) – Relative importance assigned to each criterion used in the determination of a designated commodity benchmark

The requirement in paragraph 40.4(2)(c) regarding the relative importance assigned to each criterion, including the type of input data used and how and when expert judgment may be exercised, is not intended to restrict the specific application of the relevant methodology, but to ensure the quality and integrity of the determination of the designated commodity benchmark.

Paragraph 40.4(2)(j) – Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

Where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, we expect that a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. This is not intended to reduce or restrict a benchmark administrator's flexibility to determine the methodology or to determine whether certain input data is consistent with that methodology. Rather, it is intended to clarify that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

We consider "concluded transactions" to mean transactions that are executed but not necessarily settled.

Section 40.6 – Review of methodology

We expect that a designated benchmark administrator will determine the appropriate frequency for carrying out an internal review of a designated commodity benchmark's methodology based on the specific nature of the benchmark (such as the complexity, use and vulnerability of the benchmark to manipulation) and the applicable characteristics of the part of the market (or changes thereto) that the benchmark is intended to represent. In any event, the administrator must review the methodology at least once every 12 months.

Paragraph 40.7(2)(a) – Quality and integrity of the determination of a designated commodity benchmark

While we recognize a benchmark administrator's flexibility to determine its own methodology and use of market data, we expect an administrator to use input data in accordance with the order of priority specified in its methodology.

Furthermore, we expect that the designated benchmark administrator will employ measures reasonably designed to ensure that input data contributed and considered in the determination of a designated commodity benchmark is *bona fide*. By *bona fide* we mean that parties contributing the input data have executed or are prepared to execute transactions generating such input data and that executed transactions were concluded between parties at arm's length. If the latter is not the case, then particular attention should be paid to transactions between affiliated entities and consideration given as to whether this affects the quality of the input data to any extent.

Section 40.8 – Transparency of determination of a designated commodity benchmark

We expect that, in providing an explanation of the extent to which, and the basis upon which, expert judgment was used in the determination of a designated commodity benchmark, a designated benchmark administrator will address the following:

(a) the extent to which a determination is based on transactions or spreads, and interpolation or extrapolation of input data;

(b) whether greater priority was given to bids and offers or other market data than to concluded transactions, and, if so, the reason why;

(c) whether transaction data was excluded, and, if so, the reason why.

Section 40.8 requires a designated benchmark administrator to publish the specified explanations for <u>each</u> determination of a designated commodity benchmark. However, we recognize that, to the extent that there have been no significant changes, a standard explanation may be acceptable, and any exceptions in the explanation must then be noted for each determination. We generally expect that the specified explanations will be provided contemporaneously with the determination of a benchmark, but recognize that

unforeseen circumstances may cause delays, in which case, we still expect that explanation to be published as soon as reasonably practicable.

Section 40.9 – Policies, procedures, controls and criteria of the designated benchmark administrator to ensure the integrity of the process of contributing input data

There are no specific requirements under Part 8.1 for benchmark contributors with respect to commodity benchmarks, as under Part 6 for financial benchmarks, nor, consequently, obligations on designated benchmark administrators to ensure that the benchmark contributors adhere to such requirements. However, section 40.9 does require an administrator to ensure the integrity of the process for contributing input data. We are of the view that such policies, procedures, controls and criteria will promote the accuracy and integrity of the determination of the commodity benchmark.

Paragraph 40.9(d) – Criteria relating to the contribution of transaction data

In establishing criteria that determine the appropriate contribution of transaction data by benchmark contributors, we would expect that the criteria would include encouraging benchmark contributors to contribute transaction data from the back office of the benchmark contributor. We consider the back office of a benchmark contributor to be any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any administrative and support functions, including, as applicable, settlements, clearances, regulatory compliance, maintaining of records, accounting and information technology services on behalf of the benchmark contributor or of the affiliated entity of the benchmark contributor. In general, we consider the back office of a benchmark contributor, or of an affiliated entity of a benchmark contributor, to be comprised of employees or agents who support the generation of revenue for the benchmark contributor or the affiliated entity.

Subsection 40.10(3) – Governance and control requirements

To foster confidence in the integrity of a designated commodity benchmark, we are of the view that benchmark individuals involved in the determination of a commodity benchmark should be subject to the minimum controls set out in subsection 40.10(3). A designated benchmark administrator must decide how to implement its own specific measures to achieve the objectives set out in paragraphs (a) to (e).

Section 40.11 – Books, records and other documents

Subsection 40.11(2) sets out the minimum records that must be kept by a designated benchmark administrator. We expect an administrator to consider the nature of its benchmarks-related activity when determining the records that it must keep.

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.

Section 40.12 – Conflicts of interest

We expect the policies and procedures required under subsection 40.12(1) for identifying and eliminating or managing conflicts of interest to provide the parameters for a designated benchmark administrator to

- identify conflicts of interest,
- determine the level of risk, to both the benchmark administrator and users of its designated commodity benchmarks, that a conflict of interest raises, and
- respond to a conflict of interest by eliminating or managing the conflict of interest, as appropriate, given the level of risk that it raises.

In establishing an organizational structure, as required under subsections 40.10(1) and (2), that addresses the conflict of interest requirements under subsection 40.12(3), the designated benchmark administrator should ensure that persons responsible for the determination of the designated commodity 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 of the administrator.

Section 40.13 - Assurance report on designated benchmark administrator

Under Part 8.1, there is no requirement for an oversight committee, as provided by section 7. Therefore, for purposes of section 40.13, there is no oversight committee to specify whether a limited assurance report on compliance or a reasonable assurance report on compliance needs to be provided by a public accountant. We would expect the designated benchmark administrator to determine which report is appropriate, based on the specific nature of the designated commodity benchmark, including the complexity, use and vulnerability of the benchmark to manipulation, and the applicable characteristics of the market that the benchmark is intended to represent, or other relevant factors regarding the administration of the benchmark**.**

5. These changes become effective on September 27, 2023.