The Ontario Securities Commission

OSC Bulletin

March 14, 2019

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Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Contact Centre – Inquiries, Complaints:

Office of the Secretary:

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416-609-3800 or 1-800-387-5164

Fax: 416-593-8122
TTY: 1-866-827-1295

Fax: 416-593-2318

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One Corporate Plaza
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M1T 3V4

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
Email CustomerSupport.LegalTaxCanada@TR.com

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1.2 Notices of Hearing

1.2.1 Anson Advisors Inc. – ss. 8, 21.7 and 127

FILE NO.: 2019-5

IN THE MATTER OF
ANSON ADVISORS INC.

NOTICE OF HEARING
Sections 8, 21.7 and 127 of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Application for Hearing and Review

HEARING DATE AND TIME: March 18, 2019 at 11:00 a.m.

LOCATION: 20 Queen Street West, 17th Floor, Toronto, Ontario

PURPOSE

The purpose of this proceeding is to consider the Application dated February 27, 2019 made by the party named above to review a decision of the Toronto Stock Exchange made on or about February 20, 2019.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's *Practice Guideline*.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Secretary's Office in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 8th day of March, 2019

"Grace Knakowski"
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

1.2.2 Ewing Morris & Co. Investment Partners Ltd. – ss. 8, 21.7 and 127

FILE NO.: 2019-6

IN THE MATTER OF
EWING MORRIS & CO. INVESTMENT PARTNERS LTD.

NOTICE OF HEARING
Sections 8, 21.7 and 127 of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Application for Hearing and Review

HEARING DATE AND TIME: March 18, 2019 at 11:00 a.m.

LOCATION: 20 Queen Street West, 17th Floor, Toronto, Ontario

PURPOSE

The purpose of this proceeding is to consider the Application dated March 4, 2019 made by the party named above to review a decision of the Toronto Stock Exchange made on or about February 20, 2019.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's Practice Guideline.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Secretary's Office in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

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Dated at Toronto this 8th day of March, 2019

"Grace Knakowski"
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

1.4 Notices from the Office of the Secretary

1.4.1 Anson Advisors Inc.

FOR IMMEDIATE RELEASE
March 8, 2019

ANSON ADVISORS INC.,
File No. 2019-5

TORONTO – On March 8, 2019, the Commission issued a Notice of Hearing pursuant to Sections 8, 21.7 and 127 of the *Securities Act*, RSO 1990, c S.5 to consider the Application filed by Anson Advisors Inc. dated February 27, 2019.

The hearing will be held on March 18, 2019 at 11:00 a.m. at 20 Queen Street West, 17th Floor, Toronto, Ontario.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's *Practice Guideline*.

A copy of the Notice of Hearing dated March 8, 2019 and the Application dated February 27, 2019 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 Ewing Morris & Co. Investment Partners Ltd.

FOR IMMEDIATE RELEASE
March 8, 2019

EWING MORRIS & CO. INVESTMENT PARTNERS LTD.,
File No. 2019-6

TORONTO – On March 8, 2019, the Commission issued a Notice of Hearing pursuant to Sections 8, 21.7 and 127 of the *Securities Act*, RSO 1990, c S.5 to consider the Application filed by Ewing Morris & Co. Investment Partners Ltd. dated March 4, 2019.

The hearing will be held on March 18, 2019 at 11:00 a.m. at 20 Queen Street West, 17th Floor, Toronto, Ontario.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's *Practice Guideline*.

A copy of the Notice of Hearing dated March 8, 2019 and the Application dated March 4, 2019 are available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.4.3 Money Gate Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
March 11, 2019

MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN, and
PAYAM KATEBIAN, File No. 2017-79

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on May 1, 2, 3, 6, 8, 22, 23, 24, 30, and 31, 2019 will not proceed as scheduled.

The hearing on the merits will continue on May 10, 14, 15, 2019, and June 27 and 28, 2019, commencing at 10:00 a.m. on each scheduled day.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Global Growth Assets Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to manager of scholarship plans and a mutual fund for extension of prospectus lapse date – Additional time needed to allow the fund manager to resolve deficiencies raised by staff which may impact the disclosure – Extension of lapse date will not impact currency of disclosure relating to the scholarship plans or the fund.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 62(2), 62(5).

February 7, 2019

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
GLOBAL GROWTH ASSETS INC.
(the Manager)

AND

ADVANCED EDUCATION SAVINGS PLAN,
LEGACY EDUCATION SAVINGS PLAN
(each, a Plan, collectively, the Plans)

AND

GLOBAL IMAN FUND
(the Fund, and together with the
Manager and the Plan, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption that the time limits pertaining to filing the renewal of the detailed plan disclosure and plan summary of each Plan (collectively, the **Plan Prospectus**) and the renewal prospectus of the Fund (the **Fund Prospectus**) be extended as if the lapse date of the each Plan's prospectus dated January 31, 2018 and the Fund's prospectus dated April 9, 2018 (together, the **Current Prospectuses**) is May 31, 2019 (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and

(b) the Manager has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Nova Scotia (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Manager:

1. The Manager is the investment fund manager of each of the Plans and the Fund.

2. Each Plan is an "Education Savings Plan" under s. 146.1 of the *Income Tax Act* (Canada).

3. The Fund is a mutual fund established by a declaration of trust in the province of Ontario.

4. Units of each Plan are currently qualified for distribution in each of the Jurisdictions under a prospectus dated January 31, 2018 and each Plan is a reporting issuer in each of the Jurisdictions.

5. Units of the Fund are currently qualified for distribution in each of the Jurisdictions under a prospectus dated April 9, 2018 and the Fund is a reporting issuer in each of the Jurisdictions.

6. None of the Plans, the Fund, or the Manager, is in default of securities legislation in any of the Jurisdictions.

7. The lapse date of each Plan's prospectus is January 31, 2019 (the **Current Plan Lapse Date**). The lapse date of the Fund's Prospectus is April 9, 2019 (the **Current Fund Lapse Date**). Under the Legislation, the distribution of each of the Plan's and the Fund's units would have to cease on the Current Plan Lapse Date and the Current Fund Lapse Date, respectively, unless (a) a pro forma prospectus for each of the Plan and the Fund was filed at least 30 days prior to the Current Plan Lapse Date and the Current Fund Lapse Date, (b) the final prospectus is filed no later than 10 days after the Current Plan Lapse Date and the Current Fund Lapse Date and (c) a receipt for the final prospectus is obtained within 20 days of the Current Plan Lapse Date and Current Fund Lapse Date, respectively.

8. A pro forma detailed plan disclosure and plan summary for each Plan was filed on December 31, 2018 in connection with the continuous public offering of the units of each Plan. Accordingly, without the Exemption Sought, the Plan Prospectus would have to be filed by February 11, 2019, and a receipt must be obtained by February 20, 2019, in order for the distribution of units of each Plan to continue without interruption.

9. A pro forma prospectus for the Fund is due to be filed on March 11, 2019. Without the Exemption Sought, the Fund Prospectus would have to be filed by April 19, 2019, and a receipt must be obtained by May 2, 2019, in order for the distribution of units of the Fund to continue without interruption.

10. OSC staff have indicated to the Manager that they will not be in a position to issue a receipt for the final detailed plan disclosure and plan summary within the required time period. The Exemption Sought is requested to allow the Manager to respond to the concerns of OSC staff without resulting in the Plans or the Fund being forced to cease distribution of its units because each of the Current Plan Prospectus and Current Fund Prospectus has lapsed.

11. Since the date of the Current Prospectuses, there has been no undisclosed material change in the Plan or the Fund, as appropriate. Accordingly, the Current Prospectuses continue to provide accurate information regarding the Plan or the Fund, as appropriate.

12. Should any material changes be proposed in the interim, the Current Prospectuses, as appropriate, will be amended accordingly. Therefore, the Exemption Sought will not affect the currency or accuracy of the information contained in either of the Current Prospectuses, and therefore will not be prejudicial to the public interest.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted.

"Darren McKall"
Manager, Investment Funds & Structured Products Branch
Ontario Securities Commission

2.2 Orders

2.2.1 PetroMaroc Corporation

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

March 8, 2019

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE A
REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
PETROMAROC CORPORATION
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

(a) the Ontario Securities Commission (the Principal Regulator) is the principal regulator for this application, and

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or in any other country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or on any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

The Principal Regulator is satisfied that the order meets the test set out in the Legislation for the Principal Regulator to make the order.

The decision of the Principal Regulator under the Legislation that the Order Sought is granted.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.2 MPX Bioceutical ULC

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – issuer has outstanding warrants exercisable into securities of acquirer – warrant holders no longer require public disclosure in respect of the issuer – relief granted.

Applicable Legislative Provisions

Securities Act (Ontario), s. 1(10)(a)(ii).

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE "JURISDICTION")

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE A
REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
MPX BIOCEUTICAL ULC
(THE "FILER")

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the "**Order Sought**").

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia and Alberta.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. The Filer's amalgamation predecessor, MPX Bioceutical Corporation ("**MPX**"), was incorporated on April 2, 1974 pursuant to the *Business Corporations Act* (Ontario) and was continued into British Columbia from Ontario on January 15, 2019, for the purposes of completing the Arrangement (as defined below) under the *Business Corporations Act* (British Columbia).

2. The Filer's head office is at Suite 2740, 22 Adelaide Street West, Toronto, Ontario M5H 4E3.

3. On February 5, 2019 (the "**Effective Date**"), iAnthus Capital Holdings, Inc. ("**iAnthus**") acquired all of the issued and outstanding common shares of MPX ("**MPX Shares**"), pursuant to a plan of arrangement under the *Business Corporations Act* (British Columbia) (the "**Arrangement**"), which became effective at approximately 6:00 p.m. (EST) (the "**Effective Time**") on the Effective Date.

4. Pursuant to the Arrangement, MPX amalgamated with 1183271 B.C. Unlimited Liability Company, a wholly-owned subsidiary of iAnthus, to form the Filer, which, pursuant to applicable securities legislation, inherited the reporting issuer status of MPX. The Filer is a reporting issuer in British Columbia, Alberta and Ontario.

5. Pursuant to the Arrangement, at the Effective Time, common shares ("**SpinCo Shares**") of MPX International Corporation ("**MPX International**") were distributed to holders of MPX Shares on a return of share capital pursuant to a reorganization of MPX's business and a distribution of proceeds from a disposition of MPX's property outside the ordinary course of MPX's business.

6. iAnthus is a corporation existing under the *Business Corporations Act* (British Columbia). iAnthus is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador. The common shares of iAnthus (the "**iAnthus Shares**") are listed on the Canadian Securities Exchange (the "**CSE**") under the trading symbol "IAN" and the OTCQX Best Market (the "**OTCQX**") under the trading symbol "ITHUF".

7. MPX International is a corporation existing under the *Business Corporations Act* (Ontario). As of the date hereof, MPX International is not a reporting issuer; however, MPX International has received conditional approval to list the SpinCo Shares on

the CSE and upon listing will become a reporting issuer in British Columbia, Alberta and Ontario.

8. Immediately prior to the Effective Time, MPX had the following issued and outstanding securities: (i) 453,049,662 MPX Shares; (ii) 60,934,689 common share purchase warrants of the MPX (the "**MPX Warrants**"), convertible into 60,934,689 MPX Shares; (iii) options to purchase 24,333,262 MPX Shares (the "**MPX Options**"); (iv) CDN$110,277.75 principal amount of convertible debentures (the "**MPX Convertible Debentures**"), convertible into 315,079 MPX Shares and 315,079 MPX Warrants; and (v) a US$10,000,000 principal amount convertible loan (the "**MPX Convertible Loan**" and, collectively with the MPX Shares, the MPX Warrants, the MPX Options and MPX Convertible Debentures, the "**MPX Securities**"), convertible into 29,872,810 MPX Shares.

9. In addition, immediately prior to the Effective Time, MPX was party to: (i) a debenture indenture, as amended by a first supplemental debenture indenture (as so amended, the "**Debenture Indenture**") providing for the issuance of up to an aggregate principal amount of US$49,257,572.60 of senior secured convertible debentures (the "**LuxCo Debentures**") of MPX Luxembourg, SARL ("**MPX LuxCo**"), MPX's wholly-owned subsidiary, which were convertible into MPX Shares and MPX Warrants; and (ii) a warrant indenture, as amended by a first supplemental warrant indenture (as so amended, the "**Warrant Indenture**"), providing for the issuance of up to 35,000,000 MPX Warrants in connection with the conversion of such Debentures.

10. Neither MPX nor the Filer, as its successor issuer, is required, pursuant to the terms of the Debenture Indenture and the Warrant Indenture, to remain a reporting issuer upon completion of a transaction such as the Arrangement. The terms of the Debenture Indenture and the Warrant Indenture contain provisions addressing a corporate merger, amalgamation, arrangement, or business combination, including the Arrangement, and provides for the payment of iAnthus Shares and warrants to purchase iAnthus Shares ("**iAnthus Warrants**") in lieu of MPX Shares and MPX Warrants subsequent to such an event. As a result, no additional consents or approvals are required from the holders of LuxCo Debentures.

11. The MPX Shares were listed on the CSE under the symbol "MPX" and the OTCQX under the symbol "MPXEF". No other MPX Securities were listed on any exchange.

12. To the best of the Filer's knowledge and belief and based on the registers of holders of MPX Warrants maintained by MPX as of January 30, 2019, the register of holders of MPX Convertible Debentures maintained by MPX immediately prior to the Effective Date and a geographic distribution report obtained in respect of non-registered holders of MPX Warrants, there are 139 holders of MPX Warrants, 24 of which are in Ontario (8.6% of the total aggregate MPX Warrants), 2 of which are in British Columbia (representing 0.09% of the total aggregate MPX Warrants), 1 of which is in Saskatchewan (representing 2.4% of the total aggregate MPX Warrants), 1 of which is in Manitoba (representing 0.05% of the total aggregate MPX Warrants), 1 of which is in Quebec (representing 0.1% of the total aggregate MPX Warrants), 25 of which are in the United States representing 38.9% of the total aggregate MPX Warrants), and 85 of which are in other foreign jurisdictions (representing 49.8% of the total aggregate MPX Warrants).

13. To the best of the Filer's knowledge and belief and based on the register of holders of LuxCo Debentures maintained by the trustee under the Debenture Indenture, there are 27 holders of LuxCo Debentures, 2 of which are in Ontario (representing 4.0% of the total aggregate outstanding amount of LuxCo Debentures), 1 of which is in the United States (representing 40.5% of the total aggregate outstanding amount of LuxCo Debentures), and 24 of which are in other foreign jurisdictions (representing 55.5% of the total aggregate outstanding amount of LuxCo Debentures).

14. MPX distributed the meeting materials, which included the information circular and notice of meeting, to the holders of the MPX Shares (including the holder of the MPX Convertible Loan, as a holder of MPX Shares), MPX Options, MPX Warrants and MPX Convertible Debentures in connection with the special meeting of holders of MPX Securities that took place on January 15, 2019 to consider the Arrangement.

15. Pursuant to the Arrangement, among other things, the following occurred as of the Effective Time:

    (a) The outstanding principal amount of MPX Convertible Debentures was converted into units comprised of MPX Shares and MPX Warrants at the applicable conversion price;

    (b) The outstanding principal amount of the MPX Convertible Loan was converted into MPX Shares at the applicable conversion price;

    (c) The SpinCo shares were distributed to holders of MPX Shares on a return or share capital pursuant to a reorganization of MPX's business and a distribution of proceeds form a disposition of the Filer's property outside the ordinary course of MPX's business.

(d) Each MPX Share (including MPX Shares issued on conversion of the MPX Convertible Debentures and the MPX Convertible Loan) was exchanged for 0.1673 of an iAnthus Share;

(e) Each MPX Option was exchanged for a replacement option to purchase a MPX Share (a "**MPX Replacement Option**") and an option to purchase a SpinCo Share (a "**SpinCo Option**"). All terms and conditions of a MPX Replacement Option and a SpinCo Option, including the term to expiry, conditions to and manner of exercising, were the same as the MPX Option for which they were exchanged. Each MPX Replacement Option was further exchanged for an option from iAnthus (an "**iAnthus Replacement Option**") to acquire 0.1673 of an iAnthus Share. All terms and conditions of an iAnthus Replacement Option, including the term to expiry, conditions to and manner of exercising, were the same as the MPX Replacement Option for which it was exchanged; and

(f) iAnthus assumed all of the MPX Warrants (including the MPX warrants issuable on conversion of the MPX Convertible Debentures) and upon exercise of the MPX Warrants, the holders thereof shall be entitled to receive such number of iAnthus Shares and SpinCo Shares which the holder would have been entitled to receive if the holder had been a registered holder of MPX Shares at the time of the Arrangement.

16. In addition, at the Effective Time, iAnthus assumed all of the obligations of MPX under the Debenture Indenture and the Warrant Indenture pursuant to a second supplemental debenture indenture (the "**Second Supplemental Debenture Indenture**") and a second supplemental warrant indenture the "**Second Supplemental Warrant Indenture**"), respectively. Accordingly, upon conversion of the LuxCo Debentures, the holders will be entitled to receive such number of iAnthus Shares and iAnthus Warrants which the holder would have been entitled to receive if the holder had been a registered holder of MPX Shares and MPX Warrants at the time of the Arrangement. Pursuant to the Arrangement Agreement, the Second Supplemental Debenture Indenture and the Second Supplemental Warrant Indenture, iAnthus is obligated to issue the number of iAnthus Shares and iAnthus Warrants required to meet MPX's obligations upon conversion of the LuxCo Debentures.

17. In connection with the Arrangement, (i) iAnthus Shares are authorized for issuance upon exercise of MPX Warrants and (ii) iAnthus Shares and iAnthus Warrants are authorized for issuance upon conversion of the LuxCo Debentures.

18. The MPX Shares were delisted from (i) the CSE effective at the close of business on February 6, 2019 and (ii) the OTCQX effective at the close of business on February 7, 2019.

19. The Filer is not eligible to surrender its status as a reporting issuer pursuant to the simplified procedure in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because the MPX Warrants, including MPX Warrants issued on the conversion of the MPX Convertible Debentures, and the LuxCo Debentures are not beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide.

20. Upon granting the Order Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

21. iAnthus is not in default of securities legislation in any jurisdiction in which it is a reporting issuer.

22. Neither MPX nor the Filer is in default of securities legislation in any jurisdiction in which it was or is a reporting issuer, other than: (i) the obligation to file its interim financial statements for the interim period ended December 31, 2018 and associated management's discussion and analysis, as well as certification of the foregoing filings, as the filing deadline for such financial statements, management's discussion and analysis and certifications occurred on March 1, 2019.

23. The Filer has no intention to seek public financing by way of an offering of securities.

24. The Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.

25. No securities of MPX or the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

DATED at Toronto on this 8th day of March, 2019.

"Lawrence P. Haber"
Commissioner
Ontario Securities Commission

"Tim Moseley"
Vice-Chair
Ontario Securities Commission

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Desert Mountain Energy Corp.	07 March 2019	
Great Lakes Graphite Inc.	06 March 2019	08 March 2019
Infrastructure Materials Corp.	07 March 2019	
NBS Capital Inc.	07 March 2019	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
LGC Capital Ltd.	30 January 2019	
Katanga Mining Limited	15 August 2017	

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Chapter 5

Rules and Policies

5.1.1 CSA Notice of Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Custody-Related Amendments

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Amendments to

National Instrument 31-103
Registration Requirements, Exemptions and Ongoing Registrant Obligations

Custody-Related Amendments

March 14, 2019

Introduction

We, the Canadian Securities Administrators (the **CSA**), are adopting amendments (the **Custody Amendments**) to certain custody-related provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

The Custody Amendments have been, or are expected to be, adopted by each member of the CSA. In some jurisdictions, ministerial approvals are required for the implementation of the Custody Amendments. If all necessary ministerial approvals are obtained, the Custody Amendments will come into force on **June 12, 2019**. Further detail can be found in Annex A of this Notice.

Substance and Purpose

The substance and purpose of the Custody Amendments is to continue to align the permissible custodial practices in section 14.6.1 of NI 31-103 with the similar permitted custodial practices for investment funds in subsection 6.8(2) of National Instrument 81-102 *Investment Funds* (**NI 81-102**). This subsection deals with portfolio assets held as margin for derivatives transactions outside Canada.

Amendments to subsection 6.8(2) of NI 81-102 came into force on January 3, 2019 as part of the implementation of the final phase of the CSA's Modernization of Investment Fund Product Regulation Project. This final phase related to the establishment of a regulatory framework for alternative mutual funds (the **NI 81-102 Amendments**).

Implementing the Custody Amendments will result in all clients and investment funds of registered firms having the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives.

Background

We published proposed amendments for comment on October 25, 2018 (the **October 2018 Proposal**). The 60-day comment period ended on December 24, 2018. We received no comment letters on the October 2018 Proposal. We made a change to correctly reference the definition of "regulated clearing agency", but no other changes have been made to the proposed amendments. As this change is not material, we are not publishing the Custody Amendments for another comment period.

Summary of amendments to NI 31-103

The amendments are to section 14.6.1 [*custodial provisions relating to certain margin or security interests*] of NI 31-103.

We added the definitions of the following terms to subsection 14.6.1(1) of NI 31-103:

- "cleared specified derivative"
- "regulated clearing agency"

We amended subsection 14.6.1(2) to permit clients or investment funds of a registered firm to deposit cash or securities with certain members of regulated clearing agencies as margin for certain transactions outside of Canada.

We amended paragraphs 14.6.1(2)(a) and (b) to subject members of "regulated clearing agencies" to the membership and net worth requirements set out in these paragraphs. Paragraph 14.6.1(2)(c) was amended to ensure that registered firms' clients or investment funds only use members of "regulated clearing agencies" for margin transactions if, as per the existing requirements of this paragraph, it is more beneficial to the client or investment fund than using a Canadian custodian.

We also amended subsection 14.6.1(2) to include an additional type of permitted margin transaction, namely, transactions involving "cleared specified derivatives".

List of annexes

This Notice contains the following annexes:

- Annex A – Adoption of the Instrument
- Annex B – Amendments to NI 31-103

Questions

Please refer your questions to any of the following CSA staff:

Ami Iaria
Senior Legal Counsel, Legal Services
Capital Markets Regulation Division
British Columbia Securities Commission
Tel: 604-899-6594
1-800-373-6393
aiaria@bcsc.bc.ca

Heather Currie
Legal Counsel, Market Regulation
Alberta Securities Commission
Tel: 403-592-3054
heather.currie@asc.ca

Liz Kutarna
Deputy Director, Capital Markets
Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan
Tel: 306-787-5871
liz.kutarna@gov.sk.ca

Chris Besko
Director, General Counsel
The Manitoba Securities Commission
Tel: 204-945-2561
Toll Free (Manitoba only): 1-800-655-5244
chris.besko@gov.mb.ca

Leigh-Ann Ronen
Legal Counsel, Compliance and
Registrant Regulation
Ontario Securities Commission
Tel: 416-204-8954
lronen@osc.gov.on.ca

Sophie Jean
Directrice de l'encadrement des intermédiaires
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4801
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Brian W. Murphy
Manager, Registration & Compliance
Nova Scotia Securities Commission
Tel: 902-424-4592
brian.murphy@novascotia.ca

Jason L. Alcorn
Senior Legal Counsel
Financial and Consumer Services Commission of New Brunswick
Tel: 506-643-7857
jason.alcorn@fcnb.ca

Steven Dowling
Acting Director
Consumer, Labour and Financial
Services Division
Justice and Public Safety
Government of Prince Edward Island
Tel: 902-368-4551
sddowling@gov.pe.ca

Renee Dyer
Superintendent of Securities
Service NL
Government of Newfoundland and Labrador
Tel: 709-729-4909
reneedyer@gov.nl.ca

Jeff Mason
Director of Legal Registries
Department of Justice
Government of Nunavut
Tel: 867-975-6591
jmason@gov.nu.ca

Rhonda Horte
Deputy Superintendent
Office of the Yukon Superintendent of Securities
Tel: 867-667-5466
rhonda.horte@gov.yk.ca

Thomas Hall
Superintendent of Securities
Office of the Superintendent of Securities
Department of Justice
Government of the Northwest Territories
Tel: 867-767-9305
tom_hall@gov.nt.ca

ANNEX A

ADOPTION OF THE INSTRUMENT

The Custody Amendments will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon
- a regulation in Québec
- a commission regulation in Saskatchewan

In Ontario, the Custody Amendments, as well as other required materials, were delivered to the Minister of Finance on March 7, 2019. The Minister may approve or reject the Custody Amendments or return them for further consideration. If the Minister approves the Custody Amendments or does not take any further action, the Custody Amendments will come into force on June 12, 2019.

In Québec, the Custody Amendments are adopted as a regulation made under section 331.1 of the *Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The regulation will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Custody Amendments is subject to ministerial approval. If all necessary approvals are obtained, British Columbia expects the Custody Amendments to come into force on June 12, 2019.

In Saskatchewan, the implementation of the Custody Amendments is subject to ministerial approval. If all necessary approvals are obtained, the Custody Amendments will come into force on June 12, 2019 or, if after June 12, 2019, on the day on which they are filed with the Registrar of Regulations.

ANNEX B

AMENDMENTS TO NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.

2. Subsections 14.6.1(1) and (2) are replaced with the following:

(1) In this section

"cleared specified derivative", "clearing corporation option", "futures exchange", "option on futures", "specified derivative" and "standardized future" have the same meaning as in section 1.1 of National Instrument 81-102 *Investment Funds*;

"regulated clearing agency" has the same meaning as in subsection 1(1) of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*.

(2) Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited with a member of a regulated clearing agency or a dealer as margin for transactions outside of Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if

(a) the member or dealer is a member of a regulated clearing agency, futures exchange or stock exchange, and, as a result in any case, is subject to a regulatory audit,

(b) the member or dealer has a net worth, determined from its most recent audited financial statements, in excess of $50 million, and

(c) a reasonable person would conclude that using the member or dealer is more beneficial to the client or investment fund than using a Canadian custodian..

3. (1) This Instrument comes into force on June 12, 2019.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after June 12, 2019, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

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Chapter 6

Request for Comments

6.1.1 Proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy

March 14, 2019

Introduction

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

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

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

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

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

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

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

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

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

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

- the designation and regulation of persons or companies that administer such benchmarks (**designated benchmark administrators** or **administrators**),
- the regulation of persons or companies, if any, that contribute certain data that will be used to determine such designated benchmarks (**benchmark contributors** or **contributors**), and
- the regulation of certain users of designated benchmarks, particularly users who are already regulated in some capacity under Canadian securities legislation (**benchmark users** or **users**).

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

- the Canadian Dollar Offered Rate (**CDOR**), and
- the Canadian Overnight Repo Rate Average (**CORRA**).

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

- interruption or uncertainty (if, for example, the administrator resigns or is unsuitable), and
- abusive activity relating to the benchmark, including manipulation of the benchmark.

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

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

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

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

Background

In 2012, allegations of manipulation of the London inter-bank offered rate (**LIBOR**) led to the loss of market confidence in the

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

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

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

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

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

IOSCO Principles

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

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

Initial Canadian Regulatory Response

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

- encouraging contributors to CDOR to develop a voluntary code of conduct that addresses some of the conflicts of interest issues that could lead to manipulation of submission-based benchmarks, and
- arranging for RBSL to agree to follow certain procedures to strengthen the integrity of CDOR and CORRA.

EU Benchmarks Regulation

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

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

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

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

6 See, for example, the following publications:

ISDA, *Interbank Offered Rate (IBOR) Fallbacks for 2006 ISDA Definitions - Consultation on Certain Aspects of Fallbacks for Derivatives Referencing GBP LIBOR,1 CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR and BBSW* (July 12, 2018), online: http://assets.isda.org/media/f253b540-193/42c13663-pdf/,

Deloitte, *The alphabet soup of alternative reference rates post-LIBOR - SOFR, SONIA, EONIA, SARON, and TONAR* (April 11, 2018), online: https://www2.deloitte.com/us/en/pages/financial-services/articles/alternative-reference-rates-post-libor.html,

PWC, *Farewell LIBOR - The transition to alternative reference rates for new and legacy contracts* (October 3, 2018), online: https://www.pwc.ch/en/publications/2018/Farewell-LIBOR_EN_web2.pdf, and

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

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

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

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

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

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

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

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

The restriction applies to "third country regime" benchmarks from January 1, 2022.[10] In other words, a benchmark produced outside of the EU cannot be used by EU supervised entities after December 31, 2021, unless that benchmark meets the requirements in the EU BMR and, as a result, is listed on the European Securities and Markets Authority (**ESMA**) Benchmarks Register.[11]

In order for supervised entities in the EU to be able to use benchmarks produced by third country administrators (e.g., administrators located in Canada), those administrators must apply to be added to the ESMA list of benchmarks in one of three ways:

- *Recognition* – where an administrator located in a third country has been recognised by a EU member state in accordance with the requirements set out in the EU BMR. This process is not relevant for purposes of Proposed NI 25-102.
- *Endorsement* – where an administrator or supervised entity located in the EU has a clear and well-defined role within the control or accountability framework of a third country administrator and is able to monitor effectively the provision of a benchmark. This process is relevant if the administrator or supervised entity applies for endorsement in accordance with the requirements set out in the EU BMR but is not relevant for purposes of Proposed NI 25-102.
- *Equivalence* – where an equivalency decision has been adopted by the European Commission (**EC**), as described further below.

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

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

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

[10] Originally, this restriction was to apply from January 1, 2020. However, on February 25, 2019, EU authorities announced that the date would be extended to January 1, 2022.

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

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

RBSL Authorization

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

Substance and Purpose

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

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

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

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

EU Equivalency

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

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

- Canadian securities regulators have a sovereign responsibility and are best positioned to directly regulate benchmarks with a significant connection to Canada, including such benchmarks' administrators, contributors and users, and
- it would be prudent to implement a Canadian regime by, or soon after, the EU equivalency deadline (i.e., January 1, 2022) in the event that, for example
    - another entity, including an entity resident in Canada, is later chosen to act as the administrator of benchmarks (e.g., CDOR and CORRA) administered by an EU-registered benchmark administrator (e.g., RBSL) and would like the benefit of a Canadian regime that has been recognized as equivalent by the EU, or
    - a non-EU registered benchmark administrator of another Canadian benchmark would like the benefit of a Canadian domestic regime that has been recognized as equivalent by the EU.

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

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

Risk Reduction and Investor Protection

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

- there is a need to regulate CDOR and CORRA and their administrator (i.e., RBSL) in light of the significant reliance placed by users and other market participants on CDOR and CORRA. In particular, for CDOR and CORRA, we believe that the following risks should be minimized:
  - interruption or uncertainty (if, for example, the benchmark administrator resigns or is unsuitable), and
  - misconduct relating to benchmarks including manipulation of the benchmark.

  If not and one of these events occurs, the loss of confidence that Canadian capital markets would suffer and the costs that would be borne by Canadian financial markets (including investors), would be significant,[13]
- there is a need for the ability to regulate benchmark administrators and benchmark contributors due to the risk of benchmark-related misconduct that would adversely impact:[14]
  - investors,
  - market participants, and
  - the reputation of, and confidence in, Canada's capital markets,
- many factors that resulted in benchmark-related misconduct in other jurisdictions are also present in Canada (e.g., widespread usage of the benchmark to price unrelated securities that can be traded by contributors, rate fixing activities that rely on a combination of observable market inputs and expert judgment),
- such a regime would clarify, strengthen and specify the legal basis on which Canadian securities regulators may take enforcement and other regulatory action against benchmark administrators, benchmark contributors and benchmark users in the event of misconduct involving a benchmark that harms (or threatens to harm) investors, market participants and capital markets generally, and
- such a regime would ensure the continuity of a viable designated critical benchmark by requiring market participants to provide information in relation to the designated critical benchmark for use by the designated benchmark administrator.

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

Summary of Proposed NI 25-102

Designated Benchmarks and Benchmark Administrators

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

  (a) input data contributed entirely and directly from:

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

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

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

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

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

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

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

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

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

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

General Requirements for Administrators

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

- delivering audited annual financial statements and certain forms (e.g., Form 25-102F1 *Designated Benchmark Administrator Annual Form* and Form 25-102F2 *Designated Benchmark Annual Form*) to Canadian securities regulators (Part 2),
- maintaining a governance regime that includes a board of directors (of which at least half of the members must be independent), oversight committee and compliance officer with defined roles and responsibilities within an accountability and control framework that addresses conflicts of interest, complaints, reporting of infringements, and outsourcing (Part 3),
- applying policies, procedures and controls relating to input data and the contribution of input data, as well as complying with obligations relating to the benchmark methodology used by the administrator and any changes to such methodology (Part 4),
- publishing information about the administration of its designated benchmarks, including publishing:
  - important information about the methodology,
  - the procedures relating to a significant change or cessation of a designated benchmark, and
  - a specified benchmark statement (Part 5),

- if the designated benchmark is determined using input data from contributors that is not reasonably available to the administrator,[19] applying a code of conduct to the contributors of such input data that:
    - specifies the responsibilities of those contributors with respect to the contribution of input data for the designated benchmark, and
    - includes policies and procedures designed to ensure the contributors are adhering to the code of conduct (Part 6), and
- keeping specified books, records and documents for a period of 7 years (Part 7).

Additional Administrator Requirements for Critical Benchmarks

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

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

Additional Administrator Requirements for Interest Rate Benchmarks

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

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

General Requirements for Contributors

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

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

Additional Contributor Requirements for Critical Benchmarks

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

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

Additional Contributor Requirements for Interest Rate Benchmarks

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

- engage a public accountant to provide an assurance report on the contributor's compliance with certain key requirements under Proposed NI 25-102 and the administrator's code of conduct, at least once every 2 years or when required by the administrator's oversight committee, and deliver a copy of the assurance report to the oversight committee, the board of the administrator, and the regulator or securities regulatory authority,
- ensure that each contributing individual (and their direct managers) provide a written statement that they will comply with the code of conduct established by the applicable administrator, and
- have additional policies, procedures and controls relating to various matters, including:
    - an outline of responsibilities within the benchmark contributor's organization, including a list of contributing individuals and their managers and alternates,
    - sign-off of contributions of input data,
    - disciplinary procedures relating to actual or attempted manipulation of the interest rate benchmark,
    - the management of conflicts of interest and controls to avoid any inappropriate external influence over those responsible for contributing rates,
    - requirements that contributing individuals work in locations physically separated from interest rate derivatives traders,
    - requirements to avoid collusion, and
    - requirements to keep detailed records on specified matters, such as all relevant aspects of contributions of input data and any communications between contributing individuals and other persons, including internal and external traders and brokers.

Exemptions for Regulated-data Benchmarks

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

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

Requirements for Registrants, Reporting Issuers and Recognized Entities

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

- establish and maintain written plans setting out the actions the entity would take in the event of a significant change or cessation of the designated benchmark, including the identification of a suitable alternative, and
- if appropriate, reflect the written plans in any security issued by the person or company, or any derivative to which the person or company is a party, that references the designated benchmark.

Proposed NI 25-102 is in Annex A.

Summary of the Proposed CP

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

Proposed CP is in Annex B.

Recent or Proposed Legislative Amendments

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

- additional authority to regulate benchmarks and benchmark administrators, benchmark contributors and benchmark users (including authority to designate benchmarks and benchmark administrators), and
- prohibitions on market misconduct in relation to benchmarks, specifically a prohibition on providing false or misleading information for a benchmark determination and a prohibition on benchmark manipulation.

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

Anticipated Costs and Benefits of Proposed NI 25-102

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

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

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

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

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

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

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

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

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

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

- Passport model: The CSA would add designations of benchmarks and benchmark administrators to the Passport system with a process that mirrors:

    - Part 4B (Application to become a designated rating organization) in Multilateral Instrument 11-102 *Passport System*.

    - National Policy 11-205 *Process for Designation of Credit Rating Organizations in Multiple Jurisdictions*.

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

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

Local Matters

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

Unpublished Materials

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

Expected Future Amendments for Commodity Benchmarks

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

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

Request for Comments

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

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

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

Address your submission to all of the CSA as follows:

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

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

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

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square Victoria, 4e étage
C.P. 246, Place Victoria
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.ca

Contents of Annexes

This Notice includes the following annexes:

Annex A	Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*
Annex B	Proposed Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators*
Annex C	Specific Questions of the CSA Relating to the Proposed Instrument
Annex D	Local Matters (where applicable)

Questions

Please refer your questions to any of the following:

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8079
mbennett@osc.gov.on.ca

Navdeep Gill
Manager, Legal, Market Regulation
Alberta Securities Commission
403-355-9043
navdeep.gill@asc.ca

Michael Brady
Manager, Derivatives
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca

Serge Boisvert
Senior Policy Advisor
Autorité des marchés financiers
514-395-0337 poste 4358
serge.boisvert@lautorite.qc.ca

Jeff Scanlon
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-597-7239
jscanlon@osc.gov.on.ca

Roland Geiling
Derivatives Product Analyst
Autorité des marchés financiers
514-395-0337 poste 4323
roland.geiling@lautorite.qc.ca

Jag Brar
Derivatives Market Specialist
British Columbia Securities Commission
604-899-6839
jbrar@bcsc.bc.ca

ANNEX A

PROPOSED NATIONAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

NATIONAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

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

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1.(1) In this Instrument

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

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

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

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

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

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

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

"DBA individual" means an individual who is

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

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

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

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

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

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

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

"expert judgment" means the discretion exercised by

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

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

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

"limited assurance report on compliance" means

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

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

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

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

"reasonable assurance report on compliance" means

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

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

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

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

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

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

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

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

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

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

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

(3) For the purposes of this Instrument

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

(i) it is not reasonably available to

(A) the designated benchmark administrator, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2
DELIVERY REQUIREMENTS

Information on a designated benchmark administrator

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

(a) “accounting principles”;

(b) “auditing standards”;

(c) "U.S. GAAP";

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

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

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

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

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

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

(A) the most recently completed financial year, and

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

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

(iii) notes to the annual financial statements.

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

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

(i) the most recently completed financial year, and

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

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

(c) notes to the annual financial statements.

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

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

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

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

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) Canadian GAAP applicable to private enterprises, if

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

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

(iii) IFRS;

(iv) U.S. GAAP,

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

(i) Canadian GAAS;

(ii) International Standards on Auditing;

(iii) U.S. PCAOB GAAS, and

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

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

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

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

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

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

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

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

Information on a designated benchmark

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

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

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

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

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

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

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

Submission to jurisdiction and appointment of agent for service of process

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

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

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

(a) the termination date of the Form, and

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

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

PART 3
GOVERNANCE

Board of directors

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

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

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

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

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

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

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

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

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

Accountability framework requirements

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

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

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

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

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

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

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

(c) the complaint handling procedures in this Instrument.

Compliance officer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Oversight committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) keep minutes of each meeting;

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

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

(ii) monitor each of the following:

(A) the input data;

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

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

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

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

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

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

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

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

(c) any input data that

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

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

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

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

Control framework

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

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

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

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

(b) business continuity and disaster recovery plans;

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

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

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

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

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

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

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

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

Governance requirements

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

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

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

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

(b) is subject to adequate management and supervision.

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

Conflict of interest requirements

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

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

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

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

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

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

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

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

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

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

(B) benchmark contributors or other third parties.

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

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

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

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

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

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

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

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

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

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

Reporting of infringements

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

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

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

Complaint procedures

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

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

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

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

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

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

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

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

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

Outsourcing

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the business premises of the service provider,

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

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

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

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

(f) the designated benchmark administrator retains the expertise that a reasonable person would consider to be necessary to conduct reasonable supervision of the outsourced function, service or activity and to manage the risks associated with the outsourcing, and

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

PART 4
INPUT DATA AND METHODOLOGY

Input data

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

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

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

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

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

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

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

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

(b) a process for determining benchmark contributors;

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

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

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

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

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

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

(b) cease to provide the designated benchmark.

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

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

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

(b) the methodology of the designated benchmark.

Contribution of input data

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

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

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

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

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

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

Methodology

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed significant changes to methodology

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

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

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

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

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

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

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

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

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

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

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

PART 5
DISCLOSURE

Disclosure of methodology

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

(a) the information that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) the procedures referred to in section 18;

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

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

Benchmark statement

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

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

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

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

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

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

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

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

(c) technical specifications that set out

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

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

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

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

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

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

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

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

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

(i) a description of the input data;

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

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

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

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

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

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

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

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

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

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

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

Changes to and cessation of a benchmark

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

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

Registrants, reporting issuers and recognized entities

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

(a) a registrant;

(b) a reporting issuer;

(c) a recognized exchange;

(d) a recognized quotation and trade reporting system;

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

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

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

(b) indicate why the substitution would be suitable.

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

Publishing and disclosing

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

PART 6
BENCHMARK CONTRIBUTORS

Code of conduct for benchmark contributors

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

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

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

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

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

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

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

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

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

(ii) requirements for the benchmark contributor to

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

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

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

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

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

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

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

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

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

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

(i) sections 25 and 40;

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

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

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

Governance and control requirements for benchmark contributors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A benchmark contributor to a designated benchmark must

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

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

(i) the designated benchmark administrator, or

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

Compliance officer for benchmark contributors

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

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

PART 7
RECORDKEEPING

Books and records

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

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

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

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

(c) the methodology of a designated benchmark;

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

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

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

(g) all documents relating to a complaint;

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

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

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

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

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

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

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

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

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

DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Administration of a designated critical benchmark

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

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

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

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

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

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

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

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

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

Access

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

Assessment

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

Benchmark contributor to a designated critical benchmark

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

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

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

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

Oversight committee

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

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

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

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

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

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

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

(4) The oversight committee must

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

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

Assurance report on designated benchmark administrator

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

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

(b) the methodology of the designated critical benchmark.

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

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

Assurance report on benchmark contributor

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

(a) section 25;

(b) the methodology of the designated critical benchmark.

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

(a) the oversight committee,

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

(c) the regulator or securities regulatory authority.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Accurate and sufficient data

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

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

(i) the unsecured inter-bank deposit market,

(ii) other unsecured deposit markets,

(iii) markets for commercial paper, and

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

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

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

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

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

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

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

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

Oversight committee

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

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

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

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

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

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

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

(4) The oversight committee must

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

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

Assurance report on designated benchmark administrator

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

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

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

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

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

Assurance report on benchmark contributor required by oversight committee

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

(a) sections 25 and 40;

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

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

(a) the oversight committee,

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

(c) the regulator or securities regulatory authority.

Assurance report on benchmark contributor required at certain times

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

(a) sections 25 and 40;

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

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

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

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

(a) the oversight committee,

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

(c) the regulator or securities regulatory authority.

Benchmark contributor policies and procedures

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

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

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

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

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

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

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

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

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

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

(h) there are requirements to avoid collusion

(i) among benchmark contributors, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 3 – DESIGNATED REGULATED-DATA BENCHMARKS

Non-application to designated regulated-data benchmarks

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

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

(b) subsection 15(2),

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

(d) sections 24, 25 and 26, and

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

PART 9
DISCRETIONARY EXEMPTIONS

Exemptions

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

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

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

PART 10
EFFECTIVE DATE

Effective date

43. This Instrument comes into force on •.

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

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

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

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

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

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

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

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

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

  (iv) any other use by an investment fund;

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

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

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

FORM 25-102F1
Designated Benchmark Administrator
Annual Form

Instructions

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

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

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

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Organization and Structure of Designated Benchmark Administrator

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

Item 3. Designated Benchmark

Provide the name of the designated benchmark.

Item 4. Policies and Procedures re Confidential Information

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained by the designated benchmark administrator to prevent the misuse of confidential information.

Item 5. Policies and Procedures re Conflicts of Interest

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained with respect to conflicts of interest.

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

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

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

Item 7. Policies and Procedures re Control Framework

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

Item 8. Policies and Procedures re Complaints

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

Item 9. Policies and Procedures re Books and Records

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

Item 10. Outsourced Service Providers

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

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

Item 11. Benchmark Individuals

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

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

Item 12. Compliance Officer

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

- Name,
- Employment history,
- Post-secondary education, and
- Whether employed full-time or part-time by the designated benchmark administrator.

Item 13. Specified Revenue

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

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

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

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

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

Item 14. Financial Statements

Attach a copy of the annual financial statements required by section 2 of the Instrument.

Item 15. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

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

FORM 25-102F2
Designated Benchmark
Annual Form

Instructions

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

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

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

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Designated Benchmark

Provide the name of the designated benchmark and whether it is also any of the following:

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

Item 3. Benchmark Distribution Model

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

Item 4. Procedures and Methodologies

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

- the public and non-public sources of information used in determining the designated benchmark, including information provided by benchmark contributors;
- procedures for monitoring, reviewing, and updating the designated benchmark,
- the methodologies, policies and procedures described in the Instrument.

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

Item 5. Code of Conduct for Benchmark Contributors

Unless previously provided, attach a copy of any code of conduct for benchmark contributors.

Item 6. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

The undersigned has executed this Form 25-102F2 *Designated Benchmark Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are part of this Form, are true and correct.

_____ _____

(Date) (Name of the Designated Benchmark Administrator)

By: _____

(Print Name and Title)

_____

(Signature)

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

1. Name of designated benchmark administrator (DBA):

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

3. Address of principal place of business of DBA:

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

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

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

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

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

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

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

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

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

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

_____ _____
Signature of Designated Benchmark Administrator Date

_____
Print name and title of signing officer
of Designated Benchmark Administrator

AGENT

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

_____ _____
Signature of Agent Date

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

ANNEX B

PROPOSED COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

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PART 1
GENERAL COMMENTS

Introduction

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

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

Introduction to the Instrument

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

The Instrument contains requirements that apply to designated benchmark administrators, benchmark contributors and certain benchmark users in respect of a designated benchmark. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are additional requirements in the Instrument that apply to designated critical benchmarks and designated interest rate benchmarks. The Instrument also includes a number of exemptions from certain requirements for designated benchmarks administrators and benchmark contributors in respect of designated regulated-data benchmarks.

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

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

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

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

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

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

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

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

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

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

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

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

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

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

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

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

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

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

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

"Designated interest rate benchmark" is a benchmark that is designated as an "interest rate benchmark" by an order or a decision of the regulator or securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are specific requirements in Division 2 of Part 8 of the Instrument that apply to designated interest rate benchmarks.

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

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

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

We note that the above list is not exhaustive.

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

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

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

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

(a) input data contributed entirely and directly from

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

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

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

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

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

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

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

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

Subsection 1(1) – Definition of expert judgment

"Expert judgment" is the discretion exercised by:

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

Expert judgment may involve various activities, including:

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

Subsection 1(1) – Definition of input data

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

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

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

Subsection 1(1) – Definition of transaction data

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

We consider that:

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

Subsection 1(1) – Interpretation of certain definitions

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

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

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

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

(i) it is not reasonably available to

(A) the designated benchmark administrator, or

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

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

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

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

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

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

- made available to the public, and
- regularly determined
  - entirely or partially by the application of a formula or any other method of calculation, and
  - on the basis of the value or price of one or more underlying assets, interests or things.

PART 2
DELIVERY REQUIREMENTS

Section 2 – References to Canadian GAAP, Canadian GAAS, Handbook, IFRS and International Standards on Auditing

There are references in section 2 of the Instrument to "Canadian GAAP", "Canadian GAAS", "Handbook", "IFRS" and "International Standards on Auditing", which are defined in National Instrument 14-101 *Definitions*.

Subparagraph 2(7)(a)(ii) – Canadian GAAP applicable to private enterprises

Subject to certain conditions, subparagraph 2(7)(a)(ii) of the Instrument permits audited annual financial statements of a designated benchmark administrator to be prepared using Canadian GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprise in Part II of the Handbook.

PART 3
GOVERNANCE

Subsection 7(1) – Reference to securities legislation in relation to benchmarks

Subsection 7(1) of the Instruments refers to "securities legislation in relation to benchmarks", which would include the Instrument and benchmark provisions in local securities legislation. "Securities legislation" is defined in National Instrument 14-101 Definitions.

Subsection 8(7) – Information relating to a designated benchmark

We consider that the reference to "information relating to a designated benchmark" in subsection 8(7) of the Instrument would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

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

Subsection 8(8) of the Instrument requires the oversight committee of a designated benchmark administrator to carry out certain actions. We expect that the oversight committee will carry out these actions in a manner that reasonably reflects the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Paragraph 8(8)(e) – Calculation agents and dissemination agents

Paragraph 8(8)(e) of the Instrument requires the oversight committee of a designated benchmark administrator to oversee any service provider involved in the provision or distribution of the designated benchmark, including calculation agents or dissemination agents. We consider that

- a "dissemination agent" is a person or company with delegated responsibility for disseminating a designated benchmark to benchmark users in accordance with the instructions provided by the designated benchmark administrator for the designated benchmark, including any review, adjustment and modification to the dissemination process, and

- a "calculation agent" is a person or company with delegated responsibility for determining a designated benchmark through the application of a formula or other method of calculating the information or expressions of opinions provided for that purpose, in accordance with the methodology set out by the designated benchmark administrator for the designated benchmark.

A dissemination agent would not include:

- a publisher that pays a licensing fee to publish a benchmark under a non-exclusive publishing license, or

- a publisher that pays a licensing fee to publish a benchmark under an exclusive publishing license if the benchmark administrator also makes the benchmark publicly available through other means.

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

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

Section 9 – Control framework for designated benchmark administrator and controls for benchmark contributors

Section 9 of the Instrument requires a designated benchmark administrator to establish a control framework to ensure that a designated benchmark is provided in accordance with the Instrument. Similarly, subsection 25(2) of the Instrument requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy and completeness of each contribution of input data to the designated benchmark administrator, including controls that the input data is provided in accordance with the Instrument.

We expect that the control framework provided for under subsection 9(1) of the Instrument and the controls provided for under subsection 25(2) of the Instrument will be proportionate to all of the following:

- the level of conflicts of interest identified in relation to the designated benchmark, the designated benchmark administrator or the benchmark contributor,

- the extent of expert judgment in the provision of the designated benchmark,

- the nature of the input data for the designated benchmark.

In establishing the control framework required under subsection 9(1) of the Instrument, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 25(2) of the Instrument.

The control framework and the controls used should be consistent with guidance published by a body or group that has developed the guidance through a process that includes the broad distribution of the proposed guidance for public comment.

Examples of suitable guidance that a designated benchmark administrator or a benchmark contributor could follow include:

(a) the *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Chartered Professional Accountants of Canada;

(b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and

(c) the *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* published by U.K. Financial Reporting Council.

These examples of suitable guidance include, in the definition or interpretation of "internal control", controls for compliance with applicable laws and regulations.

Subsection 9(5) – Reporting of significant security incident

Subsection 9(5) of the Instrument provides that a designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any significant security incident or any significant systems issue relating to the designated benchmark it administers. We consider a failure, malfunction, delay or other incident or issue to be a "significant security incident" or a "significant systems issue" if the designated benchmark administrator would, in the normal course of operations, escalate the matter to or inform its executive management ultimately accountable for technology.

Subsection 11(2) – Conflict of interest requirements for designated benchmark administrators

Subsection 11(2) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark and its benchmark individuals from any other part of the business if the designated benchmark administrator becomes aware of a conflict of interest or a risk of a conflict of interest between the business of the designated benchmark and the other part of the business.

We expect that, when contemplating the nature and scope of such a conflict of interest, a designated benchmark administrator would consider the following:

- the provision of benchmarks often involves discretion in the determination of benchmarks and is inherently subject to certain types of conflicts of interest, which implies the existence of various opportunities and incentives to manipulate benchmarks, and
- in order to ensure the integrity of designated benchmarks, designated benchmark administrators should implement adequate governance arrangements to control such conflicts of interest and to safeguard confidence in the integrity of benchmarks.

For example, if the designated benchmark administrator does identify such a conflict of interest, the administrator should ensure that persons responsible for the administration of the designated benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities.

Subsection 12(1) – Reporting of infringements

Subsection 12(1) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed for the purposes of detecting and reporting to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve manipulation or attempted manipulation of a designated benchmark. As part of that reporting to the regulator or securities regulatory authority, we expect that the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the regulator or securities regulatory authority.

Paragraph 13(2)(c) – Complaint procedures of designated benchmark administrator

Paragraph 13(2)(c) of the Instrument provides that a designated benchmark administrator must communicate the outcome of the investigation of a complaint to the complainant within a reasonable period of time.

We expect that, in establishing the policies and procedures for handling complaints relating to the designated benchmark required by subsection 13(1) of the Instrument, the designated benchmark administrator would include a target timetable for investigating complaints.

A designated benchmark administrator may, on a case-by-case basis, apply for exemptive relief from paragraph 13(2)(c) of the Instrument if such a communication to the complainant would be seriously prejudicial to the interests of the designated benchmark administrator or would violate confidentiality provisions.

Section 14 – Outsourcing by designated benchmark administrator

Section 14 of the Instrument sets out requirements on outsourcing by a designated benchmark administrator. For purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Paragraph 14(2)(c) – Written contract for an outsourcing

Paragraph 14(2)(c) of the Instrument provides that the policies and procedures of a designated benchmark administrator in relation to outsourcing must be reasonably designed to ensure that the designated benchmark administrator and the service provider enter into a written contract that covers the matters set out in subparagraphs 14(2)(c)(i) to (v). We consider the reference to "written contract" to include one or more written agreements.

PART 4
INPUT DATA AND METHODOLOGY

Subsection 16(4) – Front office of a benchmark contributor

Subsection 16(4) of the Instrument provides that "front office" of a benchmark contributor or an applicable affiliate means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliate.

Paragraph 17(1)(e) – Determination under the methodology

Paragraph 17(1)(e) of the Instrument provides that a determination under the methodology of a designated benchmark must be able to be verified as being accurate and complete.

A determination under a methodology that is based on information such as input data would be verified as being accurate and complete if:

- it can be clearly linked to the original information, and
- it can be linked to complementary, but separate information.

For example, in the case of an interest rate benchmark that is determined daily and calculated as the arithmetic average of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances and are market-makers in bankers' acceptances, the daily determination would be verified as being accurate and complete if:

- the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and
- the benchmark administrator's record of the rates contributed by the financial institutions can be matched to the records of those rates maintained by the applicable financial institutions.

Paragraph 17(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph 17(2)(a) of the Instrument provides that a designated benchmark administrator must take into account, in the preparation of the methodology of a designated benchmark, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to record.

In this context, we consider that "applicable characteristics" include:

- the size and reasonably expected liquidity of the market,
- the transparency of trading and the positions of participants in the market,
- market concentration,
- market dynamics, and
- the adequacy of any sample to reasonably represent that part of the market or economy the designated benchmark is intended to record.

Subsection 18(1) – Proposed or implemented significant changes to methodology

Subsection 18(1) of the Instrument provides that a designated benchmark administrator must have policies that provide for public notice of a proposed or implemented significant change to the methodology of a designated benchmark.

As part of the methodology disclosure required under section 19, paragraph 19(1)(e) of the Instrument provides that a designated benchmark administrator must publish examples of the types of changes that may constitute a significant change to the methodology of the designated benchmark.

We consider publication on the designated benchmark administrator's website of a proposed or implemented change to the methodology of a designated benchmark, accompanied by a news release advising of the publication of the proposed or implemented change, as sufficient notification in theses contexts. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of such a publication by email.

PART 5
DISCLOSURE

Subsection 20(2) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 20(2)(a) through (l) of the Instrument, are designed to provide transparency to benchmark users to understand the purpose or intention of the benchmark, the limitations of the benchmark, and how the designated benchmark administrator will apply the methodology to provide the benchmark. In preparing the benchmark statement, a designated benchmark administrator should attempt to ensure that benchmark users have sufficient information to understand what the benchmark is intended to record and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph 20(2)(a) – Applicable market or economy for purposes of the benchmark statement

Paragraph 20(2)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market or economy the designated benchmarks is intended to record. This relates to the benchmark's purpose.

For example, an interest rate benchmark may be intended to reflect the cost of unsecured interbank lending and may be intended to be used as a benchmark interest rate in interbank loan agreements. In this example, we consider it problematic if

- the type of prime bank lending rate the benchmark is intended to record is unclear, or
- the calculation method does not work well in periods of low liquidity.

PART 6
BENCHMARK CONTRIBUTORS

General

Part 6 of the Instrument contains provisions that apply in respect of benchmark contributors to a designated benchmark. There are also specific requirements that apply to:

- benchmark contributors to a designated critical benchmark (see sections 31 and 34 of the Instrument), and

- benchmark contributors to a designated interest rate benchmark (see sections 38, 39 and 40 of the Instrument).

In [●]**[Note: At the time of the final rule, we will insert a list of applicable jurisdictions]**, securities legislation defines "benchmark contributor" as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

In [●]**[Note: At the time of the final rule, we will insert a list of applicable jurisdictions]**, securities legislation provides that the securities regulatory authority may, in response to an application by the regulator or, in Québec, on its own initiative, require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. For example, a person or company may be required to provide information to a designated benchmark administrator for the purpose of determining a designated critical benchmark. In such a case, the person or company would be a benchmark contributor, and would therefore be subject to the provisions of the Instrument applicable to benchmark contributors generally and the provisions applicable to benchmark contributors to a designated critical benchmark. However, certain of those provisions only apply if input data is considered to have been contributed within the meaning of paragraph 1(3)(a) of the Instrument.

Subparagraph 24(2)(f)(vi) – Input data that is inaccurate or incomplete

Subparagraph 24(2)(f)(vi) of the Instrument requires that a code of conduct for a benchmark contributor include reporting requirements for any instance where a reasonable person would believe that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has provided input data that is inaccurate or incomplete. In establishing these requirements, we expect the designated benchmark administrator to consider providing indicators that could be used to identify input data that is inaccurate or incomplete, based on past experience. The indicators should reasonably reflect the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Subsection 24(3) – Adherence to code of conduct

In establishing the policies and procedures required under subsection 24(3) of the Instrument, we expect the designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark. For example, the policies and procedures may include the use of verification certificates signed by an officer of the benchmark contributor and on-site inspections by internal compliance staff that are independent from the business unit whose activities are subject to the code of conduct.

Paragraph 25(1)(a) – Conflict of interest requirements for benchmark contributors

Paragraph 25(1)(a) of the Instrument provides that a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure the contribution of input data by the benchmark contributor is not significantly affected by any conflict of interest involving the benchmark contributor and its employees, officers, directors and agents, if a reasonable person would consider that the contribution of the input data might be inaccurate or incomplete.

We expect that, when contemplating the scope of such conflicts of interest, a benchmark contributor would consider the following:

- benchmark contributors of input data to benchmarks can often exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation, and
- consequently, conflicts of interest must be managed or mitigated to ensure they do not affect input data.

For example, if the benchmark contributor does identify such a conflict of interest involving other business activity, the contributor should ensure that persons responsible for the contribution of input data to a designated benchmark administrator for the purpose of determining a designated benchmark:

- are located in a secure area apart from persons that carry out the other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to the other business activity.

Subsection 25(2) – Accuracy and completeness of input data

In establishing the policies, procedures and controls required under subsection 25(2), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy and completeness of input data.

Paragraph 25(3)(a) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 25(3)(a), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and the nature of its input data.

Subsection 26(1) – Compliance officer for benchmark contributors

Subsection 26(1) of the Instrument provides that a benchmark contributor to a designated benchmark must designate an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, the Instrument and securities legislation relevant to benchmarks. The officer can conduct these activities on a part-time basis but should be independent from persons involved in determining or contributing input data.

PART 7
RECORDKEEPING

Paragraph 27(2)(h) – Records of communications

The reference to “communications” in paragraph 27(2)(h) of the Instrument includes telephone conversations, email and other electronic communications.

PART 8
DESIGNATED INTEREST RATE BENCHMARKS

Subsection 35(1) – Accurate and sufficient data for designated interest rate benchmarks

Subsection 35(1) of the Instrument sets out an order of priority for input data for the determination of a designated interest rate benchmark. The order of priority lists committed quotes and indicative quotes or expert judgments. In the absence of reliable transaction data for a designated interest rate benchmark, we are of the view that committed quotes should take precedence over non-committed/indicative quotes and expert judgment.

We consider a “committed quote” to be a quote that is actionable for the other party to the potential transaction. The party that provides that quote announces their willingness to enter into transactions at the relevant bid and ask prices and agree that if they do transact, they will do so at the quoted price up to the maximum quantity specified in the quote.

We consider “indicative quote” to be a quote that is not immediately actionable by the other party to the potential transaction. Indicative quotes are usually provided before the parties negotiate the price or quantity at which the potential transaction will occur.

Subsection 37(1) – Assurance report for designated interest rate benchmark

Subsection 37(1) of the Instrument provides that a designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to section 8, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with certain sections of the Instrument and the methodology in respect of each designated interest rate benchmark it administers.

We note that the report required by subsection 37(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph 7(3)(b) of the Instrument. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph 7(3)(b) and with the requirement in subsection 37(1).

ANNEX C

SPECIFIC QUESTIONS OF THE CSA RELATING TO THE PROPOSED INSTRUMENT

Definitions and Interpretation

1. Does the proposed definition of "contributing individual" capture (or fail to capture) all of the arrangements between contributing individuals and administrators? If not, please explain with concrete examples.

2. Is the proposed interpretation of "control" appropriate? Please explain with concrete examples.

Governance

3. Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples.

4. The determination of non-independence of members of the board of directors and the oversight committee by the boards of directors of administrators as set out in paragraphs 5(4)(d), 32(2)(d) and 36(2)(d) of Proposed NI 25-102 includes a provision that if the director or oversight committee member has a relationship with the administrator that may, *in the opinion of the board of directors*, be reasonably expected to interfere with the exercise of the director's or oversight committee member's independent judgment, such director or oversight committee member would not be independent for purposes of Proposed NI 25-102. We are seeking comment on whether the CSA should replace the opinion of the board of directors with a "reasonable person" opinion in these paragraphs. Please explain with concrete examples.

Administrator Compliance Officer

5. Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples.

6. Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed NI 25-102), other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.

Critical Benchmarks

7. Under Proposed NI 25-102, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the designated critical benchmark are provided to all benchmark users on a fair, reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.

8. Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision.

Conflicts of Interest

9. Is the requirement in subsection 11(3) of Proposed NI 25-102 appropriate, particularly as it relates to a *risk* of a significant conflict of interest? Please explain with concrete examples.

Designated Benchmarks

10. The Notice states that the current intention of the CSA is to designate only RBSL as an administrator and CDOR and CORRA as RBSL's designated benchmarks. Are there any other benchmark administrators that you believe should be designated under Proposed NI 25-102? If so, please:

    (a) identify the benchmark administrator,

(b) identify any benchmark that the benchmark administrator administers that should also be designated, and

(c) provide your rationale for why such designations are appropriate.

11. If your organization is a benchmark administrator, please:

(a) advise if you intend to apply for designation under Proposed NI 25-102,

(b) advise of any benchmark you intend to also apply for designation under Proposed NI 25-102, and

(c) the rationale for your intention.

Anticipated Costs and Benefits

12. The Notice sets out the anticipated costs and benefits of Proposed NI 25-102 (in Ontario, additional detail is provided in Annex D). Do you believe the costs and benefits of Proposed NI 25-102 have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain with concrete examples.

ANNEX D

ONTARIO LOCAL MATTERS

Part 1: Description of Anticipated Costs and Benefits of Proposed NI 25-102

1. *Executive Summary*

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

However, there are many expected benefits from Proposed NI 25-102 to benchmark administrators, contributors, users, investors, market participants and Canada's capital markets. Proposed NI 25-102 significantly mitigates the risks of manipulation, interruption and uncertainty[1] in the use of CDOR and CORRA, which are Canada's most important interest rate benchmarks. The proposed regulatory requirements should further enhance confidence in Canadian capital markets and minimize the higher costs that may be borne by Canadian financial markets, including investors, in the event of interruption, uncertainty or manipulation of designated benchmarks. For example, even if Proposed NI 25-102 only results in the avoidance of a small error, distortion or manipulation of CDOR and CORRA, this would mean the direct avoidance of an error, distortion, or manipulation of financial instruments with a value of at least $12.3 trillion.[2]

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

2. *Affected Stakeholders*

The first category of stakeholders under Proposed NI 25-102 are those currently involved in benchmark-setting activities for CDOR/CORRA or using CDOR/CORRA (CDOR/CORRA Stakeholders). This is the most important group of stakeholders for purposes of our analysis because the current intention of the CSA is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks, under Proposed NI 25-102. Consequently, other than the benchmark users of CDOR and CORRA, this category is comprised of 7 entities. Table 1, below, provides a description of the CDOR/CORRA Stakeholders.

Table 1: CDOR/CORRA Stakeholders

Member	Description
Refinitiv Benchmark Services (UK) Limited (**RBSL**)[3]	RBSL is the current administrator of CDOR and CORRA. It is authorized by the FCA under the EU BMR and is therefore subject to the EU BMR. RBSL's registered benchmarks under the EU BMR include CDOR and CORRA. Currently, the intention of the CSA is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks, under Proposed NI 25-102.
Benchmark contributors for CDOR (**CDOR Contributors**)	A CDOR Contributor is a benchmark contributor that contributes input data or other information for CDOR that is not reasonably available to RBSL. CDOR currently has 6 banks acting as contributors for CDOR.[4]

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

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

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

4 The CDOR contributors are: the Bank of Montreal (BMO), the Bank of Nova Scotia (BNS), the Canadian Imperial Bank of Commerce (CIBC), the National Bank Canada (NBC), the Royal Bank of Canada (RBC) and the Toronto-Dominion Bank (TD).

Member	Description
Benchmark users of CDOR or CORRA (**CDOR/CORRA Users**)	The following list sets out the main types of users for most kinds of benchmarks, including CDOR and CORRA: • issuers of benchmark-linked securities (e.g., debt securities) • counterparties for derivatives (e.g., interest rate derivatives) • investment dealers, portfolio managers and other registrants • buy side firms and investors (e.g., pension funds, investment funds, proprietary trading desks) • banks and industry associations • government agencies (e.g., statistical agencies, central banks, or other government entities that use a benchmark for policy and operational work) • index providers • market infrastructure organizations (e.g., exchanges, clearing agencies) • academics • business news organizations • Platforms and information providers (e.g., Bloomberg, Thomson Reuters) • Lenders and borrowers that participate in loans where the rate of interest is established with reference to CORRA or CDOR We estimate that the number of potential uses in these groups would be large.
Certain CDOR/CORRA Users that are regulated entities under Canadian securities legislation (**Regulated CDOR/CORRA Users**)	Regulated CDOR/CORRA Users are a subset of CDOR/CORRA Users and are identified in section 22 of Proposed NI 25-102 (e.g., registrants, reporting issuers and recognized exchanges that use CDOR or CORRA). All Regulated CDOR/CORRA Users are subject to Canadian securities legislation.

Our analysis in section 5 below is confined to the category of known CDOR/CORRA Stakeholders because it is difficult to assess the anticipated costs on other potential stakeholders without first knowing some key and fundamental aspects of their benchmark-setting activities.[5] However, the benefits that we have identified would be realized by both existing and potential stakeholders.

3. *Potentially Affected Stakeholders*

The following sets out two additional categories of potential stakeholders under Proposed NI 25-102:

- One category are stakeholders related to benchmarks (other than CDOR and CORRA) administered by benchmark administrators who are (or will be) directly authorized, registered or recognized under the EU BMR (other than RBSL) (**Potential EU-Compliant Stakeholders**). We envision the Potential EU-Compliant Stakeholders being subject to Proposed NI 25-102 if they voluntarily decide to seek one or more designations under Proposed NI 25-102. We are presently unaware of any Canadian-domiciled benchmark administrators who are seeking authorization, registration or recognition under the EU BMR. Annex D-1 provides a description of this category of potential stakeholders.

- Another category are stakeholders related to benchmarks that are administered by benchmark administrators that are not (and do not intend to be) authorized, registered or recognized under, and therefore not subject to, the EU BMR (**Potential Other Stakeholders**). We envision the Potential Other Stakeholders being subject to Proposed NI 25-102 if securities regulators determine that it is in the public interest to regulate such entities (e.g., misconduct on the part of a benchmark administrator or the contributors to any benchmark it administers). Annex D-2 provides a description of this category of potential stakeholders.

4. *Non-Affected Stakeholders*

The CSA has no current intention of designating benchmarks (or their administrators) that are administered by governments (including government statistical agencies), central banks, crown corporations and similar public authorities. We note that these public authorities are exempted from the EU BMR. In particular, central banks already meet principles, standards and

[5] For example, the costs that may be incurred by potential stakeholders will be dependent on the benchmark to be designated, and the administrator, contributors, and users of that benchmark, and the significance of benchmark-setting activities for the designated benchmark in relation to a stakeholder's overall business activities.

procedures that ensure that they exercise their activities with integrity and in an independent and robust manner. It is therefore not necessary that such entities be subject to Proposed NI 25-102.

5. *Description of Anticipated Costs and Benefits of Proposed NI 25-102*

The following analysis describes the costs and benefits of the Proposed NI 25-102 for CDOR/CORRA Stakeholders. This analysis only focuses on incremental changes or costs, and not total changes or costs, since CDOR/CORRA Stakeholders are already engaging in almost all of the activities that we are proposing to regulate because the concepts and requirements in Proposed NI 25-102 are largely based on the concepts and requirements in EU BMR (for purposes of securing an equivalency decision in the EU and, potentially, the UK). As a result, the incremental cost is the difference between what CDOR/CORRA Stakeholders are already spending to comply with the EU BMR[6] and the additional costs to comply with Canadian specific requirements.

In general, we note that CDOR/CORRA Stakeholders may seek to comply with Proposed NI 25-102 in different ways and the CSA's principles-based and risk-based approach to compliance permits this. The types and levels of costs that may be incurred by these stakeholders are largely dictated by their approach to compliance. For example, a CDOR Contributor that chooses a vendor to build a new and bespoke information technology (**IT**) system for the record-keeping requirements may potentially face higher initial costs than a counterpart that chooses to build out an existing IT system using internal resources. The ability to exercise discretion of how best to comply with Proposed NI 25-102 while giving CDOR/CORRA Stakeholders flexibility in controlling their regulatory costs also makes it difficult for regulators to quantify in dollars the costs of regulations. For this reason, we have not attempted to quantify the dollar cost burden of Proposed NI 25-102.

The benefits that we have identified for each of the four member groups of CDOR/CORRA Stakeholders would be realized by existing and future stakeholders in that member group. We again have not attempted to quantify the value of these benefits as it is difficult to measure for every affected stakeholder the size and monetary value of those benefits.

RBSL (i.e., the administrator of CDOR and CORRA)

There are several benefits to RBSL of having its activities governed by Canadian regulatory regime that is equivalent to the EU BMR.

It is more operationally efficient for RBSL to work with Canadian regulators than an EU-based regulator. By the nature of their work and mandate, Canadian regulators have the most knowledge of the Canadian financial markets, the working of these markets, and the participants and stakeholders in these markets. This depth of knowledge and expertise means that Canadian regulators are better situated to quickly and appropriately respond to issues that RBSL may face in carrying out its duties as the benchmark administrator for CDOR and CORRA, and in complying with Proposed NI 25-102. Proposed NI 25-102 also provides Canadian securities regulators with more specific authority to intervene on behalf of RBSL and take corrective measures should CDOR Contributors not fully comply with contributor obligations under Proposed NI 25-102. Canadian securities regulators, because of their established working relationships with other Canadian financial regulators such as OSFI and the Bank of Canada, can also address issues that span across multiple areas of regulation more effectively than an EU-based regulator.

Proposed NI 25-102 may also provide clarity to benchmark administrators, benchmark contributors and benchmark users of the standard of care expectations that Canadian courts may apply to such activities under Canadian negligence law.[7] The explicit articulation of these expectations within a Canadian legal framework may assist benchmark administrators and benchmark contributors in reducing their exposure to civil liability in Canada.

We anticipate that the incremental costs to RBSL in complying with Proposed NI 25-102 would not be significant for the following reasons:

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6 https://www.fca.org.uk/publication/consultation/cp12-36.pdf,
https://www.fca.org.uk/publication/consultation/cp14-32.pdf
https://www.fca.org.uk/publication/corporate/evaluation-paper-18-2-the-impact-of-bringing-additional-benchmarks-into-the-regulatory-and-supervisory-regime.pdf
https://www.esma.europa.eu/sites/default/files/library/esma70-145-48_-_final_report_ts_bmr.pdf
http://www.europe-economics.com/publications/ee_bmr_final_report_9-02-2017.pdf.

7 Canadian negligence law, if a court finds that a party (e.g., an administrator or contributor) owes another party (e.g., a benchmark user) a duty of care, the court must then decide the content of this duty (i.e., the standard of care) and whether the first party (e.g., an administrator or contributor) has breached it. The standard of care is determined by courts by considering what would be expected of an ordinary, reasonable and prudent person in the same circumstances. Reasonableness is determined based the specific facts of the event, including likelihood and severity of harm, social utility of the conduct, and the cost of preventing the risk. While a court will assess the entire factual matrix surrounding the relationship to determine if there has been a breach, a clear regulatory breach is an important element of that matrix that courts typically take into account.

- RBSL is already authorized by the FCA, and therefore subject to the EU BMR and the costs related to the EU BMR, and

- Proposed NI 25-102 is substantially similar to the EU BMR, particularly as it relates to the obligations on benchmark administrators.

It is the CSA's intention to only designate CDOR and CORRA as critical benchmarks and interest rate benchmarks given their importance in the Canadian market. Incremental costs would arise from complying with additional regulatory requirements related to the administration of CDOR and CORRA as critical benchmarks, as set out under the heading "Additional Administrator Requirements for Critical Benchmarks" in the main body of this Notice.[8] However:

- we anticipate these costs would not be significant because most of these requirements codify practices that are already in existence as a result of RBSL choosing to voluntarily comply with the IOSCO Principles for Financial Benchmarks,

- these additional regulatory requirements would apply to CDOR and CORRA were they to meet the definition of a "critical benchmark" under the EU BMR, and

- while CDOR and CORRA are not considered to be critical benchmarks within the EU context,[9] their use is critical to the Canadian markets and the risks arising from their use must be managed accordingly. For this reason, the CSA intends to designate CDOR and CORRA as critical benchmarks under Proposed NI 25-102.

Other incremental costs applicable to RBSL may result from:

- an initial cost to deliver an application. The applicability and exact dollar amount of any application fees in CSA jurisdictions can only be determined conclusively once a designation model is chosen by the CSA,[10]

- the assurance report requirements (but the magnitude of these incremental costs will depend on how RBSL seeks to comply with the external audit requirements in the EU BMR and how much of an EU BMR based audit can be repurposed to satisfy the Canadian assurance report requirements),

- additional requirements to deliver documents to Canadian securities regulators, and

- a longer record retention period.

On-going incremental costs may include annual participation fees (or other annual fees) and the on-going costs to complete and deliver Form 25-102F1 and Form 25-102F2 (and more infrequent re-delivery of Form 25-102F3). The applicability and exact dollar amount of any participation fees or other annual fees in CSA jurisdictions can only be determined conclusively once a designation model is chosen by the CSA.[11] We anticipate that the on-going costs to complete and deliver the two annual regulatory forms would be less than the initial application costs. As RBSL becomes more familiar with the forms and the reporting requirements it will become more efficient in undertaking this activity. This efficiency would result in time savings and correspondingly lower labour costs.

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8 Note that there would be no material incremental costs on RBSL by Canadian securities regulators also designating CDOR and CORRA as "interest rate benchmarks" pursuant to Proposed NI 25-102 because CDOR and CORRA are "interest rate benchmarks" under the EU BMR and therefore subject to the requirements applicable to interest rate benchmarks thereunder, which are substantially similar to the requirements for "interest rate benchmarks" in Proposed NI 25-102.

9 Article 20 of the EU BMR establishes the conditions for a critical benchmark. The conditions are based on the uses and characteristics of the benchmark, and the impacts that would result were the benchmark no longer reliable or ceased to exist. The dollar threshold for a critical benchmark in the EU BMR is either €400B or €500B. CDOR and CORRA are not considered to be critical benchmarks under the EU BMR because they do not satisfy the conditions, including the dollar thresholds, established in Article 20 (the notional value of derivatives instruments that referenced CDOR and CORRA and involved an EU counterparty was approximately $376B CAD (or €248B) as at May 31, 2017).

10 Potential designation models are described in the section of the Notice entitled "Potential Models for Designation and Ongoing Regulatory Oversight of Benchmarks and Benchmark Administrators". For example, were the CSA to adopt a designation model similar to the one adopted for designated rating organizations (**DROs**), and an administrator was designated by the OSC, one could then anticipate a one-time application fee of approximately $15,000 in Ontario. This figure has been provided to illustrate the potential dollar costs of the application fee and should not be interpreted to indicate the OSC's preference for any particular designation model or the final fees related to such model. We note that a CSA jurisdiction may establish fees for an application prior to a designation model being adopted by the CSA.

11 For example, were the CSA to adopt a designation model similar to the one adopted for DROs, and an administrator was designated by the OSC, one could then anticipate annual participation fees of approximately $15,000 in Ontario. This figure has been provided to illustrate the potential dollar costs of the participation fees and should not be interpreted to indicate the OSC's preference for any particular designation model or the final fees related to such model. We note that a CSA jurisdiction may establish participation fees or other annual fees prior to a designation model being adopted by the CSA.

CDOR Contributors

The current contributors[12] to CDOR are Canadian-based banks.

A Canadian regulatory regime for financial benchmarks will benefit CDOR Contributors for the first two reasons identified in the benchmark administrator discussion, namely operational efficiency and more responsive and accountable market oversight and issues management.

The designation of CDOR as a critical benchmark, the mirroring of requirements for "supervised contributors" under the EU BMR (including Annex I) for all contributors in Proposed NI 25-102, and other peripheral modifications from the EU BMR in Proposed NI 25-102 would impose additional requirements on CDOR Contributors in the following categories:

- governance (e.g., appointment of a compliance officer),
- controls (e.g., assurance report),
- policies and procedures for the benchmark submission process,
- certain notices and filings, and
- record retention.

Additional detail regarding certain of these requirements is set out under the headings "Additional Contributor Requirements for Critical Benchmarks" and "Additional Contributor Requirements for Interest Rate Benchmarks" in the main body of this Notice.

There may also be some additional on-going costs arising from the assurance report requirements. The magnitude of these costs will depend on how a CDOR Contributor seeks to comply with the external audit requirements in the EU BMR and how much of an EU BMR based audit can be repurposed to satisfy the Canadian assurance report requirements.

These additional requirements would be beneficial to CDOR Contributors as they will help avoid error, manipulation or distortion of CDOR, and the potential costly liability that may arise as a result of failure to control for these risks.[13] As mentioned in the introduction section of this Notice, even the avoidance of a small error, distortion or manipulation of CDOR would mean the direct avoidance of an error, distortion or manipulation of financial instruments valued at five times Canada's GDP.

CDOR Contributors are already directly or indirectly engaged in practices that may satisfy the requirements of Proposed NI 25-102 that are not applicable to them under the EU BMR since many of these obligations are existing obligations that have been incorporated into RBSL's current CDOR Code of Conduct[14] and OSFI's Guideline E-20 CDOR Benchmark-Setting Submissions.[15]

We, therefore, anticipate that CDOR Contributors are unlikely to incur any significant incremental initial or on-going costs from the contributor-specific requirements since these costs are already being incurred in satisfying the obligations established by the EU BMR, RBSL and OSFI.

CDOR/CORRA Users

A Canadian regulatory regime for financial benchmarks will benefit CDOR/CORRA Users in several ways. Canadian regulators intimate knowledge of Canada's financial markets means that they are in the best position to quickly and appropriately address benchmark users' complaints or concerns about improper market conduct. Proposed NI 25-102, if enacted, would signal to

[12] Since contributors to CDOR are also users of CDOR, they too would benefit from Proposed NI 25-102 aimed at minimizing the potential for benchmark manipulation and error. These benefits are discussed under the CDOR Users section of this analysis.

[13] We note that, in respect of the LIBOR scandal, estimates of liability to LIBOR (and other IBOR) contributors have been estimated by some commenters to be as high as $35 billion (Keefe, Bruyette & Woods, "LIBOR - Sizing the potential damage" (July 16, 2012), online: https://kbw3.bluematrix.com/docs/pdf/bf9114c2-213c-402c-aa0a-5c36983cd56d.pdf). Furthermore, as discussed above, in January 2018, 9 large banks, including 6 from Canada, were accused by a plaintiff in a U.S. civil lawsuit of conspiring to rig CDOR to improve profits from derivatives trading. The complaint, filed by a Colorado pension fund in U.S. District Court in New York, accused the banks of suppressing CDOR from August 2007 to June 2014 by making artificially lower interest rate submissions to RBSL, CDOR's administrator. The lawsuit has not yet gone to trial and the plaintiff's allegations have not been proven in court.

[14] For example, the CDOR Contributor Code of Conduct incudes a chapter on the organizational and governance arrangements required for contributors to CDOR, including compliance controls that are appropriate for the contributor. In addition, since the CDOR contributors are all large banks, they already have in place robust compliance functions, including compliance officers.

[15] OSFI's *Guideline E-20 CDOR Benchmark-Setting Submissions* "sets out OSFI's expectations for CDOR submitting banks in respect of the governance and internal controls surrounding the activities and processes of their rate submissions." http://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/e20.aspx?pedisable=false

financial market participants, both domestically and internationally, that CDOR and CORRA are reliable benchmarks and that their use in financial instruments, such as determining interest payable, is based on accurate rates. Additionally, the public information disclosure requirements, such as posting of benchmark methodology reduces information asymmetry between benchmark contributors, administrators and users, which can result in lower risk premiums and more efficient allocation of capital for CDOR/CORRA Users.

Regulated CDOR/CORRA Users

Regulated CDOR/CORRA Users would realize the same benefits from the proposed regulatory regime as CDOR/CORRA Users generally, and these benefits are discussed above.

Regulated CDOR/CORRA Users would be subject to the requirement in section 22 of Proposed NI 25-102. Section 22 requires that, when these users use a designated benchmark whose cessation could have a significant impact on such user, a security issued by the user, or a derivative to which the user is a party, such users must have written plans setting out their contingency plan in the event that CDOR and/or CORRA significantly change or cease to be provided. We expect that most Regulated CDOR/CORRA Users would already have such contingency plans in place in accordance with prudent business practices and, depending on the entity, as a result of complying with other securities regulations.[16] We anticipate that on-going costs to comply with this requirement would be minimal as the costs would be confined to on-going review and monitoring of the relevance of the plan.

Part 2: Other Matters

Impact on Investors of Proposed NI 25-102

The impact on investors (i.e., a subset of benchmark users) of Proposed NI 25-102 is included in the above "Description of Anticipated Costs and Benefits of Proposed NI 25-102".

Alternatives Considered

No alternatives to the Proposed Instrument were considered.

Authority for Proposed NI 25-102

In Ontario, the rule making authority for Proposed NI 25-102 is provided in paragraphs 64 to 69 of subsection 143(1) of the *Securities Act* (Ontario).

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

ANNEX D-1

POTENTIAL EU-COMPLIANT STAKEHOLDERS

The following table sets out the different members of Potential EU-Compliant Stakeholders.

Member	Description
Other Canadian benchmark administrators authorized, registered or recognized (or intending to be authorized, registered or recognized) under the EU BMR (**EU Compliant Administrators**)	An EU Compliant Administrator is a benchmark administrator (other than RBSL) that is authorized, registered or recognized (or intends to be authorized, registered or recognized) by an EU member state under the EU BMR.
Benchmark contributors for benchmarks subject (or intending to be subject) to the EU BMR (**EU Compliant Contributors**)	An EU Compliant Contributor is a benchmark contributor that contributes input data or other information for an EU BMR-registered benchmark that is administrated by an EU Compliant Administrator.
Benchmark users of benchmarks subject to (or intending to be subject to) the EU BMR (**EU Protected Users**)	EU Protected Users are those users who use a benchmark that is registered with the EU and whose administrator is an EU Compliant Administrator.
Certain EU Protected Users that are regulated under Canadian securities legislation (**Regulated EU-Protected Users**)	Regulated EU-Protected Users, a subset of EU Protected Users, would be those entities identified in section 22 of Proposed NI 25-102 (e.g., registrants, reporting issuers, recognized exchanges and recognized clearing agencies), all of whom are subject to Canadian securities legislation.

ANNEX D-2

POTENTIAL OTHER STAKEHOLDERS

The following table sets out the different members of Potential Other Stakeholders.

Member	Description
Canadian benchmark administrators not (and not intending to be) authorized, registered or recognized under the EU BMR (**Other Administrators)**	An Other Administrator is a benchmark administrator that is not (and is not intending to be) authorized, registered or recognized by an EU member state under the EU BMR. The group of Other Administrators could theoretically be quite broad in light of the breadth of the definitions (or proposed definitions) of “benchmark” and “benchmark administrator” under securities legislation, as discussed above. Any decision to designate an Other Administrator under Proposed NI 25-102 is only expected to occur if a regulator or securities regulatory authority determines that such designation (and subject regulation) is in the public interest.
Benchmark contributors for benchmarks not subject to (and not intending to be subject to) the EU BMR (**Other Contributors**)	An Other Contributor is a benchmark contributor that contributes input data for a benchmark that is administrated by an Other Administrator. The group of Other Contributors could theoretically be quite broad in light of the breadth of the definitions (or proposed definitions) of “benchmark” and “benchmark contributor” under securities legislation, as discussed above.
Benchmark users of benchmarks not subject to (and not intending to be subject to) the EU BMR (**Other Users**)	Other Users are those users who use a benchmark that is not registered with the EU and whose administrator is an Other Administrator. The group of Other Users could theoretically be quite broad in light of the breadth of the definitions (or proposed definitions) of “benchmark” and “benchmark user” under securities legislation, as discussed above.
Certain Non-EU Protected Users that are regulated under Canadian securities legislation (**Other Regulated Users**)	Other Regulated Users, a subset of Other Users, would be those entities identified in section 22 of Proposed NI 25-102 (e.g., registrants, reporting issuers, recognized exchanges, and recognized clearing agencies), all of whom are subject to Canadian securities legislation.

6.1.2 Proposed Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators

OSC Notice and Request for Comment

Proposed Ontario Securities Commission Rule 25-501
(Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators*

Proposed Companion Policy 25-501
(Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators*

Proposed Consequential Amendments

March 14, 2019

Introduction

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

- proposed Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (**Proposed OSC Rule 25-501**),
- proposed Companion Policy 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (the **Proposed CP**, and together with Proposed OSC Rule 25-501, the **Proposed Instrument**),
- proposed consequential amendments to Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents* to the Ontario Securities Commission (the **Proposed Consequential Amendments**).

Collectively, the Proposed Instrument and the Proposed Consequential Amendments are referred to as the **Proposed Materials** in this Notice.

We are issuing this Notice to solicit comments on the Proposed Materials. We welcome all comments on this publication and have also included specific questions in Annex C of this Notice.

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

Proposed OSC Rule 25-501 is intended to implement a comprehensive regime for:

- the designation and regulation of benchmarks (**designated benchmarks**), including specific requirements (or exemptions from requirements) for designated critical benchmarks (**designated critical benchmarks** or **critical benchmarks**), designated interest rate benchmarks (**designated interest rate benchmarks** or **interest rate benchmarks**) and designated regulated-data benchmarks (**designated regulated-data benchmarks** or **regulated-data benchmarks**),
- the designation and regulation of persons or companies that administer such benchmarks (**designated benchmark administrators** or **administrators**),
- the regulation of persons or companies, if any, that contribute certain data that will be used to determine such designated benchmarks (**benchmark contributors** or **contributors**), and
- the regulation of certain users of designated benchmarks, particularly users who are already regulated in some capacity under Canadian securities law and/or Ontario commodity futures law (**benchmark users** or **users**).

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

- the Canadian Dollar Offered Rate (**CDOR**), and
- the Canadian Overnight Repo Rate Average (**CORRA**).

Currently, the intention of the OSC is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks (which are each expected to be designated as a critical benchmark and an interest rate benchmark), under Proposed OSC Rule 25-501.[2] This intention is based on the significant reliance placed by users and other market participants on CDOR and CORRA, which are used in various financial instruments with a notional value of at least $12.3 trillion.[3] This figure is approximately five times larger than the gross domestic product for Canada in 2017.[4]

Proposed OSC Rule 25-501 is based on, and consistent with, proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**Proposed NI 25-102**) of the Canadian Securities Administrators (**CSA**). Consequently, for additional background and other information, please see the CSA Notice and Request for Comment regarding Proposed NI 25-102 and Companion Policy dated March 14, 2019 (the **CSA Notice**) that is being published concurrently with this Notice. Capitalized terms used in this Notice but not defined have the meaning set out in the CSA Notice.

Proposed OSC Rule 25-501 is required in Ontario because Proposed NI 25-102 would not apply to Ontario commodity futures law.

Substance and Purpose

We developed Proposed OSC Rule 25-501 for the same reasons as Proposed NI 25-102. In particular, we seek to establish a benchmarks regulatory regime that would be equivalent to the European Union's benchmarks regulation (**EU BMR**) and to reduce risk in Ontario's capital markets, thereby protecting Ontario investors and other Ontario market participants.

As indicated above, the current intention of the OSC is to designate only:

- RBSL as an administrator, and
- CDOR and CORRA as RBSL's designated benchmarks under Proposed OSC Rule 25-501.

The Proposed CP is meant to assist in the interpretation and application of Proposed OSC Rule 25-501.

Summary of Proposed OSC Rule 25-501

Under the *Commodity Futures Act* (Ontario) (the **CFA**),[5] a benchmark administrator can apply for designation as a designated benchmark administrator and to request the designation of a benchmark. Alternatively, the Director can also apply for a benchmark administrator or benchmark to be designated under the CFA.

Proposed OSC Rule 25-501 sets out requirements for administrators, contributors and certain users of designated benchmarks.

Since Proposed OSC Rule 25-501 is based on Proposed NI 25-102, for additional information, see the section entitled "Summary of Proposed NI 25-102" in the CSA Notice.

Proposed OSC Rule 25-501 is in Annex A.

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

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

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

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

5 For additional detail, see the section "Recent Legislative Amendments" below.

Summary of the Proposed CP

The Proposed CP provides interpretational guidance on elements of Proposed OSC Rule 25-501, including the criteria the OSC may consider when determining whether to designate a benchmark as a critical benchmark, interest rate benchmark and/or regulated-data benchmark.

The Proposed CP is in Annex B.

Summary of the Proposed Consequential Amendments

The Proposed Consequential Amendments are consequential in nature to both Proposed OSC Rule 25-501 and Proposed NI 25-102 and were developed to allow electronic delivery of certain forms under such rule and instrument, respectively.

The Proposed Consequential Amendments are in Annex D.

Recent Legislative Amendments

In order to implement Proposed OSC Rule 25-501 and have the Ontario benchmarks regulatory regime recognized as equivalent in the EU (and potentially the UK), OSC staff recommended changes to the CFA, including:

- additional authority to regulate benchmarks and benchmark administrators, contributors and benchmark users (including authority to designate benchmarks and benchmark administrators), and
- prohibitions on market misconduct in relation to benchmarks, specifically a prohibition on providing false or misleading information for a benchmark determination and a prohibition on benchmark manipulation.

These benchmark-related amendments came into force on December 6, 2018.

Anticipated Costs and Benefits of Proposed OSC Rule 25-501

Currently, the intention of the OSC is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks, under Proposed OSC Rule 25-501 and Proposed NI 25-102. Since the obligations under Proposed OSC Rule 25-501 and Proposed NI 25-102 are substantially similar to the EU BMR requirements already applicable to RBSL and the current contributors for CDOR, we anticipate that Proposed OSC Rule 25-501 and Proposed NI 25-102 would not impose a significant incremental regulatory burden to RBSL, the current contributors to CDOR, and certain users of CDOR and CORRA that are already regulated under Canadian securities law and/or Ontario commodity futures law.

However, there are many expected benefits from Proposed OSC Rule 25-501 and Proposed NI 25-102 to benchmark administrators, contributors, users, investors, market participants and Ontario's capital markets. Proposed OSC Rule 25-501 and Proposed NI 25-102 significantly mitigate the risks of manipulation, interruption and uncertainty[6] in the use of CDOR and CORRA, which are Canada's most important interest rate benchmarks. The proposed regulatory requirements should further enhance confidence in Canadian capital markets and minimize the higher costs that may be borne by Canadian financial markets, including investors, in the event of interruption, uncertainty or manipulation of designated benchmarks. For example, even if Proposed OSC Rule 25-501 and Proposed NI 25-102 only result in the avoidance of a small error, distortion or manipulation of CDOR and CORRA, this would mean the direct avoidance of an error, distortion, or manipulation of financial instruments with a value of at least $12.3 trillion.

As a result, the OSC is of the view that the regulatory costs of Proposed OSC Rule 25-501 and Proposed NI 25-102 are proportionate to the benefits that would be realized by impacted market participants and the broader Canadian financial market.

For additional information, Annex D of the CSA Notice sets out the OSC's detailed description of the anticipated costs and benefits of Proposed NI 25-102, which would be substantially similar to the anticipated costs and benefits of Proposed OSC Rule 25-501.

Unpublished Materials

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

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

Expected Future Amendments for Commodity Benchmarks

We expect to propose revisions to Proposed NI 25-102 to incorporate requirements relating to commodity benchmarks later in 2019. We expect these changes to include a definition of "designated commodity benchmark" and to specify whether the existing requirements in Proposed NI 25-102 apply to "designated commodity benchmarks" (or their administrators, contributors and certain users) and whether any additional or different requirements are appropriate. As a result of the foregoing, we expect to propose conforming changes to Proposed OSC Rule 25-501 concurrently with such proposed revisions to Proposed NI 25-102.

These proposed amendments to Proposed OSC Rule 25-501 would be subject to a separate publication and comment process.

Impact on Investors of Proposed OSC Rule 25-501

The impact on investors (i.e., a subset of benchmark users) of Proposed OSC Rule 25-501 is included in the above "Anticipated Costs and Benefits of Proposed OSC Rule 25-501".

Alternatives Considered

No alternatives to Proposed OSC Rule 25-501 were considered.

Authority for Proposed OSC Rule 25-501 and the Proposed Consequential Amendments

The rule making authority for Proposed OSC Rule 25-501 is provided in paragraphs 34 to 39 of subsection 65(1) of the CFA.

The rule making authority for the Proposed Consequential Amendments is provided in paragraphs 29 to 32 of subsection 65(1) of the CFA and paragraph 39 of subsection 143(1) of the *Securities Act* (Ontario).

Request for Comments

We welcome your comments on the Proposed Materials.

How to Provide Comments

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

Deliver your comments **only** to the address below.

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

We cannot keep submissions confidential because applicable legislation requires publication of the written comments received during the comment period. All comments received will be posted on the website of the OSC at http:\\www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

This Notice includes the following annexes:

Annex A Proposed OSC Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators*

Annex B Proposed Companion Policy 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators*

Annex C Specific Questions of the OSC Relating to Proposed OSC Rule 25-501

Annex D Proposed Consequential Amendments to Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*

Questions

Please refer your questions to either of the following:

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 593-8079
mbennett@osc.gov.on.ca

Jeff Scanlon
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 597-7239
jscanlon@osc.gov.on.ca

ANNEX A

PROPOSED OSC RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

TABLE OF CONTENTS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1.(1) In this Rule

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

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

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

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

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

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

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

"DBA individual" means an individual who is

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

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

"designated benchmark" means a benchmark that is designated by a decision of the Commission pursuant to the CFA;

"designated benchmark administrator" means a benchmark administrator that is designated by a decision of the Commission;

"designated critical benchmark" means a benchmark that is designated as a "critical benchmark" by a decision of the Commission;

"designated interest rate benchmark" means a benchmark that is designated as an "interest rate benchmark" by a decision of the Commission;

"designated regulated-data benchmark" means a benchmark that is designated as a "regulated-data benchmark" by a decision of the Commission;

"expert judgment" means the discretion exercised by

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

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

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

"limited assurance report on compliance" means

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

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

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

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

"Ontario commodity futures law" has the same meaning ascribed to it in subsection 1(1) of the *Commodity Futures Act* (Ontario);

"reasonable assurance report on compliance" means

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

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

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

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

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

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

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

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

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

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

(2) Terms defined under Ontario commodity futures law, OSC Rule 14-501 *Definitions*, National Instrument 14-101 *Definitions*, and National Instrument 21-101 *Marketplace Operation*, and used in this Rule, have the respective meanings ascribed to those terms thereunder.

(3) For the purposes of this Rule

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

(i) it is not reasonably available to

(A) the designated benchmark administrator, or

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

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

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

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

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

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

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

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

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

(5) For the purposes of paragraph (4)(b), a person or company (first person) is considered to control another person or company (second person) if any of the following apply:

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

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

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

PART 2
DELIVERY REQUIREMENTS

Information on a designated benchmark administrator

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

(a) “accounting principles”;

(b) “auditing standards”;

(c) “U.S. GAAP”;

(d) “U.S. PCAOB GAAS”.

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

(3) A designated benchmark administrator must deliver to the Director

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

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

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

(A) the most recently completed financial year, and

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

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

(iii) notes to the annual financial statements.

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

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

(i) the most recently completed financial year, and

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

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

(c) notes to the annual financial statements.

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

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

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

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

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) Canadian GAAP applicable to private enterprises, if

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

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

(iii) IFRS;

(iv) U.S. GAAP,

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

(i) Canadian GAAS;

(ii) International Standards on Auditing;

(iii) U.S. PCAOB GAAS, and

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

(i) if subparagraph (b)(i) or (ii) applies, expresses an unmodified opinion;

(ii) if subparagraph (b)(iii) applies, expresses an unqualified opinion;

(iii) identifies the auditing standards used to conduct the audit.

(8) The information required under subsection (3) must be provided for the periods set out in, and in accordance with, Form 25-501F1 *Designated Benchmark Administrator Annual Form* and delivered

(a) initially, within 30 days after the designation unless previously provided, and

(b) subsequently, no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(9) If any of the information delivered by a designated benchmark administrator under paragraph (3)(a) becomes significantly inaccurate, the designated benchmark administrator must promptly deliver a completed amended Form 25-501F1 *Designated Benchmark Administrator Annual Form* with updated information.

Information on a designated benchmark

3.(1) A designated benchmark administrator must, for each designated benchmark that it administers, deliver to the Director

(a) information about the provision and distribution of the designated benchmark, including, but not limited to, its procedures, methodologies and distribution model, and

(b) any code of conduct for the relevant benchmark contributors.

(2) The information required under subsection (1) must be provided for the periods set out in, and in accordance with, Form 25-501F2 *Designated Benchmark Annual Form* and delivered

(a) initially, within 30 days of the designation unless previously provided, and

(b) subsequently, no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(3) If any of the information in a Form 25-501F2 *Designated Benchmark Annual Form* delivered by a designated benchmark administrator in respect of a designated benchmark it administers becomes significantly inaccurate, the designated benchmark administrator must promptly deliver a completed amended Form 25-501F2 *Designated Benchmark Annual Form* in respect of the designated benchmark with updated information.

Submission to jurisdiction and appointment of agent for service of process

4.(1) A designated benchmark administrator must, if the benchmark administrator is incorporated or organized under the laws of a foreign jurisdiction or does not have an office in Canada, submit to the non-exclusive jurisdiction of tribunals in the applicable jurisdictions of Canada and appoint an agent for service of process in Canada.

(2) The submission to jurisdiction and appointment required under subsection (1) must, unless previously provided, be provided in accordance with Form 25-501F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and delivered within 30 days after the designation.

(3) A designated benchmark administrator must deliver an amended Form 25-501F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* with updated information at least 30 days before the earlier of

(a) the termination date of the Form, and

(b) the effective date of any amendments to the Form.

(4) Subsection (3) applies until the date that is 6 years after the date on which the designated benchmark administrator ceased to be designated in the jurisdiction.

PART 3
GOVERNANCE

Board of directors

5.(1) A designated benchmark administrator must not distribute information relating to a designated benchmark unless the designated benchmark administrator has a board of directors.

(2) For the purposes of subsection (1), the board of directors of a designated benchmark administrator must not have fewer than 3 members.

(3) For the purposes of subsection (1), at least one-half of the members of the designated benchmark administrator's board of directors must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(4) For the purposes of subsection (3), a director of the board of directors of a designated benchmark administrator is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the board of directors or a board committee, the director accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the director is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the director has served on the board of directors for more than 5 years in total;

(d) the director has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors, be reasonably expected to interfere with the exercise of the director's independent judgment.

(5) For the purposes of paragraph (4)(d), in forming its opinion, the board of directors is not required to conclude that a member of a board of directors is not independent solely on the basis that the member is, or was, a benchmark user of a designated benchmark administered by the designated benchmark administrator.

Accountability framework requirements

6.(1) In this section, "accountability framework" means the polices and procedures referred to in subsection (2).

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) ensure and evidence compliance with this Rule, and

(b) ensure and evidence that the designated benchmark administrator follows the methodology for each designated benchmark it administers.

(3) The accountability framework must specify how the designated benchmark administrator complies with each of the following:

(a) the record-keeping requirements in this Rule;

(b) the requirements in this Rule relating to internal review or audit, or a public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(c) the complaint handling procedures in this Rule.

Compliance officer

7.(1) A designated benchmark administrator must designate an officer that monitors and assesses compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law in relation to benchmarks.

(2) A designated benchmark administrator must not prevent the officer referred to in subsection (1) from directly accessing the designated benchmark administrator's board of directors or a member of the board of directors.

(3) An officer referred to in subsection (1) must do all of the following:

(a) monitor and assess compliance by the designated benchmark administrator and its DBA individuals with the designated benchmark administrator's accountability framework referred to in section 6, control framework referred to in section 9, policies and procedures applicable to benchmarks, and Ontario commodity futures law in relation to benchmarks;

(b) at least once every 12 months, submit a report to the designated benchmark administrator's board of directors for the purpose of reporting on

(i) the officer's activities referenced in paragraph (a),

(ii) compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law in relation to benchmarks, and

(iii) compliance by the designated benchmark administrator with the methodology for each designated benchmark it administers;

(c) report to the designated benchmark administrator's board of directors as soon as reasonably possible if the officer becomes aware of any circumstances indicating that the designated benchmark administrator or its DBA individuals might not be in compliance with Ontario commodity futures law in relation to benchmarks and any of the following apply:

(i) the suspected non-compliance is reasonably expected to create a significant risk of financial loss to a benchmark user or to any other person or company;

(ii) the suspected non-compliance is reasonably expected to create a significant risk of harm to the integrity of the capital markets;

(iii) a reasonable person would conclude that the suspected non-compliance is part of a pattern of non-compliance.

(4) An officer referred to in subsection (1) must not participate in any of the following:

(a) the provision of a designated benchmark, including, but not limited to,

(i) the administration of the arrangements for determining the benchmark,

(ii) the collection, analysis or processing of input data for the purposes of determining the benchmark, or

(iii) determining the benchmark through the application of a formula or other method of calculation or by an assessment of input data;

(b) the establishment of compensation levels for any DBA individuals, other than for a DBA individual that reports directly to the officer.

(5) An officer referred to in subsection (1) must certify that a report submitted under paragraph (3)(b) is accurate and complete.

(6) The designated benchmark administrator must not provide a payment or other financial incentive to the officer referred to in subsection (1), or any DBA individual that reports directly to the officer, if that payment or incentive is linked to either of the following:

(a) the financial performance of the designated benchmark administrator or an affiliated entity of the designated benchmark administrator;

(b) the financial performance of a designated benchmark administered by the designated benchmark administrator.

(7) The designated benchmark administrator must not provide a financial incentive to an officer referred to in subsection (1) or any DBA individual that reports directly to the officer in a manner that a reasonable person would determine compromises the independence of the officer or the DBA individual.

(8) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure compliance with subsections (6) and (7).

(9) A designated benchmark administrator must deliver to the Director, promptly after it is submitted to the board of directors, a report referred to in paragraph (3)(b) or (c).

Oversight committee

8.(1) A designated benchmark administrator must establish and maintain an oversight committee to oversee the provision of a designated benchmark.

(2) The oversight committee must not include individuals that are members of the board of directors of the designated benchmark administrator.

(3) The oversight committee must assess the decisions of the board of directors of the designated benchmark administrator with regards to compliance with Ontario commodity futures law in relation to a designated benchmark and raise any concerns with those decisions with the board of directors of the designated benchmark administrator.

(4) The oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator.

(5) A designated benchmark administrator must establish, document, maintain and apply policies and procedures regarding the structure and mandate of the oversight committee.

(6) The board of directors of the designated benchmark administrator must appoint the members of the oversight committee.

(7) A designated benchmark administrator must not distribute information relating to a designated benchmark unless its board of directors has

(a) approved the policies and procedures referred to in subsection (5), and

(b) approved the procedures referred to in paragraph (8)(d).

(8) The oversight committee must, for each designated benchmark that the designated benchmark administrator administers, do all of the following:

(a) review the methodology of the designated benchmark at least once in every 12-month period;

(b) oversee any changes to the methodology of the designated benchmark, including requesting that the designated benchmark administrator consult with benchmark contributors or benchmark users on any significant changes to the methodology of the designated benchmark;

(c) oversee the management and operation of the designated benchmark, including the designated benchmark administrator's control framework referred to in section 9;

(d) review and approve procedures for any cessation of the designated benchmark, including procedures governing a consultation about a cessation of the designated benchmark;

(e) oversee any service provider involved in the provision or distribution of the designated benchmark, including calculation agents or dissemination agents;

(f) assess any report resulting from an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(g) monitor the implementation of any remedial actions relating to an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(h) keep minutes of each meeting;

(i) if the designated benchmark is based on input data from a benchmark contributor,

(i) oversee the designated benchmark administrator's establishment, implementation, maintenance and application of the code of conduct referred to in section 24,

(ii) monitor each of the following:

(A) the input data;

(B) the contribution of input data by a benchmark contributor;

(C) the actions of the designated benchmark administrator in challenging or validating contributions of input data,

(iii) take reasonable measures regarding any significant breach of the code of conduct referred to in section 24 to mitigate the impact of the breach and prevent additional breaches in the future, and

(iv) promptly notify the board of directors of the designated benchmark administrator of any breach of the code of conduct referred to in section 24.

(9) If the oversight committee becomes aware that the board of directors of the designated benchmark administrator has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting.

(10) If the oversight committee becomes aware of any of the following, the oversight committee must promptly report it to the Director:

(a) any significant misconduct by the designated benchmark administrator in relation to the provision of a designated benchmark;

(b) any significant misconduct by a benchmark contributor in respect of a designated benchmark that is based on input data from the benchmark contributor;

(c) any input data that

(i) a reasonable person would conclude is anomalous or suspicious, and

(ii) is used in determining the benchmark or is contributed by a benchmark contributor.

(11) The oversight committee, and each of its members, must operate with integrity in carrying out its, and their, actions and duties in this Rule.

(12) A member of the oversight committee must disclose in writing to the oversight committee the nature and extent of any conflict of interest involving the designated benchmark or the designated benchmark administrator.

Control framework

9.(1) In this section, "control framework" means the policies, procedures and controls referred to in subsections (2) and (4).

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated benchmark is provided in accordance with this Rule.

(3) Without limiting the generality of subsection (2), the designated benchmark administrator must ensure that its control framework includes controls relating to all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingency procedures in the event of a disruption to the provision of the designated benchmark or the process applied to provide the designated benchmark.

(4) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls reasonably designed to

(a) ensure that benchmark contributors comply with the code of conduct referred to in section 24 and the standards for input data in the methodology of the designated benchmark,

(b) monitor input data before any publication relating to the designated benchmark, and

(c) validate input data after publication to identify errors and anomalies.

(5) A designated benchmark administrator must promptly provide written notice to the Director describing any significant security incident or any significant systems issue relating to any designated benchmark it administers.

(6) A designated benchmark administrator must review and update its control framework on a reasonably frequent basis and at least once in every 12-month period.

(7) A designated benchmark administrator must make its control framework available, on request and free of charge, to any benchmark user.

Governance requirements

10.(1) A designated benchmark administrator must establish and document a clear organizational structure.

(2) The organizational structure referred to in subsection (1) must establish well-defined and transparent roles and responsibilities for each person or company involved in the provision of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that each of its benchmark individuals

(a) has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to them, and

(b) is subject to adequate management and supervision.

(4) A designated benchmark administrator must ensure that any information published by the benchmark administrator relating to a designated benchmark is internally approved by management of the designated benchmark administrator.

Conflict of interest requirements

11.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and avoid conflicts of interest, or mitigate risks resulting from conflicts of interest, involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that any expert judgment used by the benchmark administrator or DBA individuals in the benchmark determination process is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated benchmark, and

(d) ensure that each of its benchmark individuals is not subject to undue influence or conflicts of interest, including ensuring that each of the benchmark individuals

(i) is not subject to compensation or performance evaluations from which conflicts of interest arise or that otherwise impinge on the integrity of the benchmark determination process,

(ii) does not have any financial interests, relationships or business connections that compromise the activities of the designated benchmark administrator,

(iii) does not contribute to a determination of a designated benchmark by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except in accordance with explicit requirements of the methodology of the designated benchmark, and

(iv) is subject to procedures to control the exchange of information that may affect a designated benchmark with either of the following:

(A) other DBA individuals involved in activities that may create a risk of conflicts of interest,

(B) benchmark contributors or other third parties.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark and its benchmark individuals from any other part of the business of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a risk of a conflict of interest between the business of the designated benchmark and the other part of the business.

(3) A designated benchmark administrator must promptly publish a description of a significant conflict of interest, or a risk of a significant conflict of interest, in respect of a designated benchmark on becoming aware of the conflict or risk, including, but not limited to, a conflict or risk arising from the ownership or control of the designated benchmark administrator.

(4) The designated benchmark administrator must ensure that the policies and procedures referred to in subsection (1)

(a) take into account the nature of the designated benchmark and the risks that the designated benchmark poses to markets and benchmark users,

(b) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure and transparency obligations under this Rule, and

(c) identify and avoid conflicts of interest, or mitigate risks resulting from conflicts of interest, including, but not limited to, those that arise as a result of

(i) expert judgment or other discretion exercised in the benchmark determination process,

(ii) the ownership or control of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, and

(iii) any other person or company exercising control or direction over the designated benchmark administrator in relation to determining the designated benchmark.

(5) In the event of a significant failure to apply or follow policies and procedures to which paragraph (4)(b) applies, a designated benchmark administrator must promptly provide written notice of the significant failure to the Director.

Reporting of infringements

12.(1) A designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed for the purposes of detecting and reporting to the Director any conduct by a DBA individual or a benchmark contributor that might involve manipulation or attempted manipulation of a designated benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures for its DBA individuals to report any contravention of this Rule to the officer referred to in section 7.

(3) A designated benchmark administrator must promptly provide written notice to the Director describing any conduct that it, or any of its DBA individuals, becomes aware of that might involve manipulation or attempted manipulation of a designated benchmark.

Complaint procedures

13.(1) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures reasonably designed for receiving, handling, investigating and resolving complaints relating to the designated benchmark, including, without limitation, complaints in respect of each of the following:

(a) whether a determination of a designated benchmark accurately represents that part of the market or economy the benchmark is intended to record;

(b) whether a determination of a designated benchmark was made in accordance with the methodology of the designated benchmark;

(c) the methodology of a designated benchmark or any proposed change to the methodology.

(2) A designated benchmark administrator must do all of the following:

(a) provide a written copy of the complaint procedures at no cost to a complainant on request;

(b) investigate a complaint in a timely and fair manner;

(c) communicate the outcome of the investigation of a complaint to the complainant within a reasonable period of time;

(d) conduct the investigation of a complaint independently of persons who may have been involved in the subject-matter of the complaint.

Outsourcing

14.(1) A designated benchmark administrator must not outsource a function, service or activity relating to the administration of a designated benchmark in such a way as to significantly impair either of the following:

(a) the designated benchmark administrator's control over the provision of the designated benchmark;

(b) the ability of the designated benchmark administrator to comply with Ontario commodity futures law in relation to benchmarks.

(2) A designated benchmark administrator that outsources to a service provider a function, service or activity in the provision of a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure

(a) the service provider has the ability, capacity, and any authorization required by law, to perform the outsourced function, service or activity reliably and effectively,

(b) the designated benchmark administrator maintains records documenting the identity and the tasks of each service provider that participates in the provision of a designated benchmark and makes those records available to the Director promptly on request,

(c) the designated benchmark administrator and the service provider to which a function, service or activity is outsourced enter into a written contract that

(i) imposes service level requirements on the service provider,

(ii) allows the designated benchmark administrator to terminate the agreement when reasonably appropriate,

(iii) requires the service provider to disclose to the designated benchmark administrator any development that may have a significant impact on its ability to carry out the outsourced function, service or activity in compliance with applicable law,

(iv) requires the service provider to cooperate with the Director regarding the outsourced function, service or activity,

(v) includes a provision allowing the designated benchmark administrator to access

(i) the books, records and data related to the outsourced function, service or activity, and

(ii) the business premises of the service provider,

(vi) includes a provision requiring the service provider to provide the Director with the same access to the books, records and data related to the outsourced function, service or activity that the Director would have if the function, service or activity were not outsourced, and

(vii) includes a provision requiring the service provider to provide the Director with the same rights to access the business premises of the service provider that the Director would have if the function, service or activity was not outsourced,

(d) the designated benchmark administrator takes reasonable measures if the administrator becomes aware of any circumstances indicating that the service provider might not be carrying out the outsourced function, service or activity in compliance with this Rule or with the contract referenced in paragraph (c),

(e) the designated benchmark administrator conducts reasonable supervision of the outsourced function, service or activity and manages the risks associated with the outsourcing,

(f) the designated benchmark administrator retains the expertise that a reasonable person would consider to be necessary to conduct reasonable supervision of the outsourced function, service or activity and to manage the risks associated with the outsourcing, and

(g) the designated benchmark administrator takes steps, including developing contingency plans, that a reasonable person would consider to be necessary to avoid or mitigate operational risk related to the participation of the service provider in the provision of the designated benchmark.

PART 4
INPUT DATA AND METHODOLOGY

Input data

15.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that each of the following are satisfied in respect of input data used in the provision of a designated benchmark:

(a) the input data, in aggregate, is sufficient to provide a designated benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record;

(b) the input data will continue to be available on a reliable basis;

(c) if appropriate transaction data is available to satisfy paragraphs (a) and (b), the input data is transaction data;

(d) if appropriate transaction data is not available to satisfy paragraphs (a) and (b), the designated benchmark administrator uses, in accordance with the methodology of the designated benchmark, relevant and appropriate estimated prices, quotes, or other values as input data;

(e) the input data is capable of being verified as being accurate and complete.

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that input data for a designated benchmark is accurate and complete and that include all of the following:

(a) criteria that determine who may contribute input data to the designated benchmark administrator;

(b) a process for determining benchmark contributors;

(c) a process for assessing a benchmark contributor’s compliance with the code of conduct referred to in section 24;

(d) a process for applying measures that a reasonable person would consider to be appropriate in the event of non-compliance by a benchmark contributor with the code of conduct referred to in section 24;

(e) if appropriate, a process for stopping a benchmark contributor from contributing further input data;

(f) a process for verifying input data to ensure its accuracy and completeness.

(3) If a reasonable person would consider that the input data results in a designated benchmark that does not accurately represent that part of the market or economy the designated benchmark is intended to record, the designated benchmark administrator must do either of the following:

(a) within a reasonable time, change the input data, the benchmark contributors or the methodology of the designated benchmark in order to ensure that the designated benchmark accurately represents that part of the market or economy the designated benchmark is intended to record;

(b) cease to provide the designated benchmark.

(4) A designated benchmark administrator must promptly provide written notice to the Director if the designated benchmark administrator is required to take an action set out in paragraph (3)(a) or (b).

(5) A designated benchmark administrator must publicly disclose each of the following:

(a) the policies and procedures referred to in subsection (1) regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgment in the determination of a designated benchmark;

(b) the methodology of the designated benchmark.

Contribution of input data

16.(1) For the purpose of paragraph 15(1)(a) in respect of a designated benchmark that is based on input data from benchmark contributors, the designated benchmark administrator must obtain, if a reasonable person would consider it to be appropriate, input data from a representative sample of benchmark contributors.

(2) A designated benchmark administrator must not use input data from a benchmark contributor if the designated benchmark administrator has any indication that the benchmark contributor does not adhere to the code of conduct referred to in section 24, and in such a case, if a reasonable person would consider it to be appropriate, must obtain alternative representative data in accordance with the guidelines referred to in paragraph 17(3)(a).

(3) If input data is contributed from any front office of a benchmark contributor or an affiliate that performs any activities that relate to or might impact the input data, the designated benchmark administrator must

(a) obtain information from other sources that confirms the accuracy and completeness of the input data in accordance with its policies and procedures, and

(b) ensure that the benchmark contributor has in place adequate internal oversight and verification procedures.

(4) For the purpose of subsection (3), “front office” means any department, division, group or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities.

Methodology

17.(1) A designated benchmark administrator must not use a methodology for determining a designated benchmark unless all of the following apply:

(a) the methodology is sufficient to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to record;

(b) the methodology clearly identifies how and when expert judgment may be exercised in the determination of the designated benchmark;

(c) the accuracy and reliability of the methodology is capable of being verified including, if appropriate, by back-testing;

(d) the methodology is reasonably designed to ensure that a determination under the methodology can be made in all reasonable circumstances, without compromising the accuracy and reliability of the methodology;

(e) a determination under the methodology can be verified as being accurate and complete.

(2) A designated benchmark administrator must not implement a methodology for a designated benchmark unless the designated benchmark administrator

(a) takes into account, in the preparation of the methodology, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to record,

(b) if applicable, determines what constitutes an active market for the purposes of the designated benchmark, and

(c) establishes the priority given to different types of input data.

(3) A designated benchmark administrator must establish, document, maintain, apply and publish guidelines that

(a) identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to record, and

(b) indicate whether and how the designated benchmark is to be calculated in those circumstances.

Proposed significant changes to methodology

18.(1) A designated benchmark administrator must establish, document, maintain and apply procedures that provide for all of the following:

(a) public notice of a proposed significant change to the methodology of the designated benchmark;

(b) the provision of comments by benchmark users and other members of the public on the proposed significant change and its effect on the designated benchmark;

(c) the publication of any comments received unless the commenter has requested that their comments be held in confidence, and the designated benchmark administrator's response to the comments that are published;

(d) public notice of an implemented significant change to the methodology of the designated benchmark.

(2) For the purposes of subsection (1),

(a) the procedures in relation to the public notice under paragraph (1)(a) must provide that notice of the proposed change be published on or before a date that provides benchmark users and other members of the public with reasonable time to consider and comment on the proposed change,

(b) the procedures in relation to the publication of comments under paragraph (1)(c) may permit a part of a written comment to be excluded from publication if both of the following apply:

(i) the designated benchmark administrator considers that disclosure of that part of the comment would be seriously prejudicial to the interests of the designated benchmark administrator or would contravene privacy laws;

(ii) the designated benchmark administrator includes, with the publication, a description of the nature of the comment, and

(c) the procedures in relation to the public notice under paragraph (1)(d) must provide that notice of the implemented change be published on or before an effective date that provides benchmark users and other members of the public with reasonable time to consider the implemented change.

PART 5
DISCLOSURE

Disclosure of methodology

19.(1) A designated benchmark administrator must publish all of the following in respect of the methodology of a designated benchmark:

(a) the information that

(i) a reasonable benchmark contributor may need in order to carry out its responsibilities as a benchmark contributor, and

(ii) a reasonable benchmark user may need in order to evaluate whether the designated benchmark accurately and reliably represents that part of the market or economy the designated benchmark is intended to record;

(b) a complete explanation of all of the elements of the methodology, including, but not limited to, the following:

(i) a description of the designated benchmark and of the part of the market or economy the designated benchmark is intended to record;

(ii) the currency or other unit of measurement of the designated benchmark;

(iii) the criteria used by the designated benchmark administrator for selecting the sources of input data used to determine the designated benchmark;

(iv) the types of input data used to determine the designated benchmark and the priority given to each type;

(v) the benchmark contributors and the criteria used to determine eligibility of a benchmark contributor;

(vi) a description of the constituents of the designated benchmark and the criteria used for selecting and giving weight to them;

(vii) any minimum liquidity requirements for the constituents of the designated benchmark;

(viii) any minimum requirements for the quantity of input data, and any minimum standards for the quality of input data, used to determine the designated benchmark;

(ix) provisions identifying how and when expert judgment may be exercised in the determination of the designated benchmark;

(x) whether the designated benchmark takes into account any reinvestment of dividends paid on securities that are included in the designated benchmark;

(xi) if the methodology may be changed periodically to ensure the designated benchmark continues to accurately represent that part of the market or economy the designated benchmark is intended to record, all of the following:

(A) any criteria to be used to determine when such a change is necessary;

(B) any criteria to be used to determine the frequency of such a change;

(C) any criteria to be used to rebalance the constituents of the designated benchmark as part of making such a change;

(xii) the potential limitations of the methodology and details of any methodology to be used in exceptional circumstances, including in the case of an illiquid market or in periods of stress or where transaction data sources may be insufficient, inaccurate or unreliable;

(xiii) a description of the roles of any third parties involved in data collection for, or in calculation or dissemination of, the designated benchmark;

(xiv) the model or method used for the extrapolation and any interpolation of input data;

(c) the process for the internal review and the approval of the methodology and the frequency of such reviews;

(d) the procedures referred to in section 18;

(e) examples of the types of changes that may constitute a significant change to the methodology.

(2) A designated benchmark administrator must provide written notice to the Director of a proposed significant change to the methodology of a designated benchmark at least 45 days before its implementation.

Benchmark statement

20.(1) No later than 15 days following the designation of a designated benchmark, the designated benchmark administrator of the designated benchmark must publish a benchmark statement.

(2) For the purpose of subsection (1), a "benchmark statement" means a statement that includes all of the following:

(a) a description of the part of the market or economy the designated benchmark is intended to record, including all of the following information:

(i) the geographical area, if any, of the part of the market or economy the designated benchmark is intended to record;

(ii) any other information that a reasonable person would believe to be relevant or useful to help existing or potential benchmark users to understand the relevant features of the part of the market or economy the designated benchmark is intended to record, including both of the following to the extent that reliable information is available:

(A) information on existing or potential participants in the part of the market or economy the designated benchmark is intended to record;

(B) an indication of the dollar value of the part of the market or economy the designated benchmark is intended to record;

(b) an explanation of the circumstances in which the designated benchmark might, in the opinion of a reasonable person, no longer represent the part of the market or economy the designated benchmark is intended to record;

(c) technical specifications that set out

(i) the elements of the calculation of the designated benchmark in relation to which expert judgment may be exercised by the designated benchmark administrator or any benchmark contributor,

(ii) the criteria applicable to the exercise of expert judgment by the designated benchmark administrator or any benchmark contributor, and

(iii) the job title of the individuals that are authorized to exercise expert judgment on behalf of the designated benchmark administrator or any benchmark contributor;

(d) how the expert judgment referred to in paragraph (c) could be evaluated;

(e) notice that factors, including external factors beyond the control of the designated benchmark administrator, could necessitate changes to, or the cessation of, the designated benchmark;

(f) notice that changes to, or the cessation of, the designated benchmark could have an impact on contracts and instruments that reference the designated benchmark or on the measurement of the performance of an investment fund that references the designated benchmark;

(g) explanations for all key terms used in the statement relating to the designated benchmark and its methodology;

(h) the rationale for adopting the methodology of the designated benchmark and procedures for the review and approval of the methodology;

(i) a summary of the methodology of the designated benchmark, including, but not limited to, all of the following:

(i) a description of the input data;

(ii) the priority given to different types of input data;

(iii) the minimum data needed to determine the designated benchmark;

(iv) the use of any models or methods of extrapolation of input data;

(v) any procedure for rebalancing the constituents of the designated benchmark;

(vi) the controls and rules that govern any exercise of expert judgment by the designated benchmark administrator or any benchmark contributor;

(j) the procedures which govern the provision of the designated benchmark in periods of stress or periods where transaction data sources may be insufficient, inaccurate or unreliable and the potential limitations of the designated benchmark in those periods;

(k) the procedures for dealing with errors in input data or in the determination of the designated benchmark, including when a re-determination of the designated benchmark is required;

(l) potential limitations of the designated benchmark, including its operation in illiquid or fragmented markets and the possible concentration of input data.

(3) The designated benchmark administrator must review the benchmark statement at least every 2 years.

(4) If there are significant changes to the information in the benchmark statement, the designated benchmark administrator must promptly update the benchmark statement to reflect any changes to the information required by this section.

(5) Where the benchmark statement is updated under subsection (4), the designated benchmark administrator must promptly publish an updated version of the benchmark statement.

Changes to and cessation of a benchmark

21.(1) A designated benchmark administrator must publish, simultaneously with the benchmark statement referred to in subsection 20(1), the procedures to be followed by the designated benchmark administrator in the event of a significant change to or the cessation of a designated benchmark it administers.

(2) If the designated benchmark administrator makes a significant change to the procedures referred to in subsection (1), the designated benchmark administrator must promptly publish the updated procedures.

Registrants, registered entities and recognized entities

22.(1) If a person or company uses a designated benchmark, and if the cessation of the benchmark could have a significant impact on the person or company or a security issued by the person or company or a derivative to which the person or company is a party, the person or company must establish and maintain a written plan setting out the actions that the person or company would take in the event that the designated benchmark significantly changes or ceases to be provided and the person or company is one or more of the following:

(a) a registrant;

(b) a recognized commodity futures exchange;

(c) a registered commodity futures exchange;

(d) a recognized clearing house.

(2) If a reasonable person would consider it to be appropriate, a person or company referred to in subsection (1) must

(a) identify, in the plan referred to in subsection (1), one or more benchmarks suitable to substitute for the designated benchmark, and

(b) indicate why the substitution would be suitable.

(3) If a reasonable person would consider it to be appropriate, a person or company referred to in subsection (1) must reflect the plan referred in that subsection in any security issued by the person or company, or any derivative to which the person or company is a party, that references the designated benchmark.

Publishing and disclosing

23. If a designated benchmark administrator is required by this Rule to publish a document or information, or disclose a document or information to a benchmark user or benchmark contributor, the designated benchmark administrator must publicly and prominently disclose the document or information, free of charge, on the designated benchmark administrator's website.

PART 6
BENCHMARK CONTRIBUTORS

Code of conduct for benchmark contributors

24.(1) If a designated benchmark is determined using input data from benchmark contributors, the designated benchmark administrator of the designated benchmark must establish, document, maintain and apply a code of conduct that specifies the responsibilities of benchmark contributors with respect to the contribution of input data for the designated benchmark.

(2) A designated benchmark administrator must include in the code of conduct referred to in subsection (1) all of the following:

(a) a clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with sections 12, 15 and 16;

(b) the method by which benchmark contributors confirm and amend the identity of each contributing individual that could contribute input data to the designated benchmark administrator;

(c) procedures to verify the identity of a benchmark contributor and any contributing individual;

(d) procedures to authorize an individual to be a contributing individual;

(e) procedures to ensure that a benchmark contributor contributes all relevant input data;

(f) systems and controls that a benchmark contributor must establish, document, maintain and apply, including all of the following:

(i) procedures for contributing input data to the designated benchmark administrator;

(ii) requirements for the benchmark contributor to

(A) specify whether input data is transaction data, and

(B) confirm whether input data conforms to the designated benchmark administrator's requirements;

(iii) procedures on the use of expert judgment in contributing input data;

(iv) any requirement for the validation of input data before it is contributed to the designated benchmark administrator;

(v) requirements to maintain records relating to its activities as a benchmark contributor;

(vi) requirements that the benchmark contributor report to the designated benchmark administrator any instance where a reasonable person would believe that a contributing individual, acting on a behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate or incomplete;

(vii) requirements concerning the identification and avoidance of conflicts of interest or mitigation of risks resulting from conflicts of interest;

(viii) the designation of an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, this Rule and Ontario commodity futures law relevant to benchmarks;

(ix) a requirement that the officer referred to in paragraph (viii) be provided with direct access to the benchmark contributor's board of directors at such times as the officer may consider necessary or advisable in view of the officer's responsibilities;

(g) a requirement that, if required by the oversight committee referred to in section 8 as a result of a concern with the conduct of a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and the benchmark contributor's compliance with all of the following:

(i) sections 25 and 40;

(ii) the methodology of the designated interest rate benchmark;

(h) a requirement that the benchmark contributor must deliver a copy of the report referred to in paragraph (2)(g) to the oversight committee referred to in section 8.

(3) The designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure, at least once in every 12-month period and promptly after any change to the code of conduct referred to in subsection (1), that a benchmark contributor is adhering to the code of conduct.

Governance and control requirements for benchmark contributors

25.(1) A benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure all of the following:

(a) the contribution of input data by the benchmark contributor is not significantly affected by any conflict of interest involving the benchmark contributor and its employees, officers, directors and agents, if a reasonable person would consider that the contribution of the input data might be inaccurate or incomplete;

(b) if any expert judgment contemplated by this Rule is exercised by the benchmark contributor in contributing input data, the benchmark contributor exercises the expert judgment independently and in good faith and in accordance with the code of conduct referred to in section 24.

(2) A benchmark contributor to a designated benchmark must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the accuracy and completeness of each contribution of input data to the designated benchmark administrator, including policies, procedures and controls governing all of the following:

(a) the manner in which the input data is contributed in compliance with this Rule and the code of conduct referred to in section 24;

(b) who may submit input data to the designated benchmark administrator including, where applicable, a process for sign-off by an individual holding a position senior to that of a contributing individual;

(c) training for contributing individuals with respect to this Rule;

(d) the identification and avoidance of conflicts of interest or mitigation of risks resulting from conflicts of interest, including, but not limited to, when appropriate

(i) organizational separation of contributing individuals from employees whose responsibilities include transacting the underlying interest of the benchmark, and

(ii) removal or avoidance of incentives to manipulate a designated benchmark that may arise from remuneration policies.

(3) Before contributing input data for a designated benchmark, a benchmark contributor to a designated benchmark must

(a) establish, document, maintain and apply policies and procedures reasonably designed to guide any use of expert judgment, and

(b) if expert judgment is exercised in relation to input data, retain records that record the rationale for any decision made to use that expert judgment and the manner of the exercise of the expert judgment.

(4) A benchmark contributor to a designated benchmark must keep, for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later, records relating to each of the following:

(a) communications in relation to the contribution of input data;

(b) all information used by the benchmark contributor to make each contribution, including details of any contributions made and the names of the contributing individuals;

(c) all documentation relating to the identification and avoidance of conflicts of interest or mitigation of risks resulting from conflicts of interest;

(d) a description of the potential for financial loss or gain of the benchmark contributor and each contributing individual to financial instruments that reference the designated benchmark for which it acts as a benchmark contributor;

(e) any internal or external review of the benchmark contributor, including, for greater certainty, each limited assurance report on compliance or reasonable assurance report on compliance under this Rule.

(5) A benchmark contributor to a designated benchmark must

(a) cooperate with the designated benchmark administrator in the review and supervision of the provision of the designated benchmark, including, but not limited to, cooperation in connection with any limited assurance report on compliance or reasonable assurance report on compliance under this Rule, and

(b) make available the information and records kept in accordance with subsection (4) to

(i) the designated benchmark administrator, or

(ii) any public accountant in connection with any limited assurance report on compliance or reasonable assurance report on compliance under this Rule.

Compliance officer for benchmark contributors

26.(1) A benchmark contributor to a designated benchmark must designate an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, this Rule and Ontario commodity futures law relevant to benchmarks.

(2) A benchmark contributor must permit the officer referred to in subsection (1) to directly access the benchmark contributor's board of directors at such times as the officer may consider necessary or advisable in view of the officer's responsibilities.

PART 7
RECORDKEEPING

Books and records

27.(1) A designated benchmark administrator must keep such books and records and other documents as are necessary to account for the conduct of its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated benchmarks.

(2) A designated benchmark administrator must keep records of all of the following:

(a) all input data, including how the data was used;

(b) if input data is rejected despite conforming to the requirements of the methodology of the designated benchmark, the rationale for rejecting the input data;

(c) the methodology of a designated benchmark;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of a designated benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls and methodologies;

(f) the identities of the contributing individuals and of the benchmark individuals;

(g) all documents relating to a complaint;

(h) communications, including telephone conversations, between any benchmark individual and benchmark contributors or contributing individuals in respect of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must keep the records described in subsection (2) in such a form that it is possible to

(a) replicate the determination of a designated benchmark, and

(b) enable an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance under this Rule.

(4) A designated benchmark administrator must retain the books, records and documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and documents to be provided on request promptly to the Director.

PART 8
DESIGNATED CRITICAL BENCHMARKS, DESIGNATED INTEREST RATE BENCHMARKS AND DESIGNATED REGULATED-DATA BENCHMARKS

DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Administration of a designated critical benchmark

28.(1) If a designated benchmark administrator decides to cease providing the designated critical benchmark, the designated benchmark administrator must

(a) promptly notify the Director, and

(b) not more than 4 weeks after notifying the Director, submit a plan to the Director of how the designated critical benchmark can be transitioned to a new designated benchmark administrator or cease to be provided.

(2) Following the submission of the plan referred to paragraph (1)(b), the designated benchmark administrator must continue to provide the designated critical benchmark until one or more of the following has occurred:

(a) the provision of the designated critical benchmark has been transitioned to a new designated benchmark administrator;

(b) the designated benchmark administrator receives notice from the Director authorizing the cessation;

(c) the designation of the designated benchmark has been revoked or varied to reflect that the designated benchmark is no longer a designated critical benchmark;

(d) unless paragraph (e) applies, 12 months have elapsed from the submission of the plan referred to paragraph (1)(b);

(e) a period longer than 12 months has elapsed from the submission of the plan referred to in paragraph (1)(b), if that period is provided by the Director in written notice delivered to the designated benchmark administrator before the elapsing of the 12 months.

Access

29. A designated benchmark administrator of a designated critical benchmark must take reasonable steps to ensure that benchmark users or potential benchmarks users have access to a designated critical benchmark on a fair, reasonable, transparent and non-discriminatory basis.

Assessment

30. A designated benchmark administrator of a designated critical benchmark must, at least once in each 24-month period, submit to the Director an assessment of the capability of the designated critical benchmark to accurately represent that part of the market or economy the designated critical benchmark is intended to record.

Benchmark contributor to a designated critical benchmark

31.(1) If a benchmark contributor to a designated critical benchmark decides to cease contributing input data, it must promptly notify in writing the designated benchmark administrator.

(2) If a designated benchmark administrator receives a notice referred to in subsection (1), the designated benchmark administrator must

(a) promptly notify the Director of the decision referred to in subsection (1), and

(b) no later than 14 days after receipt of the notice, submit to the Director an assessment of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately represent that part of the market or economy the designated benchmark is intended to record.

Oversight committee

32.(1) For a designated critical benchmark, at least one-half of the members of the oversight committee referred to in section 8 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has served on the oversight committee for more than 5 years in total;

(d) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be reasonably expected to interfere with the exercise of the member's independent judgment.

(3) For the purposes of paragraph (2)(d), in forming its opinion, the board of directors is not required to conclude that a member of the oversight committee is not independent solely because the member is, or was, a benchmark user of a designated benchmark administered by the designated benchmark administrator.

(4) The oversight committee must

(a) publish details of its membership, any declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold no less than one meeting every 4 months.

Assurance report on designated benchmark administrator

33.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 8, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with all of the following in respect of each designated critical benchmark it administers:

(a) sections 6, 9 to 17 and 27;

(b) the methodology of the designated critical benchmark.

(2) The engagement referred to in subsection (1) must be carried out once in every 12-month period.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish a copy of the report and deliver a copy of the report to the Director.

Assurance report on benchmark contributor

34.(1) If required by the oversight committee referred to in section 8 as a result of a concern with the conduct of a benchmark contributor to a designated critical benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and its compliance with all of the following:

(a) section 25;

(b) the methodology of the designated critical benchmark.

(2) A benchmark contributor must, within 10 days of the receipt of a report provided for in subsection (1), deliver a copy of the report to

(a) the oversight committee,

(b) the board of directors of the designated benchmark administrator, and

(c) the Director.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Accurate and sufficient data

35.(1) For the purposes of subsection 15(1) and paragraph 15(5)(a), input data for the determination of a designated interest rate benchmark must be used by the designated benchmark administrator in the following order of priority:

(a) a benchmark contributor's transactions in the underlying market that a designated interest rate benchmark intends to measure or, if not sufficient, its transactions in related markets, including, but not limited to

(i) the unsecured inter-bank deposit market,

(ii) other unsecured deposit markets,

(iii) markets for commercial paper, and

(iv) other markets generally, including markets for overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options, provided that those transactions comply with the input data requirements in the code of conduct referred to in section 24;

(b) if the input data referred to in paragraph (a) is not available, a benchmark contributor's observations of third-party transactions in the markets described in paragraph (1)(a);

(c) if the input data referred to in paragraphs (a) and (b) is not available, committed quotes;

(d) in any other case, indicative quotes or expert judgments.

(2) For the purposes of subsections 15(1) and (3), input data for a designated interest rate benchmark may be adjusted by the designated benchmark administrator to more accurately represent that part of the market or economy that the designated interest rate benchmark is intended to record, including, but not limited to, where:

(a) the transactions that are the basis for the input data are not sufficiently proximate to the time of contribution of the input data;

(b) a market event occurs between the time of the transactions and the time of contribution of the input data and the market event might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark;

(c) there have been changes in the credit risk of the benchmark contributors and other market participants that might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark.

Oversight committee

36.(1) For a designated interest rate benchmark, at least one-half of the members of the oversight committee referred to in section 8 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has served on the oversight committee for more than 5 years in total;

(d) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be reasonably expected to interfere with the exercise of the member's independent judgment.

(3) For the purposes of paragraph (2)(d), in forming its opinion, the board of directors is not required to conclude that a member of the oversight committee is not independent solely because the member is, or was, a benchmark user of a designated benchmark administered by the designated benchmark administrator.

(4) The oversight committee must

(a) publish details of its membership, any declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold no less than one meeting every 4 months.

Assurance report on designated benchmark administrator

37.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 8, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with all of the following in respect of each designated interest rate benchmark it administers:

(a) sections 6, 9 to 17, 27 and 35;

(b) the methodology of the designated interest rate benchmark.

(2) The engagement referred to in subsection (1) must be carried out for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 24 and subsequently every 2 years.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish a copy of the report and deliver a copy of the report to the Director.

Assurance report on benchmark contributor required by oversight committee

38(1) If required by the oversight committee referred to in section 8 as a result of a concern with the conduct of a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and its compliance with all of the following:

(a) sections 25 and 40;

(b) the methodology of the designated interest rate benchmark.

(2) The benchmark contributor must, within 10 days of the receipt of a report provided for in subsection (1), deliver a copy of the report to

(a) the oversight committee,

(b) the board of directors of the designated benchmark administrator, and

(c) the Director.

Assurance report on benchmark contributor required at certain times

39(1) A benchmark contributor to a designated interest rate benchmark must engage a public accountant to provide, as specified by the oversight committee, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct and input data of the benchmark contributor and its compliance with all of the following:

(a) sections 25 and 40;

(b) the methodology of the designated interest rate benchmark;

(c) the code of conduct referred to in section 24.

(2) The engagement referred to in subsection (1) must be carried out for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 24 and subsequently every 2 years.

(3) The benchmark contributor must, within 10 days of the receipt of a report provided for in subsection (1), deliver a copy of the report to

(a) the oversight committee,

(b) the board of directors of the designated benchmark administrator, and

(c) the Director.

Benchmark contributor policies and procedures

40.(1) The requirements in subsections (2) to (7) apply to a benchmark contributor only in respect of a designated interest rate benchmark.

(2) Each contributing individual of the benchmark contributor and the direct managers of that contributing individual must provide a written statement to the benchmark contributor and the designated benchmark administrator that they will comply with the code of conduct referred to in section 24.

(3) The benchmark contributor must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure all of the following:

(a) there is an outline of responsibilities within the benchmark contributor's organization, including internal reporting lines and accountabilities;

(b) the maintenance of a current list of the names and locations of contributing individuals and managers and their alternates;

(c) there are internal procedures for sign-off of contributions of input data;

(d) there are disciplinary procedures in respect of an actual or attempted manipulation, or a failure to report an actual or attempted manipulation, by any party, including, but not limited to, any party external to the contribution process;

(e) there are conflicts of interest management procedures and communication controls, both within the benchmark contributor's organization and between benchmark contributors and other third parties, to avoid any inappropriate external influence over those responsible for contributing rates;

(f) there is a requirement that contributing individuals employed by the benchmark contributor work in locations physically separated from interest rate derivatives traders;

(g) the prevention or control of the exchange of information between persons or companies engaged in activities involving a risk of conflict of interest where the exchange of that information may affect the input data contributed;

(h) there are requirements to avoid collusion

(i) among benchmark contributors, and

(ii) between benchmark contributors and the designated benchmark administrator;

(i) there are measures to prevent, or limit, any person from exercising inappropriate influence over the way persons or companies contribute input data;

(j) the removal of any direct link between the remuneration of employees involved in the contribution of input data and the remuneration of, or revenues generated by, persons or companies engaged in another activity, where a conflict of interest may arise in relation to those activities;

(k) there are controls to identify any reverse transaction subsequent to the contribution of input data.

(4) The benchmark contributor must keep detailed records of all of the following:

(a) all relevant aspects of contributions of input data;

(b) the process governing input data determination and the sign-off of input data;

(c) the names of contributing individuals and their responsibilities;

(d) any communications between the contributing individuals and other persons or companies, including internal and external traders and brokers, in relation to the determination or contribution of input data;

(e) any interaction of contributing individuals with the designated benchmark administrator or any calculation agent;

(f) any queries regarding the input data and the outcome of those queries;

(g) sensitivity analysis for interest rate swap trading books and any other derivative trading books with a significant exposure to interest rate fixings in respect of input data.

(5) The benchmark contributor and the designated benchmark administrator must keep each of their records on a medium that allows the storage of information to be accessible for future reference with a documented audit trail.

(6) The benchmark contributor's officer referred to in section 26 must report any findings, including any reverse transaction subsequent to the contribution of input data, to the benchmark contributor's board of directors on a regular basis.

(7) A benchmark contributor to a designated interest rate benchmark must subject the benchmark contributor's input data and procedures to regular internal reviews.

DIVISION 3 – DESIGNATED REGULATED-DATA BENCHMARKS

Non-application to designated regulated-data benchmarks

41. A designated regulated-data benchmark is exempt from the requirements in

(a) subsections 12(1) and (2),

(b) subsection 15(2),

(c) subsections 16(1), (2) and (3),

(d) sections 24, 25 and 26, and

(e) paragraph 27(2)(a).

PART 9
DISCRETIONARY EXEMPTIONS

Exemptions

42. The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 10
EFFECTIVE DATE

Effective date

43. This Rule comes into force on ●.

FORM 25-501F1
Designated Benchmark Administrator
Annual Form

Instructions

(1) Terms used in this form but not defined in this form have the meaning given to them in the Rule.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under Ontario commodity futures law to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Organization and Structure of Designated Benchmark Administrator

Describe the organizational structure of the designated benchmark administrator, including, as applicable, an organizational chart that identifies the ultimate and intermediate parent companies, subsidiaries, and material affiliated entities of the designated benchmark administrator (if any); an organizational chart showing the divisions, departments, and business units of the designated benchmark administrator; and an organizational chart showing the managerial structure of the designated benchmark administrator, including the officer referred to in section 7 of the Rule and the oversight committee referred to in section 8 of the Rule. Provide detailed information regarding the designated benchmark administrator's legal structure and ownership.

Item 3. Designated Benchmark

Provide the name of the designated benchmark.

Item 4. Policies and Procedures re Confidential Information

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained by the designated benchmark administrator to prevent the misuse of confidential information.

Item 5. Policies and Procedures re Conflicts of Interest

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained with respect to conflicts of interest.

Item 6. Conflicts of Interest Arising from the Control or Ownership Structure of the Applicant

(a) Describe any conflicts of interest that arise from the control or ownership structure of the designated benchmark administrator, or from any other activities of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, in relation to a designated benchmark administered by the designated benchmark administrator.

(b) Describe the designated benchmark administrator's policies and procedures to manage or mitigate each conflict of interest described in paragraph (a).

Item 7. Policies and Procedures re Control Framework

Describe the designated benchmark administrator's control framework referred to in section 9 of the Rule and policies and procedures designed to ensure the quality of the designated benchmark.

Item 8. Policies and Procedures re Complaints

Describe the designated benchmark administrator's policies and procedures regarding complaints.

Item 9. Policies and Procedures re Books and Records

Describe the designated benchmark administrator's policies and procedures regarding recordkeeping.

Item 10. Outsourced Service Providers

Describe the designated benchmark administrator's policies and procedures regarding outsourcing and disclose the following information about the designated benchmark administrator's outsourced service providers (OSPs) and the individuals who supervise the OSPs:

- The identity of each OSPs and each of their key individual contacts,
- The total number of supervisors of each OSP,
- A general description of the minimum qualifications required of the OSPs for any outsourcing, and
- A general description of the minimum qualifications required of the benchmark individuals' supervisors for any outsourcing, including education level and work experience.

Item 11. Benchmark Individuals

Disclose the following information about the benchmark individuals of the designated benchmark administrator and the individuals who supervise the benchmark individuals:

- The total number of benchmark individuals,
- The total number of supervisors of benchmark individuals,
- A general description of the minimum qualifications required of the benchmark individuals, including education level and work experience (if applicable, distinguish between junior, mid, and senior level benchmark individuals), and
- A general description of the minimum qualifications required of the benchmark individuals' supervisors, including education level and work experience.

Item 12. Compliance Officer

Disclose the following information about the officer of the designated benchmark administrator referred to in section 7 of the Rule:

- Name,
- Employment history,
- Post-secondary education, and
- Whether employed full-time or part-time by the designated benchmark administrator.

Item 13. Specified Revenue

Disclose information, as applicable, regarding the designated benchmark administrator's aggregate revenue for the most recently completed financial year:

- Revenue from determining the designated benchmark,
- Revenue from determining any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator),
- Revenue from granting licences or rights to publish information about the designated benchmark, and

- Revenue from granting licences or rights to publish information about any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator).

Include financial information on the revenue of the designated benchmark administrator divided into fees from benchmark and non-benchmark activities, including a comprehensive description of each.

This information is not required to be audited, but any disaggregation of revenue must be determined using the same accounting principles as the annual financial statements required by section 2 of the Rule.

Item 14. Financial Statements

Attach a copy of the annual financial statements required by section 2 of the Rule.

Item 15. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-501F1 *Designated Benchmark Administrator Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Designated Benchmark Administrator)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-501F2
Designated Benchmark
Annual Form

Instructions

(1) Terms used in this form but not defined in this form have the meaning given to them in the Rule.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under Ontario commodity futures law to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Designated Benchmark

Provide the name of the designated benchmark and whether it is also any of the following:

- interest rate benchmark,
- critical benchmark,
- regulated-data benchmark.

Item 3. Benchmark Distribution Model

Describe how the designated benchmark administrator makes the designated benchmark readily accessible for free or for a fee. If a person must pay a fee to obtain information about the designated benchmark made readily accessible by the designated b benchmark administrator, provide a fee schedule or describe the prices charged.

Item 4. Procedures and Methodologies

Describe the procedures and methodologies used by the designated benchmark administrator to determine the designated benchmark. The description must be sufficiently detailed to provide an understanding of the processes employed by the designated benchmark administrator in determining the designated benchmark, including, as applicable:

- the public and non-public sources of information used in determining the designated benchmark, including information provided by benchmark contributors;
- procedures for monitoring, reviewing, and updating the designated benchmark,
- the methodologies, policies and procedures described in the Rule.

A designated benchmark administrator may provide the location on its website where additional information about the methodologies, policies and procedures is located.

Item 5. Code of Conduct for Benchmark Contributors

Unless previously provided, attach a copy of any code of conduct for benchmark contributors.

Item 6. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

The undersigned has executed this Form 25-501F2 *Designated Benchmark Annual Form* on behalf of, and on the authority of, [the Applicant]. The undersigned, on behalf of [the Applicant], represents that the information and statements contained in this Form, including appendices and attachments, all of which are part of this Form, are true and correct.

_____ _____

(Date) (Name of the Designated Benchmark Administrator)

By: _____

(Print Name and Title)

_____

(Signature)

FORM 25-501F3
Submission to Jurisdiction and
Appointment of Agent for Service of Process

1. Name of designated benchmark administrator (DBA):

2. Jurisdiction of incorporation, or equivalent, of DBA:

3. Address of principal place of business of DBA:

4. Name, email address, phone number and fax number of contact person at principal place of business of DBA:

5. Name of agent for service of process (Agent):

6. Address in Canada for service of process of Agent:

7. Name, email address, phone number and fax number of contact person of Agent:

8. The DBA designates and appoints the Agent at the address of the Agent stated in Item 6 as its agent on whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the Proceeding) arising out of, relating to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The DBA irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which it is a designated benchmark administrator; and

   (b) any administrative proceeding in any such province or territory,

   in any Proceeding arising out of or related to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator.

10. This submission to jurisdiction and appointment of agent for service of process is governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

_____ _____
Signature of Designated Benchmark Administrator Date

_____
Print name and title of signing officer
of Designated Benchmark Administrator

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of DBA] under the terms and conditions of the appointment of agent for service of process set out in this document.

_____ _____
Signature of Agent Date

_____
Print name of person signing and, if Agent
is not an individual, the title of the person

ANNEX B

PROPOSED COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

TABLE OF CONTENTS

PART 1
GENERAL COMMENTS

Introduction

This companion policy (the "Policy") provides guidance on how the Ontario Securities Commission (the "Commission" or "we") interpret various matters in Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (the "Rule").

Except for Parts 1 and 8, the numbering and headings of Parts, sections and subsections in this Policy generally correspond to the numbering and headings in the Rule. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Introduction to the Rule

Ontario commodity futures law provides that a benchmark administrator or the Director may apply to the Commission to request the designation of a benchmark or a benchmark administrator.

The Rule contains requirements that apply to designated benchmark administrators, benchmark contributors and certain benchmark users in respect of a designated benchmark. In addition to general requirements in the Rule that apply in respect of any designated benchmark, there are additional requirements in the Rule that apply to designated critical benchmarks and designated interest rate benchmarks. The Rule also includes a number of exemptions from certain requirements for designated benchmarks administrators and benchmark contributors in respect of designated regulated-data benchmarks.

When designating a benchmark, the Commission will issue a decision document designating the benchmark as a designated benchmark. If applicable, the decision document will indicate if the benchmark is also designated as a designated critical benchmark, a designated interest rate benchmark or a designated regulated-data benchmark. It is possible that a designated benchmark will receive two designations:

- a designated interest rate benchmark may also be designated as designated critical benchmark, and
- a designated regulated-data benchmark may also be designated as a designated critical benchmark.

As discussed below, we expect a benchmark administrator that applies for designation of a benchmark to provide written submissions on whether the administrator considers the benchmark to be a critical benchmark, an interest rate benchmark or a regulated-data benchmark.

When designating a benchmark administrator, the Commission will issue a decision document designating the benchmark administrator as a designated benchmark administrator of one or more designated benchmarks.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of the administrator or a benchmark will provide written submissions that contain the same information as that required by Form 25-501F1 *Designated Benchmark Administrator Annual Form* and Form 25-501F2 *Designated Benchmark Annual Form* in a format that is consistent with those forms.

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

"Designated critical benchmark" is a benchmark that is designated as a "critical benchmark" by a decision of the Commission. In addition to general requirements in the Rule that apply in respect of any designated benchmark, there are specific requirements in Division 1 of Part 8 of the Rule that apply to designated critical benchmarks.

Staff of the Commission may recommend that the Commission designate a benchmark as a "critical benchmark" if the benchmark is critical to financial markets in Canada or a region of Canada. The following two factors are among those that will be considered:

(a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value in Canada of at least $400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable; or

(b) the benchmark satisfies all of the following criteria:

(i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable;

(ii) the benchmark has no, or very few, appropriate market-led substitutes;

(iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on

(A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or

(B) a significant number of market participants in one or more jurisdictions of Canada.

For the purpose of paragraph (a) and subparagraph (b)(i), staff of the Commission will consider, among other things, the outstanding principal amount of any debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and the outstanding net asset value of any investment funds that use the benchmark to measure performance.

We note that the above list is not a complete list of factors and the existence of one of these factors by itself will not necessarily determine whether a benchmark is a critical benchmark. Instead, staff intend to follow a holistic approach where all relevant factors are considered.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of a benchmark will provide, with its application, written submissions on whether the Commission should designate the benchmark as a critical benchmark.

Subsection 1(1) – Definition of designated interest rate benchmark

"Designated interest rate benchmark" is a benchmark that is designated as an "interest rate benchmark" by a decision of the Commission. In addition to general requirements in the Rule that apply in respect of any designated benchmark, there are specific requirements in Division 2 of Part 8 of the Rule that apply to designated interest rate benchmarks.

Staff of the Commission may recommend that the Commission designate a benchmark as an "interest rate benchmark" if the benchmark is used to set interest rates of debt securities or is otherwise used as a reference in derivatives or other instruments. Factors that will be considered include the following:

(a) the benchmark is determined on the basis of the rate at which financial institutions may lend to, or borrow from, other financial institutions, or market participants other than financial institutions, in the money market; or

(b) the benchmark is determined from a survey of bid-side rates provided by financial institutions that routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

We note that the above list is not exhaustive.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of a benchmark will provide, with its application, written submissions on whether the Commission should designate the benchmark as an interest rate benchmark.

Subsection 1(1) – Definition of designated regulated-data benchmark

"Designated regulated-data benchmark" is a benchmark that is designated as a "regulated data benchmark" by a decision of the Commission. Benchmark administrators of, and benchmark contributors to, regulated-data benchmarks are exempted from certain governance and control requirements relating to the contribution of input data (see Division 3 of Part 8 of the Rule).

Staff of the Commission may recommend that the Commission designate a benchmark as a "regulated-data benchmark" if the benchmark is determined by the application of a formula from any of the following:

(a) input data contributed entirely and directly from

  (i) any of the following, but only with reference to transaction data relating to securities or derivatives:

    (A) a recognized exchange in a jurisdiction of Canada or an exchange that is subject to appropriate regulation in a foreign jurisdiction;

    (B) a recognized quotation and trade reporting system in a jurisdiction of Canada or a quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction;

    (C) an alternative trading system that is registered as a dealer in a jurisdiction of Canada and is a member of a self-regulatory entity or an alternative trading system that is subject to appropriate regulation in a foreign jurisdiction;

    (D) an entity that is similar or analogous to the entities referred to in clause (A), (B) or (C) and that is subject to appropriate regulation in a jurisdiction of Canada or a foreign jurisdiction;

  (ii) a service provider to which the designated benchmark administrator of the designated benchmark has outsourced the data collection in accordance with section 14 of the Rule, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);

(b) net asset values of investment funds that are reporting issuers in a jurisdiction of Canada or subject to appropriate regulation in a foreign jurisdiction.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of a benchmark will provide, with its application, written submissions on whether the Commission should designate the benchmark as a regulated-data benchmark.

Subsection 1(1) – Definition of expert judgment

"Expert judgment" is the discretion exercised by:

- a designated benchmark administrator with respect to the use of input data in determining a benchmark, and
- a benchmark contributor with respect to the contribution of input data.

Expert judgment may involve various activities, including:

- extrapolating values from prior or related transactions,
- adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, or
- assigning a greater weight to data relating to bids or offers than the weight assigned to a relevant concluded transaction.

Subsection 1(1) – Definition of input data

"Input data" is the data in respect of the value or price of one or more underlying assets, interests or elements that is used by a designated benchmark administrator to determine a designated benchmark. For example, input data may include estimated prices, quotes, committed quotes or other values.

Subsection 1(1) – Definitions of limited assurance report on compliance and reasonable assurance report on compliance

A "limited assurance report on compliance" and a "reasonable assurance report on compliance" must be prepared in accordance with the applicable Canadian Standard on Assurance Engagements (CSAE). The CSAE require that any public accountant that prepares such a report be independent.

Subsection 1(1) – Definition of transaction data

"Transaction data" means the data in respect of a price, rate, index or value representing transactions between unaffiliated counterparties in an active market subject to competitive supply and demand forces.

We consider that:

- transaction data would include published or onscreen data available to the public generally or by subscription, and
- the reference to "active market subject to competitive supply and demand forces" would include a market in which transactions take place, or are reported, between arm's length parties with sufficient frequency and volume to provide pricing information on an ongoing basis. This reference is separate and different from any definition for accounting purposes.

Subsection 1(1) – Interpretation of certain definitions

Definitions of each of the following terms are considered to apply only in respect of the designated benchmark to which they pertain:

- "benchmark administrator";
- "benchmark contributor";
- "benchmark individual";
- "benchmark user";
- "contributing individual";
- "DBA individual";
- "designated benchmark administrator";
- "input data";
- "transaction data".

Paragraph 1(3)(a) – Interpretation of contribution of input data

Paragraph 1(3)(a) of the Rule provides that input data is considered to have been "contributed" if

(i) it is not reasonably available to

(A) the designated benchmark administrator, or

(B) another person or company for the purpose of providing the input data to the designated benchmark administrator, and

(ii) it is provided to the designated benchmark administrator or the person or company referred to in subparagraph (i)(B) above for the purpose of determining a benchmark.

We consider that the reference to "not reasonably available" would include situations where input data is not published or otherwise available to a designated benchmark administrator using reasonable effort, on reasonable terms or a reasonable cost and the designated benchmark administrator therefore needs to obtain the input data from a benchmark contributor who has access to that data. For example, an interest rate benchmark may be based on a survey by a benchmark administrator of bid-side rates contributed by benchmark contributors that are financial institutions which routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

PART 2
DELIVERY REQUIREMENTS

Section 2 – References to Canadian GAAP, Canadian GAAS, Handbook, IFRS and International Standards on Auditing

There are references in section 2 of the Rule to "Canadian GAAP", "Canadian GAAS", "Handbook", "IFRS" and "International Standards on Auditing", which are defined in National Instrument 14-101 *Definitions*.

Subparagraph 2(7)(a)(ii) – Canadian GAAP applicable to private enterprises

Subject to certain conditions, subparagraph 2(7)(a)(ii) of the Rule permits audited annual financial statements of a designated benchmark administrator to be prepared using Canadian GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprise in Part II of the Handbook.

PART 3
GOVERNANCE

Subsection 8(7) – Information relating to a designated benchmark

We consider that the reference to "information relating to a designated benchmark" in subsection 8(7) of the Rule would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

Subsection 8(8) – Required actions for oversight committee of a designated benchmark administrator

Subsection 8(8) of the Rule requires the oversight committee of a designated benchmark administrator to carry out certain actions. We expect that the oversight committee will carry out these actions in a manner that reasonably reflects the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Paragraph 8(8)(e) – Calculation agents and dissemination agents

Paragraph 8(8)(e) of the Rule requires the oversight committee of a designated benchmark administrator to oversee any service provider involved in the provision or distribution of the designated benchmark, including calculation agents or dissemination agents. We consider that

- a "dissemination agent" is a person or company with delegated responsibility for disseminating a designated benchmark to benchmark users in accordance with the instructions provided by the designated benchmark administrator for the designated benchmark, including any review, adjustment and modification to the dissemination process, and

- a "calculation agent" is a person or company with delegated responsibility for determining a designated benchmark through the application of a formula or other method of calculating the information or expressions

of opinions provided for that purpose, in accordance with the methodology set out by the designated benchmark administrator for the designated benchmark.

A dissemination agent would not include:

- a publisher that pays a licensing fee to publish a benchmark under a non-exclusive publishing license, or
- a publisher that pays a licensing fee to publish a benchmark under an exclusive publishing license if the benchmark administrator also makes the benchmark publicly available through other means.

Subparagraph 8(8)(i)(iii) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference to "significant breach" of a code of conduct in subparagraph 8(8)(i)(iii) of the Rule would include significant, non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark.

Section 9 – Control framework for designated benchmark administrator and controls for benchmark contributors

Section 9 of the Rule requires a designated benchmark administrator to establish a control framework to ensure that a designated benchmark is provided in accordance with the Rule. Similarly, subsection 25(2) of the Rule requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy and completeness of each contribution of input data to the designated benchmark administrator, including controls that the input data is provided in accordance with the Rule.

We expect that the control framework provided for under subsection 9(1) of the Rule and the controls provided for under subsection 25(2) of the Rule will be proportionate to all of the following:

- the level of conflicts of interest identified in relation to the designated benchmark, the designated benchmark administrator or the benchmark contributor,
- the extent of expert judgment in the provision of the designated benchmark,
- the nature of the input data for the designated benchmark.

In establishing the control framework required under subsection 9(1) of the Rule, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 25(2) of the Rule.

The control framework and the controls used should be consistent with guidance published by a body or group that has developed the guidance through a process that includes the broad distribution of the proposed guidance for public comment.

Examples of suitable guidance that a designated benchmark administrator or a benchmark contributor could follow include:

(a) the *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Chartered Professional Accountants of Canada;

(b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and

(c) the *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* published by U.K. Financial Reporting Council.

These examples of suitable guidance include, in the definition or interpretation of "internal control", controls for compliance with applicable laws and regulations.

Subsection 9(5) – Reporting of significant security incident

Subsection 9(5) of the Rule provides that a designated benchmark administrator must promptly provide written notice to the Director describing any significant security incident or any significant systems issue relating to the designated benchmark it administers. We consider a failure, malfunction, delay or other incident or issue to be a "significant security incident" or a "significant systems issue" if the designated benchmark administrator would, in the normal course of operations, escalate the matter to or inform its executive management ultimately accountable for technology.

Subsection 11(2) – Conflict of interest requirements for designated benchmark administrators

Subsection 11(2) of the Rule provides that a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark and its benchmark individuals from any other part of the business if the designated benchmark administrator becomes aware of a conflict of interest or a risk of a conflict of interest between the business of the designated benchmark and the other part of the business.

We expect that, when contemplating the nature and scope of such a conflict of interest, a designated benchmark administrator would consider the following:

- the provision of benchmarks often involves discretion in the determination of benchmarks and is inherently subject to certain types of conflicts of interest, which implies the existence of various opportunities and incentives to manipulate benchmarks, and

- in order to ensure the integrity of designated benchmarks, designated benchmark administrators should implement adequate governance arrangements to control such conflicts of interest and to safeguard confidence in the integrity of benchmarks.

For example, if the designated benchmark administrator does identify such a conflict of interest, the administrator should ensure that persons responsible for the administration of the designated benchmark:

- are located in a secure area apart from persons that carry out other business activity, and

- report to a person that reports to an executive officer that does not have responsibility relating to other business activities.

Subsection 12(1) – Reporting of infringements

Subsection 12(1) of the Rule provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed for the purposes of detecting and reporting to the Director any conduct by a DBA individual or a benchmark contributor that might involve manipulation or attempted manipulation of a designated benchmark. As part of that reporting to the Director, we expect that the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the Director.

Paragraph 13(2)(c) – Complaint procedures of designated benchmark administrator

Paragraph 13(2)(c) of the Rule provides that a designated benchmark administrator must communicate the outcome of the investigation of a complaint to the complainant within a reasonable period of time.

We expect that, in establishing the policies and procedures for handling complaints relating to the designated benchmark required by subsection 13(1) of the Rule, the designated benchmark administrator would include a target timetable for investigating complaints.

A designated benchmark administrator may, on a case-by-case basis, apply for exemptive relief from paragraph 13(2)(c) of the Rule if such a communication to the complainant would be seriously prejudicial to the interests of the designated benchmark administrator or would violate confidentiality provisions.

Section 14 – Outsourcing by designated benchmark administrator

Section 14 of the Rule sets out requirements on outsourcing by a designated benchmark administrator. For purposes of Ontario commodity futures legislation, a designated benchmark administrator remains responsible for compliance with the Rule despite any outsourcing arrangement.

Paragraph 14(2)(c) – Written contract for an outsourcing

Paragraph 14(2)(c) of the Rule provides that the policies and procedures of a designated benchmark administrator in relation to outsourcing must be reasonably designed to ensure that the designated benchmark administrator and the service provider enter into a written contract that covers the matters set out in subparagraphs 14(2)(c)(i) to (v). We consider the reference to "written contract" to include one or more written agreements.

PART 4
INPUT DATA AND METHODOLOGY

Subsection 16(4) – Front office of a benchmark contributor

Subsection 16(4) of the Rule provides that "front office" of a benchmark contributor or an applicable affiliate means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliate.

Paragraph 17(1)(e) – Determination under the methodology

Paragraph 17(1)(e) of the Rule provides that a determination under the methodology of a designated benchmark must be able to be verified as being accurate and complete.

A determination under a methodology that is based on information such as input data would be verified as being accurate and complete if:

- it can be clearly linked to the original information, and
- it can be linked to complementary, but separate information.

For example, in the case of an interest rate benchmark that is determined daily and calculated as the arithmetic average of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances and are market-makers in bankers' acceptances, the daily determination would be verified as being accurate and complete if:

- the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and
- the benchmark administrator's record of the rates contributed by the financial institutions can be matched to the records of those rates maintained by the applicable financial institutions.

Paragraph 17(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph 17(2)(a) of the Rule provides that a designated benchmark administrator must take into account, in the preparation of the methodology of a designated benchmark, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to record.

In this context, we consider that "applicable characteristics" include:

- the size and reasonably expected liquidity of the market,
- the transparency of trading and the positions of participants in the market,
- market concentration,
- market dynamics, and
- the adequacy of any sample to reasonably represent that part of the market or economy the designated benchmark is intended to record.

Subsection 18(1) – Proposed or implemented significant changes to methodology

Subsection 18(1) of the Rule provides that a designated benchmark administrator must have policies that provide for public notice of a proposed or implemented significant change to the methodology of a designated benchmark.

As part of the methodology disclosure required under section 19, paragraph 19(1)(e) of the Rule provides that a designated benchmark administrator must publish examples of the types of changes that may constitute a significant change to the methodology of the designated benchmark.

We consider publication on the designated benchmark administrator's website of a proposed or implemented change to the methodology of a designated benchmark, accompanied by a news release advising of the publication of the proposed or implemented change, as sufficient notification in theses contexts. We consider it good practice for a designated benchmark

administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of such a publication by email.

PART 5
DISCLOSURE

Subsection 20(2) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 20(2)(a) through (l) of the Rule, are designed to provide transparency to benchmark users to understand the purpose or intention of the benchmark, the limitations of the benchmark, and how the designated benchmark administrator will apply the methodology to provide the benchmark. In preparing the benchmark statement, a designated benchmark administrator should attempt to ensure that benchmark users have sufficient information to understand what the benchmark is intended to record and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph 20(2)(a) – Applicable market or economy for purposes of the benchmark statement

Paragraph 20(2)(a) of the Rule provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market or economy the designated benchmarks is intended to record. This relates to the benchmark's purpose.

For example, an interest rate benchmark may be intended to reflect the cost of unsecured interbank lending and may be intended to be used as a benchmark interest rate in interbank loan agreements. In this example, we consider it problematic if

- the type of prime bank lending rate the benchmark is intended to record is unclear, or
- the calculation method does not work well in periods of low liquidity.

PART 6
BENCHMARK CONTRIBUTORS

General

Part 6 of the Rule contains provisions that apply in respect of benchmark contributors to a designated benchmark. There are also specific requirements that apply to:

- benchmark contributors to a designated critical benchmark (see sections 31 and 34 of the Rule), and
- benchmark contributors to a designated interest rate benchmark (see sections 38, 39 and 40 of the Rule).

Ontario commodity futures law defines "benchmark contributor" as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

Ontario commodity futures law provides that the Commission may, in response to an application by the Director, require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. For example, a person or company may be required to provide information to a designated benchmark administrator for the purpose of determining a designated critical benchmark. In such a case, the person or company would be a benchmark contributor, and would therefore be subject to the provisions of the Rule applicable to benchmark contributors generally and the provisions applicable to benchmark contributors to a designated critical benchmark. However, certain of those provisions only apply if input data is considered to have been contributed within the meaning of paragraph 1(3)(a) of the Rule.

Subparagraph 24(2)(f)(vi) – Input data that is inaccurate or incomplete

Subparagraph 24(2)(f)(vi) of the Rule requires that a code of conduct for a benchmark contributor include reporting requirements for any instance where a reasonable person would believe that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has provided input data that is inaccurate or incomplete. In establishing these requirements, we expect the designated benchmark administrator to consider providing indicators that could be used to identify input data that is inaccurate or incomplete, based on past experience. The indicators should reasonably reflect the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Subsection 24(3) – Adherence to code of conduct

In establishing the policies and procedures required under subsection 24(3) of the Rule, we expect the designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark. For example, the policies and procedures may include the use of verification certificates signed by an officer of the benchmark contributor and on-site inspections by internal compliance staff that are independent from the business unit whose activities are subject to the code of conduct.

Paragraph 25(1)(a) – Conflict of interest requirements for benchmark contributors

Paragraph 25(1)(a) of the Rule provides that a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure the contribution of input data by the benchmark contributor is not significantly affected by any conflict of interest involving the benchmark contributor and its employees, officers, directors and agents, if a reasonable person would consider that the contribution of the input data might be inaccurate or incomplete.

We expect that, when contemplating the scope of such conflicts of interest, a benchmark contributor would consider the following:

- benchmark contributors of input data to benchmarks can often exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation, and
- consequently, conflicts of interest must be managed or mitigated to ensure they do not affect input data.

For example, if the benchmark contributor does identify such a conflict of interest involving other business activity, the contributor should ensure that persons responsible for the contribution of input data to a designated benchmark administrator for the purpose of determining a designated benchmark:

- are located in a secure area apart from persons that carry out the other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to the other business activity.

Subsection 25(2) – Accuracy and completeness of input data

In establishing the policies, procedures and controls required under subsection 25(2), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy and completeness of input data.

Paragraph 25(3)(a) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 25(3)(a), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and the nature of its input data.

Subsection 26(1) – Compliance officer for benchmark contributors

Subsection 26(1) of the Rule provides that a benchmark contributor to a designated benchmark must designate an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, the Rule and Ontario commodity futures law relevant to benchmarks. The officer can conduct these activities on a part-time basis but should be independent from persons involved in determining or contributing input data.

PART 7
RECORDKEEPING

Paragraph 27(2)(h) – Records of communications

The reference to “communications” in paragraph 27(2)(h) of the Rule includes telephone conversations, email and other electronic communications.

PART 8
DESIGNATED INTEREST RATE BENCHMARKS

Subsection 35(1) – Accurate and sufficient data for designated interest rate benchmarks

Subsection 35(1) of the Rule sets out an order of priority for input data for the determination of a designated interest rate benchmark. The order of priority lists committed quotes and indicative quotes or expert judgments. In the absence of reliable transaction data for a designated interest rate benchmark, we are of the view that committed quotes should take precedence over non-committed/indicative quotes and expert judgment.

We consider a “committed quote” to be a quote that is actionable for the other party to the potential transaction. The party that provides that quote announces their willingness to enter into transactions at the relevant bid and ask prices and agree that if they do transact, they will do so at the quoted price up to the maximum quantity specified in the quote.

We consider “indicative quote” to be a quote that is not immediately actionable by the other party to the potential transaction. Indicative quotes are usually provided before the parties negotiate the price or quantity at which the potential transaction will occur.

Subsection 37(1) – Assurance report for designated interest rate benchmark

Subsection 37(1) of the Rule provides that a designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to section 8, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with certain sections of the Rule and the methodology in respect of each designated interest rate benchmark it administers.

We note that the report required by subsection 37(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph 7(3)(b) of the Rule. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph 7(3)(b) and with the requirement in subsection 37(1).

ANNEX C

SPECIFIC QUESTIONS OF THE OSC RELATING TO THE PROPOSED RULE

Definitions and Interpretation

1. Does the proposed definition of "contributing individual" capture (or fail to capture) all of the arrangements between contributing individuals and administrators? If not, please explain with concrete examples.

2. Is the proposed interpretation of "control" appropriate? Please explain with concrete examples.

Governance

3. Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples.

4. The determination of non-independence of members of the board of directors and the oversight committee by the boards of directors of administrators as set out in paragraphs 5(4)(d), 32(2)(d) and 36(2)(d) of Proposed OSC Rule 25-501 includes a provision that if the director or oversight committee member has a relationship with the administrator that may, *in the opinion of the board of directors*, be reasonably expected to interfere with the exercise of the director's or oversight committee member's independent judgment, such director or oversight committee member would not be independent for purposes of Proposed OSC Rule 25-501. We are seeking comment on whether the CSA should replace the opinion of the board of directors with a "reasonable person" opinion in these paragraphs. Please explain with concrete examples.

Administrator Compliance Officer

5. Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples.

6. Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed OSC Rule 25-501), other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.

Critical Benchmarks

7. Under Proposed OSC Rule 25-501, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the designated critical benchmark are provided to all benchmark users on a fair, reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.

8. Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed OSC Rule 25-501 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision.

Conflicts of Interest

9. Is the requirement in subsection 11(3) of Proposed OSC Rule 25-501 appropriate, particularly as it relates to a *risk* of a significant conflict of interest? Please explain with concrete examples.

Designated Benchmarks

10. The Notice states that the current intention of the OSC is to designate only RBSL as an administrator and CDOR and CORRA as RBSL's designated benchmarks. Are there any other benchmark administrators that you believe should be designated under Proposed OSC Rule 25-501? If so, please:

    (a) identify the benchmark administrator,

    (b) identify any benchmark that the benchmark administrator administers that should also be designated, and

(c) provide your rationale for why such designations are appropriate.

11. If your organization is a benchmark administrator, please:

(a) advise if you intend to apply for designation under Proposed OSC Rule 25-501,

(b) advise of any benchmark you intend to also apply for designation under Proposed OSC Rule 25-501, and

(c) the rationale for your intention.

Anticipated Costs and Benefits

12. The Notice sets out the anticipated costs and benefits of Proposed OSC Rule 25-501 (including the additional detail set out in Annex D of the CSA Notice). Do you believe the costs and benefits of Proposed OSC Rule 25-501 have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain with concrete examples.

ANNEX D

PROPOSED CONSEQUENTIAL AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 11-501 *ELECTRONIC DELIVERY OF DOCUMENTS TO THE ONTARIO SECURITIES COMMISSION*

1. ***Ontario Securities Commission Rule 11-501* Electronic Delivery of Documents to the Ontario Securities Commission *is amended by this Instrument.***

2. ***The following rows (except the first shaded row) are added, immediately after the row containing "25-101F2", to the table in Appendix A:***

Document Reference	Description of Document
25-102F1	Form 25-102F1 *Designated Benchmark Administrator Annual Form*
25-102F2	Form 25-102F2 *Designated Benchmark Annual Form*
25-102F3	Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process*
25-501F1	Form 25-501F1 *Designated Benchmark Administrator Annual Form*
25-501F2	Form 25-501F2 *Designated Benchmark Annual Form*
25-501F3	Form 25-501F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process*

3. This Instrument comes into force on ●.

6.1.3 Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Consultation Paper 21-402 Proposed Framework for Crypto-Asset Trading Platforms

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada

Consultation Paper 21-402
Proposed Framework for Crypto-Asset Trading Platforms

March 14, 2019

PART 1 – Introduction and purpose

The emergence of "digital assets" or "crypto assets" continues to be a growing area of interest for regulators globally. Innovations like distributed ledger technology (**DLT**) and crypto assets are relatively new and are transforming the landscape of the financial industry. Interest in crypto assets among investors, governments and regulators globally has increased significantly since the creation of bitcoin in 2008 and continues to grow. Early in 2018, at its peak, the total value of crypto assets was estimated, by one source, at more than US$800 billion.[1] While the value has since fallen, trading volumes remain significant. Today, there are over 2000 crypto assets[2] that may be traded for government-issued currencies or other types of crypto assets on over 200 platforms[3] that facilitate the buying and selling or transferring of crypto assets (**Platforms**). Many of these Platforms operate globally and without any regulatory oversight.

Although DLT may provide benefits, global incidents point to crypto assets having heightened risks related to loss and theft as compared to other assets. Regulators around the world are currently considering important issues surrounding the regulation of crypto assets including the appropriate regulation of Platforms. The Canadian Securities Administrators (the **CSA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**, and together with the CSA, **we**), have been engaged with regulators globally, through IOSCO and other innovation initiatives, to seek input on a variety of regulatory approaches that exist in this area.

Platforms, depending on how they operate and the crypto assets they make available for trading may be subject to securities regulation. The CSA, through its Regulatory Sandbox,[4] is in discussions with several Platforms that are seeking guidance on the requirements that apply to them. We have heard directly from Platform operators and their advisers that a regulatory framework is welcome, as they seek to build consumer confidence and expand their businesses across Canada and globally.

Currently there are no Platforms recognized as an exchange or otherwise authorized to operate as a marketplace or dealer in Canada. As such, the CSA has urged Canadians to be cautious when buying crypto assets.[5]

Platforms facilitate the buying and selling of crypto assets and perform functions similar to one or more of exchanges, alternative trading systems (**ATSs**), clearing agencies, custodians and dealers. Depending on their structure, they may also introduce novel features which create risks to investors and our capital markets that may not be fully addressed by the existing regulatory framework. Where securities legislation applies to Platforms we are considering a set of tailored regulatory requirements for them to address the novel features and risks (the **Proposed Platform Framework**).

We endeavor to facilitate innovation that benefits investors and our capital markets, while ensuring that we have the appropriate tools and understanding to keep pace with evolving markets. The purpose of this joint CSA/IIROC Consultation Paper (the **Consultation Paper**) is to seek feedback from the financial technology (**fintech**) community, market participants, investors and other stakeholders on how requirements may be tailored for Platforms operating in Canada whose operations engage securities law. We intend to use this feedback to establish a framework that provides regulatory clarity to Platforms, addresses risks to investors and creates greater market integrity.

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1 https://coinmarketcap.com/charts/.

2 Coinmarketcap.com listed 2098 different crypto assets as of March 1, 2019. See: https://coinmarketcap.com/all/views/all/.

3 Coinmarketcap.com listed 241 Platforms as of March 1, 2019. See: https://coinmarketcap.com/rankings/exchanges/3.

4 The CSA Regulatory Sandbox is an initiative of the CSA to support businesses seeking to offer innovative products, services and applications in Canada.

5 The CSA has previously issued investor alerts reminding investors of the inherent risks associated with crypto asset futures contracts and the need for caution when investing with crypto asset trading platforms.

Throughout the Consultation Paper, investors participating on Platforms may be referred to as either **investors** or **participants**.

PART 2 – Nature of crypto assets and application of securities legislation[6]

Crypto assets differ in their functions, structures, governance and rights. Some crypto assets, commonly referred to as "utility tokens", are created to allow holders to access or purchase goods or services on a DLT network being developed by the creators of the token. As set out in As set out in As set out in CSA Staff Notice 46-307 *Cryptocurrency Offerings* and CSA Staff Notice 46-308 *Securities Law Implications for Offerings of Tokens,* staff of the CSA have found that most of the offerings of utility tokens have involved a distribution of securities, usually as investment contracts. Other crypto assets are tokenized forms of traditional securities or derivatives and may represent an interest in assets or have their value may be based on an underlying interest. If crypto assets that are securities and/or derivatives are traded on a Platform, the Platform would be subject to securities and/or derivatives regulatory requirements.

We note that it is widely accepted that at least some of the well established crypto assets that function as a form of payment or means of exchange on a decentralized network, such as bitcoin, are not currently in and of themselves, securities or derivatives. Instead, they have certain features that are analogous to existing commodities such as currencies and precious metals.

However, securities legislation may still apply to Platforms that offer trading of crypto assets that are commodities, because the investor's contractual right to the crypto asset may constitute a security or derivative. We are evaluating the specific facts and circumstances of how trading occurs on Platforms to assess whether or not a security or derivative may be involved. Some of the factors we are currently considering in this evaluation include:

- whether the Platform is structured so that there is intended to be and is delivery of crypto assets to investors,
- if there is delivery, when that occurs, and whether it is to an investor's wallet over which the Platform does not have control or custody,
- whether investors' crypto assets are pooled together with those of other investors and with the assets of the Platform,
- whether the Platform or a related party holds or controls the investors' assets,
- if the Platform holds or stores assets for its participants, how the Platform makes use of those assets,
- whether the investor can trade, or rollover positions held by the Platform, and
- having regard to the legal arrangements between the Platform and its participants, the actual functions of the Platform and the manner in which transactions occur on it
    - who has control or custody of crypto assets,
    - who the legal owner of such crypto assets is, and
    - what rights investors will have in the event of the Platform's insolvency.

Consultation question

1. Are there factors in addition to those noted above that we should consider?

The CSA wishes to remind market participants that any person or company advertising, offering, selling or otherwise trading or matching trades in crypto assets that are securities or derivatives, or derivatives that are based on crypto assets to persons or companies in Canada, or conducting such activities from a place of business in Canada is subject to securities legislation in Canada. Further, as noted above, although some crypto assets may be commodities, securities legislation may still apply to Platforms that offer trading of such crypto assets because the investor's contractual right to the crypto asset/commodity may constitute a security or derivative. Further, in most jurisdictions in Canada, the provisions of securities legislation relating to fraud, market manipulation and misleading statements apply not just to the trading of securities and derivatives but also to trading of the underlying interest of a derivative (e.g. the commodity).

[6] As defined in National Instrument 14-101 *Definitions.*

The Proposed Platform Framework referred to in this Consultation Paper considers how existing regulatory requirements may be tailored for Platforms and should not be construed as acceptance by the CSA that securities and/or derivatives legislation may not apply to any particular offering involving crypto assets.

PART 3 – Risks related to Platforms

The operational models and the risks related to Platforms may vary from one platform to another; however, the risks are not entirely different than those applicable to other types of regulated entities such as marketplaces and dealers. The introduction of crypto assets and the operational models of Platforms, however, raise different and in some cases heightened, areas of risk. Key areas of risk include:

- **Investors' crypto assets may not be adequately safeguarded** – Many Platforms have control of their participants' crypto assets (e.g. they keep participants' crypto assets in a single account on the distributed ledger under the Platform's private key or the Platform holds its participants' private keys on their behalf). Platforms may not have necessary processes and controls in place to segregate participants' assets from their own and to safeguard those assets, including maintaining and safeguarding any private keys associated with wallets held by the Platform. There are also current challenges associated with auditing the internal controls surrounding custody of participants' assets.

- **Processes, policies and procedures may be inadequate** – Platforms may not have sufficient processes, policies and procedures in place to establish an internal system of controls and supervision sufficient to prudently manage the risks associated with their business, including business continuity risks, key personnel risks and regulatory compliance risks.

- **Investors' assets may be at risk in the event of a Platform's bankruptcy or insolvency** – Platforms may not segregate participants' assets from their own or may use participants' assets to fund operating costs and other expenses. As a result, Platforms may not hold sufficient assets to cover investor claims and return investors' assets in the event of bankruptcy or insolvency. In addition, Platforms may operate in jurisdictions that have limited asset protection and insolvency regimes.

- **Investors may not have important information about the crypto assets that are available for trading on the Platform** – Each crypto asset has its own functions, associated rights and risks. Platforms may not provide sufficient or clear information about the crypto assets for participants to make informed investment decisions. Examples of information may include the standards that the crypto asset had to meet before being admitted for trading on the Platform and any potential difficulties in liquidating the crypto asset.

- **Investors may not have important information about the Platform's operations** – Platforms may not provide sufficient information about the functions they perform and their fees. For example, some Platforms do not deliver crypto assets to a wallet controlled by the participant unless requested, but participants may not be aware of this or the risks associated with the Platform retaining custody of their crypto assets, including that they may not be able to access their crypto assets.

- **Investors may purchase products that are not suitable for them** – Exchanges and other regulated marketplaces do not interact directly with retail investors; instead they interact through regulated intermediaries (i.e. registered dealers). In contrast, Platforms may offer investors (including retail investors) direct access to the Platform without the use of a regulated intermediary that performs know-your-client and suitability assessments. As a result, participants may purchase crypto assets, many of which can be complex, high risk and volatile products, that are not suitable investments for them.

- **Conflicts of interest may not be appropriately managed** – There may be conflicts of interest between the Platform's operator and participants who access the Platform, including the inherent conflicts of interest where Platforms act as market makers and trade as principal.

- **Manipulative and deceptive trading may occur** – Platforms may be susceptible to manipulative and deceptive trading given the market volatility, lack of reliable pricing information for crypto assets, the fact that they trade 24 hours daily and the fact that trading on many Platforms is not currently monitored.

- **There may not be transparency of order and trade information** – Information relating to the price and volume of orders and trades may not be publicly available or sufficient to support efficient price discovery.

- **System resiliency, integrity and security controls may be inadequate** – Platforms have significant cybersecurity risks. DLT is a nascent technology and Platform operators may not have sufficient experience or possess the necessary skills to ensure that systems function properly and there is adequate protection against cyber theft of participants' crypto asset investments.

Consultation question

2. What best practices exist for Platforms to mitigate these risks? Are there any other substantial risks which we have not identified?

PART 4 – Regulatory approaches in other jurisdictions

In developing the Proposed Platform Framework, we considered the approaches taken by securities and financial regulators in other jurisdictions. We found that in many jurisdictions the existing regulatory requirements will apply to regulate Platforms within those jurisdictions. Some jurisdictions may tailor requirements or provide exemptions. This means that the regulatory requirements applicable to exchanges, ATSs (in the U.S. or Canada), multilateral trading venues (in Europe) and other regulated markets may apply to a Platform.

In the U.S., the Securities and Exchange Commission (**SEC**) issued a statement indicating that, if a platform offers trading of digital securities and operates a marketplace, it must be registered with the SEC as a national securities exchange, registered with the Financial Industry Regulatory Authority as a broker-dealer operating an ATS, or be exempt from registration.[7] The Commodity Futures Trading Commission (**CFTC**) has indicated that bitcoin and certain other crypto assets are encompassed in the definition of "commodity". In the context of retail commodity transactions in crypto assets, for example on Platforms, the CFTC has consulted with market participants on its approach to the proposed interpretation of the term "actual delivery".[8]

In European jurisdictions, the regulatory framework under the Markets in Financial Instruments Directive (**MiFID**) applies when crypto assets qualify as financial instruments. The European Securities and Markets Authority (**ESMA**) recently published a report with their advice on initial coin offerings and crypto assets where they identify the risks in the crypto asset sector.[9] In the report, ESMA indicates that where crypto assets qualify as transferable securities or other types of MiFID financial instruments, the existing regulatory framework will apply. ESMA also noted that the existing requirements may not address all the risks, and in some areas, the requirements may not be relevant in a DLT framework.

In Singapore, Platforms that trade crypto assets that are securities may be approved exchanges or be recognised market operators and, in both cases, are subject to regulation by the Monetary Authority of Singapore.[10]

In Hong Kong, Platforms that are trading products that are not within the remit of the Hong Kong Securities and Futures Commission (**HKSFC**) can apply to use HKSFC's Regulatory Sandbox, particularly if they will, in the future, seek to offer trading of products that are within the remit of the HKSFC. This will allow the HKSFC to engage in an exploratory stage where it observes the Platform's operations and considers the effectiveness of proposed regulatory requirements for Platforms and whether Platforms are appropriate to be regulated by the HKSFC. If the decision is made to license the Platform, additional restrictions may apply.[11]

In Malaysia, the *Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token)* Order 2019 came into force on January 15, 2019 and specifies that all digital currencies, tokens and crypto assets are classified as securities, placing them under the authority of the Securities Commission Malaysia.[12]

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7 SEC Statement on Potentially Unlawful Online Platforms for Trading Digital Assets (March 7, 2018): https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading.

8 CFTC, Retail Commodity Transactions Involving Virtual Currency, Proposed Interpretation, 82 Fed. Reg. 60335 (December 20, 2017): https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2017-27421a.pdf.

9 ESMA Advice – Initial Coin Offerings and Crypto-Assets (January 9, 2019): https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf.

10 Monetary Authority of Singapore, A Guide to Digital Token Offerings (last updated November 30, 2018): http://www.mas.gov.sg/~/media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/Regulations%20Guidance%20and%20Licensing/Guidelines/A%20Guide%20to%20Digital%20Token%20Offerings%20last%20updated%20on%2030%20Nov%202018.pdf

11 HKSFC Conceptual framework for the potential regulation of virtual asset trading platform operators (November 1, 2018): https://www.sfc.hk/web/EN/files/ER/PDF/App%202_%20Conceptual%20framework%20for%20VA%20trading%20platform_eng.pdf

12 Securities Commission Malaysia media release (January 14, 2019): https://www.sc.com.my/news/media-releases-and-announcements/sc-to-regulate-offering-and-trading-of-digital-assets

Many financial regulators are proactively conducting inquiries into the activities of Platforms to determine if they are carrying on activities that require them to comply with their requirements.

Consultation question

3. Are there any global approaches to regulating Platforms that would be appropriate to be considered in Canada?

PART 5 – The Proposed Platform Framework

5.1 Overview of the Proposed Platform Framework

The Proposed Platform Framework will apply to Platforms that are subject to securities legislation and that may not fit within the existing regulatory framework. It will apply both to Platforms that operate in Canada and to those that have Canadian participants.[13]

In developing the Proposed Platform Framework, the CSA considered that some of the Platforms are hybrid in nature and may perform functions typically performed by one or more of the following types of market participants: ATSs,[14] exchanges[15] (exchanges and ATSs are both types of marketplaces[16]), dealers, custodians and clearing agencies. Specifically:

- like an exchange or ATS, they may be a market or facility where orders of multiple buyers and sellers are brought together and matched;
- like an exchange, they may facilitate the creation or "listing" of a crypto asset;
- like an ATS or exchange, they may decide which crypto assets will be eligible for trading;
- like an exchange, they may offer a guarantee of a two-sided market and conduct regulatory activities;
- like a dealer, they may perform know-your-client and suitability reviews to grant access to investors (retail and institutional) and they may trade as principal;
- like a dealer or a custodian, they may self-custody investor's assets or otherwise have control over investors' assets; and
- like a clearing agency, they may enable the clearing and settlement of trades.

Application of marketplace requirements

The Proposed Platform Framework is based on the existing regulatory framework applicable to marketplaces and incorporates relevant requirements for dealers facilitating trading or dealing in securities. It is tailored to take into account the functions that may be performed by each Platform. Specifically, a Platform that brings together orders of buyers and sellers of securities and uses non-discretionary methods for these orders to interact is a marketplace.

As a marketplace, a Platform will be subject to requirements that will address many of the risks outlined in Part 3 of the Consultation Paper, such as those set out in NI 21-101, National Instrument 23-101 *Trading Rules* (NI 23-101 and, together with NI 21-101, the **Marketplace Rules**) and National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces* (**NI 23-103**).

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13 The CSA may consider exemptive relief from the applicable requirements if the Platform is located outside of Canada and is regulated by a foreign regulator in a manner that is similar to domestic oversight.

14 ATS is defined in every jurisdiction other than Ontario in s. 1.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), and in Ontario in ss. 1(1) of the *Securities Act* (Ontario).

15 An exchange is a marketplace that may, among other things, lists the securities of issuers; provides a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis; sets requirements governing the conduct of marketplace participants; or disciplines marketplace participants. Securities legislation enables securities regulatory authorities to recognize exchanges or exempt an exchange from recognition.

16 Marketplace is defined in every jurisdiction other than Ontario in s. 1.1 on NI 21-101, and in Ontario in ss. 1(1) of the *Securities Act* (Ontario).

Application of dealer requirements

In addition to marketplace functions, the Platform may also perform dealer functions, for example, providing custody of crypto assets and permitting direct access to trading by retail investors. As a result, the Proposed Platform Framework will include requirements that address the risks relating to these additional functions. Many of these requirements already exist in regulatory frameworks applicable to dealers.

Some entities will not fall within the definition of a marketplace. For example, an entity that is trading crypto assets that are securities but always trades against its participants and does not facilitate trading between buyers and sellers may be regulated as a dealer only and therefore not be subject to the Marketplace Rules and the Proposed Platform Framework. For example, firms that are currently registered in the category of exempt market dealer and that are currently permitted under securities legislation to facilitate the sale of securities, including crypto assets, in reliance on available prospectus exemptions in National Instrument 45-106 *Prospectus Exemptions* can continue to offer this service as long as they do not fall within the definition of "marketplace".

Registered firms introducing crypto asset products and/or services are required to report changes in their business activities to their principal regulator and the proposed activities may be subject to review to assess whether there is adequate investor protection.

Investment dealer registration and IIROC membership

Like the Marketplace Rules, the Proposed Platform Framework contemplates Platforms both becoming registered as investment dealers and becoming IIROC dealer and marketplace members (**IIROC Members**).[17] IIROC currently oversees all investment dealers as well as trading activity on debt and equity marketplaces in Canada and, accordingly,

- has a comprehensive body of rules governing the business, financial and trading conduct of IIROC Members which are tailored to the different types of products and services offered by IIROC Members;
- has established programs to assess compliance with both IIROC's rules applicable to dealers (**IIROC Dealer Member Rules**) and the Universal Market Integrity Rules (**UMIR**) that govern trading on a marketplace;
- has experience with dealers and marketplaces that trade a variety of securities and has developed tailored compliance programs and applied tailored rules for marketplaces; and
- operates in a regulatory capacity in every province in Canada.

Recognition as an exchange

A Platform that intends to carry on business as an exchange should contact the relevant securities regulatory authority to discuss whether recognition as an exchange is appropriate or, if such Platforms offer direct retail access or trade as principal, the Proposed Platform Framework is more appropriate to address risks arising from these activities.

Derivatives requirements

The CSA plans to consult on the appropriate regulatory framework to apply to marketplaces that trade over-the-counter derivatives, including platforms that offer derivatives with exposure to a crypto asset (e.g. a derivatives trading facility or swap execution facility that facilitate transactions in bitcoin-based derivatives). In the interim, if a Platform is trading or dealing in crypto assets that may be classified as derivatives, to the extent that the Platform has similar functions or operations to those contemplated in this Consultation Paper, it may be appropriate to apply requirements to those Platforms that are similar to the requirements contemplated by the Proposed Platform Framework. We anticipate, however, that such requirements may need to be specifically tailored to reflect the requirements that currently apply to derivatives or are otherwise appropriate to apply to those products and marketplaces.[18]

5.2 Proposed Platform Framework – Key areas for consultation

While the Proposed Platform Framework builds on an existing regulatory regime that was designed for a wide variety of market participants, we recognize that the existing regulatory requirements, and particularly the Marketplace Rules, were designed for marketplaces trading traditional securities (such as equities and debt). The CSA supports innovation in our capital markets while

[17] We note that IIROC membership may not be appropriate in all cases, depending on the facts and circumstances.

[18] We would also like to remind market participants of the requirements relating to commodity futures exchange contracts in securities and commodity futures legislation.

protecting investors and promoting fair and efficient capital markets. We are therefore considering a set of requirements tailored to Platforms' operations that appropriately addresses the new risks introduced.

Below, we seek feedback on a number of areas that will assist in determining appropriate requirements for Platforms.

5.2.1 Custody and verification of assets

It has been reported that crypto assets with a value of almost US$1 billion were stolen in 2018 from Platforms that operate globally.[19] The ownership of crypto assets is evidenced by private keys which are required to execute crypto asset transactions. As the loss or theft of a private key may result in the loss of assets, the safeguarding of private keys is especially critical.

The operational model of many Platforms involves the Platform having custody of its participants' assets including private keys or the Platform holding the crypto assets in its own wallet with the Platform's private key. As a result, appropriate custody controls are a necessary part of managing risks to investors. To the extent that the Platform holds or has control over investors' assets, a significant risk is that investors' assets are not sufficiently accounted for or protected by the Platform. As a result, the Platform might not have sufficient crypto assets or cash to satisfy demand or could be vulnerable to theft. This risk increases substantially if there is insufficient insurance to cover the full amount of the theft.

When looking at the operations of a Platform, we will assess whether a Platform's risk management policies and procedures are appropriate to manage and mitigate the custodial risks. Expectations will be guided by the operational model of the Platform. For example, if the trades on a Platform do not occur on the distributed ledger, and instead the Platform keeps track of changes in ownership on its own internal ledger, we will evaluate whether the Platform has a robust system of internal controls, including records, that ensures that a participant's crypto assets are accurately accounted for by the Platform and appropriately segregated from assets belonging to the Platform.

Traditional custodians that hold assets for clients typically engage an independent auditor to perform an audit of the custodian's internal controls and prepare an assurance report. There are different types of assurance reports; however, it is common for custodians to engage external auditors to issue system and organization controls reports such as SOC 1 Reports[20] and SOC 2 Reports[21] regarding the suitability of internal controls in financial reporting and controls surrounding the custody of investors' assets. The auditor will issue a report pertaining to the design of the controls (**Type I Report**), and a report assessing whether such controls are operating as intended over a defined period (**Type II Report**). We anticipate that these reports will play an important role in the authorization and oversight of the Platform, reporting of transactions, internal risk management and verification of the existence of investors' assets. We contemplate requiring that Platforms obtain SOC 2, Type I and II Reports for their custody system and, if they use third-party custodians, to ensure that they have SOC 2, Type I and II Reports.

We understand, however, that there have been challenges with crypto asset custodians and Platforms obtaining SOC 2, Type II Reports, in part due to the novel nature of crypto asset custody solutions and the limited period of time that Platforms have been in operation to allow for the testing of internal controls. Nevertheless, we contemplate that Platforms seeking registration as an investment dealer registration and IIROC membership that plan to provide custody of crypto assets will not only need to satisfy existing custody requirements but will also be expected to meet other yet-to-be determined standards specific to the custody of crypto assets.

Consultation questions

4. What standards should a Platform adopt to mitigate the risks related to safeguarding investors' assets? Please explain and provide examples both for Platforms that have their own custody systems and for Platforms that use third-party custodians to safeguard their participants' assets.

5. Other than the issuance of Type I and Type II SOC 2 Reports, are there alternative ways in which auditors or other parties can provide assurance to regulators that a Platform has controls in place to ensure that investors' crypto-assets exist and are appropriately segregated and protected, and that transactions with respect to those assets are verifiable?

6. Are there challenges associated with a Platform being structured so as to make actual delivery of crypto assets to a participant's wallet? What are the benefits to participants, if any, of Platforms holding or storing crypto assets on their behalf?

[19] https://www.reuters.com/article/us-crypto-currency-crime/cryptocurrency-theft-hits-nearly-1-billion-in-first-nine-months-report-idUSKCN1MK1J2.

[20] Report on controls at a service organization relevant to participant entities' internal control over financial reporting.

[21] Report on controls at a service organization relevant to security, availability, processing integrity, confidentiality or privacy.

5.2.2 Price determination

Fair and efficient capital markets are dependent on price discovery. The wide availability of information on orders and/or trades is important to foster efficient price discovery and investor confidence. As with traditional marketplaces, Platforms will be required to foster price discovery for the crypto assets they offer for trading. It is important for regulators and for the participants on the Platform to understand how prices on a Platform are determined. In addition, where the Platform or an affiliate acts as a market maker and provides quotes, the mechanisms for determining those quotes are expected to be available to participants. When trading as a market maker against its participants, a Platform will also be required to provide participants with a fair price.

Consultation questions

7. What factors should be considered in determining a fair price for crypto assets?

8. Are there reliable pricing sources that could be used by Platforms to determine a fair price, and for regulators to assess whether Platforms have complied with fair pricing requirements? What factors should be used to determine whether a pricing source is reliable?

5.2.3 Surveillance of trading activities

The existing types of marketplaces have different regulatory responsibilities. Exchanges are responsible for conducting market surveillance of trading activities on the exchange and enforcing market integrity rules. All of the existing equity exchanges have retained IIROC to monitor trading activity and enforce market integrity rules. ATSs, by contrast, are not permitted to conduct market surveillance or enforcement activities and are required to engage a regulation services provider (**RSP**). IIROC currently acts as an RSP to all equity and fixed income marketplaces.

If IIROC were retained as an RSP by a Platform, IIROC would conduct market surveillance for that Platform. We understand that some of the types of manipulative and deceptive trading activities that may occur on Platforms that trade crypto assets are similar to those on marketplaces trading traditional securities. A unique challenge associated with market surveillance on Platforms is the fact that crypto assets trade on a global basis, on and off Platforms, outside regular trading hours, and may be illiquid and highly volatile. This, and the fact that there is currently no central source for pricing, may affect the price of a crypto asset trading on a Platform. This may also make it difficult to obtain reliable reference data that is needed to conduct effective surveillance.

To reduce the risks of potentially manipulative or deceptive activities, in the near term, we propose that Platforms not permit dark trading or short selling activities, or extend margin to their participants. We may revisit this once we have a better understanding of the risks introduced to the market by the trading of crypto assets.

Some Platforms have indicated that they intend to set rules and monitor the trading activities of their marketplace participants rather than retaining an RSP. This may raise conflicts of interest issues that will need to be addressed.

Consultation questions

9. Is it appropriate for Platforms to set rules and monitor trading activities on their own marketplace? If so, under which circumstances should this be permitted?

10. Which market integrity requirements should apply to trading on Platforms? Please provide specific examples.

11. Are there best practices or effective surveillance tools for conducting crypto asset market surveillance? Specifically, are there any skills, tools or special regulatory powers needed to effectively conduct surveillance of crypto asset trading?

12. Are there other risks specific to trading of crypto assets that require different forms of surveillance than those used for marketplaces trading traditional securities?

5.2.4 Systems and business continuity planning

System resiliency, reliability and security controls are important for investor protection. System failures may result in investors being unable to access their crypto assets and may have an impact on market efficiency and investor protection. Marketplaces are required to have adequate internal and information technology controls over their trading, surveillance and clearing systems

and information security controls that relate to security threats and cyber-attacks.[22] Marketplaces are also required to maintain business continuity and disaster recovery plans to provide uninterrupted provision of key services.[23] To ensure that marketplaces have adequate internal and technology controls in place over their trading, surveillance and clearing systems and that their systems function as designed, marketplaces are required to engage an entity with relevant experience both in information technology and in the evaluation of related internal controls to conduct an independent systems review (ISR).[24]

Technology and cyber security are key risks for Platforms. For these reasons they will also be required to comply with the systems and business continuity planning requirements applicable to existing marketplaces in NI 21-101. One key difference between Platforms and traditional marketplaces is that there is a greater risk for participants when a Platform provides custody of investors' crypto assets and does not have the appropriate internal controls.

In the normal course, all marketplaces are required to have an ISR conducted for other critical systems including order entry, execution or data. These requirements are in place to manage risks associated with the use of technology and to ensure that minimum standards are maintained. In some cases, we have granted temporary exemptions from the ISR requirements, provided the marketplace did not pose a significant risk to the capital markets and certain reports and information are provided to regulators.

Consultation question

13. Under which circumstances should an exemption from the requirement to provide an ISR by the Platform be considered? What services should be included/excluded from the scope of an ISR? Please explain.

5.2.5 Conflicts of interest

Platforms may have certain conflicts of interests, similar to other marketplaces. They may also raise a number of unique conflicts. For example, they may provide advice to their participants, which raises a conflict because the Platform may be providing advice on the same crypto assets that they have made eligible for trading on the Platform.

Another conflict relates to proprietary trading. Like dealers, it is possible that some Platforms trade for their own account against their participants, including retail investors. This raises conflicts of interest and a number of risks, including that the Platform's participants may not know that the Platform operator also trades on the marketplace against the investor and the risk that investors may not receive a fair price when trading against the Platform operator.

To address these risks, we contemplate that Platforms will be required to identify and manage potential conflicts of interest and will be required to disclose whether they trade against their participants, including acting as a market maker, and the associated conflicts of interest. Disclosure will assist investors in assessing whether they want to participate on the Platform. To the extent Platforms are required to become IIROC Members, they will also be subject to requirements in the UMIR aimed at mitigating the risks associated with trading against their participants.[25]

Consultation questions

14. Is there disclosure specific to trades between a Platform and its participants that Platforms should make to their participants?

15. Are there particular conflicts of interest that Platforms may not be able to manage appropriately given current business models? If so, how can business models be changed to manage such conflicts appropriately?

5.2.6 Insurance

Some Platforms have custody of investors' assets. This makes them attractive targets for cyber-attacks and theft by insiders. Accordingly, insurance will also be an important safeguard. Dealers are required to maintain bonding or insurance against specific risks and in specified amounts.[26] This requirement may not address the specific operational risks of Platforms.

22 Part 12 of NI 21-101.

23 *Ibid.*

24 *Ibid.*

25 These include UMIR 5.3 *Client Priority*, UMIR 8.1 *Client Principal Trading* and UMIR 4.1 *Frontrunning*.

26 s. 12.3 of NI 31-103.

Many Platforms currently operate without any insurance covering investors' assets. We note that there may be significant difficulty and costs for a Platform to obtain insurance, in part due to the limited number of crypto asset insurance providers, and the high risk of cyber-attacks. Therefore, some Platforms have indicated that they are considering limited coverage that only extends to certain crypto assets, crypto assets in "hot wallets" or "cold wallets", loss as result of hacking, or loss from insider theft.

Consultation questions

16. What type of insurance coverage (e.g. theft, hot-wallet, cold-wallet) should a Platform be required to obtain? Please explain.

17. Are there specific difficulties with obtaining insurance coverage? Please explain.

18. Are there alternative measures that address investor protection that could be considered equivalent to insurance coverage?

5.2.7 Clearing and settlement

All trades executed on a marketplace are required to be reported and settled through a clearing agency.[27] A regulated clearing agency improves the efficiency of marketplaces and brings stability to the financial system.

Without exemptive relief, this requirement would also apply to Platforms that are marketplaces. However, currently there are no regulated clearing agencies for crypto assets that are securities or derivatives. As indicated above, we understand that on some Platforms, transaction settlement occurs on the Platform's internal ledger and is not recorded on the distributed ledger. We are considering whether an exemption from the requirement to report and settle trades through a clearing agency is appropriate. In these circumstances, Platforms will still be subject to certain requirements applicable to clearing agencies and will therefore be required to have policies, procedures and controls to address certain risks including operational, custody, liquidity, investment and credit risk.[28] We plan to revisit such exemptions in the future, as the space continues to develop and evolve.

Some Platforms may operate a non-custodial (decentralized) model where the transfer of crypto assets that are securities or derivatives occurs between the two parties of a trade on a decentralized blockchain protocol (e.g. smart contract). These types of Platforms will be required to have controls in place to address the specific technology and operational risks of the Platform.

Consultation questions

19. Are there other models of clearing and settling crypto assets that are traded on Platforms? What risks are introduced as a result of these models?

20. What, if any, significant differences in risks exist between the traditional model of clearing and settlement and the decentralized model? Please explain how these different risks may be mitigated.

21. What other risks are associated with clearing and settlement models that are not identified here?

5.2.8 Applicable regulatory requirements

Platforms that are marketplaces are subject to existing marketplace regulatory requirements, including those summarized at **Appendix B**. Some of these requirements may not be relevant for Platforms and others may need to be tailored to address specific risks.

Platforms may perform additional functions typically performed by dealers and clearing agencies. We are also considering how the requirements summarized at **Appendices C** and **D** may apply. Leveraging the existing regulatory frameworks will ensure that Platforms are treated similarly to other marketplaces, but with appropriately tailored requirements that are relevant for the functions they perform.

Please note that Appendices B, C and D provide only an overview of certain requirements and therefore they should not be relied upon as exhaustive lists of the requirements applicable to marketplaces, dealers and clearing agencies.

[27] Part 13 of NI 21-101.

[28] If not already addressed by rules applicable to IIROC Members, to the extent they apply.

Consultation question

22. What regulatory requirements, both at the CSA and IIROC level, should apply to Platforms or should be modified for Platforms? Please provide specific examples and the rationale.

PART 6 – Providing Feedback

The CSA Regulatory Sandbox is an initiative of the CSA to support business seeking to offer innovative products, services and applications in Canada. The CSA Regulatory Sandbox is a part of the CSA's 2016-2019 Business Plan's objectives to gain a better understanding of how fintech innovations are impacting capital markets and assess the scope and nature of regulatory implications.[29]

We invite interested parties to make written submissions on the consultation questions identified throughout this Consultation Paper. A complete list of the consultation questions referred to throughout this paper is provided in **Appendix A**. We also welcome you to provide any other comments on the appropriate regulation of Platforms. The information provided will assist us in refining the Proposed Platform Framework and our understanding of this area of innovation.

Please submit your comments in writing by **May 15, 2019**. Please send your comments by email in Microsoft Word format. Address your submission to IIROC and all members of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses below. Your comments will be distributed to IIROC and the other CSA members.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
Consultation-en-cours@lautorite.qc.ca

[29] CSA Business Plan, 2016-2019: https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_Business_Plan_2016-2019.pdf

IIROC

Victoria Pinnington
Senior Vice President, Market Regulation
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, Ontario M5H 3T9
vpinnington@iiroc.ca

Certain CSA regulators require publication of the written comments received during the comment period. We will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca), the Ontario Securities Commission (www.osc.gov.on.ca), and the Alberta Securities Commission (www.albertasecurities.com). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

PART 7 – Questions

Please refer your questions to any of the following CSA and IIROC staff:

Amanda Ramkissoon Fintech Regulatory Adviser, OSC LaunchPad Ontario Securities Commission aramkissoon@osc.gov.on.ca	**Ruxandra Smith** Senior Accountant, Market Regulation Ontario Securities Commission ruxsmith@osc.gov.on.ca
Timothy Baikie Senior Legal Counsel Market Regulation Ontario Securities Commission tbaikie@osc.gov.on.ca	**Serge Boisvert** Senior Policy Advisor Exchanges and SRO Oversight Autorité des marchés financiers serge.boisvert@lautorite.qc.ca
Marc-Olivier St-Jacques Senior Policy Advisor Supervision of Intermediaries Autorité des marchés financiers marco.st-jacques@lautorite.qc.ca	**Denise Weeres** Director, New Economy Alberta Securities Commission denise.weeres@asc.ca
Katrina Prokopy Senior Legal Counsel, Market Regulation Alberta Securities Commission katrina.prokopy@asc.ca	**Sasha Cekerevac** Senior Analyst, Market Structure Alberta Securities Commission sasha.cekerevac@asc.ca
Dean Murrison Director, Securities Division Financial and Consumer Affairs Authority of Saskatchewan dean.murrison@gov.sk.ca	**Zach Masum** Manager, Legal Services, Capital Markets Regulation British Columbia Securities Commission zmasum@bcsc.bc.ca
Ami Iaria Senior Legal Counsel, Capital Markets Regulation British Columbia Securities Commission aiaria@bcsc.bc.ca	**Peter Lamey** Legal Analyst, Corporate Finance Nova Scotia Securities Commission peter.lamey@novascotia.ca
Chris Besko Director, General Counsel The Manitoba Securities Commission chris.besko@gov.mb.ca	**Wendy Morgan** Deputy Director, Policy Financial and Consumer Services Commission (New Brunswick) wendy.morgan@fcnb.com
Victoria Pinnington Senior Vice President, Market Regulation IIROC vpinnington@iiroc.ca	**Sonali GuptaBhaya** Director, Market Regulation Policy IIROC sguptabhaya@iiroc.ca

APPENDIX A
Consultation Questions

1. Are there factors in addition to those noted in Part 2 that we should consider?

2. What best practices exist for Platforms to mitigate the risks outlined in Part 3? Are there any other significant risks which we have not identified?

3. Are there any global approaches to regulating Platforms that are appropriate to be considered in Canada?

4. What standards should a Platform adopt to mitigate the risks related to safeguarding investors' assets? Please explain and provide examples both for Platforms that have their own custody systems and for Platforms that use third-party custodians to safeguard their participants' assets.

5. Other than issuance of Type I and Type II SOC 2 Reports, are there alternative ways in which auditors or other parties can provide assurance to regulators that a Platform has controls in place to ensure that investors' crypto-assets exist and are appropriately segregated and protected, and that transactions with respect to those assets are verifiable?

6. Are there challenges associated with a Platform being structured so as to make actual delivery of crypto assets to a participant's wallet? What are the benefits to participants, if any, of the Platforms holding or storing crypto assets on their behalf?

7. What factors should be considered in determining a fair price for crypto assets?

8. Are there reliable pricing sources that could be used by Platforms to determine a fair price, and for regulators to assess whether Platforms have complied with fair pricing requirements? What factors should be used to determine whether a pricing source is reliable?

9. Is it appropriate for Platforms to set rules and monitor trading activities on their own marketplace? If so, under which circumstances should this be permitted?

10. Which market integrity requirements should apply to trading on Platforms? Please provide specific examples.

11. Are there best practices or effective surveillance tools for conducting crypto asset market surveillance? Specifically, are there any skills, tools or special regulatory powers needed to effectively conduct surveillance of crypto asset trading?

12. Are there other risks specific to trading of crypto assets that require different forms of surveillance than those used for marketplaces trading traditional securities?

13. Under which circumstances should an exemption from the requirement to provide an ISR by the Platform be appropriate? What services should be included/excluded from the scope of the ISR? Please explain.

14. Is there disclosure specific to trades between a Platform and its participants that Platforms should make to their participants?

15. Are there particular conflicts of interest that Platforms may not be able to manage appropriately given current business models? If so, how can business models be changed to manage such conflicts appropriately?

16. What type of insurance coverage (e.g. theft, hot-wallet, cold-wallet) should a Platform be required to obtain? Please explain.

17. Are there specific difficulties with obtaining insurance coverage? Please explain.

18. Are there alternative measures that address investor protection that could be considered that are equivalent to insurance coverage?

19. Are there other models of clearing and settling crypto assets that are traded on Platforms? What risks are introduced as a result of these models?

20. What, if any, significant differences in risks exist between the traditional model of clearing and settlement and the decentralized model? Please explain how these different risks could be mitigated.

21. What other risks could be associated with clearing and settlement models that are not identified here?

22. What regulatory requirements (summarized at Appendices B, C, and D), both at the CSA and IIROC level, should apply to Platforms or should be modified for Platforms? Please provide specific examples and the rationale.

APPENDIX B
Summary of Regulatory Requirements Applicable to Marketplaces

Marketplaces are subject to the Marketplace Rules and NI 23-103. These include high-level principles relating to access to the marketplaces and trading on the marketplaces. A summary of the regulatory requirements is included below. Please note that this summary should not be relied upon as being an exhaustive list of the requirements applicable to marketplaces.

1. Market integrity

The Marketplace Rules and NI 23-103 have a number of requirements covering market integrity. For example, NI 21-101 requires a marketplace to take reasonable steps to ensure it operates in a way that does not interfere with fair and orderly markets.[30] NI 23-101 and securities legislation in some jurisdictions also prohibit any person or company from engaging in transactions that they know, or should know, result in market manipulation or are fraudulent. NI 23-103 also has requirements for marketplaces aimed at maintaining market integrity. For example, marketplaces are required to assess, on a regular basis, whether they require risk management and supervisory controls, policies and procedures, in addition to those of their participants. Marketplaces are also required to assess on a regular basis the continuing adequacy and effectiveness of these controls, policies and procedures.[31]

While the Marketplace Rules and NI 23-103 establish the high-level principles for marketplaces that trade in Canada, the specific requirements applicable to participants on a marketplace are included in the UMIR, which are administered by IIROC.

2. Transparency of operations

Marketplaces are required to make transparent, on their websites, a description of how their orders are entered, interact and are executed, the hours of operation, their fees (including fees for facilitation, routing and mark-ups, if applicable), their affiliates' fees, access requirements, conflicts of interest policies and procedures, and referral arrangements between the marketplace and service providers.[32] The purpose of these requirements is to ensure that market participants understand how the marketplace works, as well as the associated risks, its features and its fees.

3. Transparency of orders and trades

Except in certain circumstances, marketplaces must make transparent their order and trade information for securities traded on a marketplace by providing it to an information processor.[33] The information processor collects, consolidates and disseminates their data, and also sets the requirements for the order and trade information that must be provided to it by marketplaces.

4. Transparency to regulators

Marketplaces are required to provide certain information to the securities regulators, so that they understand the business of the marketplace and the risks it introduces to the market. Such information is described in the exhibits included in Forms 21-101F1 *Information Statement Exchange or Quotation and Trade Reporting System* and 21-101F2 *Information Statement Alternative Trading System*, for exchanges and ATSs respectively, and relates to: governance, marketplace operations, outsourcing arrangements, systems, custody, the types of securities traded, how access to services is provided, and fees. These forms must be filed prior to the commencement of the operations and must be kept up to date. Changes to the information included in these forms must also be reported to the securities regulators, either in advance, if the change is significant, or subsequent to its implementation if it is not.

In addition, marketplaces report their trading activities on a quarterly basis.[34] The quarterly reports are provided to the securities regulators in electronic form. The information reported is included in Form 21-101F3 *Quarterly Report of Marketplace Activities* and includes trading activity information (value, volume and number of trades) by category of security, information about orders and order types, and information about the most traded securities.

30 s. 5.7 of NI 21-101.

31 Part 4 of NI 23-103.

32 s. 10.1 of NI 21-101.

33 Part 7 of NI 21-101 and Part 8 of NI 21-101 for equity and fixed income securities, respectively.

34 Part 3 of NI 21-101.

5. Listing securities

Exchanges may list securities of an issuer.[35] They are required to comply with the fair access requirements in NI 21-101 (and in their recognition orders), which include the requirement to establish written standards for granting access to each of their services,[36] including listings. Since exchanges have listings requirements in the form of rules, they must ensure that these rules require compliance with securities legislation[37] and that they provide appropriate sanctions for violations of the rules.[38]

6. Fair access

Marketplaces must not unreasonably prohibit or limit access by a person or company to services offered by the marketplace. A marketplace must establish written standards for granting access to each of its services and must keep records of each access grant or denial of access.[39] It must neither permit unreasonable discrimination among participants, issuers and marketplace participants nor impose any burden on competition that is not reasonably necessary and appropriate.[40] Lastly, a marketplace must not prohibit, condition or otherwise limit a marketplace participant from trading on any marketplace.[41]

7. Conflict of interest

A marketplace must establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of a marketplace or the services it provides, and any conflicts that owners of the marketplace may have.[42] These policies must be disclosed on the marketplace's website.

8. Outsourcing

A marketplace that outsources key services or systems to a service provider must have policies and procedures relating to the selection of the service provider, must maintain access to the books and records of the service provider, must ensure that the securities regulatory authorities have access to data that is maintained at the service provider and must review, on a regular basis, the performance of the service provider.[43] The outsourcing requirements seek to ensure that the marketplace retains responsibility and control over the outsourced services or systems.[44]

9. Confidential treatment of trading information

A marketplace must not release the order or trade information of any of its participants. This requirement protects each marketplace participant's trading history and strategy. There is an exception to this requirement in limited situations, where data is used for capital markets research and provided certain conditions are met.[45]

10. Recordkeeping requirements

Marketplaces are required to keep books, records and other documents that are reasonably necessary for the proper recording of its business in electronic form.[46]

11. Systems and business continuity planning

Marketplaces are required to have adequate internal and information technology controls over their trading, surveillance and clearing systems and information security controls that relate to security threats and cyber attacks. A marketplace is also required to maintain business continuity and disaster recovery plans. A marketplace is required to develop, maintain and test a business continuity plan to ensure uninterrupted provision of key services. A marketplace is required to engage a qualified third party to conduct an independent system review to assess whether it has adequate internal and information technology controls and if they function as designed.[47]

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35 An issuer is listed when there is a formal arrangement between the exchange and the issuer to have the issuer's securities listed, and the exchange has and enforces listing requirements.

36 para. 5.1(2)(a) of NI 21-101.

37 para. 5.3(b) of NI 21-101.

38 para. 5.4(b) of NI 21-101.

39 s. 5.1 of NI 21-101.

40 ss. 5.1(3) of NI 21-101.

41 s. 5.1 of NI 21-101.

42 s. 5.11 of NI 21-101.

43 s. 5.12 of NI 21-101.

44 Ibid.

45 s. 5.10 of NI 21-101.

46 Part 11 of NI 21-101.

47 Part 12 of NI 21-101.

12. Clearing and settlement

All trades executed on a marketplace must be reported and settled through a clearing agency.[48] Marketplace participants have a choice as to the clearing agency that they would like to use for the clearing and settlement of their trades, provided that the clearing agency is appropriately regulated in Canada.

[48] Part 13 of NI 21-101.

APPENDIX C
Summary of Regulatory Requirements Applicable to Dealers

Registration is required if a person or company is in the business of or is holding itself out as being in the business of, trading securities. We have generally found Platforms that intermediate trades of securities between buyers and sellers to be "in the business" of trading securities and subject to the registration requirements set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, and, where applicable, IIROC Dealer Member Rules and UMIR.

Although the details of the specific requirements applicable to different categories of dealers vary, the summary below captures the basic requirements applicable to a dealer. Please note that this summary should not be relied upon as an exhaustive list of the requirements applicable to dealers.

1. Proficiency

Dealers are in the business of buying and selling securities and derivatives on behalf of the clients and are implicitly or explicitly holding themselves out as having a certain level of knowledge or expertise. Accordingly, individuals registered as dealing representatives are expected to have the education, training and experience that a reasonable person would consider necessary to perform their activities competently, including understanding the structure, features and risks of each security the individual recommends.[49]

Similarly, firms are required to employ individuals as ultimate designated persons (**UDP**) and chief compliance officers (**CCO**) who meet certain additional educational and experience requirements and who will have responsibilities respecting promoting compliance with securities legislation and establishing and monitoring policies and procedures designed to assess compliance by the firm and its dealing representatives with securities legislation.[50]

2. Books and records

Dealers may hold the assets of and conduct transactions on behalf of a multitude of clients. Accordingly, it is important that they maintain books and records that accurately reflect their business activities, financial affairs and client transactions. These books and records requirements help dealers ensure that they are able to prepare and file financial information, determine their capital adequacy, and generally demonstrate compliance with the capital and insurance requirements, among other securities law requirements.[51] Maintaining proper books and records allows dealers to document information about their relationships with their clients and with other entities, as well as, to report to their clients the trades they have transacted on behalf of their clients.[52]

3. Compliance system

Given the significant role registered dealers play vis-à-vis their clients and to the capital markets, dealers are required to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation and to manage the risks associated with its business in accordance with prudent business practices.[53] An effective compliance system includes internal controls and day-to-day monitoring and supervision elements that are appropriately documented. These elements are intended to ensure the integrity of the practices of the dealer, as well as the appropriate segregation of key duties and functions, and includes employee proficiency and training.

As part of a compliance system, a registered firm must appoint both a CCO and an UDP. The CCO is responsible for monitoring, updating and reviewing policies and procedures a registered firm must have as part of its compliance system. The UDP promotes compliance with securities legislation and sets the tone for firm-wide compliance. Investment dealers are also required to appoint a Chief Financial Officer.

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49 The proficiency requirements for registered individuals at investment dealers are set out in IIROC Dealer Member Rule 2900 *Proficiency and Education*. The requirements for registered individuals at dealers other than investment dealers are included in Part 3 of NI 31-103.

50 s. 11.2 and 11.3 of NI 31-103, respectively.

51 s. 11.5 of NI 31-103.

52 s. 14.12 and 14.14 of NI 31-103.

53 s. 11.1 of NI 31-103.

4. Financial condition and required capital

Dealers may have access to the assets of a multitude of clients and the insolvency of a dealer could have serious implications for clients and confidence in the capital markets. Accordingly, firms are subject to ongoing financial requirements.[54]

Registered firms are required to calculate regulatory capital to ensure that it is not less than zero. The minimum capital for an exempt market dealer and a restricted dealer is $50,000 (unless an alternative minimum is imposed). Investment dealers are required to maintain risk adjusted capital, calculated in accordance with IIROC requirements, that is greater than zero.[55]

5. Insurance

Similarly, because of the significance of the financial condition of registered dealers to their clients and the capital markets, registered dealers must also maintain bonding or insurance that contains certain specific clauses and coverage. The amount of insurance coverage depends on the category of dealer involved.[56]

6. Financial reporting

Securities regulators monitor the financial condition of registered firms by requiring them to prepare and deliver to regulators annual and interim financial information, and to abide by requirements in IIROC Dealer Member Rule 16 *Dealer Members' Auditors and Financial Reporting*.

7. KYC and suitability

Know-your-client and suitability obligations require dealers to collect information to establish the identity of their clients, to understand their investment needs and objectives, overall financial circumstances, and risk tolerance and to then take reasonable steps to use that information to ensure a proposed transaction is suitable to the client. In order to make that suitability assessment, the dealer also needs to understand the features and risks of the security or derivative to be transacted (the know-your-product requirement).[57] In addition, dealers also have separate, specific obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the associated regulations, including the requirement to verify the identity of clients for certain activities and transactions.

8. Conflicts of interest

Dealers are faced with many potential conflicts of interest between their and their clients' interests. Accordingly, securities legislation requires that a dealer take reasonable steps to identify conflicts of interests that exist and may exist between itself and its clients. Among other requirements, a dealer must identify conflicts of interest that should be avoided and respond appropriately to other conflicts of interest given the level of risk each conflict raises (e.g. through control and/or disclosure of the conflict of interest).[58]

9. Custody

As dealers may have access to clients' assets, there are a number of requirements and prohibitions regarding custody of client cash and securities. Investment dealers, as IIROC members, must comply with the custodial requirements of IIROC.[59] Depending on the location where such assets are held, investment dealers may have to provide additional capital to reflect increased risk.[60] Exempt market dealers must comply with the requirements regarding holding client cash and securities set out in NI 31-103 which prohibits them from holding client assets and acting as custodians themselves.[61] Instead, client assets of exempt market dealers are normally held by a custodian that is a separate legal entity.

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54 The financial requirements for investment dealers are found in IIROC Dealer Member Rule 17 *Dealer Member Minimum Capital, Conduct of Business and Insurance* and Form 1. The financial requirements for dealers other than investment dealers are in s. 12.1 of NI 31-103.

55 Part 12, Division 1 of NI 31-103.

56 The insurance requirements for dealers other than investment dealers are included in s. 12.3 of NI 31-103. The insurance requirements for investment dealers are in IIROC Rule 400 *Insurance*.

57 The suitability requirements for dealers other than investment dealers are included in Part 13 of NI 31-103. The requirements for investment dealers are in IIROC Rule 1300 *Supervision of Accounts*.

58 s. 13.4 of NI 31-103.

59 IIROC Dealer Member Rule 2000 *Segregation Requirements*, Dealer Member Rule 17 *Dealer Member Minimum Capital, Conduct of Business and Insurance* and Dealer Member Rule 2600 *Internal Control Policy Statements*.

60 IIROC Form 1 General Notes and Definitions, (d) "acceptable securities locations".

61 s. 14.5.2 of NI 31-103.

10. Best execution and fair pricing

Investment dealers are required to establish, maintain and follow written policies and procedures that are reasonably designed to achieve best execution when acting for a client.[62] What constitutes "best execution" varies depending on the particular circumstances and, for transactions that are executed over the counter, such as transactions in fixed income securities, the expectation is that dealers have policies and procedures to ensure that prices to their clients for these securities are fair and reasonable, both for the pricing of principal transactions and for commissions that may be charged by the dealer.

11. Handling Complaints

Dealers are required to document complaints and to effectively and fairly respond to them. These procedures should include monitoring of complaints, to allow the detection of frequent and repetitive complaints made with respect to the same matter, which may, on a cumulative basis, indicate a serious problem. Registered firms are required to be a member of the Ombudsman for Banking Services and Investments,[63] except in Québec where the dispute resolution service is administered by the Autorité des marchés financiers.

62 IIROC Dealer Member Rule 3300 *Best Execution of Client Orders*.

63 Part 13, Division 5 of NI 31-103.

APPENDIX D
Requirements Applicable to Clearing Agencies

A clearing agency is defined in securities legislation as a person or company that, among other activities, provides centralized facilities for clearing and settlement of transactions in securities or, in some jurisdictions, derivatives.

National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**) sets out certain requirements in connection with the application process for recognition as a clearing agency or exemption from the recognition requirement. Please note that this summary should not be relied upon as being an exhaustive list of the requirements applicable to clearing agencies.

NI 24-102 also sets out the ongoing requirements applicable to recognized clearing agencies. This includes the requirement to meet or exceed applicable principles as set up in the April 2012 report *Principles for financial market infrastructures* published by the Committee on Payments and Market Infrastructure and the International Organization of Securities Commissions (**PFMI**). The PFMI cover all areas associated with activities carried out by a clearing agency: systemic risk, legal risk, credit risk, liquidity risk, general business risk, custody and investment risk and operational risk. Clearing agencies are required to:

- have appropriate rules and procedures on how transactions are cleared and settled, including when settlement is final;
- minimize and control their credit and liquidity risks;
- have rules that clearly state their obligations with respect to the delivery of securities traded; and
- identify, monitor and manage the risks and costs associated with the delivery of crypto assets, including the risk of loss of these crypto assets.

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Canoe Diversified Bond Fund (formerly Fiera Capital Diversified Bond Fund)
Canoe Income and Growth Fund (formerly Fiera Capital Income and Growth Fund)
Canoe High Income Fund (formerly Fiera Capital High Income Fund)
Canoe Core Canadian Equity Fund (formerly Fiera Capital Core Canadian Equity Fund)
Canoe Canadian Small Mid Cap Fund (formerly Fiera Capital Equity Growth Fund)
Canoe U.S. Equity Fund (formerly Fiera Capital U.S. Equity Fund)
Canoe International Equity Fund (formerly Fiera Capital International Equity Fund)
Canoe Global Equity Fund (formerly Fiera Capital Global Equity Fund)
Canoe Defensive Global Equity Fund (formerly Fiera Capital Defensive Global Equity Fund)
Principal Regulator – Quebec
Type and Date:
Amended and Restated to Final Simplified Prospectus dated March 1, 2019
Received on March 5, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Fiera Capital Corporation
Project #2799529

Issuer Name:
Dynamic Blue Chip U.S. Balanced Class
Dynamic Power Global Navigator Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 7, 2019
Received on March 8, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
Promoter(s):
1832 Asset Management L.P.
Project #2831337

Issuer Name:
Mackenzie Broad Risk Premia Collection Fund
Mackenzie Enhanced Equity Risk Premia Fund
Mackenzie Enhanced Fixed Income Risk Premia Fund
Mackenzie Global Energy Resource Long/Short Fund
Mackenzie Multi-Strategy Absolute Return Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated March 8, 2019
NP 11-202 Preliminary Receipt dated March 11, 2019
Offering Price and Description:
Series R
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Mackenzie Financial Corporation
Project #2883862

Issuer Name:
MDPIM Canadian Bond Pool
MDPIM Canadian Long Term Bond Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 8, 2019
Received on March 8, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Financial Management Inc.
Project #2757644

Issuer Name:
Ninepoint High Interest Savings Fund (formerly, Ninepoint Short-Term Bond Fund)
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated March 6, 2019
Received on March 7, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Ninepoint Partners LP
Project #2745066

Issuer Name:
Phillips, Hager & North Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 8, 2019
Received on March 8, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Phillips, Hager & North Investment Funds Ltd.
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2773191

Issuer Name:
1. Scotia Latin American Fund
2. Scotia International Equity Fund
3. Scotia Pacific Rim Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 7, 2019
Received on March 11, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Scotia Securities Inc.
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2829063

Issuer Name:
W.A.M. Collins Income Pool
Willoughby Investment Pool
Principal Regulator – British Columbia
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated March 4, 2019
NP 11-202 Preliminary Receipt dated March 5, 2019
Offering Price and Description:
Series A and Series F Units
Underwriter(s) or Distributor(s):
Harbourfront Wealth Management Inc.
Promoter(s):
Willoughby Asset Management Inc.
Project #2882056

Issuer Name:
Dynamic Blue Chip U.S. Balanced Class
Dynamic Power Global Navigator Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 7, 2019
NP 11-202 Receipt dated March 11, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
Promoter(s):
1832 Asset Management L.P.
Project #2831337

Issuer Name:
Franklin K2 Alternatives Fund
Franklin Target Return Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated March 5, 2019
NP 11-202 Receipt dated March 6, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2863651

Issuer Name:
Horizons Gold Yield ETF
Horizons Natural Gas Yield ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated March 1, 2019
NP 11-202 Receipt dated March 11, 2019
Offering Price and Description:
Class E units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2867751

Issuer Name:
iShares ESG Canadian Aggregate Bond Index ETF
iShares ESG Canadian Short Term Bond Index ETF
iShares ESG MSCI Canada Index ETF
iShares ESG MSCI EAFE Index ETF
iShares ESG MSCI Emerging Markets Index ETF
iShares ESG MSCI USA Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated March 4, 2019
NP 11-202 Receipt dated March 5, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2865331

Issuer Name:
MDPIM Canadian Bond Pool
MDPIM Canadian Long Term Bond Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 8, 2019
NP 11-202 Receipt dated March 11, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Financial Management Inc.
Project #2757644

Issuer Name:
Purpose Money Market Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated March 7, 2019
NP 11-202 Receipt dated March 8, 2019
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2874431

NON-INVESTMENT FUNDS

Issuer Name:
Bragg Gaming Group Inc. (formerly Breaking Data Corp.)
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated March 11, 2019
NP 11-202 Receipt dated March 11, 2019
Offering Price and Description:
$13,800,000.00
27,058,802 Units Issuable upon Exercise of 27,058,802 Special Warrants
Underwriter(s) or Distributor(s):
Eight Capital
Canaccord Genuity Corp.
Haywood Securities Inc.
Promoter(s):
–
Project #2863037

Issuer Name:
BuzBuz Capital Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus dated February 22, 2019
NP 11-202 Preliminary Receipt dated March 4, 2019
Offering Price and Description:
$250,000.00
2,500,000 Common Shares
PRICE: C$0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
–
Project #2881168

Issuer Name:
First Capital Realty Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 6, 2019
NP 11-202 Preliminary Receipt dated March 6, 2019
Offering Price and Description:
$453,200,000.00 – 22,000,000 Common Shares (Represented by Instalment Receipts)
Price: C$20.60 per Offered Share, of which C$10.30 is payable on closing of the Offering
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Promoter(s):
–
Project #2880237

Issuer Name:
Flower One Holdings Inc. (formerly Theia Resources Ltd.)
Principal Regulator – Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated March 6, 2019
NP 11-202 Preliminary Receipt dated March 7, 2019
Offering Price and Description:
Up to a Maximum of $50,000,000.00 – 9.5% Unsecured Convertible Debenture Units
Price: C$1,000.00 per Convertible Debenture Unit
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Canaccord Genuity Corp.
Cormark Securities Inc.
Eight Capital
Industrial Alliance Securities Inc.
PI Financial Corp.
Promoter(s):
–
Project #2881840

Issuer Name:
Halo Labs Inc. (formerly Apogee Opportunities Inc.)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 6, 2019
NP 11-202 Preliminary Receipt dated March 6, 2019
Offering Price and Description:
$10,000,000.00 (10,000 UNITS)
PRICE: C$1,000.00 PER UNIT
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Gravitas Securities Inc.
Clarus Securities Inc.
Cormark Securities Inc.
PI Financial Corp.
Promoter(s):
–
Project #2882779

Issuer Name:
Haro Metals Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated February 28, 2019
NP 11-202 Preliminary Receipt dated March 6, 2019
Offering Price and Description:
Offering of $340,000.00
3,400,000 Shares at C$0.10 per Share
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Steve Smith
Iqbal Boga
Project #2882424

Issuer Name:
IM Exploration Inc.
Principal Regulator – Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated March 4, 2019
NP 11-202 Preliminary Receipt dated March 5, 2019
Offering Price and Description:
Offering: $300,000.00 or 3,000,000 Common Shares
Offering Price: C$0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Yaron Conforti
Joel Freudman
Project #2854904

Issuer Name:
LL One Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus dated February 28, 2019
NP 11-202 Preliminary Receipt dated March 5, 2019
Offering Price and Description:
Offering: Minimum of $375,000.00 and up to $420,000.00
Minimum of 3,750,000 Common Shares and up to 4,200,000
Price: C$0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
–
Project #2879806

Issuer Name:
North American Construction Group Ltd.
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated March 6, 2019
NP 11-202 Preliminary Receipt dated March 6, 2019
Offering Price and Description:
$55,000,000.00
5.00% Convertible Unsecured Subordinated Debentures
Price: C$1,000.00 per Debenture
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Canaccord Genuity Corp
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Raymond James Ltd.
Industrial Alliance Securities Inc.
PI Financial Corp.
Acumen Capital Finance Partners Limited
Promoter(s):
–
Project #2880577

Issuer Name:
Sun Life Financial Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated March 8, 2019
NP 11-202 Preliminary Receipt dated March 8, 2019
Offering Price and Description:
$5,000,000,000.00
Debt Securities
Class A Shares
Class B Shares
Common Shares
Subscription Receipts
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2883694

Issuer Name:
Titan Medical Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 5, 2019
NP 11-202 Preliminary Receipt dated March 5, 2019
Offering Price and Description:
Maximum: US$25,000,000.00 (* Units)
Minimum: US$20,000,000.00 (* Units)
Price: US$(*) per Unit
Underwriter(s) or Distributor(s):
Bloom Burton Securities Inc.
Promoter(s):
–
Project #2882253

Issuer Name:
Zymeworks Inc.
Principal Regulator – British Columbia
Type and Date:
Short Form Base Shelf Prospectus dated March 6, 2019
NP 11-202 Receipt dated March 6, 2019
Offering Price and Description:
US$250,000,000
Common Shares
Preferred Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2874915

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Brookfield Investment Management Inc. To: Brookfield Public Securities Group LLC	Portfolio Manager and Commodity Trading Manager	January 4, 2019
Change in Registration Category	Provisus Wealth Management Limited	From: Portfolio Manager and Investment Fund Manager To: Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	March 11, 2019

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 MFDA – Proposed Amendments to MFDA By-Law No. 1, Sections 3.3 (Election and Term), 3.6.1 (Governance Committee) and 4.7 (Quorum) – Request for Comment

REQUEST FOR COMMENT

MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

PROPOSED AMENDMENTS TO MFDA BY-LAW NO. 1

SECTIONS 3.3 (ELECTION AND TERM), 3.6.1 (GOVERNANCE COMMITTEE) AND 4.7 (QUORUM)

The MFDA is publishing for public comment proposed amendments (Proposed Amendments) to sections 3.3 (Election and Term), 3.6.1 (Governance Committee) and 4.7 (Quorum) of MFDA By-law No 1.

The primary objectives of the Proposed Amendments are to ensure that the MFDA's governance structure aligns with those of comparator organizations, as appropriate, and continues to reflect best governance practices for self-regulatory organizations.

A copy of the MFDA Notice, including the text of the Proposed Amendments, is published on our website at www.osc.gov.on.ca. The comment period ends on June 12, 2019.

13.2 Marketplaces

13.2.1 Alpha Exchange Inc. – Notice of Proposed Changes and Request for Comments

ALPHA EXCHANGE INC.

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENTS

On February 21, 2019 TSX Inc. published for comment proposed changes to allow for dynamic order protection rule repricing. A Notice and Request for Comment in respect of the proposed changes was published in the Commission's Bulletin at (2019), 42 OSCB 1761.

As announced in the February 22, 2019 TMX Equities Trading Notice 2019-004, TMX Group intended to introduce dynamic repricing on resting OPR Reprice orders on all three of its equities trading venues – Toronto Stock Exchange (TSX), TSX Venture Exchange (TSXV) and TSX Alpha Exchange (Alpha). As a result of a TMX oversight, the Notice and Request for Comment published by the Commission did not include explicit reference to the identical functionality also being implemented on Alpha.

Following review by the OSC, this notice is to confirm that the public comment process underway for the introduction of dynamic OPR reprice functionality on TSX and TSXV now also applies for the introduction of the same functionality on Alpha.

The public comment period ends on March 25, 2019.

13.2.2 TSX Inc. – Enhancement of "Seek Dark Liquidity" Functionality – Notice of Proposed Amendments and Request for Comments

TSX INC.

NOTICE OF PROPOSED AMENDMENTS AND REQUEST FOR COMMENTS

ENHANCEMENT OF 'SEEK DARK LIQUIDITY' FUNCTIONALITY

TSX Inc. ("TSX") is publishing this Notice of Proposed Amendments in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto".

Market participants are invited to provide comments on the proposed changes. Comments should be in writing and delivered by April 15, 2019 to:

Anastassia Tikhomirova
Legal Counsel, Regulatory Affairs
TMX Group
300-100 Adelaide Street West
Toronto, Ontario M5H 1S3
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

Comments will be made publicly available unless confidentiality is requested. Upon completion of the review by Commission staff, and in the absence of any regulatory concerns, notice will be published to confirm completion of Commission staff's review and the Commission's approval.

Background

TSX is planning to enhance the current Seek Dark Liquidity (SDL) functionality to provide increased opportunity for users to achieve larger overall fills and potential price improvement when employing cross-seeking routing strategies by allowing for SDL interaction against resting visible liquidity, subject to certain limits.

The new optional SDL functionality will be referred to as 'SDL Plus'.[1]

Details and Rationale

Currently, users are able to specify two different options for IOCs/FOKs marked SDL – the first allowing for execution against dark price improving liquidity only, and the second allowing for the SDL to also execute against dark resting liquidity at the Protected NBBO, subject to the 'large' size requirements for at-the-quote dark executions.[2]

The SDL Plus feature will allow users to specify a third execution option for their SDL IOCs/FOKs that will cause the order to execute against resting price-improving dark liquidity followed by resting visible liquidity at the Protected NBBO from the same broker (attributed) until any volume allocated in the 'broker preferencing' priority tier has been exhausted (subject to the volume and price limit imposed on the SDL Plus order by the user).

The order type will be most beneficial for those currently using cross-seeking routing strategies in that it will allow the user the ability to oversize their orders to maximize the amount of price-improving dark liquidity captured.

Additional details are as follows:

- The execution price of an SDL Plus order will be constrained to the less aggressive of the order's limit price or the opposite-side Protected NBBO, and regardless of any OPR instruction included on the SDL Plus order.

[1] TSX has filed a patent application for SDL Plus.

[2] See UMIR 6.6.

SDL Plus orders with limit prices that are more aggressive than the opposite side NBBO, and SDL Plus market priced orders, will be automatically repriced to the opposite side NBBO.

- SDL Plus orders must be broker attributed in order to execute against resting visible volume in the broker preferencing priority tier. An SDL Plus order that is marked as anonymous will be accepted, but will behave like an SDL order that has been specified to only interact with price-improving dark liquidity.

- An attributed SDL Plus order will execute against visible attributed same-broker volume at the Protected NBBO, subject to the order's limit price.

- Once any visible attributed same-broker volume participating in the broker preferencing allocation tier is exhausted, any remaining portion of the SDL Plus order will cancel back to the participant.

- If there is no visible same-broker attributed volume at the opposite-side Protected NBBO on TSX, an SDL Plus order will behave like an SDL order that has been specified to only interact with price-improving dark liquidity.

- SDL Plus orders entered with a 'bypass' instruction will be rejected, as is currently applicable for SDL orders.

- RT participation is not applicable when an SDL Plus order executes against visible resting volume in the broker preferencing tier.

As is applicable for current SDL functionality, SDL Plus users will be able to apply the Minimum Quantity (MinQty) restriction that requires a minimum volume threshold be met for the IOC/FOK to trade. The Minimum Interaction Size (MIS) feature will not be available for SDL Plus. Information on MinQty functionality is available in TSX's Dark Liquidity Guide.[3]

Examples of SDL Plus functionality are provided in Appendix A to this notice.

Expected Date of Implementation

The proposed changes are expected to become effective in Q3 2019 at the earliest.

Expected Impact

TSX believes the SDL Plus feature will provide users with additional means to maximize their interaction against dark price-improving volume resting on TSX via a variety of active routing strategies. These include cross-seeking routing strategies employed by various participants today, whereby they seek to trade against their own visible resting orders.

By using the SDL Plus feature, it also provides opportunities for dealers to maximize the volume filled against their clients' orders resting on TSX, reducing information leakage where it allows for the order to be fully satisfied.

Impact in the context of internalization

We appreciate that some may view the SDL Plus feature as facilitating an increase in broker preferencing in Canada, and thereby helping to promote internalization. We also acknowledge that increased internalization has been and continues to be a topic of debate amongst industry participants. TMX held an industry roundtable discussion on internalization in January 2018,[4] and a concept paper from the Canadian Securities Administrators to further explore the topic has recently been published for comment.

We had withheld formally proposing this feature in light of industry concerns related to internalization and uncertainties as to what direction the awaited concept paper would take. We have chosen now to proceed with proposing this feature for the following reasons:

- there is continued direct customer demand for the feature, and supported by increased adoption of cross-seeking routing strategies;

- market-wide attributed unintentional cross rates have continued to rise unabated, driven by the introduction of broker preferencing on a competing market; and

[3] Available at: https://www.tsx.com/resource/en/1764/dark-liquidity-guide-v1.pdf.

[4] https://www.osc.gov.on.ca/documents/en/Securities-Category2/sn_20171205_23-319_internalization-in-the-canadian-market.pdf.

- the introduction of SDL Plus will not necessarily increase market-wide 'internalization' rates[5] further, and may actually help to reduce those rates.

Regarding the last of the above points, our expectation is that primary use of SDL Plus will be by those already using cross-seeking active routing strategies. In that case, we would expect use of SDL Plus to shift such activities away from other markets to TSX resulting in no overall net change to market-wide 'internalization' rates. To the extent that SDL Plus is successful at providing price-improving dark volume to those strategies, this could also have the effect of reducing market-wide internalization rates by shifting traded volume from what otherwise is occurring through a broker-preferenced trade on other markets to volume that trades against price-improving 'any-broker' dark resting volume on TSX.

Expected Impact of Proposed Changes on the Exchange's Compliance with Ontario Securities Law

The proposed changes will not impact TSX's compliance with Ontario securities law and in particular the requirements for fair access and maintenance of fair and orderly markets. TSX will continue to apply appropriate execution logic to ensure conformance with dark price improvement requirements under section 6.6 of UMIR.

Estimated Time Required by Members and Service Vendors to Modify Their Own Systems after Implementation of the Proposed Amendments

SDL functionality currently exists on TSX. Implementation effort for users is negligible as it will involve specification of one additional tag value for SDL orders to identify it as being SDL Plus. Usage is also optional.

Based on current planned implementation timelines, we anticipate that at least 90 days will be provided between regulatory approval and implementation, which should be sufficient to allow adoption by those that wish to take advantage of the SDL Plus order feature.

Do the Changes Currently Exist in Other Markets or Jurisdictions

As indicated above, SDL functionality exists today on TSX. Various participants also employ cross-seeking routing strategies through which they seek to trade against their own visible resting orders. SDL Plus will allow participants using these strategies to increase the amount of dark price-improving liquidity that can be captured in the process.

In technical terms, SDL Plus simply represents a limit or condition on an existing IOC/FOK (in addition to the order's limit price and volume) that defines the point in the normal execution path at which the IOC/FOK is to stop. An SDL Plus will execute against resting dark volume following normal dark priority allocation rules on TSX, and will continue to execute against visible volume where current priority allocation logic allocates volume from the same broker first (both sides must be broker attributed). The SDL Plus order establishes a condition that halts the execution of the IOC/FOK after the end of the broker preferencing allocation tier, assuming that the IOC/FOK's price and volume limits have not already been breached.

[5] As measured by market-wide attributed unintentional cross rates.

APPENDIX A

EXAMPLES INVOLVING SDL PLUS ORDERS

The following examples demonstrate the proposed functionality for CMO orders.

Example 1: *Execution of SDL Plus against visible volume*.

Book as follows:

	Order Ref #	Lit / Dark	Public Broker #	Timestamp	Volume	BID	ASK
PNBBO						*10.00*	*10.05*
TSX	1	Dark	1	10:00:01	2,000	10.025	
TSX	2	Dark	1	10:00:07	1,000	10.01	
TSX	3	Visible	29	10:00:05	400	10.00	
TSX	4	Visible	6	10:00:06	500	10.00	

Action: Order #5 received – An IOC sell marked SDL Plus for 5,000 shares at $10.00 is entered by Broker 6.

Result: Order #5 will trade 2,000 shares against Order #1 at $10.025, 1,000 shares against Order #2 at $10.01, and 500 shares against Order #4 at $10.00 via broker preferencing allocation tier, and will then cancel back remainder of 1,500 shares at end of broker preferencing allocation tier.

Example 2: *Normal broker preferencing rules apply*.

Book as follows:

	Order Ref #	Lit / Dark	Public Broker #	Timestamp	Volume	BID	ASK
PNBBO						*10.00*	*10.05*
TSX	1	Dark	1	10:00:01	2,000	10.025	
TSX	2	Dark	1	10:00:07	1,000	10.01	
TSX	3	Visible	29	10:00:05	400	10.00	
TSX	4	Visible	6	10:00:06	500	10.00	

Action: Order #5 received – An IOC sell marked SDL Plus for 5,000 shares at $10.00 is entered by Broker 1 (underlying broker is Broker 6).

Result: Order #5 will trade 2,000 shares against Order #1 at $10.025, 1,000 shares against Order #2 at $10.01, and will cancel back 2,000. There will be no trade against visible order #4 in the broker preferencing allocation tier as both sides are not publicly attributed to Broker 6.

Example 3: *TSX Best Bid is worse than the Protected National Best Bid*

Book as follows:

	Order Ref #	Lit / Dark	Public Broker #	Timestamp	Volume	BID	ASK
PNBBO						*10.00*	*10.05*
TSX	1	Dark	1	10:00:01	2,000	10.025	
TSX	2	Dark	1	10:00:07	1,000	10.00	
TSX	3	Visible	51	10:00:07	1,000	9.99	
TSX	4	Visible	6	10:00:08	500	9.99	

Action: Order #5 received – An IOC sell marked SDL Plus 7,000 shares at $9.99 is entered by Broker 6.

Result: Order #5 will trade 2,000 shares against Order #1 at $10.025, and will cancel back 5,000. There will be no trade against Order #2, as the best visible bid on TSX is worse than the PNBB so the SDL Plus order will only interact with resting price improving dark orders. There will be no trade against Orders #3 and #4 for the same reason.

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