CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment
Proposed Amendments to Multilateral Instrument 25-102
Designated Benchmarks and Benchmark Administrators
and
Proposed Changes to Companion Policy 25-102
Designated Benchmarks and Benchmark Administrators

May 30, 2024

Introduction

Today, the securities regulatory authorities (collectively the **Authorities** or **we**) of the Canadian Securities Administrators (the **CSA**) in British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia, Yukon and Northwest Territories (the **Participating Jurisdictions**) are publishing for a 90-day comment period:

- proposed amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102** or the **Instrument**), and
- proposed changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **CP**).

The text of the proposed amendments to MI 25-102 (the **Proposed Amendments**) and the proposed changes to the CP (the **Proposed Changes**) is contained in Annex A and Annex B, respectively, of this Notice and will also be available on websites of the Participating Jurisdictions, including:

lautorite.qc.ca
asc.ca
bcsc.bc.ca
nssc.novascotia.ca
fcnb.ca
osc.ca
fcaa.gov.sk.ca
yukon.ca
justice.gov.nt.ca

We are issuing this Notice to solicit comments on the Proposed Amendments and the Proposed Changes. We welcome all comments on the Proposed Amendments and the Proposed Changes and also invite comments on the specific questions set out in Annex E of this Notice.

Background

Currently, MI 25-102 provides a comprehensive regime for the designation and regulation of benchmarks and their administrators, and the regulation of benchmark contributors and of certain benchmark users of designated benchmarks.

The Authorities that adopted MI 25-102 also entered into a memorandum of understanding (the **MOU**)[1] respecting the oversight of designated benchmarks and designated benchmark administrators, including the processing of applications for designation. The MOU outlines the manner in which the jurisdictions will cooperate and coordinate their efforts to oversee designated benchmarks and designated benchmark administrators in order to achieve consistency, efficiency and effectiveness in the overall oversight approach, as well as the efficient and effective processing of applications for designation.

To date, the Ontario Securities Commission (**OSC**) and the Autorité des marchés financiers (**AMF**) have designated:

- the Canadian Dollar Offered Rate (**CDOR**)[2] as a designated critical benchmark and a designated interest rate benchmark and Refinitiv Benchmark Services (UK) Limited (**RBSL**) as its designated benchmark administrator for purposes of MI 25-102, and
- Term CORRA as a designated interest rate benchmark and CanDeal Benchmark Administration Services Inc. as its designated benchmark administrator for purposes of MI 25-102.

Under the MOU, the OSC and the AMF are co-lead authorities of these designated benchmarks and designated benchmark administrators. No other Authorities have designated any benchmarks or benchmark administrators at this time.

Substance and Purpose

The Proposed Amendments will revise the requirements in MI 25-102 for assurance reports (the **Revised Assurance Report Requirements**).

The Revised Assurance Report Requirements are intended to address technical issues encountered by accounting firms that were engaged to prepare assurance reports in 2022 for RBSL as the designated benchmark administrator of CDOR and the six Canadian banks that are benchmark contributors to CDOR.

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[1] A copy of the MOU is at https://www.osc.ca/sites/default/files/2021-05/mou_20210527_designated-benchmarks.pdf

[2] CDOR will cease to be published after June 28, 2024. It is expected that market participants will use the Canadian Overnight Repo Rate Average (**CORRA**) as the alternative reference rate for most instruments that currently reference CDOR. CORRA is an interest rate benchmark administered by the Bank of Canada. Term CORRA is only intended to replace CDOR for certain instruments (Term CORRA's use will be limited through its licensing agreements to trade finance, loans and derivatives associated with loans).

- These technical issues related to the manner in which MI 25-102 defined limited assurance reports and referenced the Canadian Standards on Assurance Engagements 3000, 3001, 3530 and 3531.
- While CSA staff provided guidance in 2022 on how the accounting firms could address the technical issues for purposes of preparing that year's assurance reports, CSA staff are now proposing the Revised Assurance Report Requirements to provide greater certainty to the parties that are required to prepare these reports.
- We sought to ensure that the Revised Assurance Report Requirements will also work for accounting firms that apply International Standard on Assurance Engagements 3000.

In addition, the Revised Assurance Report Requirements would apply to any designated benchmark that is not a designated commodity benchmark, a designated critical benchmark or a designated interest rate benchmark (e.g., if an Authority were to designate a crypto asset benchmark that is not a commodity benchmark or a term rate benchmark that is not an interest rate benchmark).

Summary of the Proposed Amendments and the Proposed Changes

The Proposed Amendments are set out in Annex A and the Proposed Changes are set out in Annex B.

Revised Assurance Report Requirements

We have proposed to amend the assurance report provisions in MI 25-102 that apply in respect of designated commodity benchmarks, designated critical benchmarks and designated interest rate benchmarks.

- For this purpose, we have proposed to repeal or replace certain definitions in MI 25-102 and add new definitions to MI 25-102.
- Background information and more detail on the Revised Assurance Report Requirements is set out in Annex C.

Furthermore, we have proposed an additional assurance report provision (new section 13.1 of MI 25-102) that would apply to any designated benchmark that is not a designated commodity benchmark, a designated critical benchmark or a designated interest rate benchmark (e.g., if an Authority were to designate a crypto asset benchmark that is not a commodity benchmark or a term rate benchmark that is not an interest rate benchmark). Background information on proposed section 13.1 of MI 25-102 is set out in Annex D.

We have also proposed changes to the CP to reflect the Revised Assurance Report Requirements.

Other

The Proposed Amendments and the Proposed Changes also include certain clarifications to other language in MI 25-102 and CP, respectively.

Anticipated Costs and Benefits of the Proposed Amendments and the Proposed Changes

Like the existing provisions in MI 25-102 and CP, the Proposed Amendments and the Proposed Changes would only apply in respect of a benchmark that is designated by a decision of an Authority.

Overall, the Authorities are of the view that the regulatory costs of the Proposed Amendments and the Proposed Changes are proportionate to the benefits that would be realized by impacted market participants and the broader Canadian market.

Unpublished Materials

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

Local Matters

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

Request for Comments

We welcome your comments on the Proposed Amendments and the Proposed Changes and also invite comments on the specific questions set out in Annex E of this Notice. Please submit your comments in writing on or before August 28, 2024. Please send your comments by email. Your submissions should 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 asc.ca, the AMF at lautorite.qc.ca and the OSC at osc.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 the following CSA jurisdictions:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other Participating Jurisdictions.

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

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour PwC
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Contents of Annexes:

This Notice includes the following Annexes:

Annex A: Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*

Annex B: Proposed Changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators*

Annex C: Background information on Revised Assurance Report Requirements

Annex D: Background information on proposed section 13.1 of MI 25-102

Annex E: Specific questions of the Authorities relating to the Proposed Amendments

Annex F: Local matters (where applicable)

Questions

Please refer your questions to any of the following:

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ANNEX A

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

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

2. Subsection 1(1) is amended by repealing the definitions of "*CSAE 3000*", "*CSAE 3001*", "*CSAE 3530*", "*CSAE 3531*", "*ISAE 3000*", "*limited assurance report on compliance*", and "*reasonable assurance report on compliance*".

3. Subsection 1(1) is amended by adding the following definition before the definition of "subject requirements":

"reasonable assurance report on controls" means a report prepared on a reasonable assurance basis

(a) by a public accountant on the statement of an individual or management of a person or company, as applicable, that

(i) relates to the description, design and implementation of policies, procedures and controls by the individual or management with respect to applicable subject requirements, and

(ii) states whether those policies, procedures and controls operated effectively over the applicable period, and

(b) in accordance with

(i) the Handbook, or

(ii) International Standards on Assurance Engagements set by the International Auditing and Assurance Standards Board, as amended from time to time;**.**

4. Subsection 1(1) is amended in the definition of "*subject requirements*" by adding the following paragraph:

(a.0) paragraphs 13.1(1)(a) and (b)**,**.

5. Paragraph 5(2)(b) is amended by replacing "a public accountant's limited assurance report on compliance or a reasonable assurance report on compliance***" with "***or a reasonable assurance report on controls***".***

6. ***Paragraphs 7(8)(f) and 7(8)(g) are amended by replacing "***public accountant's limited assurance report on compliance or reasonable assurance report on compliance***" with "***reasonable assurance report on controls***".***

7. ***The following section is added:***

Assurance report on designated benchmark administrator

13.1(1) A designated benchmark administrator must engage a public accountant to provide a reasonable assurance report on controls, in respect of each designated benchmark it administers that is not a designated critical benchmark, a designated interest rate benchmark or a designated commodity benchmark, relating to the designated benchmark administrator's

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

(b) following the methodology of the designated benchmark.

(2) A designated benchmark administrator must ensure that an engagement referred to in subsection (1) occurs

(a) in the case of the first engagement, within 12 months of the designation of the benchmark, and

(b) in the case of any subsequent engagement, once every 24 months.

(3) A designated benchmark administrator must require the public accountant to provide the reasonable assurance report on controls to the designated benchmark administrator within 90 days of the end of the 12 months or 24 months referred to in subsection (2).

(4) For purposes of subsection (1), the applicable period for the report is

(a) in the case of the first report for a designated benchmark, the period commencing 3 months before the end of the 12 months referred to in paragraph (2)(a) and ending on the last day of that 12 months, and

(b) in the case of any subsequent report for a designated benchmark, the period commencing 12 months before the end of the 24 months referred to in paragraph (2)(b) and ending on the last day of those 24 months.

(5) A designated benchmark administrator must, within 100 days of the end of the 12 months or 24 months referred to in subsection (2), publish the report and deliver a copy of the report to the regulator or securities regulatory authority**.**

8. ***Paragraphs 24(4)(f), 24(5)(a) and (b) and 26(3)(b) are amended by replacing "***limited

assurance report on compliance or reasonable assurance report on compliance***" with "***reasonable assurance report on controls***".***

9. Section 32 is repealed and the following substituted:

Assurance report on designated benchmark administrator

32.(1) A designated benchmark administrator must engage a public accountant to provide a reasonable assurance report on controls, in respect of each designated critical benchmark it administers, relating to the designated benchmark administrator's

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

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

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

(3) A designated benchmark administrator must require the public accountant to provide the reasonable assurance report on controls to the designated benchmark administrator within 90 days of the end of the 12 months referred to in subsection (2).

(4) For purposes of subsection (1), the applicable period for the report is

(a) in the case of the first report for a designated critical benchmark, the period commencing 3 months before the end of the 12 months referred to in subsection (2) and ending on the last day of those 12 months, and

(b) in the case of any subsequent report for a designated critical benchmark, the period commencing on the first day of the 12 months referred to in subsection (2) and ending on the last day of those 12 months.

(5) A designated benchmark administrator must, within 100 days of the end of the 12 months referred to in subsection (2), publish the report and deliver a copy of the report to the regulator or securities regulatory authority**.**

10. Section 33 is repealed and the following substituted:

Assurance report on benchmark contributor requested by oversight committee

33.(1) If requested by the oversight committee referred to in section 7 as a result of a concern relating to a benchmark contributor to a designated critical benchmark, the benchmark contributor must engage a public accountant to provide a reasonable assurance report on controls relating to the benchmark contributor's

(a) compliance with section 24, and

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

(2) A benchmark contributor must require the public accountant to provide the reasonable assurance report on controls to the benchmark contributor within 90 days of the request of the oversight committee referred to in subsection (1).

(3) For purposes of subsection (1), the applicable period for the report is 3 months, 6 months, 9 months or 12 months as specified in the request of the oversight committee.

(4) A benchmark contributor must, within 100 days of the request of the oversight committee referred to 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**.**

11. Section 36 is repealed and the following substituted:

Assurance report on designated benchmark administrator

36.(1) A designated benchmark administrator must engage a public accountant to provide a reasonable assurance report on controls, in respect of each designated interest rate benchmark it administers, relating to the designated benchmark administrator's

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

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

(2) A designated benchmark administrator must ensure that an engagement referred to in subsection (1) occurs

(a) in the case of the first engagement

(i) in the case of a designated interest rate benchmark with a benchmark contributor, within 6 months after the later of

(A) the introduction of a code of conduct for a benchmark contributor referred to in section 23, and

(B) the designation of the benchmark, or

(ii) in the case of a designated interest rate benchmark without a benchmark contributor, within 12 months of the designation of the benchmark, and

(b) in the case of any subsequent engagement, once every 24 months.

(3) A designated benchmark administrator must require the public accountant to provide the reasonable assurance report on controls to the designated benchmark administrator within 90 days of the end of the 6 months, 12 months or 24 months referred to in subsection (2).

(4) For purposes of subsection (1), the applicable period for the report is

(a) in the case of the first report for a designated interest rate benchmark, the period commencing 3 months before the end of the 6 months or 12 months referred to in paragraph (2)(a) and ending on the last day of those 6 months or 12 months, and

(b) in the case of any subsequent report for a designated interest rate benchmark, the period commencing 12 months before the end of the 24 months referred to in paragraph (2)(b) and ending on the last day of those 24 months.

(5) A designated benchmark administrator must, within 100 days of the end of the 6 months, 12 months or 24 months referred to in subsection (2), publish the report and deliver a copy of the report to the regulator or securities regulatory authority**.**

12. Subsection 37 is repealed and the following substituted:

Assurance report on benchmark contributor requested by oversight committee

37.(1) If requested by the oversight committee referred to in section 7 as a result of a concern relating to a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public accountant to provide a reasonable assurance report on controls relating to the benchmark contributor's

(a) compliance with sections 24 and 39, and

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

(2) A benchmark contributor must require the public accountant to provide the reasonable assurance report on controls to the benchmark contributor within 90 days of the request of the oversight committee referred to in subsection (1).

(3) For purposes of subsection (1), the applicable period for the report is 3 months, 6 months, 9 months or 12 months as specified in the request of the oversight

committee.

(4) A benchmark contributor must, within 100 days of the request of the oversight committee referred to 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..

13. Subsection 38 is repealed and the following substituted:

Assurance report on benchmark contributor required at certain times

38.(1) A benchmark contributor to a designated interest rate benchmark must engage a public accountant to provide a reasonable assurance report on controls relating to the benchmark contributor's

(a) compliance with sections 24 and 39,

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

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

(2) A benchmark contributor must ensure that an engagement referred to in subsection (1) occurs

(a) in the case of the first engagement, 6 months after the later of

(i) the introduction of a code of conduct for benchmark contributors referred to in section 23, and

(ii) the designation of the benchmark, and

(b) in the case of any subsequent engagement, once every 24 months.

(3) A benchmark contributor must require the public accountant to provide the reasonable assurance report on controls to the benchmark contributor within 90 days of the end of the 6 months or 24 months referred to in subsection (2).

(4) For purposes of subsection (1), the applicable period for the report is

(a) in the case of the first report for a designated interest rate benchmark, the period commencing 3 months before the end of the 6 months referred to in paragraph (2)(a) and ending on the last day of those 6 months, and

(b) in the case of any subsequent report for a designated interest rate benchmark, the period commencing 12 months before the end of the 24 months referred to in paragraph (2)(b) and ending on the last day of those 24 months.

(5) A benchmark contributor must, within 100 days of the end of the 6 months or 24 months referred to in subsection (2), deliver a copy of the report to

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

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

(c) the regulator or securities regulatory authority**..**

14. Paragraphs 39(8)(b) and 40.11(3)(b) are amended by replacing "limited assurance report on compliance or reasonable assurance report on compliance***" with "***reasonable assurance report on controls***".***

15. Subsection 40.13 is repealed and the following substituted:

Assurance report on designated benchmark administrator

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

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

(b) following the methodology applicable to the designated commodity benchmark.

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

(3) A designated benchmark administrator must require the public accountant to provide the reasonable assurance report on controls to the designated benchmark administrator within 90 days of the end of the 12 months referred to in subsection (2).

(4) For purposes of subsection (1), the applicable period for the report is

(a) in the case of the first report for a designated commodity benchmark, the period commencing 3 months before the end of the 12 months referred to in subsection (2) and ending on the last day of that 12 months, and

(b) in the case of any subsequent report for a designated commodity benchmark, the period commencing on the first day of the 12 months referred to in subsection (2) and ending on the last day of that 12 months.

(5) A designated benchmark administrator must, within 100 days of the end of the 12 months referred to in subsection (2), publish the report and deliver a copy of the report to the regulator or securities regulatory authority**.**

16. This Instrument comes into force on ●.

ANNEX B

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

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

2. Subsection 1(1) with the heading of "Definition of input data" is changed by replacing "s. 1(3)***" with "***subsection 1(3)***".***

3. Subsection 1(1) with the heading of "Definitions of limited assurance report on compliance and reasonable assurance report on compliance" is replaced with the following:

Subsection 1(1) – Definition of reasonable assurance report on controls

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

In the Instrument, "Handbook" has the meaning set out in National Instrument 14-101 *Definitions*.

A reasonable assurance report on controls is required, as applicable, by sections 13.1, 32, 33, 36, 37, 38 and 40.13 of the Instrument.

- The definition of "reasonable assurance report on controls" refers to "applicable subject requirements". The term "subject requirements" is defined in subsection 1(1) of the Instrument and refers to paragraphs 13.1(1)(a) and (b), 32(1)(a) and (b), 33(1)(a) and (b), 36(1)(a) and (b), 37(1)(a) and (b), 38(1)(a), (b) and (c) and 40.13(1)(a) and (b) of the Instrument.

- The reference to "12 months" in subsections 32(2) and 40.13(2) of the Instrument refers to any period of 12 consecutive months and does not need to correspond to a calendar year or a financial year of a designated benchmark administrator.

- The definition of "reasonable assurance report on controls" refers to "applicable period" (which is relevant for the reference to "the applicable period for the report" in subsections 13.1(4), 32(4), 33(3), 36(4), 37(3), 38(4) and 40.13(4) of the Instrument).

- In the case a reasonable assurance report on controls requested by an oversight committee under section 33 or 37 of the Instrument, the oversight committee would

specify the beginning and the end of the applicable period for the report, as contemplated by subsection 33(3) and 37(3) of the Instrument, respectively..

4. Subsection 36(1) with the heading of "Assurance report for designated interest rate benchmark" is changed by replacing the first paragraph with the following:

Subsection 36(1) of the Instrument provides that a designated benchmark administrator must engage a public accountant to provide a reasonable assurance report on controls, relating to the designated benchmark administrator's compliance with certain sections of the Instrument and following the methodology of each designated interest rate benchmark it administers..

5. Part 8.1 is changed

(a) in the sixth bullet of the first paragraph under the heading of "Publication of information" by replacing "limited assurance report or a reasonable assurance report***" with "***reasonable assurance report on controls***".***

(b) in the second paragraph under the heading "Subsections 40.1(3) and (4) – Dual designation as a commodity benchmark and a regulated-data benchmark" by replacing "an assurance report***" with "***a reasonable assurance report on controls***".***

6. Section 40.13 with the heading of "Assurance report on designated benchmark administrator" is deleted.

7. These changes become effective on ●.

ANNEX C

BACKGROUND INFORMATION ON REVISED ASSURANCE REPORT REQUIREMENTS

The Revised Assurance Report Requirements are intended to address certain technical issues related to the assurance reports that MI 25-102 currently requires that were encountered by accounting firms when preparing assurance reports in 2022 for RBSL as the designated benchmark administrator of CDOR and the six Canadian banks that are benchmark contributors to CDOR.

Issue #1 – Nature of the assurance report

The first issue related to determining which Canadian Standard(s) on Assurance Engagements (namely CSAE 3000, 3001, 3530 and 3531) should be applied, given the language in MI 25-102.

This issue was raised by accounting firms when they were preparing assurance reports for benchmark contributors to CDOR contemplated by MI 25-102.

- At the relevant time, each accounting firm was preparing an assurance report contemplated by clause (a) of the existing definition of "limited assurance report" in MI 25-102.
- The accounting firms wanted to apply Canadian assurance standards in order to conduct an engagement on internal controls over compliance with MI 25-102 requirements (i.e., a CSAE 3000 engagement), consistent with the practice that has evolved in the EU using ISAE 3000, but there were two reasons they could not do so:
    - first, MI 25-102 did not permit the use of CSAE 3000 on a stand-alone basis (in particular, clause (a) of the definition of "limited assurance report" in MI 25-102 contemplated a report being prepared in accordance with CSAE 3000 and CSAE 3530), and
    - second, even if MI 25-102 did permit the use of CSAE 3000 on a standalone basis, MI 25-102 contemplates assurance reports on compliance with specified requirements, which is in the scope of CSAE 3530 (CSAE 3530 scopes out reports on internal controls over compliance).
- Furthermore, the accounting firms raised questions on whether the desired assurance report was intended to:
    - be an "assurance report on effectiveness of controls over compliance" rather than an "assurance report on compliance with specified regulations", and
    - require testing of controls "over a period" rather than at a "point in time".
- At the relevant time, CSA staff advised the accounting firms that we would accept a limited assurance report that was only prepared in accordance with CSAE 3000, notwithstanding the definition of a limited assurance report in MI 25-102. However, we are now addressing these issues in the Proposed Amendments.

More detail

Typically, with respect to controls, public accountants tend to refer to the "design and implementation" and "operating effectiveness" of controls.

- To provide assurance over design and implementation (**D&I**), a public accountant would typically review the control description (design), conduct inquiries, and then perform a walk-through of the control to ensure it's been implemented as designed (implementation).
- Operating effectiveness is then assessed through a sample of tests to ensure the control is operating as designed over a period.

The "limited assurance reports" that OSC and AMF staff received in 2022 for RBSL and for the benchmark contributors to CDOR only covered assurance over D&I, not operating effectiveness. For example, the assurance reports for the benchmark contributors provided limited assurance that management's description of the controls implemented by the benchmark contributors is appropriate, and that the design of the controls is suitable to achieve the control objectives as set out in the various requirements in the CDOR methodology and MI 25-102. Furthermore, the limited assurance reports were only at a point in time.

From a policy perspective and to further regulatory oversight, it would be preferable for securities regulators to receive "reasonable assurance reports" that also provide assurance on operating effectiveness of controls and involve testing of controls over a period.

How the Proposed Amendments address this issue

The Proposed Amendments provide that the desired nature of an assurance report is to be an "assurance report on effectiveness of controls" rather than an "assurance report on compliance".

In particular, the Proposed Amendments include a definition of "reasonable assurance report on controls" (which uses the definition of "Handbook"[3] in National Instrument 14-101 *Definitions*). If such a report was prepared in accordance with the Handbook, it would currently be prepared in accordance with CSAE 3000. As result, we have proposed to delete the definition of CSAE 3000 in MI 25-102. In like manner, we have proposed to delete the definition of "ISAE 3000" in MI 25-102 and replace it with a reference to "International Standards on Assurance Engagements"[4] in the definition of "reasonable assurance report on controls".

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[3] The Handbook provides for a number of Canadian Standards on Assurance Engagements (**CSAEs**, a plural term).

- Currently, the applicable CSAE (a singular term) for a "reasonable assurance report on controls" would be CSAE 3000.
- However, we have proposed to use the term "Handbook" in MI 25-102 to provide flexibility for the future (so that MI 25-102 will not have to be amended if the Auditing and Assurance Standards Board changes the applicable subject-specific standard or standards that would apply to a reasonable assurance report on controls).

[4] We note that the document entitled "International Framework for Assurance Standards" refers to International Standards on Assurance Engagements (**ISAEs**, a plural term). See: https://www.ifac.org/_flysystem/azure-private/publications/files/B002%202013%20IAASB%20Handbook%20Framework.pdf

- The International Auditing and Assurance Standards Board has published a number of ISAEs. For example, see https://www.icaew.com/technical/audit-and-assurance/assurance/standards-and-guidance
- Currently, the applicable ISAE (a singular term) for a "reasonable assurance report on controls" would be ISAE 3000.

Furthermore, we note the following:

- Since our goal is to get assurance on the effectiveness of controls, we have proposed to remove the option of providing a "limited assurance report". In a limited assurance engagement, the practitioner obtains only enough evidence to express a negative form of opinion over the subject matter and conclude that "nothing has come to their attention" that would lead them to believe there is an error or misstatement (in this case, that a control is not properly designed or properly implemented). The limited assurance reports provided under existing provisions in MI 25-102 are point in time assessments.
- In order to assess the effectiveness of a control, the practitioner needs to perform testing to be able to determine that the control is designed, implemented and operating as it should over an appropriate period of time, in order to provide a sufficient basis to express a positive form of opinion over the subject matter and conclude that the controls are designed and operating effectively. This would be outside the scope of the limited assurance report.
- The Proposed Amendments reflect that a "reasonable assurance report" on operating effectiveness of controls is over a period[5].
- Furthermore, we have proposed to remove references to CSAE 3001 since CSAE 3001 engagements are for direct engagements where an entity is not making an assertion regarding whether the entity's performance conformed with suitable criteria. Since MI 25-102 requires that a designated benchmark administrator or benchmark contributor make an external assertion and obtain an assurance report to be delivered to securities regulators, it does not appear that CSAE 3001 would ever be applicable.

- However, we propose to use the plural term "International Standards on Assurance Engagements" in MI 25-102 to provide flexibility for the future (so that MI 25-102 will not have to be amended if the International Auditing and Assurance Standards Board changes the applicable subject-specific standard or standards that would apply to a reasonable assurance report on controls).

[5] The proposed definition of "reasonable assurance report on controls" refers to "applicable period". The "applicable period" is set out in the following proposed revised provisions of MI 25-102, as applicable: subsections 13.1(4), 32(4), 33(3), 36(4), 37(3), 38(4) and 40.13(4).

Certain of the revised sections provide that, for the first assurance report for a designated benchmark, the applicable period is 3 months, as set out in the following proposed revised provisions of MI 25-102, as applicable: paragraphs 13.1(4)(a), 32(4)(a), 36(4)(a), 38(4)(a) and 40.13(4)(a).

- The purpose of this abbreviated period of 3 months is to recognize that a designated benchmark administrator may need time to prepare and implement the policies, procedures and controls required by MI 25-102 in the first 12 months after they are designated and to "work out the bugs".
- We have proposed to only require an assurance report after the designated benchmark administrator has "worked out the bugs" – i.e., for the last 3 months of the 12 months in question.

For an assurance report required every 24 months, the public accountant is only required to "go back" 12 months, as set out in the following proposed revised provisions of MI 25-102, as applicable: paragraphs 13.1(4)(b), 36(4)(b) and 38(4)(b).

- We have also proposed to delete references to CSAE 3530 and CSAE 3531, since those documents contemplate "assurance reports on compliance", rather than an "assurance report on effectiveness of controls".
- We recognize that the Proposed Amendments provide greater specificity on these matters than that set out in the EU and UK benchmark regulations.
- We also recognize that a relatively significant additional amount of work is required to prepare a "reasonable assurance report on controls" when compared to a limited assurance report. However, we don't consider this additional amount of work to be unduly onerous for the parties involved. Furthermore, we note that the Revised Assurance Report Requirements would only apply in respect of a benchmark designated by a decision of an Authority.

Issue #2 - Time when assurance report must be provided by public accountant

While existing provisions in MI 25-102 specify when a designated benchmark administrator or a benchmark contributor must engage an accounting firm to prepare an assurance report required by MI 25-102[6], MI 25-102 does not specify when the accounting firm must provide the assurance report.

At the relevant time, CSA staff advised the parties subject to the assurance report requirements in MI 25-102 that the report should be prepared within 90 days of the end of the applicable period. However, we are now addressing this issue in the Proposed Amendments.

How the Proposed Amendments address this issue
The Proposed Amendments specify the deadline when the assurance report must be provided by a public accountant (i.e., within 90 days of the end of the applicable period).[7]

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[6] The times when a designated benchmark administrator or a benchmark contributor must engage an accounting firm to prepare an assurance report required by MI 25-102 are set out in the following proposed revised provisions of MI 25-102, as applicable: subsections 13.1(2), 32(2), 36(2), 38(2) and 40.13(2). Different timing applies for a report under proposed revised subsections 33(2) and 37(2).

We propose to add guidance in the CP that the reference to "12 months" in subsections 32(2) and 40.13(2) of MI 25-102 refers to any period of 12 consecutive months and does not need to correspond to a calendar year or a financial year of a designated benchmark administrator.

[7] The 90-day requirement for the public accountant to provide the report to the designated benchmark administrator or benchmark contributor is set out in the following revised provisions of MI 25-102, as applicable: subsections 13.1(3), 32(3), 33(2), 36(3), 37(2), 38(3) and 40.13(4).

The Proposed Amendments also require that the assurance report be delivered to the applicable regulator or securities regulatory authority (each, an **applicable regulator**) by "day 100", as set out in the following revised provisions of MI 25-102, as applicable: subsections 13.1(5), 32(5), 33(4), 36(5), 37(4), 38(5) and 40.13(5). These provisions give the designated benchmark administrator or benchmark contributor 10 days to deliver the report to the applicable regulator after the time it was required to be provided by the public accountant to the designated benchmark administrator or benchmark contributor under the applicable provisions. If the public

ANNEX D

BACKGROUND INFORMATION ON PROPOSED SECTION 13.1 OF MI 25-102

Background

The assurance report provisions in the existing version of MI 25-102 only apply to designated commodity benchmarks, designated critical benchmarks and designated interest rate benchmarks.

The Proposed Amendments include a new assurance report provision (proposed section 13.1 of MI 25-102) that would apply to any other benchmark that is designated by a decision of an Authority (e.g., a crypto asset benchmark that is not a commodity benchmark or a term rate benchmark that is not an interest rate benchmark).[8]

In particular, given highly publicized risks regarding the crypto asset market and crypto asset trading platforms, the Proposed Amendments contemplate that if an Authority were to designate a crypto asset benchmark as a "designated benchmark", it should be subject to an assurance report requirement to help mitigate those risks.

Crypto asset benchmarks

Existing MI 25-102 has an assurance report provision that would apply to a designated commodity benchmark. While some crypto assets may be characterized as commodities, other crypto assets may be more appropriately categorized not as commodities (e.g., certain crypto assets may be securities[9] so would not be commodities in certain jurisdictions). Consequently, not every crypto asset benchmark would be appropriately categorized as a commodity benchmark. A crypto asset benchmark may also not be appropriately categorized as a "designated interest rate benchmark" or "designated critical benchmark".

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accountant provides the report to the designated benchmark administrator or benchmark contributor in less than 90 days from the end of the 12 months referred to in subsection (2), the "100 day" deadline still applies for the designated benchmark administrator or benchmark contributor to deliver a copy of the report to the applicable regulator. The intention is to provide the designated benchmark administrator or benchmark contributor with a "fixed deadline" to deliver the report to the applicable regulator.

[8] Proposed section 13.1 of MI 25-102, like the other Revised Assurance Report Requirements, will require a "reasonable assurance report on controls". For more detail, see Annex C.

[9] CSA staff are of the view that value-referenced crypto assets may constitute securities and/or derivatives and that fiat-backed crypto assets generally meet the definition of "security" and/or would meet the definition of "derivative" in applicable legislation in several jurisdictions. See CSA Staff Notice 21-332 *Crypto Asset Trading Platforms: Pre-Registration Undertakings - Changes to Enhance Canadian Investor Protection* at https://www.osc.ca/sites/default/files/2023-02/csa_20230222_21-332_crypto-trading-platforms-pre-reg-undertakings.pdf.

ANNEX E

SPECIFIC QUESTIONS OF THE AUTHORITIES RELATING TO THE PROPOSED AMENDMENTS

Revised Assurance Report Requirements

1. The Proposed Amendments provide that a reasonable assurance report on controls must consider whether controls operated effectively over "the applicable period". For the first reasonable assurance report on controls to be provided for a designated critical benchmark or a designated interest rate benchmark, the applicable period is specified to be a 3-month "look back" period. Is the proposed 3-month "look back" period an appropriate period for the first reasonable assurance report on controls to be so provided?

2. Proposed subsections 33(2) and 37(2) of MI 25-102 provide that a benchmark contributor must ensure that a reasonable assurance report on controls is provided by a public accountant to the benchmark contributor within 90 days of a request of the oversight committee. Is the proposed 90-day period a sufficient period of time? Should it be a shorter period? [10]

New assurance report provision

3. By way of background,
   - the assurance report provisions in the existing version of MI 25-102 only apply to designated commodity benchmarks, designated critical benchmarks and designated interest rate benchmarks, and
   - the Proposed Amendments include a new assurance report provision (proposed section 13.1 of MI 25-102) that would apply to any other benchmark that is designated by a decision of an Authority (e.g., a crypto asset benchmark that is not a commodity benchmark or a term rate benchmark that is not an interest rate benchmark).

   In this context, do you:
   (a) agree that proposed section 13.1 of MI 25-102 is appropriate, or
   (b) have alternative proposals for a different type of assurance report that may be more appropriate for a crypto asset benchmark but still provide a sufficient level of assurance for a public accountant to conclude on the operating effectiveness of controls?

4. What issues would an accounting firm encounter in providing an assurance report on a crypto asset benchmark that it would not otherwise face when providing an assurance report on a commodity benchmark or an interest rate benchmark?

[10] It has been suggested that a shorter period may be appropriate in certain situations where the oversight committee makes a request for a reasonable assurance report on controls following the emergence of a problem or material issue that the oversight committee has identified or become aware of.

CANDEAL Benchmark Solutions

August 15, 2024

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories

Dear Sirs/Mesdames:

Re: Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*

This letter responds to the Notice and Request for Comment dated May 30, 2024 of the Canadian Securities Administrators (**CSA**) on proposed amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102**) and proposed changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (**Proposed Amendments**). Terms not defined in this letter will have the same meaning given to them in the Proposed Amendments.

CanDeal Benchmark Administration Services Inc. (**CBAS** or **we**) welcome the opportunity to provide comments to the CSA. We appreciate the clarification in the Proposed Amendments regarding the timelines to conduct reasonable assurance reviews and for the public accounting firms to issue the reasonable assurance reports on controls for designated benchmark administrators. We also appreciate that the Proposed Amendments clarify that designated benchmark administrators may use the date of designation as a designated benchmark administrator as a reference date for the timelines to conduct the first reasonable assurance review.

Response to Question 1 in Annex E

1. The Proposed Amendments provide that a reasonable assurance report on controls must consider whether controls operated effectively over "the applicable period". For the first reasonable assurance report on controls to be provided for a designated critical benchmark or a designated interest rate benchmark, the applicable period is specified to be

a 3-month "look back" period. Is the proposed 3-month "look back" period an appropriate period for the first reasonable assurance report on controls to be so provided?

CBAS believes that a 3-month "look back" period is appropriate for the first reasonable assurance report for a designated benchmark administrator. We are of the view that a designated benchmark administrator should not commence its operations without having implemented a solid set of baseline controls that operate effectively. While these controls may be augmented over time, they should be in place and ready to be tested in the first six months from the designation of the benchmark.

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If you have any questions concerning these comments, please do not hesitate to contact us.

Yours sincerely,

"Ruxandra Smith"

Ruxandra Smith
Head of Regulatory Affairs
Candeal Group Inc.

cc: Andrew Munn, CBAS