

Note: [09 Oct 2024] – The following is a consolidation of 25-102CP. It incorporates the changes to this document that came into effect on September 27, 2023 and local changes in Québec as described in CSA Notice 11-347 (reflected in shaded areas). This consolidation is provided for your convenience and should not be relied on as authoritative.

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

PART 1 **GENERAL COMMENTS**

Introduction

This companion policy (the “Policy”) provides guidance on how the Canadian Securities Administrators (“we”) interpret various matters in Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (the “Instrument”).

Except for Parts 1 and 8, the numbering and headings of Parts, sections and subsections in this Policy generally correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Introduction to the Instrument

Designation of Benchmarks and Benchmark Administrators

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

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

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

In Québec, subsection 1 (8.5) of the Regulation sets out the criteria and conditions that the securities regulatory authority must take into consideration when assessing an application for designation of a benchmark or when making a designation on its own initiative.

Where the regulator intends to apply for the designation of a benchmark or benchmark administrator, or in Alberta, British Columbia or Québec, the securities regulatory authority intends to make the designation on its own initiative, we generally expect to give the affected benchmark administrator reasonable notice of our intention and the reasons for it. In addition, in certain jurisdictions, securities legislation provides the benchmark administrator with an opportunity to be heard and, where necessary, to provide documents before the securities regulatory authority makes its decision. Furthermore, regardless of who applies for the designation, we would generally not expect that a designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Categories of Designation

The Instrument contains requirements that apply to designated benchmark administrators, benchmark contributors and certain benchmark users in respect of a designated benchmark. In addition to requirements in the Instrument that generally apply in respect of any designated benchmark, there are additional requirements in the Instrument that apply to designated critical benchmarks and designated interest rate benchmarks.

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

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

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, a designated regulated-data benchmark or a designated commodity benchmark. It is possible that a designated benchmark will receive more than one designation. For example,

- a designated interest rate benchmark may also be designated as a designated critical benchmark,
- a designated regulated-data benchmark may also be designated as a designated critical benchmark, but not if it is a commodity benchmark,

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

In Québec, categories of benchmarks and criteria and conditions that must be met to fall into a category of benchmarks are established under subsections 1 (8.1) to (8.4) of the Regulation. A designated benchmark must meet the criteria and conditions that characterize a specific category of benchmarks to be assigned to this category of benchmarks. In Québec, the securities regulatory authority may attribute a category of benchmarks to a designated benchmark only if such individual benchmark satisfies the criteria and conditions set out for the category of benchmarks to be attributed. A designated benchmark that is assigned to a category of benchmarks is subject to the requirements that generally apply in respect of any designated benchmark and to the additional requirements (or exemptions) specified for the relevant category of benchmarks in Parts 8 and 8.1 of the Regulation.

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, a regulated-data benchmark or a commodity benchmark.

When designating a benchmark or benchmark administrator, a securities regulatory authority will issue a decision document that may designate the benchmark administrator as a designated benchmark administrator of one or more designated benchmarks.

We expect that a benchmark administrator that applies under securities legislation for the designation of the administrator or a benchmark will provide written submissions that contain the same information as that required by Form 25-102F1 *Designated Benchmark Administrator Annual Form* and Form 25-102F2 *Designated Benchmark Annual Form* in a format that is consistent with those forms.

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

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

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

Definitions and Interpretation

Subsection 1(1) – Definition of designated commodity benchmark

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

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

In Québec, a benchmark must meet the criteria and conditions established under subsection 1 (8.4) of the Regulation to be designated as a commodity benchmark. This provision extends the criteria used under paragraph (a) of the definition of “designated commodity benchmark” to the category of commodity benchmarks so that no conceptual distinction is created between the definition and the category of commodity benchmarks.

Subsection 1(1) – Definition of designated critical benchmark

“Designated critical benchmark” is a benchmark that is designated for the purposes of the Instrument as a “critical benchmark” by a decision of the securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are specific requirements in Division 1 of Part 8 of the Instrument that apply to designated critical benchmarks. However, if a designated commodity benchmark is also designated as a critical benchmark, then subsections 40.1(1) and (2) of the Instrument will specify the requirements applicable to such a benchmark.

Except in Québec, staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark as a “critical benchmark” if the benchmark is critical to financial or commodity markets in Canada or a region of Canada. The following two factors are among those that will be considered:

- (a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds, having a total value in Canada of at least \$400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable; or
- (b) the benchmark satisfies all of the following criteria:
 - (i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable;
 - (ii) the benchmark has no, or very few, appropriate market-led substitutes;
 - (iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on
 - (A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or
 - (B) a significant number of market participants in one or more jurisdictions of Canada.

For the purpose of paragraph (a) and subparagraph (b)(i) above and, in Québec, subparagraph (a)(i) of subsection 1 (8.1) of the Regulation, staff of a securities regulatory authority will consider, among other things, the outstanding principal amount of any debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and

the outstanding net asset value of any investment funds that use the benchmark to measure performance.

We note that the above list is not a complete list of factors and the existence of one of these factors by itself will not necessarily determine whether a benchmark is a critical benchmark. Instead, staff intend to follow a holistic approach where all relevant factors are considered.

In Québec, a benchmark must meet the criteria and conditions established under subsection 1 (8.1) of the Regulation to be designated as a critical benchmark.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the securities regulatory authority should designate the benchmark as a critical benchmark.

Subsection 1(1) – Definition of designated interest rate benchmark

“Designated interest rate benchmark” is a benchmark that is designated for the purposes of the Instrument as an “interest rate benchmark” by a decision of the securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are specific requirements in Division 2 of Part 8 of the Instrument that apply to designated interest rate benchmarks.

Except in Québec, staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark as an “interest rate benchmark” if the benchmark is used to set interest rates of debt securities or is otherwise used as a reference in derivatives or other instruments. Factors that will be considered include the following:

- (a) the benchmark is determined on the basis of the rate at which financial institutions may lend to, or borrow from, other financial institutions, or market participants other than financial institutions, in the money market; or
- (b) the benchmark is determined from a survey of bid-side rates contributed by financial institutions that routinely accept bankers’ acceptances issued by borrowers and are market makers in bankers’ acceptances either directly or through an affiliate.

We note that the above list is not exhaustive.

In Québec, a benchmark must meet the criteria and conditions established under subsection 1 (8.3) of the Regulation to be designated as an interest rate benchmark.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the securities regulatory authority should designate the benchmark as an interest rate benchmark.

Subsection 1(1) – Definition of designated regulated-data benchmark

“Designated regulated-data benchmark” is a benchmark that is designated for the purposes of the Instrument as a “regulated-data benchmark” by a decision of the securities regulatory authority. Benchmark administrators of regulated-data benchmarks are exempted from certain governance and control requirements relating to the contribution of input data (see Division 3 of Part 8 of the Instrument). However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections 40.1(3) and (4) of the Instrument will specify the requirements applicable to such a benchmark.

Except in Québec, staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark as a “regulated-data benchmark” if the benchmark is determined by the application of a formula from any of the following:

- (a) input data contributed entirely, or almost entirely, from
 - (i) any of the following, but only with reference to transaction data relating to securities or derivatives:
 - (A) a recognized exchange in a jurisdiction of Canada or an exchange that is subject to appropriate regulation in a foreign jurisdiction;
 - (B) a recognized quotation and trade reporting system in a jurisdiction of Canada or a quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction;
 - (C) an alternative trading system that is registered as a dealer in a jurisdiction of Canada and is a member of a self-regulatory entity or an alternative trading system that is subject to appropriate regulation in a foreign jurisdiction;
 - (D) an entity that is similar or analogous to the entities referred to in clause (A), (B) or (C) and that is subject to appropriate regulation in a jurisdiction of Canada or a foreign jurisdiction;
 - (ii) a service provider to which the designated benchmark administrator of the designated benchmark has outsourced the data collection in accordance with section 13 of the Instrument, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);
- (b) net asset values of investment funds that are reporting issuers in a jurisdiction of Canada or subject to appropriate regulation in a foreign jurisdiction.

In Québec, a benchmark must meet the criteria and conditions established under subsection 1 (8.2) of the Regulation to be designated as a regulated-data benchmark.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the regulator or the securities regulatory authority should designate the benchmark as a regulated-data benchmark.

Subsection 1(1) – Definition of expert judgment

“Expert judgment” is the discretion exercised by:

- a designated benchmark administrator with respect to the use of input data in determining a benchmark, and
- a benchmark contributor with respect to input data.

Expert judgment may involve various activities, including:

- extrapolating values from prior or related transactions,
- adjusting values for factors that might influence the quality of data such as market data, economic factors, market events or impairment of a buyer or seller's credit quality, or
- assigning a greater weight to data relating to bids or offers than the weight assigned to a relevant concluded transaction.

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

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

Subsection 1(1) – Definition of input data

“Input data” is the data in respect of any measurement of one or more assets, interests or elements that is contributed, or otherwise obtained, by a designated benchmark administrator for the purpose of determining a designated benchmark. For example, input data may include estimated prices, quotes, committed quotes or other values.

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

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

Subsection 1(1) – Definitions of limited assurance report on compliance and reasonable assurance report on compliance

A “limited assurance report on compliance” and a “reasonable assurance report on compliance” must be prepared in accordance with the applicable Canadian Standard on Assurance Engagements (CSAE) or the applicable International Standard on Assurance Engagements (IASE). The CSAE and ISAE require that any public accountant that prepares such a report be independent.

Subsection 1(1) – Definition of transaction data

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

We consider that:

- transaction data would include published or onscreen data available to the public generally or by subscription, and
- the reference to “active market subject to competitive supply and demand forces” would include a market in which transactions take place, or are reported, between arm’s length parties with sufficient frequency and volume to provide pricing information on an ongoing basis. This reference is separate and different from any definition for accounting purposes.

Subsection 1(1) – Interpretation of certain definitions

Definitions of each of the following terms are considered to apply only in respect of the designated benchmark to which they pertain:

- “benchmark administrator”;
- “benchmark contributor”;
- “benchmark individual”;
- “benchmark user”;
- “contributing individual”;
- “DBA individual”;
- “designated benchmark administrator”;
- “input data”;
- “transaction data”.

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

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

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

- (a) it is not reasonably available to
 - (i) the designated benchmark administrator, or
 - (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and
- (b) it is provided to the designated benchmark administrator or the other person or company referred to in subparagraph (a)(ii) above for the purpose of determining a benchmark.

We consider that the reference to “not reasonably available” would include situations where input data is not published or otherwise available to a designated benchmark administrator or another person or company, other than the benchmark contributor, using reasonable effort, on reasonable terms or at a reasonable cost and the designated benchmark administrator therefore needs to obtain the input data from a benchmark contributor who has access to that data. For example, an interest rate benchmark may be based on a survey by a benchmark administrator of bid-side rates contributed by benchmark contributors that are financial institutions which routinely accept bankers’ acceptances issued by borrowers and are market makers in bankers’ acceptances either directly or through an affiliate.

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

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

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

Subsection 1(5) of the Instrument indicates that, for purposes of the Instrument, the definitions in Appendix A apply. Appendix A contains definitions of “benchmark”, “benchmark administrator”, “benchmark contributor” and “benchmark user”. However,

- Subsection 1(6) indicates that subsection 1(5) does not apply in Alberta, New Brunswick, Nova Scotia, Ontario or Saskatchewan. In these jurisdictions, the terms in Appendix A are defined in securities legislation.

- Subsection 1(7) provides that, in British Columbia, the definitions of “benchmark” and “benchmark contributor” in the *Securities Act* (British Columbia) apply.
- Subsection 1(8) provides that, in Québec, the definitions of “benchmark” and “benchmark administrator” in the *Securities Act* (Québec) apply.

The definition of benchmark refers to a “price, estimate, rate, index or value”. We consider that “index” would include any indicator that is:

- made available to the public, and
- regularly determined
 - entirely or partially by the application of a formula or any other method of calculation, and
 - on the basis of the measurement of one or more assets, interests or elements, including, but not limited to, the value or price of the asset, interest or element.

Public authorities

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

Use of “reasonable person”

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

PART 2 DELIVERY REQUIREMENTS

Section 2 – References to Canadian GAAP, Canadian GAAS, Handbook, IFRS and International Standards on Auditing

There are references in section 2 of the Instrument to “Canadian GAAP”, “Canadian GAAS”, “Handbook”, “IFRS” and “International Standards on Auditing”, which are defined in National Instrument 14-101 *Definitions*.

Subparagraph 2(7)(a)(ii) – Canadian GAAP applicable to private enterprises

Subject to certain conditions, subparagraph 2(7)(a)(ii) of the Instrument permits audited annual financial statements of a designated benchmark administrator to be prepared using Canadian

GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprise in Part II of the Handbook.

Subsection 2(8) – Information on designated benchmark administrator

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

Subsection 3(2) – Information on designated benchmark

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

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

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

PART 3 GOVERNANCE

Board of directors

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

- **subsection 6(6)** – a designated benchmark administrator must not provide a payment or other financial incentive to a compliance officer referred to in subsection 6(1), or any DBA individual that reports directly to the officer, if the payment or other financial incentive

would create a conflict of interest. Such a payment would compromise the independence of the compliance officer or the DBA individual;

- **subsections 7(2) and (3)** – a designated benchmark administrator must establish an oversight committee, the members of which must not be members of the board of directors;
- **subsections 7(4) and (9)** – the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator and, if the oversight committee becomes aware that the board of directors has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting;
- **subsection 10(1)** – a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to, among other things, ensure that any expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised and protect the integrity and independence of the provision of a designated benchmark;
- **subsection 12(2)** – a benchmark administrator must conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint; and
- **subsections 31(1) and 35(1)** – for a designated critical benchmark and a designated interest rate benchmark, respectively, at least half of the members of the oversight committee of the designated benchmark administrator must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

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

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

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

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

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

While subsection 7(3) of the Instrument prohibits the oversight committee from including individuals that are members of the board of directors of the designated benchmark administrator, we do not consider this provision to prohibit a member of the board of directors from being invited, when appropriate, to an oversight committee meeting, provided that the member of the board of

directors does not perform or influence the independent performance of the roles of the oversight committee set out in section 7 of the Instrument.

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

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

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

Subsection 7(8) of the Instrument requires the oversight committee of a designated benchmark administrator to carry out certain actions. We expect that the oversight committee will carry out these actions in a manner that reasonably reflects the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

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

Paragraph 7(8)(e) of the Instrument requires the oversight committee of a designated benchmark administrator to oversee any service provider involved in the provision of the designated benchmark, including calculation agents or dissemination agents. We consider that

- a “dissemination agent” is a person or company with delegated responsibility for disseminating a designated benchmark to benchmark users in accordance with the instructions provided by the designated benchmark administrator for the designated benchmark, including any review, adjustment and modification to the dissemination process, and
- a “calculation agent” is a person or company with delegated responsibility for determining a designated benchmark through the application of a formula or other method of calculating the information or expressions of opinions provided for that purpose, in accordance with the methodology set out by the designated benchmark administrator for the designated benchmark.

A dissemination agent would not include:

- a publisher that pays a licensing fee to publish a benchmark under a non-exclusive publishing license, or
- a publisher that pays a licensing fee to publish a benchmark under an exclusive publishing license if the benchmark administrator also makes the benchmark publicly available through other means.

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

paragraph, for example, through the receipt and review of regular reporting from those responsible for the supervision contemplated by section 13 of the Instrument.

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

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

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

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

Section 8 – Control framework

Section 8 of the Instrument requires a designated benchmark administrator to establish a control framework to ensure that a designated benchmark is provided in accordance with the Instrument. Similarly, except in Québec, subsection 24(2) of the Instrument requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy, reliability and completeness of each contribution of input data to the designated benchmark administrator, including controls that the input data is provided in accordance with the Instrument.

We expect that the control framework provided for under subsection 8(2) of the Instrument and the controls provided for under subsection 24(2) of the Instrument will be proportionate to all of the following:

- the level of conflicts of interest identified in relation to the designated benchmark, the designated benchmark administrator or the benchmark contributor,
- the extent of expert judgment in the provision of the designated benchmark,
- the nature of the input data for the designated benchmark.

In establishing the control framework required under subsection 8(2) of the Instrument, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 24(2) of the Instrument.

The control framework and the controls used should be consistent with guidance published by a body or group that has developed the guidance through a process that includes the broad distribution of the proposed guidance for public comment.

Examples of suitable guidance that a designated benchmark administrator or a benchmark contributor could follow include:

- (a) the *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Chartered Professional Accountants of Canada;
- (b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and
- (c) the *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* published by U.K. Financial Reporting Council.

These examples of suitable guidance include, in the definition or interpretation of “internal control”, controls for compliance with applicable laws and regulations.

Subsection 8(5) – Reporting of significant security incident or systems issue

Subsection 8(5) of the Instrument provides that a designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any security incident or any systems issue relating to a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant. We consider a failure, malfunction, delay or other incident or issue to be a “significant security incident” or a “significant systems issue” if the designated benchmark administrator would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology.

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

Subsection 10(2) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark administrator relating to a designated benchmark, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated benchmark.

We expect that, when contemplating the nature and scope of such a conflict of interest, a designated benchmark administrator would consider a variety of matters, including the following:

- the provision of benchmarks often involves discretion in the determination of benchmarks and is inherently subject to certain types of conflicts of interest, which implies the existence of various opportunities and incentives to manipulate benchmarks, and

- in order to ensure the integrity of designated benchmarks, designated benchmark administrators should implement adequate governance arrangements to control such conflicts of interest and to safeguard confidence in the integrity of benchmarks.

For example, if the designated benchmark administrator does identify such a conflict of interest, the administrator should ensure that persons responsible for the administration of the designated benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities.

Subsection 11(1) – Reporting of contraventions

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

- manipulation or attempted manipulation of a designated benchmark, or
- provision or attempted provision of false or misleading information in respect of a designated benchmark.

As part of that reporting to the regulator or securities regulatory authority, we expect that the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the regulator or securities regulatory authority.

Paragraph 12(2)(c) – Complaint procedures

Paragraph 12(2)(c) of the Instrument provides that a designated benchmark administrator must communicate the outcome of the investigation of a complaint to the complainant within a reasonable period.

We expect that, in establishing the policies and procedures for complaints relating to the designated benchmark required by subsection 12(1) of the Instrument, the designated benchmark administrator would include a target timetable for investigating complaints.

A designated benchmark administrator may, on a case-by-case basis, apply for exemptive relief from paragraph 12(2)(c) of the Instrument if such a communication to the complainant would be seriously prejudicial to the interests of the designated benchmark administrator or would violate confidentiality provisions.

Section 13 – Outsourcing

Section 13 of the Instrument sets out requirements on outsourcing by a designated benchmark administrator. For purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

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

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

Paragraph 13(2)(c) of the Instrument provides that the policies and procedures of a designated benchmark administrator in relation to outsourcing must be reasonably designed to ensure that the designated benchmark administrator and the service provider enter into a written agreement that covers the matters set out in subparagraphs 13(2)(c)(i) to (vi). We consider the reference to “written agreement” to include one or more written agreements.

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

PART 4 INPUT DATA AND METHODOLOGY

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

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

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

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

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

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

completeness of the input data in accordance with the benchmark administrator's policies and procedures.

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

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

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

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

- it can be clearly linked to the original information, and
- it can be linked to complementary, but separate information.

For example, in the case of an interest rate benchmark that is determined daily and calculated as the arithmetic average of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances and are market-makers in bankers' acceptances, the daily determination would be verified as being accurate, reliable and complete if:

- the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and
- the benchmark administrator's record of the rates contributed by the financial institutions can be matched to the records of those rates maintained by the applicable financial institutions.

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

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

Paragraph 16(2)(a) of the Instrument provides that a designated benchmark administrator must take into account, in the preparation of the methodology of a designated benchmark, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to represent.

In this context, we consider that "applicable characteristics" include:

- the size and reasonably expected liquidity of the market,
- the transparency of trading and the positions of participants in the market,
- market concentration,

- market dynamics, and
- the adequacy of any sample to reasonably represent that part of the market or economy the designated benchmark is intended to represent.

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

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

As part of the methodology disclosure required under section 18, paragraph 18(1)(e) of the Instrument provides that a designated benchmark administrator must publish examples of the types of changes that may constitute a significant change to the methodology of the designated benchmark.

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

We consider publication on the designated benchmark administrator's website of a proposed or implemented change to the methodology of a designated benchmark, accompanied by a news release advising of the publication of the proposed or implemented change, as sufficient notification in these contexts. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of such a publication by email.

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

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

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

Compliance with methodology

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

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

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

PART 5 DISCLOSURE

Subsection 19(1) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 19(1)(a) through (m) of the Instrument, are designed to provide transparency to benchmark users to understand the purpose or intention of the benchmark, the limitations of the benchmark, and how the designated benchmark administrator will apply the methodology to provide the benchmark. In preparing the benchmark statement, a designated benchmark administrator should attempt to ensure that benchmark users have sufficient information to understand what the benchmark is intended to represent and to make a decision on whether to use, or continue to use, the benchmark.

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

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

For example, an interest rate benchmark may be intended to represent the cost of unsecured interbank lending and may be intended to be used as a benchmark interest rate in interbank loan agreements. In this example, we consider it problematic if

- the type of prime bank lending rate the benchmark is intended to record is unclear, or
- the calculation method does not work well in periods of low liquidity.

Subsection 20(2) – Significant change to designated benchmark

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

PART 6 BENCHMARK CONTRIBUTORS

General

Part 6 of the Instrument contains provisions that apply in respect of benchmark contributors to a designated benchmark. There are also specific requirements that apply to:

- benchmark contributors to a designated critical benchmark (see sections 30 and 33 of the Instrument), and
- benchmark contributors to a designated interest rate benchmark (see sections 37, 38 and 39 of the Instrument).

Securities legislation defines “benchmark contributor” as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

In Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario and Saskatchewan, securities legislation provides that the securities regulatory authority may, in response to an application by the regulator or, in Alberta or British Columbia, on its own initiative, require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. For example, a person or company may be required to provide information to a designated benchmark administrator for the purpose of determining a designated critical benchmark. In such a case, the person or company would be a benchmark contributor, and would therefore be subject to the provisions of the Instrument applicable to benchmark contributors generally and the provisions applicable to benchmark contributors to a

designated critical benchmark. However, certain of those provisions only apply if input data is considered to have been contributed within the meaning of subsection 1(3) of the Instrument.

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

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

The requirement in subsection 23(1) of the Instrument for a designated benchmark administrator to establish, document, maintain and apply a code of conduct that specifies the responsibilities of benchmark contributors with respect to the contribution of input data for the designated benchmark only applies if a designated benchmark is determined using input data from benchmark contributors. Subsection 1(3) of the Instrument sets out when input data is considered to have been contributed and Part 1 of this Policy provides further guidance on subsection 1(3) of the Instrument and when input data is considered to have been contributed.

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

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

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

Subparagraph 23(2)(f)(vii) of the Instrument requires that a code of conduct for a benchmark contributor include a reporting requirement for any instance when a reasonable person would consider that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate, unreliable or incomplete. In establishing these requirements, we expect the designated benchmark administrator to consider providing indicators that could be used to identify input data that is inaccurate, unreliable or incomplete, based on past experience. The indicators should reasonably reflect the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

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

Subparagraph 23(2)(f)(x) of the Instrument requires that a code of conduct for a benchmark contributor include a requirement that the benchmark contributor's designated officer referred to in subparagraph 23(2)(f)(ix) and the benchmark contributor's chief compliance officer not be prevented or restricted from directly accessing the benchmark contributor's board of directors. In some instances, the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance

officer will be the same person. However, if they are different persons, each must be provided with direct access to the benchmark contributor's board of directors. However, we realize that there may be situations where the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance officer may jointly or separately report to the benchmark contributor's board of directors on a matter.

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

In establishing the policies and procedures required under subsection 23(3) of the Instrument, we expect the designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark. For example, the policies and procedures may include the use of verification certificates signed by an officer of the benchmark contributor and on-site inspections by internal compliance staff that are independent from the business unit whose activities are subject to the code of conduct.

Paragraph 24(1)(a) – Conflict of interest requirements for benchmark contributors

Except in Québec, paragraph 24(1)(a) of the Instrument provides that a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure input data contributed by the benchmark contributor is not affected by any conflict of interest or potential conflict of interest involving the benchmark contributor and its employees, officers, directors or agents, if a reasonable person would consider that the input data might be inaccurate, unreliable or incomplete.

We expect that, when establishing these policies and procedures, a benchmark contributor would consider the following:

- benchmark contributors of input data to benchmarks can often exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation, and
- consequently, conflicts of interest must be managed or mitigated to ensure they do not affect input data.

For example, if the benchmark contributor does identify such a conflict of interest involving other business activity, the contributor should ensure that persons responsible for the contribution of input data to a designated benchmark administrator for the purpose of determining a designated benchmark:

- are located in a secure area apart from persons that carry out the other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to the other business activity.

Subsection 24(2) – Accuracy, reliability and completeness of input data

In establishing the policies, procedures and controls required under subsection 24(2) of the Instrument, subject to any requirements set out in the code of conduct established under section 23 of the Instrument, we expect a benchmark contributor to consider the specific nature of the

designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy, reliability and completeness of input data. For example, depending on the specific nature of the designated benchmark, it may be appropriate to require an individual with appropriate knowledge holding a position senior to that of the contributing individual to sign-off on input data before it is contributed to the designated benchmark administrator.

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

Subsection 24(3) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 24(3)(a), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and the nature of its input data.

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

Subsection 24(4) – Record keeping by benchmark contributor

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

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

Section 25 – Compliance officer for benchmark contributors

Except in Québec, subsection 25(1) of the Instrument provides that a benchmark contributor that contributes input data for a designated benchmark must designate an officer to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section 23, the Instrument and securities legislation relating to benchmarks. The officer can conduct these activities on a part-time basis but should be independent from persons involved in determining or contributing input data.

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

PART 7 RECORD KEEPING

Section 26 – Record keeping by designated benchmark administrator

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

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

PART 8 DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

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

Except in Québec, section 30 of the Instrument provides the process for a benchmark contributor to cease to contribute input data to a designated critical benchmark. After the benchmark contributor has provided notice to the designated benchmark administrator that it will cease to contribute input data, subsection 30(2) of the Instrument requires the benchmark contributor to

continue contributing input data for a period not exceeding 6 months. This is to provide a transition to protect the accuracy and integrity of the designated critical benchmark.

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

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

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Section 34 – Order of priority of input data

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

- (a) a benchmark contributor's transaction data in the underlying market that the designated interest rate benchmark intends to represent;
- (b) if the input data referred to in paragraph (a) is not available, executable quotes in the market described in paragraph (a);
- (c) if the input data referred to in paragraphs (a) and (b) is not available, indicative quotes in the market described in paragraph (a);
- (d) if the input data referred to in paragraphs (a), (b) and (c) is not available, a benchmark contributor's observations of third-party transactions in markets related to the market described in paragraph (a);
- (e) in any other case, expert judgments.

We consider an “executable quote” (also known as a “committed quote”) to be a quote that is actionable for the other party to the potential transaction. The party that provides that quote announces their willingness to enter into transactions at the relevant bid and ask prices and agree that if they do transact, they will do so at the quoted price up to the maximum quantity specified in the quote.

We consider “indicative quote” to be a quote that is not immediately actionable by the other party to the potential transaction. Indicative quotes are usually provided before the parties negotiate the price or quantity at which the potential transaction will occur.

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

In the context of section 34 of the Instrument, for the purposes of subsections 14(1) and (3) of the Instrument, input data for a designated interest rate benchmark may be adjusted, if contemplated by the methodology for the designated interest rate benchmark, to more accurately represent that part of the market or economy that the designated interest rate benchmark is intended to represent, including, but not limited to, where:

- (a) the time of the transactions that are the basis for the input data is not sufficiently proximate to the time of contribution of the input data;
- (b) a market event occurs between the time of the transactions and the time of contribution of the input data and the market event might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark;
- (c) there have been changes in the credit risk of the benchmark contributors and other market participants that might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark.

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

Subsection 36(1) of the Instrument provides that a designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, regarding the designated benchmark administrator's compliance with certain sections of the Instrument and following of the methodology of each designated interest rate benchmark it administers.

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

Subsection 39(4) – Record keeping by benchmark contributor

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

PART 8.1 DESIGNATED COMMODITY BENCHMARKS

Publication of information

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

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

For the purposes of Part 8.1, we generally consider publication of the applicable information on the designated benchmark administrator’s website, accompanied by a news release advising of the publication of the information, as sufficient notification in these contexts. However, we recognize that a news release generally will not be necessary for the explanation of each determination of a designated commodity benchmark required under section 40.8. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of publication by email.

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

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

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

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

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

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

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

Given the interpretation provided by paragraph 1(3)(a) of the Instrument as to when input data is considered to have been "contributed", as described earlier in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed, would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-data benchmark. Examples include the requirements in paragraphs 40.4(2)(g), (h) and (i), paragraphs 40.7(2)(d) and (e) and section 40.9.

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

Section 40.2 – Non-application to designated commodity benchmarks

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

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

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

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

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

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

We expect that the methodology established and used by a designated benchmark administrator will be based on the applicable characteristics of the relevant underlying interest of the designated commodity benchmark for that part of the market that the designated commodity benchmark is intended to represent, such as the grade and quality of the commodity, its geographical location, seasonality, etc., and will be sufficient to provide an accurate and reliable benchmark. For example, the methodology for a crude oil benchmark should reflect the following, but not be limited to, the

specific crude grade (e.g., sweet or heavy), the location (e.g., Edmonton or Hardisty), the time period within which transactions are concluded during the trading day, and the month of delivery.

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

- (a) concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;
- (b) if the input data referred to in paragraph (a) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, bids and offers in the market described in paragraph (a);
- (c) if the input data referred to in paragraphs (a) and (b) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, any other information relating to the market described in paragraph (a) that is used to determine the designated commodity benchmark; and
- (d) in any other case, expert judgments.

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

The specific reference unit used in the methodology will vary depending on the underlying commodity. Examples of possible reference units include barrels of oil or cubic meters (m³) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

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

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

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

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

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

Section 40.6 – Review of methodology

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

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

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

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

Section 40.8 – Transparency of determination of a designated commodity benchmark

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

- (a) the extent to which a determination is based on transactions or spreads, and interpolation or extrapolation of input data;
- (b) whether greater priority was given to bids and offers or other market data than to concluded transactions, and, if so, the reason why;
- (c) whether transaction data was excluded, and, if so, the reason why.

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

that the specified explanations will be provided contemporaneously with the determination of a benchmark, but recognize that unforeseen circumstances may cause delays, in which case, we still expect that explanation to be published as soon as reasonably practicable.

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

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

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

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

Subsection 40.10(3) – Governance and control requirements

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

Section 40.11 – Books, records and other documents

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

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

Section 40.12 – Conflicts of interest

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

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

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

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities of the administrator.

Section 40.13 - Assurance report on designated benchmark administrator

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