ANNEX E

MI 25-102, BLACKLINED TO SHOW CHANGES FROM PROPOSED NI 25-102

~~NATIONAL~~MULTILATERAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

~~A~~Note: The text box in this Instrument located ~~below~~after subsection ~~1(5~~1(6) refers to terms defined in securities legislation. This text box does not form part of this Instrument.

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1.(1) In this Instrument,

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

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

"contributing individual" means an individual who contributes input data ~~for~~, as an employee or agent, on behalf of a benchmark contributor;

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

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

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

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

"DBA individual" means an individual who is

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

(b) an agent of a designated benchmark administrator who ~~provides~~performs services ~~directly to~~on behalf of the designated benchmark administrator;

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

~~"designated benchmark administrator" means a~~

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

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

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

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

" means

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

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

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

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

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

"expert judgment" means the discretion exercised by

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

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

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

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

"limited assurance report on compliance" means

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

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

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

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

"reasonable assurance report on compliance" means

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

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

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

(a) ~~subparagraphs 24(2~~paragraphs 32(1)(~~g~~a)~~(i)~~ and (~~ii~~b),

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

(c)~~,(c)~~ paragraphs ~~34(1~~36(1)(a)~~,~~ and (b)~~ and (c)~~,

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

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

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

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

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

(b) occurring in an active market subject to competitive supply and demand forces.

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

(3) For the purposes of this Instrument ~~(a)~~ , input data is considered to have been contributed to a designated benchmark administrator if

(~~i~~a) it is not reasonably available to

(~~A~~i) the designated benchmark administrator, or

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

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

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

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

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

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

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

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

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

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

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

(6) Subsection (45) does not apply in ~~•~~ Alberta, New Brunswick, Nova Scotia, Ontario or Saskatchewan.

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

~~*legislation)*~~*Alberta, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the terms in Appendix A are defined in securities legislation.*

~~(6)~~**(7)** In British Columbia, the definitions of "benchmark" and "benchmark contributor" in the *Securities Act* (British Columbia) apply to this Instrument.

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

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

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

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

(~~7~~10) For the purposes of paragraph (~~6~~9)(b), a person or company (first person) ~~is considered to control~~controls another person or company (second person) if any of the following apply:

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

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

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

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

PART 2
DELIVERY REQUIREMENTS

Information on a designated benchmark administrator

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

(a) "accounting principles";

(b) "auditing standards";

(c) "U.S. GAAP";

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

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

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

(a) information that a reasonable person would ~~conclude fully~~consider describes ~~its~~the designated benchmark administrator's organization ~~and~~, structure and ~~its~~ administration of benchmarks, including, ~~but not limited to,~~for greater certainty, a description of its policies and procedures required under this Instrument, ~~its~~conflicts of interest and potential conflicts of interest, ~~its~~any person or company referred to in section 13 to which a designated benchmark administrator has outsourced a function, service ~~providers referred to in section 14~~or activity in the provision of a designated benchmark, ~~its~~ benchmark individuals, the officer referred to in section ~~7~~6 and ~~its~~sources of revenue, and

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

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

(A) the most recently completed financial year, and

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

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

(iii) notes to the annual financial statements.

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

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

(i) the most recently completed financial year, and

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

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

(c) notes to the annual financial statements.

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

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

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

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

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) Canadian GAAP applicable to private enterprises, if

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

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

(iii) IFRS;

(iv) U.S. GAAP,

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

(i) Canadian GAAS;

(ii) International Standards on Auditing;

(iii) U.S. PCAOB GAAS, and

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

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

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

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

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

(a) ~~initially, within~~on or before the 30~~ days~~th day after the ~~designation unless previously provided~~designated benchmark administrator is designated, and

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

(9) If any of the information delivered by a designated benchmark administrator under paragraph (3)(a) becomes ~~significantly~~ inaccurate, and a reasonable person would consider the inaccuracy to be significant, the designated benchmark administrator must promptly deliver a completed amended Form 25-102F1 *Designated Benchmark Administrator Annual Form* ~~with updated~~that includes the accurate information.

(i) Information on a designated benchmark

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

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

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

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

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

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

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

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

Benchmark Annual Form ~~in respect of the designated benchmark with updated~~that includes the accurate information.

(ii) Submission to jurisdiction and appointment of agent for service of process

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

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

~~(3)~~**(3)** A designated benchmark administrator, or a benchmark administrator referred to in subsection (4), must deliver an amended Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* ~~with~~containing updated information at least 30 days before the ~~earlier of~~effective date of any change that would result in a change to the information provided in the Form.

~~(a) the termination date of the Form, and~~

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

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

~~**PART 3**~~
~~**GOVERNANCE**~~

~~**Board of directors**~~

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

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

~~**(3)** For the purposes of subsection (1), at least one-half of the members of the designated benchmark administrator's board of directors must be independent of the designated~~

~~benchmark administrator and any affiliated entity of the designated benchmark administrator.~~

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

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

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

~~(c) the director has served on the board of directors for more than 5~~until the date that I s 6 years ~~in total;~~

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

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

PART 3
GOVERNANCE

Accountability framework requirements

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

~~(2~~**5.(1)** A designated benchmark administrator must establish, document, maintain and apply an accountability framework of policies and procedures that are reasonably designed to

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

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

(~~3~~2) ~~The~~An accountability framework referred to in subsection (1) must specify how the designated benchmark administrator complies with each of the following:

(a) ~~the record-keeping requirements in this Instrument~~Part 7;

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

(c) the ~~complaint handling~~policies and procedures referred to in ~~this Instrument~~section 12.

Compliance officer

~~7~~6.**(1)** A designated benchmark administrator must designate an officer ~~that monitors~~to be responsible for monitoring and ~~assesses~~assessing compliance by the designated benchmark administrator and its DBA individuals with securities legislation ~~in relation~~relating to benchmarks.

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

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

(a) monitor and assess compliance by the designated benchmark administrator and its DBA individuals with the ~~designated benchmark administrator's~~ accountability framework referred to in section ~~6~~5, the control framework referred to in section ~~9, policies and procedures applicable to benchmarks,~~8 and securities legislation ~~in relation~~relating to benchmarks;

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

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

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

(iii) ~~compliance by~~whether the designated benchmark administrator ~~with~~has followed the methodology ~~for~~applicable to each designated benchmark it administers;

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

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

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

(iii) a reasonable person would ~~conclude~~consider that the suspected non-compliance, if actual, is part of a pattern of non-compliance.

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

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

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

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

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

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

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

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

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

~~(b) the financial performance of a designated benchmark administered by the designated benchmark administrator~~would create a conflict of interest.

(7) ~~The~~A designated benchmark administrator must ~~not provide a financial incentive to an officer referred to in~~establish, document, maintain and apply policies and procedures reasonably designed to ensure compliance with subsection (~~1~~6)~~, or any DBA individual that reports directly to the officer, in a manner that a reasonable person would determine compromises the independence of the officer or the DBA individual~~.

(8) ~~A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure compliance with subsections (6) and (7). **(9)**~~ A designated benchmark administrator must deliver to the regulator or securities regulatory authority, promptly after it is submitted to the board of directors, a report referred to in paragraph (3)(b) or (c).

Oversight committee

~~8~~7.(1) ~~A designated benchmark administrator must establish and maintain an~~ In this section, "oversight committee~~ to oversee~~" means the ~~provision of a designated benchmark~~committee referred to in subsection (2).

(2) ~~The oversight committee must not include individuals that are members of the board of directors of the~~A designated benchmark administrator must establish and maintain a committee to oversee the provision of a designated benchmark.

(3) The oversight committee must ~~assess the decisions of the board of directors of the designated benchmark administrator with regards to compliance with securities legislation in relation to a designated benchmark and raise any concerns with those decisions with~~not include any individual who is a member of the board of directors of the designated benchmark administrator.

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

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

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

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

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

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

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

(a) review the methodology of the designated benchmark at least once ~~in~~ every 12~~-month period~~ months and consider if any changes to the methodology are required;

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

(c) oversee the management and operation of the designated benchmark, including the designated benchmark administrator's control framework referred to in section ~~9~~8;

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

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

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

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

(h) keep minutes of ~~each meeting~~its meetings;

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

(i) oversee the designated benchmark administrator's establishment, ~~implementation~~documentation, maintenance and application of the code of conduct referred to in section ~~24~~23,

(ii) monitor each of the following:

(A) the input data;

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

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

(iii) take reasonable measures regarding any ~~significant~~ breach of the code of conduct referred to in section ~~24~~23 to mitigate the impact of the breach and

prevent additional breaches in the future, if a reasonable person would consider that the breach is significant, and

(iv) promptly notify the board of directors of the designated benchmark administrator of any breach of the code of conduct referred to in section ~~24~~23, if a reasonable person would consider that the breach is significant.

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

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

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

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

(c) any input data that

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

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

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

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

Control framework

~~9~~**8.(1)** In this section, "control framework" means the policies, procedures and controls referred to in subsections (2), (3) and (4).

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

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

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

(b) business continuity and disaster recovery plans;

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

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

(a) ensure that benchmark contributors comply with the code of conduct referred to in section ~~24~~23 and the standards for input data in the methodology of the designated benchmark,

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

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

(5) A designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any ~~significant~~ security incident or any ~~significant~~ systems issue relating to ~~any~~a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant.

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

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

(iii) Governance requirements

~~10~~9.**(1)** A designated benchmark administrator must establish and document ~~a clear~~its organizational structure.

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

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

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

(b) is subject to adequate management and supervision.

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

~~Conflict~~Conflicts of interest ~~requirements~~

~~11~~10.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

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

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

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

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

(~~d~~e) ensure that each of its benchmark individuals is not subject to undue influence, undue pressure or conflicts of interest, including, for greater certainty, ensuring that each of the benchmark individuals

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

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

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

~~methodology~~as permitted under the policies and procedures of the designated benchmark administrator, and

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

(A) any other DBA ~~individuals~~individual if that individual is involved in ~~activities~~an activity that ~~may create~~results in a ~~risk~~conflict of ~~conflicts~~interest or a potential conflict of interest,

(B) a benchmark ~~contributors~~contributor or any other ~~third parties~~person or company.

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

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

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

(b) on becoming aware of the conflict of interest, or ~~risk~~the potential conflict of interest, including, ~~but not limited to~~for greater certainty, a conflict or ~~risk~~potential conflict arising from the ownership or control of the designated benchmark administrator.

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

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

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

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

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

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

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

(5) ~~In the event of a significant failure~~If a designated benchmark administrator fails to apply or follow ~~policies and procedures to which paragraph (4)(b) applies~~a policy or procedure referred to in subsection (4), and a reasonable person would consider the failure to be significant, ~~a~~the designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

Reporting of ~~infringements~~contraventions

~~12~~11.**(1)** A designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed ~~for the purposes of detecting~~to detect and ~~reporting~~promptly report to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve the following:

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

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

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures for its DBA individuals to report any contravention of ~~this Instrument~~securities legislation relating to benchmarks to the officer referred to in section ~~7~~6.

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

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

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

Complaint procedures

~~13~~12.**(1)** A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures reasonably designed ~~for receiving, handling, investigating~~to ensure that the designated benchmark administrator receives, investigates and ~~resolving~~resolves complaints relating to a designated benchmark, including, ~~without limitation~~for greater certainty, complaints in respect of each of the following:

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

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

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

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

(a) provide a written copy of the complaint procedures at no cost to ~~a complainant~~any person or company on request;

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

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

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

Outsourcing

~~14~~13.**(1)** A designated benchmark administrator must not outsource a function, service or activity relating to the administration of a designated benchmark in such a way as to significantly impair ~~either~~any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4
INPUT DATA AND METHODOLOGY

Input data

~~15~~14.**(1)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that ~~each~~all of the following are satisfied in respect of input data used in the provision of a designated benchmark:

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

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

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

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

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

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

(a) criteria ~~that determine~~for determining who may ~~contribute input data to the designated~~act as benchmark ~~administrator~~contributors and contributing individuals;

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

(c) a process for assessing a benchmark contributor's compliance with the code of conduct referred to in section ~~24~~23;

(d) a process for applying measures that a reasonable person would consider ~~to be~~ appropriate in the event of ~~non-compliance by~~ a benchmark contributor failing to comply with the code of conduct referred to in section ~~24~~23;

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

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

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

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

(b) cease to provide the designated benchmark.

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

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

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

(b) the methodology of the designated benchmark.

(iv) Contribution of input data

~~16~~**15.(1)** For the purpose of paragraph ~~15(1~~14(1)(a) in respect of a designated benchmark that is based on input data from benchmark contributors, the designated benchmark administrator must obtain, if a reasonable person would consider it to be appropriate, input data from a representative sample of benchmark contributors.

(2) A designated benchmark administrator must not use input data from a benchmark contributor if

(a) a reasonable person would consider that the ~~designated~~ benchmark ~~administrator~~contributor has ~~any indication that the benchmark contributor does not adhere to~~breached the code of conduct referred to in section ~~24~~23, and ~~in such a case, if~~

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

(3) If the circumstances referred to in subsection (2) occur, and if a reasonable person would consider it to be appropriate, a designated benchmark administrator must obtain alternative representative data in accordance with the ~~guidelines~~policies and procedures referred to in ~~paragraph 17(3)(a~~subsection 16(3).

~~(3)~~(4) If input data is contributed from any front office of a benchmark contributor, or of an ~~affiliate~~affiliated entity of a benchmark contributor, that performs any activities that relate to or might ~~impact~~affect the input data, the designated benchmark administrator must

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

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

~~(4) For the purpose of subsection~~ **(~~3~~5)** In this section, "front office" means any department, division or other internal grouping of a benchmark contributor, ~~group~~ or ~~personnel~~any employee or agent of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the benchmark contributor.

Methodology

~~17.(1)~~16.(1) A designated benchmark administrator must not ~~use~~follow a methodology for determining a designated benchmark unless all of the following apply:

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

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

(c) the accuracy and reliability of the methodology, with respect to determinations made under it, is capable of being verified, including, if appropriate, by back-testing;

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

(e) a determination under the methodology ~~can be~~is capable of being verified as being accurate, reliable and complete.

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

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

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

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

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

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

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

Proposed significant changes to methodology

~~18.~~**17.(1)** In this section, "significant change" means a change that a reasonable person would consider to be significant.

(~~1~~2) A designated benchmark administrator must ~~establish, document, maintain and apply procedures that provide for~~not implement a significant change to a methodology for determining a designated benchmark, unless all of the following apply:

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

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

(c) the ~~publication of~~ designated benchmark administrator has published

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

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

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

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

~~(2)~~**(3)** For the purposes of subsection (~~1~~2),

~~(a) the procedures in relation to the public~~(a) the notice under paragraph (~~1~~2)(a) must ~~provide~~be published on a date that ~~notice of the proposed change be published on or before a date that provides benchmark~~ provides benchmark users and other members of the public with reasonable time to consider and comment on the proposed change,

~~(b) the procedures in relation to~~ (b) the publication of comments under paragraph (~~1~~2)(c) may permit a part of a written comment to be excluded from publication if both of the following apply:

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

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

(c) the ~~procedures in relation to the public~~ notice under paragraph (~~1~~2)(d) must ~~provide that notice of the implemented change~~ be published ~~on or~~sufficiently before ~~an~~the effective date ~~that provides~~of the change to provide benchmark users and other members of the public with reasonable time to consider the ~~implemented~~implementation of the significant change.

PART 5
DISCLOSURE

Disclosure of methodology

~~19~~**18.(1)** A designated benchmark administrator must publish all of the following in respect of the methodology of a designated benchmark:

(a) the information that

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

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

(b) ~~a complete~~an explanation of all of the elements of the methodology, including, ~~but not limited to~~for greater certainty, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) the ~~procedures~~process referred to in section ~~18~~17 for making significant changes to the methodology;

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

(2) A designated benchmark administrator must provide written notice to the regulator or securities regulatory authority of a proposed significant change to the methodology of a designated benchmark referred to in section 17 at least 45 days before ~~its implementation~~the significant change is implemented.

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

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

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

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

Benchmark statement

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

~~**(2)** For the purpose of subsection (1)~~

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

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

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

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

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

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

(b) an explanation of the circumstances in which the designated benchmark might, in the opinion of a reasonable person, ~~no longer~~not accurately and reliably represent ~~the~~that part of the market or economy the designated benchmark is intended to ~~record~~represent;

(c) ~~technical specifications~~information that ~~set~~sets out all of the following:

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

(ii) the ~~criteria applicable to the exercise of~~circumstances in which expert judgment would be exercised by the designated benchmark administrator or any benchmark contributor~~, and~~ ;

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

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

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

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

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

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

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

(~~i~~j) a summary of the methodology of the designated benchmark, including, ~~but not limited to, all of~~for greater certainty, the following, if applicable:

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

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

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

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

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

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

(~~j~~k) the procedures ~~which~~that govern the provision of the designated benchmark in periods of market stress or ~~where~~when transaction data ~~sources may~~might be

~~insufficient,~~ inaccurate ~~or~~, unreliable or incomplete, and the potential limitations of the designated benchmark ~~in~~during those periods;

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

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

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

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

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

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

Changes to and cessation of a designated benchmark

~~21~~**20.(1)** A designated benchmark administrator must ~~publish, simultaneously with the benchmark statement referred to in subsection 20(1), the procedures to be followed by~~not cease to provide a designated benchmark, unless the designated benchmark administrator ~~in~~has provided notice of the ~~event of a significant change to or~~cessation on a date that provides benchmark users and other members of the public with reasonable time to consider the impact of the cessation ~~of a designated benchmark it administers~~.

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

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

Registrants, reporting issuers and recognized entities

~~22~~21.**(1)** If a person or company uses a designated benchmark, and if a significant change to the methodology or provision of the benchmark, or the cessation of the benchmark, could have a significant impact on the person or company ~~or~~, a security issued by the person or company or a derivative to which the person or company is a party, the person or company must establish and maintain a written plan setting out the actions that the person or company ~~would~~will take in the event ~~that~~of any of the following:

(a) a significant change to the methodology or provision of the designated benchmark ~~significantly changes or ceases to be provided and~~;

(b) a cessation of the designated benchmark.

(2) Subsection (1) does not apply unless the person or company is ~~one or more~~any of the following:

(a) a registrant;

(b) a reporting issuer;

(c) a recognized exchange;

(d) a recognized quotation and trade reporting system;

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

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

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

~~(b) indicate why the substitution would be suitable.~~

(3) Subsection (1) does not apply with respect to a security issued or a derivative entered into before the date this Instrument comes into force.

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

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

(b) indicate why the substitution would be suitable.

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

Publishing and disclosing

~~23~~**22.** If, under this Instrument, a designated benchmark administrator is required ~~by this Instrument~~ to publish a document or information, or disclose a document or information to a benchmark user or benchmark contributor, the designated benchmark administrator must publicly ~~and prominently disclose~~include the document or information~~, free of charge,~~ on the designated benchmark administrator's website in a prominent manner and, for greater certainty, free of charge.

PART 6
BENCHMARK CONTRIBUTORS

Code of conduct for benchmark contributors

~~24~~**23.(1)** If a designated benchmark is determined using input data from a benchmark ~~contributors~~contributor, the designated benchmark administrator of the designated benchmark must establish, document, maintain and apply a code of conduct that specifies the responsibilities of the benchmark ~~contributors~~contributor with respect to the contribution of input data ~~for the designated benchmark~~.

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

(a) a ~~clear~~ description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with sections ~~12,~~14 and 15 ~~and 16~~;

(b) the method by which a benchmark ~~contributors~~contributor will confirm ~~and amend~~ the identity of each contributing individual ~~that could~~who might contribute input data ~~to~~;

(c) the method by which the designated benchmark administrator~~;~~

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

(d) the procedures ~~to authorize an individual~~that a benchmark contributor will use to determine who is suitable to be authorized as a contributing individual;

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

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

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

(ii) ~~requirements for the benchmark contributor to~~

~~(A) specify~~specifying whether input data is transaction data~~, and~~;

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

(~~iii~~iv) procedures ~~on~~for the ~~use~~exercise of expert judgment in contributing input data;

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

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

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

(~~vii~~viii) ~~requirements concerning the identification and avoidance of~~a requirement to identify and eliminate or manage conflicts of interest ~~or mitigation of risks resulting from~~and potential conflicts of interest that may affect the integrity, accuracy or reliability of the designated benchmark;

(~~viii~~ix) a procedure for the designation of an officer ~~that monitors~~of the benchmark contributor who is to be responsible for monitoring and ~~assesses~~assessing compliance by the benchmark contributor and its employees with the code of conduct ~~referred to in section 24, this Instrument~~ and securities legislation ~~relevant~~ relating to benchmarks;

~~(ix)~~ (x) a requirement that the benchmark contributor's officer referred to in ~~paragraph (viii) be provided with direct access to~~subparagraph (ix) and the benchmark contributor's chief compliance officer not be prevented or

restricted from directly accessing the benchmark contributor's board of directors ~~at such times as the officer may consider necessary or advisable in view of the officer's responsibilities;~~

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

~~(i) sections 25 and 40;~~

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

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

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

Governance and control requirements for benchmark contributors

~~25~~**24.(1)** ~~A~~Except in Québec, a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure all of the following:

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

(b) if ~~any~~ expert judgment ~~contemplated by this Instrument~~ is exercised by the benchmark contributor in contributing input data, the benchmark contributor exercises the expert judgment independently ~~and~~, in good faith and in ~~accordance~~compliance with the code of conduct referred to in section ~~24~~23.

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

~~designated benchmark administrator~~, including policies, procedures and controls governing all of the following:

(a) the manner in which the input data is contributed in compliance with this Instrument and the code of conduct referred to in section ~~24~~23;

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

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

(d) the identification and ~~avoidance~~elimination or management of conflicts of interest ~~or mitigation of risks resulting from~~and potential conflicts of interest, including, ~~but not limited to, when appropriate~~for greater certainty,

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

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

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

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

(a) establish, document, maintain and apply policies and procedures reasonably designed to ~~guide any use~~establish criteria, including any restrictions or limitations, for the exercise of expert judgment, and

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

(4) ~~A~~Except in Québec, a benchmark contributor ~~to~~that contributes input data for a designated benchmark must keep, for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later, records relating to ~~each~~all of the following:

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

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

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

(d) all documentation relating to the identification and ~~avoidance~~elimination or management of conflicts of interest ~~or mitigation of risks resulting from~~and potential conflicts of interest;

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

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

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

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

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

(i) the designated benchmark administrator~~, or~~ ;

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

Compliance officer for benchmark contributors

~~26~~25.(1) ~~A~~Except in Québec, a benchmark contributor ~~to~~that contributes input data for a designated benchmark must designate an officer ~~that monitors~~of the benchmark contributor who is to be responsible for monitoring and ~~assesses~~assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section ~~24~~23, this Instrument and securities legislation ~~relevant~~relating to benchmarks.

~~(2) A~~**(2)** Except in Québec, a benchmark contributor must ~~permit~~not prevent or restrict the officer referred to in subsection (1) ~~to~~and its chief compliance officer from directly ~~access~~accessing the benchmark contributor's board of directors ~~at such times as the officer may consider necessary or advisable in view~~or a member of the ~~officer's responsibilities~~board of directors.

PART 7
~~RECORDKEEPING~~
RECORD KEEPING

Books ~~and~~, records
~~27~~ and other documents

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

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

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

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

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

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

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

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

(g) all documents relating to a complaint;

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

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

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

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

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

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

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

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

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

DIVISION 1 ~~–~~ = DESIGNATED CRITICAL BENCHMARKS

Administration of a designated critical benchmark

~~28~~27.**(1)** If a designated benchmark administrator decides to cease providing a designated critical benchmark, the designated benchmark administrator must

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

(b) not more than 4 weeks after notifying the regulator or securities regulatory authority, submit a plan to the regulator or securities regulatory authority ~~of~~for how

the designated critical benchmark can be transitioned to ~~a new~~another designated benchmark administrator or cease to be provided.

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

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

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

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

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

Access

~~29~~**28.** A designated benchmark administrator of a designated critical benchmark must take reasonable steps to ensure that benchmark users ~~or~~and potential benchmarks users have direct access to the designated critical benchmark on a fair, reasonable, transparent and non-discriminatory basis.

Assessment

~~30~~**29.** A designated benchmark administrator of a designated critical benchmark must, at least once ~~in each 24-month period~~every 2 years, submit to the regulator or securities regulatory authority an assessment of the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated critical benchmark is intended to ~~record~~represent.

Benchmark contributor to a designated critical benchmark

~~31~~**30.(1)** ~~If~~Except in Québec, if a benchmark contributor to a designated critical benchmark decides ~~to~~it will cease contributing input data, it must promptly notify in writing the designated benchmark administrator that administers the designated critical benchmark.

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

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

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

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

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

(b) no later than 14 days after receipt of the notice,

(i) submit to the regulator or securities regulatory authority an assessment of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated benchmark is intended to ~~record~~represent, and

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

Oversight committee

31.(1) For a designated critical benchmark, at least half of the members of the oversight committee referred to in section 7 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

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

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

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

(c) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark

administrator, be expected to interfere with the exercise of the member's independent judgment.

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

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

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

Assurance report on designated benchmark administrator

32.(1) ~~For a~~ A designated ~~critical~~ benchmark~~, at least one-half of the members of~~ administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section ~~8 must be independent of~~7, either a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated critical benchmark it administers, regarding the designated benchmark administrator ~~and any affiliated entity~~'s

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

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

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

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

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

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

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

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

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

~~**(4)** The oversight committee must~~

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

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

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

Assurance report on ~~designated~~ benchmark ~~administrator~~contributor

33.(1) ~~A designated benchmark administrator~~Except in Québec, if required by the oversight committee referred to in section 7 as a result of a concern with the conduct of a benchmark contributor to a designated critical benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee ~~referred to in section 8~~, either a limited assurance report on compliance or a reasonable assurance report on compliance regarding the ~~designated~~conduct of the benchmark ~~administrator's compliance with all of the following in respect of each designated critical benchmark it administers:~~contributor and its

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

(a) compliance with section 24, and

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

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

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

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

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

(c) the regulator or securities regulatory authority.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Order of priority of input data

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

Oversight committee

35.(1) For a designated interest rate benchmark, at least half of the members of the oversight committee referred to in section 7 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

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

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

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

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

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

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

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

Assurance report on designated benchmark administrator

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

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

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

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

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

Assurance report on benchmark contributor

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

~~(a) section 25;~~

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

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

~~(a) the oversight committee,~~

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

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

~~***DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS***~~

(vi) ~~*Accurate and sufficient data*~~

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

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

~~(i) the unsecured inter-bank deposit market,~~

~~(ii) other unsecured deposit markets,~~

(iii) markets for commercial paper, and

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

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

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

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

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

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

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

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

Oversight committee

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

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

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

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

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

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

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

(4) The oversight committee must

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

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

Assurance report on designated benchmark administrator

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

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

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

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

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

Assurance report on benchmark contributor Except in Québec, if required by **oversight committee**

38(1) If required by the oversight committee referred to in section 87 as a result of a concern with the conduct of a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the

oversight committee, either a limited assurance report on compliance or a reasonable assurance report on compliance, regarding the conduct of the benchmark contributor and its ~~compliance with all of the following:~~

~~(a) sections 25 and 40;~~

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

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

(a) compliance with sections 24 and 39, and

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

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

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

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

(c) the regulator or securities regulatory authority.

Assurance report on benchmark contributor required at certain times

~~**39(1**~~**38.(1)** ~~A~~Except in Québec, a benchmark contributor to a designated interest rate benchmark must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, regarding the conduct and input data of the benchmark contributor and its

(a) compliance with ~~all of the following: (a)~~ sections ~~25~~24 and ~~40;~~39,

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

(c) following of the code of conduct referred to in section ~~24~~23.

(2) ~~The~~Except in Québec, a benchmark contributor must ensure an engagement referred to in subsection (1) ~~must be carried out~~occurs for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section ~~24~~23 and subsequently once every 2 years.

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

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

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

(c) the regulator or securities regulatory authority.

(vii) Benchmark contributor policies and procedures

~~40~~39.**(1)** ~~The requirements in subsections~~Subsections (2) to (7) do not apply to a ~~benchmark contributor only~~person or company except in respect of a designated interest rate benchmark.

(2) ~~Each~~Except in Québec, a contributing individual of the benchmark contributor and ~~the direct managers~~a manager of that contributing individual must provide a written statement to the benchmark contributor and the designated benchmark administrator that ~~they~~the contributing individual and the manager will comply with the code of conduct referred to in section ~~24~~23.

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

(a) that there is an outline of responsibilities within the benchmark contributor's organization, including internal reporting lines and accountabilities;

(b) the maintenance of a current list of the names and locations of contributing individuals and managers and their alternates;

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

(i) how the procedures were applied, and

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

(d) that there are disciplinary procedures ~~in respect of an actual or attempted manipulation, or a failure to report an actual or attempted manipulation, by any party, including, but not limited to, any party~~to address the following conduct of a person or company, including, for greater certainty, a person or company that is external to the ~~contribution~~ process governing contributions of input data:

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

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

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

(f) that there is a requirement that contributing individuals employed by the benchmark contributor work in locations physically separated from interest rate derivatives traders;

(g) the prevention or control of the exchange of information between persons or companies engaged in activities involving a ~~risk of~~ conflict of interest ~~where~~or a potential conflict of interest, if a reasonable person would consider that the exchange of that information ~~may~~might adversely affect the accuracy, reliability or completeness of the input data contributed by a benchmark contributor;

(h) that there are requirements to avoid collusion

(i) among benchmark contributors, and

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

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

(j) the removal of any direct ~~link~~connection between the remuneration of ~~employees~~an employee involved in the contribution of input data and the remuneration of, or revenues generated by, ~~persons~~a person or ~~companies~~company engaged in another

activity, ~~where~~if a conflict of interest ~~may~~exists or might arise in relation to ~~those activities~~the other activity;

(k) that there are controls to identify ~~any~~a reverse transaction subsequent to the contribution of input data.

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

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

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

(c) the ~~names~~name of each contributing ~~individuals~~individual and ~~their~~the individual's responsibilities;

(d) any communications, including, for greater certainty, telephone conversations, between the contributing individuals and other persons or companies, including internal and external traders and brokers, in relation to the determination or contribution of input data;

(e) any interaction of contributing individuals with the designated benchmark administrator or any calculation agent;

(f) any queries regarding the input data and the outcome of those queries;

(g) sensitivity analysis for interest rate swap trading books and any other derivative trading books with ~~a significant~~an exposure to interest rate fixings in respect of input data, if a reasonable person would consider that the exposure is significant;

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

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

(5) ~~The~~Except in Québec with respect to benchmark contributors, a benchmark contributor and ~~the~~a designated benchmark administrator must keep ~~each of~~ their records ~~on~~in a medium that allows ~~the storage of information~~records to be accessible ~~for future reference~~and with a documented audit trail.

(6) ~~The~~Except in Québec, the benchmark contributor's officer referred to in section ~~26~~25 or the benchmark contributor's chief compliance officer must report ~~any findings, including~~

~~any reverse transaction~~ ~~subsequent to the contribution of input data,~~all the following to the benchmark contributor's board of directors on a ~~regular~~reasonably frequent basis:

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

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

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

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

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

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

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

DIVISION 3 — DESIGNATED REGULATED-DATA BENCHMARKS

Non-application to designated regulated-data benchmarks

~~41~~40. A designated regulated-data benchmark is exempt from the ~~requirements in~~following:

(a) subsections ~~12(1~~11(1) and (2)~~,~~;

(b) subsection ~~15(2~~14(2)~~,~~;

(c) subsections ~~16(1~~15(1), (2) and (3)~~,~~;

(d) sections ~~24~~23, ~~25~~24 and ~~26, and~~ 25;

(e) paragraph ~~27(2~~26(2)(a).

PART 9
DISCRETIONARY EXEMPTIONS

Exemptions

~~42~~41.**(1)** The regulator or ~~the~~ securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 10
EFFECTIVE DATE

Effective date

~~43~~42.(1) This Instrument comes into force on ~~.~~July 13, 2021.

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

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

Definitions Applying in Certain Jurisdictions
~~(Subsection 1(4))~~
(subsections 1(5) to (8))

"benchmark" means a price, estimate, rate, index or value that is

(a) determined from time to time by reference to an assessment of one or more underlying interests,

(b) made available to the public, including, for greater certainty, either free of charge or on payment, and

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

(i) determining the interest payable, or other sums that are due, under a contract, derivative, instrument or security,

(ii) determining the value of a contract, derivative, instrument or security or the price at which it may be traded,

(iii) measuring the performance of a contract, derivative, investment fund, instrument or security, or

(iv) any other use by an investment fund;

"benchmark administrator" means a person or company that administers a benchmark;

"benchmark contributor" means a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark;

"benchmark user" means a person or company that, in relation to a contract, derivative, investment fund, instrument or security, uses a benchmark.

FORM 25-102F1
Designated Benchmark Administrator
Annual Form

Instructions

(1) Terms used ~~in this form~~ but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under securities legislation to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator
State the name of the designated benchmark administrator.

Item 2. Organization and Structure of Designated Benchmark Administrator
Describe the organizational structure of the designated benchmark administrator, including, as applicable, an organizational chart that identifies the ultimate and intermediate parent companies, subsidiaries, and material affiliated entities of the designated benchmark administrator (if any); an organizational chart showing the divisions, departments, and business units of the designated benchmark administrator; and an organizational chart showing the managerial structure of the designated benchmark administrator, including the officer referred to in section ~~7~~6 of the Instrument and the oversight committee referred to in section ~~8~~7 of the Instrument. Provide detailed information regarding the designated benchmark administrator's legal structure and ownership.

Item 3. Designated Benchmark
Provide the name of the designated benchmark.

Item 4. Policies and Procedures re Confidential Information
Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained by the designated benchmark administrator to prevent the misuse of confidential information.

Item 5. Policies and Procedures re Conflicts of Interest
Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained with respect to conflicts of interest and potential conflicts of interest.

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

(a) Describe any ~~conflicts~~conflict of interest or potential conflict of interest that ~~arise~~arises from the control or ownership structure of the designated benchmark administrator, or from any other activities of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, in relation to a designated benchmark administered by the designated benchmark administrator.

(b) Describe the designated benchmark administrator's policies and procedures to identify and eliminate or manage ~~or mitigate~~ each conflict of interest or potential conflict of interest described in paragraph (a).

Item 7. Policies and Procedures re Control Framework
Describe the designated benchmark administrator's control framework referred to in section ~~9~~8 of the Instrument and policies and procedures designed to ensure the quality of the designated benchmark.

Item 8. Policies and Procedures re Complaints
Describe the designated benchmark administrator's policies and procedures regarding complaints.

Item 9. Policies and Procedures re Books ~~and~~, Records and Other Documents
Describe the designated benchmark administrator's policies and procedures regarding ~~recordkeeping~~record keeping.

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

- ~~The~~the identity of ~~each OSP~~the provider and each of ~~their~~its key individual contacts~~,~~;
- ~~The~~the total number of ~~supervisors of each OSP,~~individuals who supervise the provider;
- ~~A~~a general description of the minimum qualifications required of the ~~OSPs~~provider for any outsourcing~~, and~~;
- ~~A~~a general description of the minimum qualifications required of ~~the benchmark~~ individuals~~' supervisors~~ who supervise the provider for any outsourcing, including education level and work experience.

Item 11. Benchmark Individuals
Disclose the following information about the benchmark individuals of the designated benchmark administrator and the individuals who supervise the benchmark individuals:

- ~~The~~the total number of benchmark individuals~~,~~;

- ~~The~~the total number of supervisors of benchmark individuals~~,~~;

- ~~A~~a general description of the minimum qualifications required of the benchmark individuals, including education level and work experience (if applicable, distinguish between junior, mid, and senior level benchmark individuals)~~, and~~;

- ~~A~~a general description of the minimum qualifications required of the supervisors of benchmark individuals~~' supervisors~~, including education level and work experience.

Item 12. Compliance Officer

Disclose the following information about the officer of the designated benchmark administrator referred to in section ~~7~~6 of the Instrument:

- ~~Name, ~~name;

- ~~Employment~~employment history~~,~~;

- ~~Post~~post-secondary education~~, and~~;

- ~~Whether~~whether employed full-time or part-time by the designated benchmark administrator.

Item 13. Specified Revenue

Disclose the following information, as applicable, regarding the designated benchmark administrator's aggregate revenue for the most recently completed financial year:

- ~~Revenue~~revenue from determining the designated benchmark~~, ~~;

- ~~Revenue~~revenue from determining any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator)~~,~~;

- ~~Revenue~~revenue from granting licences or rights to publish information about the designated benchmark~~, and~~;

- ~~Revenue~~revenue from granting licences or rights to publish information about any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator).

Include financial information on the revenue of the designated benchmark administrator divided into fees from benchmark and non-benchmark activities, including a comprehensive description of each.

This information is not required to be audited, but any disaggregation of revenue must be determined using the same accounting principles as the annual financial statements required by section 2 of the Instrument.

Item 14. Financial Statements
Attach a copy of the annual financial statements required ~~by~~under section 2 of the Instrument.

Item 15. Verification Certificate
Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-102F1 *Designated Benchmark Administrator Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are incorporated into and form part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Designated Benchmark Administrator)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-102F2
Designated Benchmark
Annual Form

Instructions

(1) Terms used ~~in this form~~ but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under securities legislation to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator
State the name of the designated benchmark administrator.

Item 2. Designated Benchmark
Provide the name of the designated benchmark and whether it is also any of the following:

- interest rate benchmark~~,~~;
- critical benchmark~~,~~;
- regulated-data benchmark.

Item 3. Benchmark Distribution Model
Describe how the designated benchmark administrator makes the designated benchmark readily accessible for free or for a fee. If a person must pay a fee to obtain information about the designated benchmark made readily accessible by the designated benchmark administrator, provide a fee schedule or describe the prices charged.

Item 4. Procedures and Methodologies
Describe the procedures and methodologies used by the designated benchmark administrator to determine the designated benchmark. The description must be sufficiently detailed to provide an understanding of the processes employed by the designated benchmark administrator in determining the designated benchmark, including the following, as applicable:

- the public and non-public sources of information used in determining the designated benchmark, including information provided by benchmark contributors;
- procedures for monitoring, reviewing, and updating the designated benchmark,
- the methodologies, policies and procedures described in the Instrument.

A designated benchmark administrator may provide the location on its website where additional information about the methodologies, policies and procedures is located.

Item 5. Code of Conduct for Benchmark Contributors
Unless previously provided, attach a copy of any code of conduct for benchmark contributors.

Item 6. Verification Certificate
Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-102F2 *Designated Benchmark Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are incorporated into and form part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Designated Benchmark Administrator)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-102F3
Submission to Jurisdiction and
Appointment of Agent for Service of Process

1. Name of the designated benchmark administrator (the "DBA"):

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

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

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

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

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

7. Name, email address, phone number and fax number of contact person of the Agent:

8. The DBA designates and appoints the Agent at the address of the Agent stated in Item 6 as its agent on whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (~~the Proceeding~~a "proceeding") arising out of, relating to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator, and irrevocably waives any right to raise as a defence in any ~~such Proceeding~~proceeding any alleged lack of jurisdiction to bring ~~such Proceeding~~a proceeding.

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

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

   (b) any judicial, quasi-judicial and other administrative proceeding in any such province or territory,

   in any ~~Proceeding~~proceeding arising out of or related to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator.

10. This submission to jurisdiction and appointment of agent for service of process is governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

_____ _____

Signature of Designated Benchmark Administrator Date

_____

Print name and title of signing officer
of Designated Benchmark Administrator

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of DBA] under the terms and conditions of the appointment of agent for service of process set out in this document.

_____ _____

Signature of Agent Date

_____

Print name of person signing and, if Agent
is not an individual, the title of the person

ANNEX F

CP, BLACKLINED TO SHOW CHANGES FROM PROPOSED CP

COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

~~**TABLE OF CONTENTS**~~

PART 1
GENERAL COMMENTS

Introduction

This companion policy (the "Policy") provides guidance on how the Canadian Securities Administrators ("we") interpret various matters in ~~National~~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 ~~that~~for the designation of a benchmark and a benchmark administrator. In all Canadian jurisdictions that have adopted the Instrument, a benchmark administrator or a regulator may apply to a securities regulatory authority to request the designation of a benchmark or a benchmark administrator. In Alberta, British Columbia and Québec, the securities regulatory authority may make the designation on its own initiative. In Québec, the decision of the securities regulatory authority to designate a benchmark has the legal

effect of the benchmark administrator becoming subject to the *Securities Act* (Québec). "Regulator" and "securities regulatory authority" are defined in National Instrument 14-101 *Definitions*.

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

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

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

Categories of Designation

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

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

(d) a designated interest rate benchmark may also be designated as a designated critical benchmark, and

(e) a designated regulated-data benchmark may also be designated as a designated critical benchmark.

As discussed below, we expect a benchmark administrator that applies for designation of a benchmark to provide written submissions on whether the administrator considers the benchmark to be a critical benchmark, an interest rate benchmark or a regulated-data benchmark.

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

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

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

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

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

would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

"Designated critical benchmark" is a benchmark that is designated for the purposes of the Instrument as a "critical benchmark" by ~~an order or~~ a decision of the ~~regulator or~~ securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are specific requirements in Division 1 of Part 8 of the Instrument that apply to designated critical benchmarks.

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

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

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

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

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

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

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

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

For the purpose of paragraph (a) and subparagraph (b)(i), staff of a ~~regulator or~~ securities regulatory authority will consider, among other things, the outstanding principal amount of any

debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and the outstanding net asset value of any investment funds that use the benchmark to measure performance.

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

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

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

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

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

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

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

We note that the above list is not exhaustive.

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

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

"Designated regulated-data benchmark" is a benchmark that is designated for the purposes of the Instrument as a "regulated -data benchmark" by ~~an order or~~ a decision of the ~~regulator or~~ securities regulatory authority. Benchmark administrators of~~, and benchmark contributors to,~~ regulated-data benchmarks are exempted from certain governance and control requirements relating to the contribution of input data (see Division 3 of Part 8 of the Instrument).

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

(a) input data contributed entirely ~~and directly~~, 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 ~~14~~13 of the Instrument, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);

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

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

Subsection 1(1) – Definition of expert judgment

"Expert judgment" is the discretion exercised by:

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

Expert judgment may involve various activities, including:

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

Subsection 1(1) – Definition of input data

"Input data" is the data in respect of ~~the value or price~~any measurement of one or more ~~underlying~~ assets, interests or elements that is ~~used~~contributed, or otherwise obtained, by a designated benchmark administrator ~~to determine~~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 ~~counterparties~~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".

~~Paragraph~~Subsection 1(3~~)(a~~) – Interpretation of contribution of input data

~~Paragraph 1(3)(a) of~~There are provisions in the Instrument ~~provides~~ 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

(~~i~~a) it is not reasonably available to

(~~A~~i) the designated benchmark administrator, or

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

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

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

bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

~~**Subsection 1(4**~~

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(4~~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) ~~indicates that subsection 1(4)~~ does not apply in ~~• **[Note: At the time of the final rule, we plan to insert a list of jurisdictions that have not included these defined terms in their securities legislation]**~~. ~~The other~~Alberta, New Brunswick, Nova Scotia, Ontario or Saskatchewan. In these jurisdictions ~~of Canada have defined these~~, the terms in ~~their~~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 ~~one or more underlying assets, interests~~the asset, interest or ~~things~~element.

Public authorities

Where public authorities (for example, national statistics agencies, universities or research centres) contribute data to, or provide or have control over the provision of, a benchmark for public policy purposes, we would generally not designate such a benchmark as a "designated benchmark" or its administrator as a "designed benchmark administrator". In this regard, we would generally

consider a "public authority" to include a government, a government agency or an entity performing public functions, having public responsibilities or providing public services under the control of a government or a government agency.

Use of "reasonable person"

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

PART 2
DELIVERY REQUIREMENTS

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

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

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

Subject to certain conditions, subparagraph 2(7)(a)(ii) of the Instrument permits audited annual financial statements of a designated benchmark administrator to be prepared using Canadian GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprise in Part II of the Handbook.

Subsection 2(8) – Information on designated benchmark administrator

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

Subsection 3(2) – Information on designated benchmark

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

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

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

PART 3
GOVERNANCE

Board of directors

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

- **subsection 6(6)** – a designated benchmark administrator must not provide a payment or other financial incentive to a compliance officer referred to in subsection 6(1), or any DBA individual that reports directly to the officer, if the payment or other financial incentive would create a conflict of interest. Such a payment would compromise the independence of the compliance officer or the DBA individual;
- **subsections 7(2) and (3)** – a designated benchmark administrator must establish an oversight committee, the members of which must not be members of the board of directors;
- **subsections 7(4) and (9)** – the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator and, if the oversight committee becomes aware that the board of directors has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting;
- **subsection 10(1)** – a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to, among other things, ensure that any expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised and protect the integrity and independence of the provision of a designated benchmark;
- **subsection 12(2)** – a benchmark administrator must conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint; and
- **subsections 31(1) and 35(1)** – for a designated critical benchmark and a designated interest rate benchmark, respectively, at least half of the members of the oversight committee of the designated benchmark administrator must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

Subsection ~~7(1~~6(1) – Reference to securities legislation ~~in relation~~relating to benchmarks

Subsection ~~7(1~~6(1) of the ~~Instruments~~Instrument refers to "securities legislation ~~in relation~~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 ~~8(7~~7(3) – Oversight committee must not include members of board of directo~~rs~~*rs*

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 ~~8(7~~7(7) of the Instrument would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

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

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

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

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

A dissemination agent would not include:

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

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 ~~8(8~~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 ~~to "significant~~ in subparagraph 7(8)(i)(iii) of the Instrument to a "breach" of a code of conduct ~~in subparagraph 8(8)(i)(iii) of the Instrument~~that is "significant" would include~~ significant,~~ 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 ~~9~~8 – Control framework ~~for designated benchmark administrator and controls for benchmark contributors~~

Section ~~9~~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 ~~25(2~~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 ~~9(1~~8(2) of the Instrument and the controls provided for under subsection ~~25(2~~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 ~~9(1~~8(2) of the Instrument, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection ~~25(2~~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 ~~9(5~~8(5) – Reporting of significant security incident or systems issue

Subsection ~~9(5~~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 ~~significant~~ security incident or any ~~significant~~ systems issue relating to ~~the~~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 ~~its executive~~senior management ultimately accountable for technology.

Subsection ~~11(2~~10(2) – Conflict of interest requirements for designated benchmark administrators

Subsection ~~11(2~~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 ~~part of the~~ business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a ~~risk of a~~potential conflict of interest ~~between~~involving the business of the designated benchmark ~~and the other part of the business~~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:

(iv) 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

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

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

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

Subsection ~~12(1~~11(1) – Reporting of ~~infringements~~contraventions

Subsection ~~12(1~~11(1) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed ~~for the purposes of detecting~~to detect and ~~reporting~~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 ~~13(2~~12(2)(c) – Complaint procedures ~~of designated benchmark administrator~~

Paragraph ~~13(2~~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 ~~of time~~.

We expect that, in establishing the policies and procedures for ~~handling~~ complaints relating to the designated benchmark required by subsection ~~13(1~~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 ~~13(2~~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 ~~14~~13 – Outsourcing ~~by designated benchmark administrator~~

Section ~~14~~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 ~~14(2~~13(2)(c) – Written ~~contract~~agreement for ~~an~~ outsourcing

Paragraph ~~14(2~~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 ~~contract~~agreement that covers the matters set out in subparagraphs ~~14(2~~13(2)(c)(i) to (~~v~~vi). We consider the reference to "written ~~contract~~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 ~~16(4~~15(2) – Significant breaches of code of conduct for a benchmark contributor

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

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

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

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

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

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

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

Subsection ~~16(4~~15(5) of the Instrument provides that "front office" of a benchmark contributor or an applicable ~~affiliate~~affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the ~~affiliate~~affiliated entity.

Paragraph ~~17(1~~16(1)(e) – ~~Determination~~Capability to verify determination under the methodology

Paragraph ~~17(1~~16(1)(e) of the Instrument provides that a determination under the methodology of a designated benchmark must be ~~able to 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:

(c) the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and

(d) 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 ~~17(2~~16(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph ~~17(2~~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 ~~record~~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 ~~record~~represent.

Subsection ~~18(1~~17(2) – Proposed or implemented significant changes to methodology

Subsection ~~18(1~~17(2) of the Instrument provides that a designated benchmark administrator must ~~have policies that~~ 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 ~~19~~18, paragraph ~~19(1~~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 ~~theses~~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 ~~20(2~~19(1) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs ~~20(2~~19(1)(a) through (~~l~~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 ~~record~~represent and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph ~~20(2~~19(1)(a) – Applicable part of the market or economy for purposes of the benchmark statement

Paragraph ~~20(2~~19(1)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of ~~the~~that part of the market or economy the designated ~~benchmarks~~benchmark is intended to ~~record~~represent. This relates to the benchmark's purpose.

For example, an interest rate benchmark may be intended to ~~reflect~~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 ~~31~~30 and ~~34~~33 of the Instrument), and
- benchmark contributors to a designated interest rate benchmark (see sections 37, 38~~, 39~~ and ~~40~~39 of the Instrument).

~~In [•][Note: At the time of the final rule, we will insert a list of applicable jurisdictions], securities~~Securities legislation defines "benchmark contributor" as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

In ~~[•][Note: At the time of the final rule, we will insert a list of applicable jurisdictions],~~ 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 ~~Québec~~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 ~~paragraph~~subsection 1(3)~~(a)~~ 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 ~~24(2~~23(2)(f)(~~vi~~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 ~~24(2~~23(2)(f)(~~vi~~vii) of the Instrument requires that a code of conduct for a benchmark contributor include a reporting ~~requirements~~requirement for any instance ~~where~~when a reasonable person would ~~believe~~consider that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has ~~provided~~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 ~~24(3~~23(3) – ~~Adherence to~~Assessment of compliance with code of conduct

In establishing the policies and procedures required under subsection ~~24(3~~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 ~~25(1~~24(1)(a) – Conflict of interest requirements for benchmark contributors

~~Paragraph 25(1~~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 ~~the contribution of~~ input data contributed by the benchmark contributor is not ~~significantly~~ affected by any conflict of interest or potential conflict of interest involving the benchmark contributor and its employees, officers, directors ~~and~~or agents, if a reasonable person would consider that ~~the contribution of~~ the input data might be inaccurate, unreliable or incomplete.

We expect that, when ~~contemplating the scope of such conflicts of interest~~establishing these policies and procedures, a benchmark contributor would consider the following:

(vi) 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

(vii) consequently, conflicts of interest must be managed or mitigated to ensure they do not affect input data.

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

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

Subsection ~~25(2~~24(2) – Accuracy, reliability and completeness of input data

In establishing the policies, procedures and controls required under subsection ~~25(2)~~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.

~~Paragraph 25(3)(a~~

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 ~~25(3~~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 ~~26(1)~~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

~~Subsection 26(1~~Except in Québec, subsection 25(1) of the Instrument provides that a benchmark contributor ~~to~~that contributes input data for a designated benchmark must designate an officer ~~that monitors~~to be responsible for monitoring and ~~assesses~~assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section ~~24~~23, the Instrument and securities legislation ~~relevant~~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
~~RECORDKEEPING~~RECORD KEEPING

~~**Paragraph 27(2)(h) – Records of communications**~~

Section 26 – Record keeping by designated benchmark administrator

The reference to "communications" in paragraph ~~27(2~~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 ~~INTEREST RATE~~CRITICAL BENCHMARKS

~~**Subsection 35(1) – Accurate and sufficient data for**~~

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 ~~benchmarks~~ ~~Subsection 35(1) of the Instrument sets out an order of priority for~~benchmark is based on a contribution of input data from a benchmark contributor, input data for the determination of ~~a~~the designated interest rate benchmark~~. The~~ must be used by the designated benchmark administrator in accordance with the order of priority ~~lists committed quotes and indicative quotes or expert judgments. In the absence of reliable~~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 ~~for a~~in the underlying market that the designated interest rate benchmark~~, we are of the view that committed quotes should take precedence over non-committed/indicative quotes and~~ 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 ~~judgment~~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 ~~37(1~~36(1) – Assurance report for designated interest rate benchmark

Subsection ~~37(1~~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 ~~8~~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 ~~in respect~~ of each designated interest rate benchmark it administers.

We note that the report required by subsection ~~37(1~~36(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph ~~7(3~~6(3)(b) of the Instrument. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph ~~7(3~~6(3)(b) and with the requirement in subsection ~~37(1~~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.