ANNEX B

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

COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

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PART 1
GENERAL COMMENTS

Introduction

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

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

Introduction to the Instrument

Securities legislation provides that a benchmark administrator or a regulator may apply to a securities regulatory authority to request the designation of a benchmark or a benchmark administrator. In Québec, the securities regulatory authority may make the designation on its own initiative. "Regulator" and "securities regulatory authority" are defined in National Instrument 14-101 *Definitions*.

The Instrument contains requirements that apply to designated benchmark administrators, benchmark contributors and certain benchmark users in respect of a designated benchmark.

In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are additional requirements in the Instrument that apply to designated critical benchmarks and designated interest rate benchmarks. The Instrument also includes a number of exemptions from certain requirements for designated benchmarks administrators and benchmark contributors in respect of designated regulated-data benchmarks.

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

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

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

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

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

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We note that the above list is not exhaustive.

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

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

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

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

(a) input data contributed entirely and directly from

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

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

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

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

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

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

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

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

Subsection 1(1) – Definition of expert judgment

"Expert judgment" is the discretion exercised by:

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

Expert judgment may involve various activities, including:

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

Subsection 1(1) – Definition of input data

"Input data" is the data in respect of the value or price of one or more underlying assets, interests or elements that is used by a designated benchmark administrator to determine a designated benchmark. For example, input data may include estimated prices, quotes, committed quotes or other values.

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

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

Subsection 1(1) – Definition of transaction data

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

We consider that:

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

Subsection 1(1) – Interpretation of certain definitions

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

- "benchmark administrator";
- "benchmark contributor";
- "benchmark individual";
- "benchmark user";
- "contributing individual";
- "DBA individual";
- "designated benchmark administrator";

- "input data";

- "transaction data".

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

Paragraph 1(3)(a) of the Instrument provides that input data is considered to have been "contributed" if

(i) it is not reasonably available to

(A) the designated benchmark administrator, or

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

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

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

Subsection 1(4) – Definitions of benchmark, benchmark administrator, benchmark contributor and benchmark user in Appendix A

Subsection 1(4) of the Instrument indicates that, for purposes of the Instrument, the definitions in Appendix A apply. Appendix A contains definitions of "benchmark", "benchmark administrator", "benchmark contributor" and "benchmark user". However, subsection 1(5) indicates that subsection 1(4) does not apply in • **[Note: At the time of the final rule, we plan to insert a list of jurisdictions that have not included these defined terms in their securities legislation]**. The other jurisdictions of Canada have defined these terms in their securities legislation.

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

- made available to the public, and
- regularly determined

- entirely or partially by the application of a formula or any other method of calculation, and
- on the basis of the value or price of one or more underlying assets, interests or things.

PART 2
DELIVERY REQUIREMENTS

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

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

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

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

PART 3
GOVERNANCE

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

Subsection 7(1) of the Instruments refers to "securities legislation in relation to benchmarks", which would include the Instrument and benchmark provisions in local securities legislation. "Securities legislation" is defined in National Instrument 14-101 *Definitions*.

Subsection 8(7) – Information relating to a designated benchmark

We consider that the reference to "information relating to a designated benchmark" in subsection 8(7) of the Instrument would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

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

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

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

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

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

A dissemination agent would not include:

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

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

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

Section 9 – Control framework for designated benchmark administrator and controls for benchmark contributors

Section 9 of the Instrument requires a designated benchmark administrator to establish a control framework to ensure that a designated benchmark is provided in accordance with the Instrument. Similarly, subsection 25(2) of the Instrument requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy and completeness of each contribution of input data to the designated benchmark administrator, including controls that the input data is provided in accordance with the Instrument.

We expect that the control framework provided for under subsection 9(1) of the Instrument and the controls provided for under subsection 25(2) of the Instrument will be proportionate to all of the following:

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

In establishing the control framework required under subsection 9(1) of the Instrument, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 25(2) of the Instrument.

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

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

(a) the *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Chartered Professional Accountants of Canada;

(b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and

(c) the *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* published by U.K. Financial Reporting Council.

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

Subsection 9(5) – Reporting of significant security incident

Subsection 9(5) of the Instrument provides that a designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any significant security incident or any significant systems issue relating to the designated benchmark it administers. We consider a failure, malfunction, delay or other incident or issue to be a "significant security incident" or a "significant systems issue" if the designated benchmark administrator would, in the normal course of operations, escalate the matter to or inform its executive management ultimately accountable for technology.

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

Subsection 11(2) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark and its benchmark individuals from any other part of the business if the designated benchmark

administrator becomes aware of a conflict of interest or a risk of a conflict of interest between the business of the designated benchmark and the other part of the business.

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

- the provision of benchmarks often involves discretion in the determination of benchmarks and is inherently subject to certain types of conflicts of interest, which implies the existence of various opportunities and incentives to manipulate benchmarks, and
- in order to ensure the integrity of designated benchmarks, designated benchmark administrators should implement adequate governance arrangements to control such conflicts of interest and to safeguard confidence in the integrity of benchmarks.

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

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

Subsection 12(1) – Reporting of infringements

Subsection 12(1) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed for the purposes of detecting and reporting to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve manipulation or attempted manipulation of a designated benchmark. As part of that reporting to the regulator or securities regulatory authority, we expect that the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the regulator or securities regulatory authority.

Paragraph 13(2)(c) – Complaint procedures of designated benchmark administrator

Paragraph 13(2)(c) of the Instrument provides that a designated benchmark administrator must communicate the outcome of the investigation of a complaint to the complainant within a reasonable period of time.

We expect that, in establishing the policies and procedures for handling complaints relating to the designated benchmark required by subsection 13(1) of the Instrument, the designated benchmark administrator would include a target timetable for investigating complaints.

A designated benchmark administrator may, on a case-by-case basis, apply for exemptive relief from paragraph 13(2)(c) of the Instrument if such a communication to the

complainant would be seriously prejudicial to the interests of the designated benchmark administrator or would violate confidentiality provisions.

Section 14 – Outsourcing by designated benchmark administrator

Section 14 of the Instrument sets out requirements on outsourcing by a designated benchmark administrator. For purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Paragraph 14(2)(c) – Written contract for an outsourcing

Paragraph 14(2)(c) of the Instrument provides that the policies and procedures of a designated benchmark administrator in relation to outsourcing must be reasonably designed to ensure that the designated benchmark administrator and the service provider enter into a written contract that covers the matters set out in subparagraphs 14(2)(c)(i) to (v). We consider the reference to "written contract" to include one or more written agreements.

PART 4
INPUT DATA AND METHODOLOGY

Subsection 16(4) – Front office of a benchmark contributor

Subsection 16(4) of the Instrument provides that "front office" of a benchmark contributor or an applicable affiliate means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliate.

Paragraph 17(1)(e) – Determination under the methodology

Paragraph 17(1)(e) of the Instrument provides that a determination under the methodology of a designated benchmark must be able to be verified as being accurate and complete.

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

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

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

- the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and

- the benchmark administrator's record of the rates contributed by the financial institutions can be matched to the records of those rates maintained by the applicable financial institutions.

Paragraph 17(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph 17(2)(a) of the Instrument provides that a designated benchmark administrator must take into account, in the preparation of the methodology of a designated benchmark, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to record.

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

- the size and reasonably expected liquidity of the market,
- the transparency of trading and the positions of participants in the market,
- market concentration,
- market dynamics, and
- the adequacy of any sample to reasonably represent that part of the market or economy the designated benchmark is intended to record.

Subsection 18(1) – Proposed or implemented significant changes to methodology

Subsection 18(1) of the Instrument provides that a designated benchmark administrator must have policies that provide for public notice of a proposed or implemented significant change to the methodology of a designated benchmark.

As part of the methodology disclosure required under section 19, paragraph 19(1)(e) of the Instrument provides that a designated benchmark administrator must publish examples of the types of changes that may constitute a significant change to the methodology of the designated benchmark.

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

PART 5
DISCLOSURE

Subsection 20(2) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 20(2)(a) through (l) of the Instrument, are designed to provide transparency to benchmark users to understand the purpose or intention of the benchmark, the limitations of the benchmark, and how the designated benchmark administrator will apply the methodology to provide the benchmark.

In preparing the benchmark statement, a designated benchmark administrator should attempt to ensure that benchmark users have sufficient information to understand what the benchmark is intended to record and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph 20(2)(a) – Applicable market or economy for purposes of the benchmark statement

Paragraph 20(2)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market or economy the designated benchmarks is intended to record. This relates to the benchmark's purpose.

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

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

PART 6
BENCHMARK CONTRIBUTORS

General

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

- benchmark contributors to a designated critical benchmark (see sections 31 and 34 of the Instrument), and
- benchmark contributors to a designated interest rate benchmark (see sections 38, 39 and 40 of the Instrument).

In **[•][Note: At the time of the final rule, we will insert a list of applicable jurisdictions]**, securities legislation defines "benchmark contributor" as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

In **[•][Note: At the time of the final rule, we will insert a list of applicable jurisdictions]**, securities legislation provides that the securities regulatory authority may, in response to an application by the regulator or, in Québec, on its own initiative, require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. For example, a person or company may be required to provide information to a designated benchmark administrator for the purpose of determining a designated critical benchmark. In such a case, the person or company would be a benchmark contributor, and would therefore be subject to the

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

Subparagraph 24(2)(f)(vi) – Input data that is inaccurate or incomplete

Subparagraph 24(2)(f)(vi) of the Instrument requires that a code of conduct for a benchmark contributor include reporting requirements for any instance where a reasonable person would believe that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has provided input data that is inaccurate or incomplete. In establishing these requirements, we expect the designated benchmark administrator to consider providing indicators that could be used to identify input data that is inaccurate or incomplete, based on past experience. The indicators should reasonably reflect the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Subsection 24(3) – Adherence to code of conduct

In establishing the policies and procedures required under subsection 24(3) of the Instrument, we expect the designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark. For example, the policies and procedures may include the use of verification certificates signed by an officer of the benchmark contributor and on-site inspections by internal compliance staff that are independent from the business unit whose activities are subject to the code of conduct.

Paragraph 25(1)(a) – Conflict of interest requirements for benchmark contributors

Paragraph 25(1)(a) of the Instrument provides that a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure the contribution of input data by the benchmark contributor is not significantly affected by any conflict of interest involving the benchmark contributor and its employees, officers, directors and agents, if a reasonable person would consider that the contribution of the input data might be inaccurate or incomplete.

We expect that, when contemplating the scope of such conflicts of interest, a benchmark contributor would consider the following:

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

For example, if the benchmark contributor does identify such a conflict of interest involving other business activity, the contributor should ensure that persons responsible for

the contribution of input data to a designated benchmark administrator for the purpose of determining a designated benchmark:

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

Subsection 25(2) – Accuracy and completeness of input data

In establishing the policies, procedures and controls required under subsection 25(2), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy and completeness of input data.

Paragraph 25(3)(a) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 25(3)(a), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and the nature of its input data.

Subsection 26(1) – Compliance officer for benchmark contributors

Subsection 26(1) of the Instrument provides that a benchmark contributor to a designated benchmark must designate an officer that monitors and assesses compliance by the benchmark contributor and its employees with the code of conduct referred to in section 24, the Instrument and securities legislation relevant to benchmarks. The officer can conduct these activities on a part-time basis but should be independent from persons involved in determining or contributing input data.

PART 7
RECORDKEEPING

Paragraph 27(2)(h) – Records of communications

The reference to "communications" in paragraph 27(2)(h) of the Instrument includes telephone conversations, email and other electronic communications.

PART 8
DESIGNATED INTEREST RATE BENCHMARKS

Subsection 35(1) – Accurate and sufficient data for designated interest rate benchmarks

Subsection 35(1) of the Instrument sets out an order of priority for input data for the determination of a designated interest rate benchmark. The order of priority lists committed

quotes and indicative quotes or expert judgments. In the absence of reliable transaction data for a designated interest rate benchmark, we are of the view that committed quotes should take precedence over non-committed/indicative quotes and expert judgment.

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

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

Subsection 37(1) – Assurance report for designated interest rate benchmark

Subsection 37(1) of the Instrument provides that a designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to section 8, a limited assurance report on compliance or a reasonable assurance report on compliance regarding the designated benchmark administrator's compliance with certain sections of the Instrument and the methodology in respect of each designated interest rate benchmark it administers.

We note that the report required by subsection 37(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph 7(3)(b) of the Instrument. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph 7(3)(b) and with the requirement in subsection 37(1).