

## ANNEX C

### BACKGROUND INFORMATION ON REVISED ASSURANCE REPORT REQUIREMENTS

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

#### **Issue #1 – Nature of the assurance report**

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

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

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

#### ***More detail***

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

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

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

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

#### ***How the Proposed Amendments address this issue***

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

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

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<sup>3</sup> The Handbook provides for a number of Canadian Standards on Assurance Engagements (CSAEs, a plural term).

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

<sup>4</sup> We note that the document entitled “International Framework for Assurance Standards” refers to International Standards on Assurance Engagements (ISAEs, a plural term). See:

[https://www.ifac.org/\\_flysystem/azure-private/publications/files/B002%202013%20IAASB%20Handbook%20Framework.pdf](https://www.ifac.org/_flysystem/azure-private/publications/files/B002%202013%20IAASB%20Handbook%20Framework.pdf)

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

Furthermore, we note the following:

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

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

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

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

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

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

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

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

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

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

### ***How the Proposed Amendments address this issue***

The Proposed Amendments specify the deadline when the assurance report must be provided by a public accountant (i.e., within 90 days of the end of the applicable period).<sup>7</sup>

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

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

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

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