

ANNEX D

BACKGROUND INFORMATION ON PROPOSED SECTION 13.1 OF MI 25-102

Background

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

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

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

Crypto asset benchmarks

Existing MI 25-102 has an assurance report provision that would apply to a designated commodity benchmark. While some crypto assets may be characterized as commodities, other crypto assets may be more appropriately categorized not as commodities (e.g., certain crypto assets may be securities⁹ so would not be commodities in certain jurisdictions). Consequently, not every crypto asset benchmark would be appropriately categorized as a commodity benchmark. A crypto asset benchmark may also not be appropriately categorized as a “designated interest rate benchmark” or “designated critical benchmark”.

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

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

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