

**CSA Notice of
Amendments to Multilateral Instrument 25-102
Designated Benchmarks and Benchmark Administrators
and
Changes to Companion Policy 25-102
*Designated Benchmarks and Benchmark Administrators***

June 29, 2023

Introduction

Today, the securities regulatory authorities (collectively, the **Authorities** or **we**) of the Canadian Securities Administrators (the **CSA**) in British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia, Yukon and Northwest Territories (the **Participating Jurisdictions**) are adopting amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102** or the **Instrument**) and changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **CP**).

Together, the amendments to the Instrument and the changes to the CP are referred to as the **Amendments**. The Amendments incorporate provisions for a securities regulatory regime for commodity benchmarks and their administrators.

The text of the Amendments is contained in Annex B and Annex C of this Notice and will also be available on websites of the Participating Jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.besc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.ca
www.fcaa.gov.sk.ca
www.yukon.ca
justice.gov.nt.ca

In some Participating Jurisdictions, Ministerial approvals are required for the implementation of the Amendments. Subject to obtaining all necessary approvals, the Amendments will come into force on September 27, 2023.

Substance and Purpose

Currently, MI 25-102 provides a comprehensive regime for the designation and regulation of specific financial benchmarks and their administrators, and the regulation of contributors and of certain users. An overview of this regime was provided in the April 29, 2021 CSA Notice of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy.

On April 29, 2021, we also published separately under CSA Notice and Request for Comment Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **2021 CSA Request for Comment Notice**) the proposed amendments to MI 25-102 (the **Proposed Amendments**) and the changes to the CP (**the Proposed Changes** and, with the Proposed Amendments, the **Proposals**) regarding commodity benchmarks and administrators of commodity benchmarks.

The Amendments will implement a comprehensive regime for:

- the designation and regulation of commodity benchmarks (**designated commodity benchmarks**), including specific requirements (or exemptions from requirements) for benchmarks dually designated as designated critical benchmarks and designated commodity benchmarks (**critical commodity benchmarks**), and for benchmarks dually designated as designated regulated-data benchmarks and designated commodity benchmarks (**designated regulated-data commodity benchmarks** or **regulated-data commodity benchmarks**), and
- the designation and regulation of persons or companies that administer such benchmarks (**designated benchmark administrators** or **administrators**).

Further details about the rationale for the Amendments are available in the 2021 CSA Request for Comment Notice, specifically pages 4 and 5 under the heading of “Substance and Purpose”.

Background

As outlined in the March 14, 2019 CSA Notice and Request for Comment on Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy (the **March 2019 CSA Notice**),¹ in 2012, allegations of manipulation of the London inter-bank offered rate (**LIBOR**) led to the loss of market confidence in the credibility and integrity of not only LIBOR, but also in financial benchmarks in general. Although not on the scale of the

¹ Available online at https://www.osc.ca/sites/default/files/pdfs/irps/ni_20190314_25-102_designated-benchmarks.pdf.

LIBOR scandal, there have also been examples of manipulation or attempted manipulation of energy price indexes to benefit positions on futures exchanges.²

Following the LIBOR controversies, the International Organization of Securities Commissions (IOSCO) published the *Principles for Oil Price Reporting Agencies* (the **IOSCO PRA Principles**),³ setting out principles intended to enhance the reliability of oil price assessments that are referenced in derivative contracts subject to regulation by IOSCO members. This was followed by the publication in July 2013 of the *Principles for Financial Benchmarks* (together with the IOSCO PRA Principles, the **IOSCO Principles**). Although both sets of IOSCO Principles reflect similar concerns regarding the need for safeguards to ensure the integrity of benchmarks, the IOSCO PRA Principles were developed to focus on the specifics of the underlying physical oil markets.⁴ Even though the IOSCO PRA Principles were developed in the context of oil price reporting agencies (**PRAs**) in oil derivatives markets, IOSCO has encouraged the adoption of these principles more generally to any commodity derivatives contract that references a PRA-assessed price without regard to the nature of the underlying commodity.⁵

Subsequent to the publication of the IOSCO Principles, the European Union (EU) adopted the *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (EU BMR).⁶ A detailed overview of the EU BMR was provided in the March 2019 CSA Notice.

We are of the view that adopting the commodity benchmark provisions in the Amendments will codify international best practices, as articulated under the IOSCO PRA Principles.

Currently, the Authorities do not intend to designate any administrators of commodity benchmarks. However, the Authorities may designate administrators and their associated commodity benchmarks in the future on public interest grounds, including where:

- a commodity benchmark is sufficiently important to commodity markets in Canada, or
- the Authorities become aware of activities that raise concerns that align with the regulatory risks identified below in respect of such parties and conclude that the administrator and commodity benchmark in question should be designated.

² For specific examples, see footnote 87 within IOSCO's September 2011 Final Report on the *Principles for the Regulation and Supervision of Commodity Derivatives Markets*, available online at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD358.pdf>.

³ Available online at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf>.

⁴ See the IOSCO September 2014 Report on the *Implementation of the Principles for Oil Price Reporting Agencies*, specifically Chapter 1, pages 1 and 2, available online at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD448.pdf>.

⁵ See page 7, *supra* note 2.

⁶ The EU BMR that came into force on June 30, 2016 is available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN>; the 2016 regulations have been amended as summarized at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R1011-20220101&from=EN>.

Summary of Written Comments Received by the CSA

The comment period for the 2021 CSA Request for Comment Notice ended on July 28, 2021. We received five comment letters. We have considered the comments received and thank all commenters for their input.

Annex A includes the names of the commenters and a summary of their comments, together with our responses.

The comment letters can be viewed on the websites of each of the:

- Alberta Securities Commission at www.albertasecurities.com,
- Ontario Securities Commission at www.osc.ca, and
- Autorité des marchés financiers at www.lautorite.qc.ca.

Summary of Changes to the Proposals

For details of all changes made, Annex D and Annex E contain blacklines of the Amendments compared to the Proposals.

Notable changes include:

(1) Definition of “commodity benchmark”

We have removed the definition of “commodity benchmark” from section 40.1 of the Proposed Amendments and added the substance of that definition to the definition for “designated commodity benchmark” in subsection 1(1) of the Instrument. In addition, we have removed the reference to a commodity that is intangible from the definition in the Instrument. We also revised the guidance in the CP regarding the scope of the definition, to clarify that we consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and that we may include other intangible products, such as certain crypto assets, that develop as international markets evolve.

(2) Definitions of “front office” and “front office employee”

For clarity, we have split the definition of “front office” into two definitions: “front office” and “front office employee”. Since the definitions are used in both section 15 of the Instrument and section 40.10 of the Proposed Amendments (section 40.9 of the Amendments), the definitions were moved to subsection 1(1) of the Instrument. We have also included additional guidance in the CP regarding the meaning of both terms. These changes were made for clarity but do not affect the substance of the requirements where these definitions are used.

(3) Scope of MI 25-102

We added language to sections 40.3 [*Control framework*] (section 40.4 of the Proposed Amendments) and 40.10 [*Governance and control requirements*] (section 40.11 of the Proposed Amendments) of the Instrument to clarify that those provisions apply to the business operations of a designated benchmark administrator only in so far as those operations involve the administration and provision of a designated commodity benchmark.

(4) Publication of information

We added guidance in Part 8.1 [*Designated Commodity Benchmarks*] of the CP regarding our expectations for how a designated benchmark administrator may satisfy the requirements in the Part 8.1 of the Instrument to publish information relating to a designated commodity benchmark. We generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification. However, we recognize that a news release generally will not be necessary for each determination of a designated commodity benchmark under section 40.8 of the Instrument.

(5) Types of input data

Subparagraph 40.5(2)(a)(i) of the Proposed Amendments required a designated benchmark administrator to establish, document and publish how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information to determine a designated commodity benchmark.

For clarity, while subparagraph 40.4(2)(a)(i) of the Amendments still requires a designated benchmark administrator to establish, document and publish how it uses input data to determine a designated commodity benchmark, we have removed the reference to "the volume of transactions, concluded and reported transactions, bids, offers and any other market information" from the Amendments and revised the guidance in section 40.4 [*Methodology to ensure the accuracy and reliability of a designated commodity benchmark*] of the CP to clarify our general expectations regarding the priority given to different types of input data in the methodology of a designated commodity benchmark.

- (6) Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

We added guidance in paragraph 40.4(2)(j) [*Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark*] of the CP on our expectation that, where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. In addition, we have clarified that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

Local Matters

Where applicable, Annex F provides additional information required by the local securities legislation.

Contents of Annexes

This Notice includes the following annexes:

- Annex A: Summary of Comments and CSA Responses
- Annex B: Amendments to MI 25-102
- Annex C: Changes to CP
- Annex D: Amendments to MI 25-102, blacklined to show changes from the Proposals
- Annex E: Changes to CP, blacklined to show changes from the Proposals

In certain jurisdictions, this Notice also includes:

- Annex F: Local matters (where applicable)

Questions

Please refer your questions to any of the following:

Harvey Steblyk
Senior Legal Counsel, Market Regulation
Alberta Securities Commission
403-297-2468
harvey.steblyk@asc.ca

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8079
mbennett@osc.gov.on.ca

Melissa Taylor
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-596-4295
mtaylor@osc.gov.on.ca

Roland Geiling
Derivatives Product Analyst
Autorité des marchés financiers
514-395-0337 poste 4323
roland.geiling@lautorite.qc.ca

Faisal Kirmani
Derivatives Oversight Specialist
British Columbia Securities Commission
604-899-6846
fkirmani@bcsc.bc.ca

Serge Boisvert
Senior Policy Advisor
Autorité des marchés financiers
514-395-0337 poste 4358
serge.boisvert@lautorite.qc.ca

Michael Brady
Deputy Director, Capital Markets Regulation
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca