ANNEX E

SPECIFIC QUESTIONS OF THE AUTHORITIES RELATING TO THE PROPOSED AMENDMENTS[1]

Interpretation

1. The definition for "commodity benchmark" excludes a benchmark that has, as an underlying interest, a currency or a commodity that is intangible. Is the scope of the proposed definition, and the guidance in the CP, appropriate to cover the commodity benchmark industry in Canada? Please explain with concrete examples.

Applicable Requirements from the Financial Benchmarks Regime

2. Despite a different proposed regime for commodity benchmarks, the Authorities expect that certain requirements, applicable to financial benchmarks, would also be applicable, sometimes with minor modifications, to commodity benchmarks. These include, for example, the requirements to report contraventions (section 11), the requirement for a control framework (section 40.4), and governance and control requirements (section 40.11). Are these requirements appropriate in the context of commodity benchmarks? Please explain with concrete examples.

Dual Designation as a Commodity Benchmark and a Critical Benchmark

3. Where the underlying commodity is gold, silver, platinum or palladium, a benchmark dually designated as a commodity benchmark and a critical benchmark would be subject to the requirements applicable to critical financial benchmarks, rather than critical commodity benchmarks. Do you think that there are benchmarks in Canada that could be dually designated as critical commodity benchmarks where the underlying is gold, silver, platinum or palladium, and is there a need to provide for the specific regulation of such benchmarks?

Dual Designation as a Commodity Benchmark and a Regulated-Data Benchmark

4. Subsection 40.2(4) provides for certain exemptions for benchmarks dually designated as commodity and regulated-data benchmarks, where such benchmarks are determined from transactions in which the transacting parties, in the ordinary course of business, make or take physical delivery of the commodity. Is carving out such a subset of dually-designated benchmarks necessary for appropriate regulation of commodity benchmarks in Canada? If so, are the exemptions provided for, which generally mirror exemptions for regulated-data benchmarks from Parts 1 to 8 requirements, appropriate? Please explain with concrete examples.

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[1] The specific questions are with respect to the Proposed Amendments published by the Authorities today, on April 29, 2021. For further details, see the CSA Notice of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy, dated April 29, 2021.

Input Data

5. We have distinguished between input data that is "contributed" for the purposes of the Instrument (see subsection 1(3)), and data that is otherwise obtained by the administrator. Certain provisions in Part 8.1 impose requirements on a designated benchmark administrator if input data is "contributed", whereas other obligations are imposed irrespective of how input data is obtained. Where the word "contributed" is not specifically used or implied,[2] we mean all the input data, not only "contributed" data. Taking into consideration the obligations imposed on designated benchmark administrators of commodity benchmarks, through the use or lack of use of "contributed", are the obligations imposed under the provisions of Part 8.1 appropriate?[3] Please explain with concrete examples.

6. The guidance on paragraph 40.8(2)(a) of the CP states that, where consistent with the methodology, we expect the administrator to give priority to input data in a certain order. Does the order of priority of use of input data for purposes of determination of a commodity benchmark, as stated in the CP, reflect the methodology used for your commodity benchmarks? Are there any other types of input data that should be specified in the order of priority?

Methodology

7. Under the Proposed Amendments, designated administrators are expected to ensure that particular requirements are met whenever their methodology is implemented and a designated benchmark is determined. Are the elements of the methodology that we propose to regulate, specifically within section 40.5, sufficiently clear such that an administrator would be able to comply with the requirements?

Conflicts of Interest

8. Paragraphs 40.13(1)(a), (b) and (d) mirror the conflict of interest requirements under paragraphs 10(1)(a), (b) and (d) of the Instrument, to ensure that certain overarching requirements apply to all designated benchmark administrators. Is this approach appropriate? Do commodity benchmark administrators face potential conflicts of interest that are not addressed by these or the other conflict of interest provisions?

Assurance Report on Designated Benchmark Administrator

9. Subsection 40.14(2) requires a designated benchmark administrator of a designated commodity benchmark, whether or not the benchmark is also designated as a critical benchmark, to engage a public accountant to provide a limited or reasonable assurance report on compliance once in every 12-month period. In contrast, pursuant to subsection

[2] For example, in paragraph 40.5(2)(g), it is implied that input data is "contributed", within the meaning of subsection 1(3) of the Instrument.

[3] See for example subparagraphs 40.5(2)(a)(i) and (iii), which apply in respect of all input data, while paragraphs 40.5(2)(g), (h) and (i) apply in respect of contributed data.

36(2), an administrator of a designated interest rate benchmark is required to engage a public accountant to provide such a report, once in every 24-month period, albeit a report is required 6 months after the introduction of a code of conduct for benchmark contributors. Given the general risks raised by the activities of administrators of commodity benchmarks versus of interest rate benchmarks, are the proposed requirements appropriate? Please explain your response.

Concentration Risk

10. Pursuant to subsection 20(1), designated benchmark administrators of designated commodity benchmarks would be subject to certain obligations when they cease to provide a designated commodity benchmark. However, market users may potentially have more limited benchmarks to utilize for purposes of their transactions (concentration risk) where a designated benchmark administrator that administers a number of designated commodity benchmarks unexpectedly delays in providing or ceases to provide those benchmarks. Do you think that additional requirements should be added under Part 8.1 to address this concentration risk? If yes, what requirements should be added?

Designated Benchmarks

11. If your organization is a benchmark administrator of commodity benchmarks, please:

    a) advise if you intend to apply for designation under MI 25-102,
    b) advise of any benchmark you intend to also apply for designation under MI 25-102, and
    c) indicate the rationale for your intention.

Anticipated Costs and Benefits

12. The Notice sets out the anticipated costs and benefits of the Proposed Amendments (in Ontario, additional detail is provided in Annex F). Do you believe the costs and benefits of the Proposed Amendments have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain and/or identify furthers costs or benefits.