

April 30, 2019

BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Me Anne-Marie Beaudoin
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Dear Sirs/Mesdames:

Re: Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy (collectively, the “Proposed Instrument”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to provide general comments on the Proposed Instrument that would regulate benchmarks, their administrators, contributors and certain benchmark users.

¹ The CAC is an advocacy council for CFA Societies Canada, representing over 17,000 Canadian charterholders, of the 12 Member Societies across Canada. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

²CFA Institute is a global, not-for-profit professional association of over 166,000 investment analysts, advisers, portfolio managers, and other investment professionals in 163 markets, of whom more than 159,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 152 member societies in 74 markets. For more information, visit www.cfainstitute.org.

We are generally supportive of the provisions contained in the Proposed National Instrument, mainly given the prior instances of benchmark manipulation cited in the CSA Notice and Request for Comment. We found the statistics cited with respect to the notional value of financial instruments that are derived from the two domestically important benchmarks, CDOR and CORRA, particularly impactful. We are also supportive of this iteration of benchmark regulation because the stated intention of the CSA is in part to have the EU recognize the Canadian regime as being equivalent under the EU BMR, which would allow EU market participants to continue to use any designated Canadian benchmarks. Given the global nature of our markets, it is important that Canadian benchmarks not be subject to a myriad of overlapping global rules and that any rules conform to the IOSCO Financial Benchmark Principles.

Generally, the CAC favours the use of benchmarks that are free from conflicts of interest and are based off of inputs where prices are determined from liquid, transparent and efficient markets. This added transparency and governance will also serve to foster investor confidence by improving the reliability of benchmark figures.

As CFTC Chairman Giancarlo recently explained:

“The fact is that there is no longer a liquid market in unsecured inter-bank term lending underpinning LIBOR. Based on statistics shared by the Federal Reserve Board, there are less than six to seven transactions per day at market rates to support one-and three-month LIBOR across all the submitting banks. Longer maturities have fewer than these. For three-month LIBOR - the standard reference rate in the derivatives markets - on most days, there is less than \$1 billion of borrowings among the largest banks; on many less days, we see less than \$100 million. For one-month LIBOR, the median daily number of actual borrowing transactions which are observable in the marketplace in Q2 2018 was five.”³

We think it is important to ensure that contributions to a benchmark do not diminish its quality, especially considering that a benchmark based on insufficient sample sizes or that no longer appropriately represents its underlying market may set the value in a vast array of financial instruments by a large multiple.

One of the IOSCO principles related to benchmark quality deals with benchmark design, and indicates that the benchmark should take into account, amongst a number of other factors, the size and liquidity of the applicable market, as well as the relative size of the underlying market in relation to the volume of trading in the market that references the applicable benchmark. The contributions to the benchmark should also be based on values formed by forces of supply and demand, and “be anchored by observable

³ Remarks of Chairman J. Christopher Giancarlo, Nov. 29, 2018, before 2018 Financial Stability Conference, Federal Reserve Bank of Cleveland, Office of Financial Research, Washington, D.C. online: https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo61#_ftn5

transactions entered into at arm's length between buyers and sellers in the market for the [Interest] the [Benchmark] measures in order for it to function as a credible indicator of prices, rates, indices or values".⁴

The CFA Institute Global Investment Performance Standards (GIPS®)⁵, are global recognized standards for calculating and presenting investment performance. Global performance standards, which rely in large part on the integrity of input data, require investment advisers to measure their performance in such a way as to enable investors to compare performance among firms and ensure that the output is presented fairly. By analogy, global standards for contributing and calculating benchmarks can also help provide assurance to users of benchmarks of their comparability and quality.

We recognize that while the CSA currently intends to designate only CDOR and CORRA as critical benchmarks, the regime has to be flexible enough to accommodate future designated benchmarks. We would favour further research to identify alternatives that are consistent with the IOSCO principles. For example, perhaps future regulation should apply more broadly to include the underlying benchmarks used in many ETFs and other structured products. To the extent that there is any information that can be publicly disclosed to the market about benchmarks that may be subject to designation, it would help users prepare their documents and processes well in advance of any such designation and help prevent commercial impediments to alternative benchmarks.

We agree that it is important that the governance framework for administrators include robust policies designed to mitigate conflicts of interest, which are pronounced when a benchmark contributor, administrator and user are the same entity or within the same corporate family. We are of the view that all designated benchmarks be required to obtain an assurance report from a qualified public accountant on the administrator's compliance with key sections of the Proposed National Instrument, at least once every 12 months.

With respect to the proposed potential models for regulatory oversight of benchmarks and their administrators, our preference would be to utilize a model which replicates the approach used for exchanges and other marketplaces, or failing that, the passport model in a manner that mirrors the model currently successfully being used by DROs and CROs. We are concerned that the use of a non-coordinated review model could result in an unworkable patchwork of unharmonized regulation, where some jurisdictions enact rules that would satisfy the EU BMR and others might not.

As a further general comment, in addition to regulating certain benchmarks and their administrators, additional consideration should be given to more oversight on the

⁴ "Principles for Financial Benchmarks" *The International Organization of Securities Commissions (IOSCO)* (July 2013), online: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>

⁵ "Global Investment Performance Standards (GIPS)," *CFA Institute* (December 2014), online: <https://www.cfainstitute.org/-/media/documents/code/gips/gips-standards-2010.ashx>

use of benchmarks by investors, even for benchmarks which are not ultimately designated benchmarks. There have been many articles written on the increasing use of esoteric benchmarks by investors, the composition of which are unlikely to be fully understood by users⁶. Even if those benchmarks are not of systemic importance to the Canadian capital markets, it may be worth further research as to whether additional investor education or disclosure by benchmarks and products derived from benchmark references are warranted.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for
Canadian CFA Institute Societies*

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⁶ David Allison, "Exotic Indexes: Built to Sell or Built to Last?" (3 April 2019), *Continuing Education for CFA Institute Members* (blog), online: <https://blogs.cfainstitute.org/investor/2019/04/03/indexed-annuities-the-exotic-side-of-indexing/>