12 June 2019

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorite des marches financiers
800, rue du Square Victoria, 4e étage
C.P. 246, Place Victoria
Montreal Quebec H4Z 1G3

RE: Feedback on proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy Instrument 25-102

Dear Secretaries,

The Index Industry Association (IIA) is pleased to respond to Canada's request for comments on Feedback on proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy Instrument 25-102. The IIA has provided input and an ongoing dialog to most jurisdictions that have considered or proposed some form of regulation on benchmarks.

The IIA is an independent, not-for-profit organization representing the global index industry whose purpose is to represent independent index industry by working with market participants, regulators, and other representative bodies to promote sound practices that strengthen markets and serves the needs of investors. Many of the leading global independent index administrators are members of the IIA, including Bloomberg Indices, CBOE Holdings, the Center for Research in Security Prices, China Bond Pricing, FTSE Russell Group, Hang Seng Indexes, ICE Data Indices, IHS Markit, Morningstar, MSCI Inc., NASDAQ OMX, S&P Dow Jones Indices, STOXX, and Tokyo Stock Exchange. Our members administer approximately 3.7 million indexes which is estimated to be approximately 98% of all indexes globally. All IIA members are independent administrators meaning they neither trade the underlying component securities of their respective benchmarks nor do they directly create products for investor use. This model mitigates the real and perceived conflicts of interests by entities that do not separate these key functions. IIA members adhere to the IOSCO Principles for Financial Benchmarks Published in 2013 ("IOSCO Principles") and the IIA Best Practices (located on our website at [XXX].

The IIA appreciates the efforts the Canadian Securities Administrators (CSA) has undertaken to make a thorough review of the current and proposed international benchmark regulations. IIA believes the CSA should follow the IOSCO Principles as they are the global standard for index administrators and contributors and they serve as the basis on which other regulatory regimes are formed. Benchmark administrators have spent a significant amount of time and resources to adhere to the IOSCO Principles and to protect the integrity of their respective benchmark determination processes. The index industry is diverse and there are a wide variety of index offerings. The closer the CSA regulation is to the IOSCO Principles, the more consistent regulatory regimes will be globally which will ensure maximum participation from the index industry in Canada resulting in more choices for Canadian investors.

IIA believes regulators should limit any benchmark regulation to domestic, contribution-based, critical benchmarks. This approach is appropriate and consistent with how most other global regulators are implementing their regulation.

Markets work best when participants have transparency into how benchmarks and their related products will be regulated. Without this transparency, markets could become disconnected and liquidity could suffer making those benchmarks less relevant to investors. IIA would caution expanding the list of critical benchmarks to include regulated data benchmarks.

<u>Answers to Specific Questions in Annex C</u>

1. No Response

2. No Response

3. *Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples*.

The IIA does not believe this requirement is necessary or justifiable. Any requirement pertaining to the composition of an index administrator's board of directors or other oversight or governance body needs to be flexible and proportionate. Global index administrators need to select a structure most appropriate to their businesses. Just as the EU Benchmark Regulation does not specify the composition of the administrator's corporate board or replacing the board every five years, the Proposed Instrument should reflect the fact that board of directors may be responsible for several index families or even businesses beyond their index business. It will not be practical and will lead to fragmentation and inconsistency for global benchmark administrators to have unique boards of directors for each index or index family. IIA members alone administer 3.7 million indexes globally.

The IOSCO Principles rely heavily on the principles of proportionality. If CSA wants to mandate independent boards then it should focus on where there are inherent and/or clear conflicts of interests that cannot otherwise be mitigated through other appropriate controls. Independent benchmark administrators, ones who neither trade the underlying component securities nor directly create the products for investors do not have the same conflict of interests as self-indexed administrators. Requiring independent administrators to have independent boards will unnecessarily increase the costs for administration that will likely be passed on to investors.

Likewise, IIA believes that oversight committee members should not be restricted to an artificial, five year maximum term. IIA agrees voting members of the Committee should not be involved in the executive management of the benchmark administrator or the day-to-day production of benchmarks, but may be senior leaders of affiliated entities. Additionally, outside members with sufficient expertise in the index industry often have their own conflicts of interests. Their involvement in an oversight committee could adversely impact the independent nature of an index provider and managing their participation is enormously complex and challenging.

4. No response

5. *Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples*.

No, compliance officers perform a vital function making sure individuals adhere to policies, procedures and controls reasonably designed to comply with applicable regulation. Expanding the duties of a compliance officer to include the monitoring of individual benchmarks or families of benchmarks with its methodology is not desirable from an expertise view point and neither is it practical considering the sheer number of benchmarks many administrators provide. Oversight of the determination of a benchmark, or a family of benchmarks, requires specific skills and experience of the particular market which would not be appropriate to expect from compliance personnel. As stated earlier, many of the global providers administer tens of thousands or hundreds of thousands of indices and this would significantly dilute resources such as ensuring appropriate policies and processes, and accountability measures are in place to function properly.

Furthermore, we urge the CSA to revisit the concept of a compliance officer under the Proposed Instrument to allow greater flexibility for benchmark administrators to construct a governance and oversight function appropriate and proportionate to the benchmarks it administers. For example, both the IOSCO Principles and the EU Benchmark Regulation acknowledge that there may be multiple committees that together fulfill the requirements to monitor, assess and oversee compliance by the benchmark administrator with its policies, procedures, legal and regulatory requirements.

6. *Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual, other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.*

While it may be appropriate for compliance personnel to confirm that compensation policies conform to regulatory requirements broadening this principle to include the establishment of compensation levels is not appropriate because: (i) the definition of DBA individual is broad and could potentially include a sizeable population of individuals from varied disciplines; and (ii) it is unlikely that a compliance officer would have the necessary expertise and market insight to fulfill this function effectively. The risk of unattended consequences and unintended conflicts of interest would not be in the best interest of the administrators' clients and ultimately investors. It is also inconsistent with the IOSCO Principles and the EU BMR.

7. *Under Proposed NIv25-102, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the designated*

critical benchmark are provided to all benchmark users on a fair reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.

While none of the current benchmarks deemed critical under this proposal are administered by a member of the IIA, this is an important issue. The IIA does not believe that there are any obstacles faced by users to access data and information for benchmarks in Canada. IIA believes Canada has some of the most comprehensive anti-competition laws currently in effect and believes if an issue would ever arise, those well-established laws would be applied appropriately. This would be the most effective route of address than a complex, vague set of fair reasonable and non-discriminatory standards. Imposing FRAND-like standards is appropriate for consideration only when there is an accepted and documented history of market-access issues and this is not the case of access data and information for benchmarks. The value-chain for investors in the investment industry is quite complex and the relationships between market data providers, product providers, redistributors, and other stakeholders is extremely complex. An overly prescriptive regime like imposing FRAND only on benchmark administrators only addresses a very small piece of the value-chain. Benchmark administrators would be the only ones in the value-chain impacted by this restriction. This would unfairly impact benchmark administrators and does not address the costs and access rights to input data nor the product providers who take in the vast majority of the fees that investors pay. In the case of active portfolio managers, it is often that the investors' fees are over ten times those charged by portfolio managers passively tracking indices. Allowing the market mechanism to function naturally will ensure investors have the largest number of choices.

8. Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision?

The question presupposes that it is the decision of a contributor no longer willing to participate in providing input. IIA understands the logic if the contributor who provides the only input data, or there are very few other market participants decides for business reasons it wants to exit a market there could be a need to transition; however, the reason for not continuing may not always be in the contributor's control. Liquidity in markets, regulatory changes, and other conditions could dictate no price or input data is available or prices may no longer exist beyond their control. In that case, mandating something that is not available or not reliable may do more harm to market participants by providing unreliable and unrealistic prices. The scenario would be very fact dependent and IIA would caution against hard-wiring a one size fits all solution to the marketplace where the many variables are not known beforehand.

This question highlights the absurdity of including regulated data benchmarks as benchmarks that could potentially be designated critical. There are no "contributors" in the case of regulated data benchmarks as this regulation contemplates. Is the exchange the "contributor" in that scenario? The reason the EU did not allow regulated data benchmarks to be deemed critical is they acknowledged and understood the difference of risks between contributed benchmarks and those based on transparent, regulated markets. IIA urges the CSA to follow the proportionality principles found in the IOSCO Principles and in almost every other global regulator and not allow for regulated data benchmarks to be eligible to be deemed critical benchmarks.

A practical issue for adhering to this requirement would be for benchmark contributors not located in Canada and/or where equivalent benchmark regulation exists. In those cases, which is the majority of

countries in the world, it is not clear what authority CSA could legally force compliance of those contributors.

9. *Is the requirement in subsection 11(3) of Proposal NI 25-102 appropriate, particularly as it relates to a risk of a significant conflict of interest? Please explain with concrete examples*.

Disclosure should be limited to actual, significant conflicts, not a laundry list of potential conflicts of interest. If every potential risk of conflict of interest is included, it could create a problem similar to the long lists found in securities prospectuses that are rarely read and understood because of the sheer length of potential issues. Restricting the list to actual, significant risks may make the disclosure more meaningful.

10. *The notice states that the current intention of the CSA is to designate only RBSL as an administrator for CDOR and CORRA as RBSL's designated benchmarks. Are there any other benchmark administrators that you believe should be designated under Proposal NI 25-102?*

IIA does not believe any other benchmarks should be included. However, the CSA should provide greater clarity and transparency in terms of the assessment or method it will adopt to designate a benchmark. A failure to provide clear objective criteria to the market could inhibit investment, innovation and the smooth running of the Canadian financial market.

11. No response

12. *The Notice sets out the anticipated costs and benefits of Proposed NI 25-102. Do you believe the costs or benefits have not been identified in the analysis? Please explain with concrete examples.*

The example does not include one of the most significant costs and that is of dual supervision. Where Canada identifies benchmarks for inclusion that are also regulated, for example in the EU, like CDOR and CORRA, the benchmark administrator will have to comply in both jurisdictions. These costs will be passed to clients of the benchmark administrator and likely on to investors. The only remedy is not to have them used in the EU which would seem antithetical to having Canadian benchmarks used globally which is clearly not the intent of the regulation, but a potential unintended consequence. For this reason, IIA believes regulators should limit any benchmark regulation to domestic, contribution-based, critical benchmarks.

<u>Other Issues Identified Not Specifically Asked in Annex C</u>

There are several issues involving regulated data benchmarks that are not identified in Annex C that should be addressed. As mentioned in other places, it is inconsistent and disproportionate for CSA to have the authority and power to designate regulated data benchmarks as critical. CSA does not need to include them as critical to be deemed equivalent to the EU Benchmark Regulation since the EU expressly excludes regulated data benchmarks from being designated as critical. In addition, and as acknowledged by almost every other regulator, regulated data benchmarks are less susceptible to manipulation and have a far greater number of alternatives, and have thus been specifically excluded them from being deemed critical.

Permitting regulated data benchmarks to be designated critical is also not consistent with the proportionality principles in the IOSCO Principles. The first regulated data benchmark was compiled beginning in 1896 and IIA is not aware of any significant issues with independently administered regulated data benchmarks since then. Canadian regulators have done an excellent job of

regulating the exchanges and trading venues in which these products trade and clear and IIA sees no objective justification to potentially extend the designation of critical benchmarks to include regulated data benchmarks.

Another issue relates to the requirement that input data come "…entirely and directly…" from trading venues and exchanges. This language seems to be borrowed from the EU Benchmark Regulation Benchmark administrators are global in nature and take prices from over 200 recognized stock exchanges and trading venues. The only way this is made possible is to buy the data through data aggregators such as Thompson Reuters, ICE, or Bloomberg. They provide a purely technical link between trading venues and the benchmark administrators putting the data in a common format so it may be used. They do not change the underlying prices from the exchanges. As I am sure you are aware, this has been amended in the EU ESA Review because the EU realized there would be no regulated data benchmarks. The EU amended the language by removing "…and directly…". The EU also does not consider this technical service to be considered outsourcing under EU BMR Section 14.

Additionally, we would like to highlight is the inconsistency compared to all other global regulation pertaining to record retention. IOSCO and the EU BMR, along with others, require administrators to retain the information for 5 years not the 7 years proposed by the CSA. As mentioned before, benchmark administrators are global in nature and consistency is necessary across all jurisdictions. If different than the global standard, this will increase costs to investors with little or no benefit to investors.

A final point of inconsistency with the global standards are the proposed CSA forms (25-102F1 and 25-102F2). These forms request information on revenue and fee models (Specified Revenue item number 13 on Form F1 and Benchmark Distribution Model item number 3 of Form F2) which go well beyond any request for information globally. There is no justification for the reason this information is needed and is not relevant to help the CSA, or any regulator, determine benchmark risk or resource allocation which is the reason for benchmark regulation.

If I can clarify or provide any additional information to the staff, please do not hesitate to contact me.

Sincerely,
Richard H. Redding, CEO