CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Consultation

Draft *Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators*

Draft *Policy Statement to Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators*

March 14, 2019

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing the following for a 90-day comment period, expiring on June 12, 2019:

- draft *Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* (the **Draft Regulation**), and

- draft *Policy Statement to Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* (the **Draft Policy Statement**).

Collectively, the Draft Regulation and the Draft Policy Statement are referred to as the **Draft Materials** in this Notice.

The text of the Draft Regulation and the Draft Policy Statement is published with this Notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.sk.ca
www.mbsecurities.ca

We are issuing this Notice to solicit comments on the Draft Materials. We welcome all comments on this publication and have also included specific questions in the "Request for Comments" section below.

Currently, benchmarks, and persons that administer them, contribute data that is used to determine them, and use them, are not subject to formal securities regulatory requirements or oversight in Canada. However, as the importance of benchmarks continues to increase in Canadian capital markets, and because misconduct involving benchmarks has led to significant negative impacts on capital markets causing several international developments, we are of the view that it is appropriate

to develop a securities regulatory regime for benchmarks and their administrators, contributors and certain of their users.

The Draft Materials are intended to implement a comprehensive regime for:

- the designation and regulation of benchmarks (**designated benchmarks**), including specific requirements (or exemptions from requirements) for designated critical benchmarks (**designated critical benchmarks** or **critical benchmarks**), designated interest rate benchmarks (**designated interest rate benchmarks** or **interest rate benchmarks**) and designated regulated-data benchmarks (**designated regulated-data benchmarks** or **regulated-data benchmarks**),

- the designation and regulation of persons that administer such benchmarks (**designated benchmark administrators** or **administrators**),

- the regulation of persons, if any, that contribute certain data that will be used to determine such designated benchmarks (**benchmark contributors** or **contributors**), and

- the regulation of certain users of designated benchmarks, particularly users who are already regulated in some capacity under Canadian securities legislation (**benchmark users** or **users**).

In Canada, Refinitiv Benchmark Services (UK) Limited (**RBSL**)[1] is currently the administrator of two domestically important benchmarks:

- the Canadian Dollar Offered Rate (**CDOR**), and

- the Canadian Overnight Repo Rate Average (**CORRA**).

Currently, the intention of the CSA is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks (which are each expected to be designated as a critical benchmark and an interest rate benchmark), under the Draft Regulation.[2] This intention is based on the significant reliance placed by users and other market participants on CDOR and CORRA, which are used in various financial instruments with a notional value of at least $12.3 trillion

[1] Prior to a name change on February 28, 2019, RBSL was known as Thomson Reuters Benchmark Services Limited.

[2] CDOR is the recognized financial benchmark in Canada for bankers' acceptances (BAs) with a term of maturity of one year or less; it is the rate at which banks are willing to lend to companies. CORRA is a measure of the average cost of overnight collateralized funding, and is widely used as the reference for overnight indexed swaps and related futures. Additional information on CDOR and CORRA can be found at: https://financial.thomsonreuters.com/en/products/data-analytics/market-data/financial-benchmarks/benchmarks-in-canada.html.

dollars.[3] This figure is approximately five times larger than the gross domestic product for Canada in 2017.[4] For CDOR and CORRA, we believe that the following risks should be minimized:

- interruption or uncertainty (if, for example, the administrator resigns or is unsuitable), and
- abusive activity relating to the benchmark, including manipulation of the benchmark.

If not, confidence in Canadian capital markets would suffer and participants in Canadian financial markets (including investors) would incur significant losses or costs.

It is possible that the CSA may designate other administrators and their associated benchmarks in the future on public interest grounds, including where:

- a benchmark is sufficiently important to financial markets in Canada,
- a benchmark administrator applies for designation to allow its benchmark to be referenced in financial instruments that are invested in by, or where a counterparty is, one or more European institutional investors pursuant to the EU BMR (defined below), and
- the CSA becomes aware of activities of a benchmark administrator, contributor or user that raise concerns that align with the regulatory risks identified below in respect of such parties and conclude that the administrator and benchmark in question should be designated.

Please refer to the section of this Notice on "Expected Future Amendments on Commodity Benchmarks" for circumstances in which a CSA jurisdiction may designate commodity benchmarks in the future.

Background

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 LIBOR and financial benchmarks in general. The manipulation of LIBOR led to individual and class-action lawsuits, criminal prosecutions, significant fines and settlements paid by banks that contributed data, an independent review (the **Wheatley Review**)[5] and, ultimately, the implementation of several recommendations from that review, including the replacement in February 2014 of the British Bankers' Association as the administrator of LIBOR by ICE Benchmark Administration Limited. Although the change in administrator and the implementation of other changes recommended in the Wheatley Review have increased market confidence in LIBOR, market concerns have persisted regarding the reliability of LIBOR due to the decline in interbank borrowing activity since the onset of the

[3] Bank of Canada, *CDOR & CORRA in Financial Markets –Size and Scope* (September 2018), online: https://www.bankofcanada.ca/wp-content/uploads/2018/10/CDOR-CORRA-in-Financial-Markets-%E2%80%93Size-and-Scope.pdf.

[4] See, for example: http://www.international.gc.ca/economist-economiste/statistics-statistiques/data-indicators-indicateurs/Annual_Ec_Indicators.aspx?lang=eng.

[5] Available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf.

financial crisis. As a result, regulatory work has been ongoing to identify alternatives to LIBOR and other interbank offered rates.[6]

IOSCO Principles

In October 2012, after the LIBOR controversies, the International Organization of Securities Commissions (**IOSCO**) published the *Principles for Oil Price Reporting Agencies* (the **IOSCO PRA Principles**)[7] which are intended to enhance the reliability of oil price assessments that are referenced in derivatives contracts subject to regulation by IOSCO members.

In July 2013, IOSCO published the *Principles for Financial Benchmarks* (**IOSCO Financial Benchmark Principles**).[8] Together the IOSCO Financial Benchmark Principles and the IOSCO PRA Principles (the **IOSCO Principles**) provide an overarching framework of principles for the regulation of benchmarks used in financial markets, including principles to address conflicts of interest in processes for determining benchmarks, that are referenced in financial instruments subject to regulation by IOSCO members.

Initial Canadian Regulatory Response

Following the controversies in 2012 regarding alleged misconduct related to the determination of LIBOR and the introduction of the IOSCO Principles, we initially decided that we did not need to seek to immediately regulate benchmarks. Instead, Canadian financial sector regulators pursued other measures to reduce risk, such as:

- encouraging contributors to CDOR to develop a voluntary code of conduct that addresses some of the conflicts of interest issues that could lead to manipulation of submission-based benchmarks, and

- arranging for RBSL to agree to follow certain procedures to strengthen the integrity of CDOR and CORRA.

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[6] See, for example, the following publications:

ISDA, *Interbank Offered Rate (IBOR) Fallbacks for 2006 ISDA Definitions - Consultation on Certain Aspects of Fallbacks for Derivatives Referencing GBP LIBOR,1 CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR and BBSW* (July 12, 2018), online: http://assets.isda.org/media/f253b540-193/42c13663-pdf/,

Deloitte, *The alphabet soup of alternative reference rates post-LIBOR - SOFR, SONIA, EONIA, SARON, and TONAR* (April 11, 2018), online: https://www2.deloitte.com/us/en/pages/financial-services/articles/alternative-reference-rates-post-libor.html,

PWC, *Farewell LIBOR - The transition to alternative reference rates for new and legacy contracts* (October 3, 2018), online: https://www.pwc.ch/en/publications/2018/Farewell-LIBOR_EN_web2.pdf, and

Oliver Wyman, *Making the World's Most Important Number Less Important - Libor Transition* (July 2018), online: https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2018/july/Oliver-Wyman-Making-The-Worlds-Most-Important-Number-Less-Important_vFINAL.pdf.

[7] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf.

[8] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.

EU Benchmarks Regulation

On June 30, 2016, the European Union's (**EU**) *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (**EU BMR**)[9] came into force. Most of the provisions of the EU BMR came into effect on January 1, 2018. The regulation introduces a common framework and consistent approach to benchmark regulation across the EU. It aims to ensure benchmarks are robust and reliable, and to minimize conflicts of interest in benchmark-setting processes.

The EU BMR is part of the EU's response to the LIBOR scandal and, in particular:

- aims to reduce the risk of manipulation of benchmarks by addressing conflicts of interest, governance controls and the use of discretion in the benchmark-setting process, and

- requires administrators of a broad range of benchmarks used in the EU to be authorized or registered by a national regulator and to implement governance systems and other controls to ensure the integrity and reliability of the benchmarks they administer.

The EU BMR has provisions regulating benchmark administrators, benchmark contributors and benchmark users.

Supervised entities under EU legislation (e.g., banks, investment firms, insurance companies, mutual funds, pension funds, fund managers and consumer lenders) will be subject to restrictions on using benchmarks (including trading in financial contracts and instruments that reference a benchmark) unless:

- they are produced by an EU administrator authorized or registered under the EU BMR, or

- they are benchmarks of a benchmark administrator located outside the EU that have been qualified for use in the EU under the EU BMR's third country regime (three possible routes are described below).

The restriction applies to "third country regime" benchmarks from January 1, 2022.[10] In other words, a benchmark produced outside of the EU cannot be used by EU supervised entities after December 31, 2021, unless that benchmark meets the requirements in the EU BMR and, as a result, is listed on the European Securities and Markets Authority (**ESMA**) Benchmarks Register.[11]
In order for supervised entities in the EU to be able to use benchmarks produced by third country administrators (e.g., administrators located in Canada), those administrators must apply to be added to the ESMA list of benchmarks in one of three ways:

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[9] Available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN.

[10] Originally, this restriction was to apply from January 1, 2020. However, on February 25, 2019, EU authorities announced that the date would be extended to January 1, 2022.

[11] ESMA's Benchmarks Register can be found online at https://www.esma.europa.eu/databases-library/registers-and-data.

- *Recognition* – where an administrator located in a third country has been recognised by a EU member state in accordance with the requirements set out in the EU BMR. This process is not relevant for purposes of the Draft Regulation.

- *Endorsement* – where an administrator or supervised entity located in the EU has a clear and well-defined role within the control or accountability framework of a third country administrator and is able to monitor effectively the provision of a benchmark. This process is relevant if the administrator or supervised entity applies for endorsement in accordance with the requirements set out in the EU BMR but is not relevant for purposes of the Draft Regulation.

- *Equivalence* – where an equivalency decision has been adopted by the European Commission (**EC**), as described further below.

Under the EU BMR, ESMA will be able to register a benchmark provided by a non-EU administrator in a non-EU state as qualified for use in the EU if:

- the EC has adopted an equivalency decision with respect to the non-EU state,

- the administrator is authorized or registered, and is supervised, in the non-EU state,

- the administrator has notified ESMA of its consent to the use of its benchmarks in the EU by supervised entities (the administrator must also provide ESMA with a list of the relevant benchmarks and advise ESMA of the relevant non-EU regulator in the non-EU state), and

- specific cooperation arrangements between ESMA and the non-EU regulator in the non-EU state are operational.

The EC will be able to adopt an equivalency decision with respect to the non-EU state if administrators authorized or registered in that state comply with binding requirements that are equivalent to the EU BMR. The determination of equivalence takes into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO Principles, as applicable.

Alternatively, the EC will be able to adopt an equivalency decision if there are binding requirements in the non-EU state equivalent to the EU BMR with respect to a specific non-EU administrator or benchmark or benchmark family. This provides some flexibility as it will allow the EC to make equivalency decisions for non-EU benchmarks in those cases where a non-EU state only regulates a limited category of critical benchmarks on an equivalent basis.

RBSL Authorization

On July 12, 2018, RBSL issued a press release announcing that it had been approved by the United Kingdom's (**UK**) Financial Conduct Authority (**FCA**) as an authorized "benchmark administrator" under the EU BMR. As an authorized administrator, RBSL is certified to continue to administer, calculate and publish benchmarks in line with the EU BMR, and users of these benchmarks can continue to use them in accordance with the EU BMR. For additional information regarding the impact of the UK leaving the EU on RBSL's authorization with the FCA, please see the discussion below under the heading "*EU Equivalency*".

Substance and Purpose

We developed the Draft Regulation to establish an EU BMR-equivalent benchmarks regulatory regime and to reduce risk in Canada's capital markets, thereby protecting Canadian investors and other Canadian market participants.

As previously indicated, the current intention of the CSA is to designate only:

- RBSL as an administrator, and
- CDOR and CORRA as RBSL's designated benchmarks under the Draft Regulation.

The Draft Policy Statement is meant to assist in the interpretation and application of the Draft Regulation.

EU Equivalency

In light of the EU BMR, having the EU recognize the Canadian benchmarks regime as equivalent is desirable and important since it would allow EU institutional market participants to continue to use any Canadian benchmark designated under the Draft Regulation. For example, an EU institutional investor may hold securities that refer to a Canadian benchmark.

Although Canada-based administrators are able to directly apply for EU-based registration in the EU under the EU BMR (and, as noted above, RBSL has in fact secured such authorization from the FCA), the CSA is of the view that:

- Canadian securities regulators have a sovereign responsibility and are best positioned to directly regulate benchmarks with a significant connection to Canada, including such benchmarks' administrators, contributors and users, and
- it would be prudent to implement a Canadian regime by, or soon after, the EU equivalency deadline (i.e., January 1, 2022) in the event that, for example
    - another entity, including an entity resident in Canada, is later chosen to act as the administrator of benchmarks (e.g., CDOR and CORRA) administered by an EU-registered benchmark administrator (e.g., RBSL) and would like the benefit of a Canadian regime that has been recognized as equivalent by the EU, or

- a non-EU registered benchmark administrator of another Canadian benchmark would like the benefit of a Canadian domestic regime that has been recognized as equivalent by the EU.

In addition, we understand that, in the event that the UK leaves the EU, the UK will make amendments to retain EU law related to financial benchmarks (i.e., the EU BMR) to ensure that it continues to operate effectively in a UK context.[12] In such an event, we would also seek a UK equivalency decision. Having the UK recognize the Canadian regime as equivalent is desirable and important since it would, for example, allow UK institutional market participants to continue to use any Canadian benchmark designated under the Draft Regulation. We expect that a positive EU equivalency decision would lead to a positive UK equivalency decision.

Risk Reduction and Investor Protection

The CSA believes that Canadian securities regulators should now establish and implement a regulatory regime for benchmarks for the following reasons:

- there is a need to regulate CDOR and CORRA and their administrator (i.e., RBSL) in light of the significant reliance placed by users and other market participants on CDOR and CORRA. In particular, for CDOR and CORRA, we believe that the following risks should be minimized:

    - interruption or uncertainty (if, for example, the benchmark administrator resigns or is unsuitable), and

    - misconduct relating to benchmarks including manipulation of the benchmark.

    If not and one of these events occurs, the loss of confidence that Canadian capital markets would suffer and the costs that would be borne by Canadian financial markets (including investors), would be significant,[13]

- there is a need for the ability to regulate benchmark administrators and benchmark contributors due to the risk of benchmark-related misconduct that would adversely impact:[14]

    - investors,

[12] See, for example, HM Treasury, *Draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019*, online: https://www.gov.uk/government/publications/draft-benchmarks-amendment-and-transitional-provision-eu-exit-regulations-2019.

[13] In January 2018, 9 large banks, including 6 from Canada, were accused by a plaintiff in a U.S. civil lawsuit of conspiring to rig CDOR to improve profits from derivatives trading. The complaint, filed by a Colorado pension fund in U.S. District Court in New York, accused the banks of suppressing CDOR from August 2007 to June 2014 by making artificially lower interest rate submissions to RBSL, CDOR's administrator. The lawsuit has not yet gone to trial and the plaintiff's allegations have not been proven in court.

[14] See, for example, the enforcement actions taken in the UK alone: https://www.fca.org.uk/markets/benchmarks/enforcement.

- market participants, and

- the reputation of, and confidence in, Canada's capital markets,

- many factors that resulted in benchmark-related misconduct in other jurisdictions are also present in Canada (e.g., widespread usage of the benchmark to price unrelated securities that can be traded by contributors, rate fixing activities that rely on a combination of observable market inputs and expert judgment),

- such a regime would clarify, strengthen and specify the legal basis on which Canadian securities regulators may take enforcement and other regulatory action against benchmark administrators, benchmark contributors and benchmark users in the event of misconduct involving a benchmark that harms (or threatens to harm) investors, market participants and capital markets generally, and

- such a regime would ensure the continuity of a viable designated critical benchmark by requiring market participants to provide information in relation to the designated critical benchmark for use by the designated benchmark administrator.

In addition, the CSA believes it is necessary to reflect international developments in the regulation of benchmarks. IOSCO has released its IOSCO Principles and certain other major jurisdictions have either introduced benchmark regulations or taken measures to regulate key benchmarks or their methodologies.[15]

Summary of the Draft Regulation

Designated Benchmarks and Benchmark Administrators

Under current or forthcoming securities legislation,[16] a benchmark administrator can apply for designation as a designated benchmark administrator and to request the designation of a benchmark. Alternatively, the regulator can also apply for a benchmark administrator or benchmark to be designated under securities legislation.[17]

The Draft Policy Statement explains that if a benchmark administrator wants to apply to be designated as a designated benchmark administrator and to request the designation of a benchmark, the application should provide the same information as that set out in Form 25-102F1 and Form 25-102F2. A benchmark administrator may request, or the regulator, except in Québec, or the

[15] In addition to the EU, for example, Australia, Hong Kong, Singapore and South Africa. For additional detail, see Financial Stability Board, *Reforming major interest rate benchmarks - Progress report* (November 14, 2018), online: http://www.fsb.org/wp-content/uploads/P141118-1.pdf.

[16] For additional detail, see the section "Recent or Proposed Legislative Amendments" below.

[17] Except in Québec, where the securities regulatory authority has the authority to designate a benchmark administrator or benchmark on its own initiative.

securities regulatory authority may decide, that a benchmark should receive, one or more of the following additional designations:[18]

- **Critical benchmark** – Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as a "critical benchmark" if the benchmark is critical to financial markets in Canada or a region of Canada. The following two factors are among those that will be considered:

  (a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value in Canada of at least $400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable, or

  (b) the benchmark satisfies all of the following criteria:

    (i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable,

    (ii) the benchmark has no, or very few, appropriate market-led substitutes,

    (iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on:

      (A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or

      (B) a significant number of market participants in one or more jurisdictions of Canada.

  For the purpose of paragraph (a) and subparagraph (b)(i), staff of a regulator or securities regulatory authority will consider, among other things, the outstanding principal amount of any debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and the outstanding net asset value of any investment funds that use the benchmark to measure performance.

- **Interest rate benchmark** – Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as an "interest rate benchmark" if the benchmark is used to set interest rates of debt

[18] Note that the interpretations of what can constitute a critical benchmark, an interest rate benchmark and a regulated-data benchmark are located in the Draft Policy Statement.

securities or is otherwise used as a reference in derivatives or other instruments. Factors that will be considered include the following:

(a) the benchmark is determined on the basis of the rate at which financial institutions may lend to, or borrow from, other financial institutions, or market participants other than financial institutions, in the money market, or

(b) the benchmark is determined from a survey of bid-side rates provided by financial institutions that routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

- **Regulated-data benchmark** – Staff of a regulator or securities regulatory authority may recommend that the regulator or the securities regulatory authority designate a benchmark as a "regulated-data benchmark" if the benchmark is determined by the application of a formula from any of the following:

(a) input data contributed entirely and directly from:

(i) any of the following, but only with reference to transaction data relating to securities or derivatives:

(A) a recognized exchange in a jurisdiction of Canada or an exchange that is subject to appropriate regulation in a foreign jurisdiction,

(B) a recognized quotation and trade reporting system in a jurisdiction of Canada or a quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction,

(C) an alternative trading system that is registered as a dealer in a jurisdiction in Canada and is a member of a self-regulatory entity or an alternative trading system that is subject to appropriate regulation in a foreign jurisdiction,

(D) an entity that is similar or analogous to the entities referred to in clause (A), (B) or (C) and that is subject to appropriate regulation in a jurisdiction of Canada or a foreign jurisdiction,

(ii) a service provider to which the designated benchmark administrator of the designated benchmark has outsourced the data collection in accordance with section 14 of the Draft Regulation, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);

(b) net asset values of investment funds that are reporting issuers in a jurisdiction of Canada or subject to appropriate regulation in a foreign jurisdiction.

When designating a benchmark, a securities regulatory authority will issue a decision document designating the benchmark as a designated benchmark. If applicable, the decision document will indicate if the benchmark is also designated as a designated critical benchmark, a designated interest rate benchmark or a designated regulated-data benchmark. It is possible that a designated benchmark will receive two designations:

- a designated interest rate benchmark may also be designated as designated critical benchmark, and

- a designated regulated-data benchmark may also be designated as a designated critical benchmark.

General Requirements for Administrators

Once designated, an administrator must comply with various requirements, such as:

- delivering audited annual financial statements and certain forms (e.g., Form 25-102F1 *Designated Benchmark Administrator Annual Form* and Form 25-102F2 *Designated Benchmark Annual Form*) to Canadian securities regulators (Part 2),

- maintaining a governance regime that includes a board of directors (of which at least half of the members must be independent), oversight committee and compliance officer with defined roles and responsibilities within an accountability and control framework that addresses conflicts of interest, complaints, reporting of infringements, and outsourcing (Part 3),

- applying policies, procedures and controls relating to input data and the contribution of input data, as well as complying with obligations relating to the benchmark methodology used by the administrator and any changes to such methodology (Part 4),

- publishing information about the administration of its designated benchmarks, including publishing:

    - important information about the methodology,

    - the procedures relating to a significant change or cessation of a designated benchmark, and

    - a specified benchmark statement (Part 5),

- if the designated benchmark is determined using input data from contributors that is not reasonably available to the administrator,[19] applying a code of conduct to the contributors of such input data that:

    - specifies the responsibilities of those contributors with respect to the contribution of input data for the designated benchmark, and

    - includes policies and procedures designed to ensure the contributors are adhering to the code of conduct (Part 6), and

- keeping specified books, records and documents for a period of 7 years (Part 7).

Additional Administrator Requirements for Critical Benchmarks

The Draft Regulation has additional requirements relating to an administrator of a critical benchmark (Part 8), including:

- that the administrator provides specific notice to securities regulators and complies with other requirements if it intends to cease administering the critical benchmark,

- that the administrator provides specific notice to securities regulators if a contributor decides to cease contributing input data with respect to the critical benchmark and an assessment of the impact of such development on the critical benchmark,

- that the administrator provides user access to the critical benchmark on a fair, reasonable, transparent and non-discriminatory basis,

- that the administrator provides securities regulators with an assessment at least once every 24 months of the capability of the critical benchmark to accurately represent that part of the market or economy the critical benchmark is intended to record,

- that at least half of the administrator's oversight committee be comprised of independent members, and

- that, at least once every 12 months, the administrator must engage a public accountant to provide an assurance report on the administrator's compliance with certain key sections of the Draft Regulation and the methodology for the critical benchmark and publish a copy of the assurance report.

Additional Administrator Requirements for Interest Rate Benchmarks

Similarly, the Draft Regulation has additional requirements relating to the administrator of an interest rate benchmark (Part 8), including:

[19] Note that since the input data for CORRA is reasonably available to RBSL as the CORRA administrator (e.g., it is available via subscription or is a public source) and such data is not created for the specific purpose of determining CORRA, the providers of such data sources are not considered "contributors" for purposes of certain provisions relating to input data in the EU BMR and the Regulation.

- that the administrator follows a specified order of priority for the use of input data and adjusts the data in specified circumstances,

- that at least half of the administrator's oversight committee be comprised of independent members, and

- that, at least once every 2 years, the administrator must engage a public accountant to provide an assurance report on the administrator's compliance with certain key requirements under the Draft Regulation and the methodology for the interest rate benchmark and publish a copy of the assurance report.

General Requirements for Contributors

The Draft Regulation also imposes requirements on contributors to a designated benchmark, including governance and control requirements, such as appointing a compliance officer and applying policies and procedures relating to accurate and complete contributions of input data, conflicts of interest involving contributions of input data, and the use (and records evidencing the rationale of such use) of expert judgment (Part 6).

Additional Contributor Requirements for Critical Benchmarks

The Draft Regulation has additional requirements relating to a contributor of a critical benchmark (Part 8), including that:

- a contributor provides specific notice to the administrator if it decides to cease contributing to the critical benchmark, and

- if required by the administrator's oversight committee, the contributor engages a public accountant to provide an assurance report on the contributor's compliance with certain key requirements under the Draft Regulation and the methodology for the critical benchmark and deliver a copy of the assurance report to the oversight committee, the board of the administrator, and the regulator, except in Québec, or the securities regulatory authority.

Additional Contributor Requirements for Interest Rate Benchmarks

Similarly, the Draft Regulation has additional requirements relating to a contributor of an interest rate benchmark (Part 8), including that the contributor must:

- engage a public accountant to provide an assurance report on the contributor's compliance with certain key requirements under the Draft Regulation and the administrator's code of conduct, at least once every 2 years or when required by the administrator's oversight committee, and deliver a copy of the assurance report to the oversight committee, the board of the administrator, and the regulator, except in Québec, or the securities regulatory authority,

- ensure that each contributing individual (and their direct managers) provide a written statement that they will comply with the code of conduct established by the applicable administrator, and

- have additional policies, procedures and controls relating to various matters, including:

    - an outline of responsibilities within the benchmark contributor's organization, including a list of contributing individuals and their managers and alternates,

    - sign-off of contributions of input data,

    - disciplinary procedures relating to actual or attempted manipulation of the interest rate benchmark,

    - the management of conflicts of interest and controls to avoid any inappropriate external influence over those responsible for contributing rates,

    - requirements that contributing individuals work in locations physically separated from interest rate derivatives traders,

    - requirements to avoid collusion, and

    - requirements to keep detailed records on specified matters, such as all relevant aspects of contributions of input data and any communications between contributing individuals and other persons, including internal and external traders and brokers.

Exemptions for Regulated-data Benchmarks

The Draft Regulation (section 41) includes several exemptions from certain requirements in the Draft Regulation for administrators and contributors of regulated-data benchmarks, including exemptions from:

- administrator requirements relating to systems and controls for detecting manipulation or attempted manipulation,

- administrator requirements involving policies, procedures and controls relating to contribution of input data and the accuracy and completeness of such data,

- the administrator requirement for a code of conduct for contributors, and

- contributor requirements relating to appointing a compliance officer and maintaining a specified governance and control framework.

Requirements for Registrants, Reporting Issuers and Recognized Entities

The Draft Regulation (section 22) also imposes certain requirements on registrants, reporting issuers and specified recognized entities that use a designated benchmark if the cessation of the

designated benchmark could have a significant impact on such person, a security issued by the person, or any derivative to which the person is a party. In this case, registrants, reporting issuers and specified recognized entities must:[20]

- establish and maintain written plans setting out the actions the entity would take in the event of a significant change or cessation of the designated benchmark, including the identification of a suitable alternative, and

- if appropriate, reflect the written plans in any security issued by the person, or any derivative to which the person is a party, that references the designated benchmark.

Summary of the Policy Statement

The Policy Statement provides interpretational guidance on elements of the Draft Regulation, including the criteria the regulators may consider when determining whether to designate a benchmark as a critical benchmark, interest rate benchmark and/or regulated-data benchmark.

Recent or Proposed Legislative Amendments

In order to implement the Draft Regulation and have the Canadian benchmarks regulatory regime recognized as equivalent in the EU (and potentially the UK), staff in each CSA jurisdiction recommended changes to their local securities legislation, including:

- additional authority to regulate benchmarks and benchmark administrators, benchmark contributors and benchmark users (including authority to designate benchmarks and benchmark administrators), and

- prohibitions on market misconduct in relation to benchmarks, specifically a prohibition on providing false or misleading information for a benchmark determination and a prohibition on benchmark manipulation.

To date, benchmark-related amendments to securities legislation are in force or have received royal assent in Alberta, Ontario, Québec and Nova Scotia. Other CSA jurisdictions are recommending these amendments to their government.

Anticipated Costs and Benefits of the Draft Regulation

Currently, the intention of the CSA is to designate only RBSL as an administrator, and only CDOR and CORRA as its designated benchmarks, under the Draft Regulation. Since the obligations under the Draft Regulation are substantially similar to the EU BMR requirements already applicable to RBSL and the current contributors for CDOR, we anticipate that the Draft Regulation would not impose a significant incremental regulatory burden to RBSL, the current contributors to CDOR,

[20] We note that these obligations are not exhaustive and should be considered as supplementary to obligations that may otherwise exist in respect of the use of benchmarks (whether or not the benchmark is a "designated benchmark" for the purposes of the Regulation) under other requirements pursuant to securities and derivatives legislation, such as the requirement for a registered firm to "establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to … manage the risks associated with its business in accordance with prudent business practices" under paragraph 11.1(b) of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

and certain users of CDOR and CORRA that are already regulated under Canadian securities legislation.

However, there are many expected benefits from the Draft Regulation to benchmark administrators, contributors, users, investors, market participants and Canada's capital markets. The Draft Regulation significantly mitigates the risks of manipulation, interruption and uncertainty[21] in the use of CDOR and CORRA, which are Canada's most important interest rate benchmarks. The proposed regulatory requirements should further enhance confidence in Canadian capital markets and minimize the higher costs that may be borne by Canadian financial markets, including investors, in the event of interruption, uncertainty or manipulation of designated benchmarks. For example, even if the Draft Regulation only results in the avoidance of a small error, distortion or manipulation of CDOR and CORRA, this would mean the direct avoidance of an error, distortion, or manipulation on financial instruments with a value of at least $12.3 trillion.

As a result, the CSA is of the view that the regulatory costs of the Draft Regulation are proportionate to the benefits that would be realized by impacted market participants and the broader Canadian financial market.

In Ontario, an annex to this Notice sets out the OSC's more detailed description of the anticipated costs and benefits of the Draft Regulation.

Potential Models for Designation and Ongoing Regulatory Oversight of Benchmarks and Benchmark Administrators

We are considering the following four options for processing the designation and regulation of benchmarks and benchmark administrators and for ongoing regulatory oversight:

- Non-coordinated review model: Each CSA jurisdiction would separately process designation applications in its jurisdiction without coordinating with other CSA jurisdictions.

- Coordinated review model: The CSA would manage designation applications in accordance with a process that mirrors the "coordinated review" process set out in *Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions*.

- Passport model: The CSA would add designations of benchmarks and benchmark administrators to the Passport system with a process that mirrors:
    - Part 4B (Application to become a designated rating organization) in *Regulation 11-102 respecting Passport System.*
    - *Policy Statement 11-205 respecting Process for Designation of Credit Rating Organizations in Multiple Jurisdictions.*

[21] As examples of uncertainty, the benchmark administrator resigns or is no longer suitable in carrying out its role as a benchmark administrator, or contributors cease to contribute to a benchmark.

- Regulatory model similar to that used for exchanges, self-regulatory organizations, clearing houses, trade repositories and matching services utilities: The CSA would develop an approach to regulation similar to the CSA's approach to regulating exchanges, self-regulatory organizations, clearing houses, trade repositories and matching services utilities. Different approaches (e.g., principal, lead, co-leads) could be used based on a memorandum of understanding established by CSA jurisdictions.

The CSA is also considering a two-phased approach to implementation where we could begin using a non-coordinated review model on a trial basis. Based on the CSA's experience processing the designations and the frequency of such designations, the CSA would consider the model which is most appropriate as the permanent CSA model.

Local Matters

Where applicable, an annex to this Notice provides additional information required by the local securities legislation.

Unpublished Materials

In developing the Draft Materials, we have not relied on any significant unpublished study, report or other written materials.

Expected Future Amendments for Commodity Benchmarks

We expect to propose revisions to the Draft Regulation to incorporate requirements relating to commodity benchmarks later in 2019. We expect these changes to include a definition of "designated commodity benchmark" and to specify whether the existing requirements in the Draft Regulation apply to "designated commodity benchmarks" (or their administrators, contributors and certain users) and whether any additional or different requirements are appropriate.

These proposed amendments would be subject to a separate publication and comment process.

Request for Comments

We welcome your comments on the Draft Materials and also invite comments on the specific questions set out in Annex A of this Notice.

Please submit your comments in writing on or before June 12, 2019. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (in Microsoft Word format).

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Address your submission to all of the CSA as follows:

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 Territory
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA.

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 4e étage
C.P. 246, Place Victoria
Montréal (Québec) H4Z 1G3
Fax : 514 864-6381
consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
comment@osc.gov.on.ca

Contents of Annexes

This Notice includes the following annex:

Annex A Specific Questions of the CSA Relating to the Draft Materials

Questions

Please refer your questions to any of the following:

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

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

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

Michael Brady
Manager, Derivatives
British Columbia Securities Commission
604 899-6561
mbrady@bcsc.bc.ca

Jag Brar
Derivatives Market Specialist
British Columbia Securities Commission
604 899-6839
jbrar@bcsc.bc.ca

Navdeep Gill
Manager, Legal, Market Regulation
Alberta Securities Commission
403 355-9043
navdeep.gill@asc.ca

Jeff Scanlon
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416 597-7239
jscanlon@osc.gov.on.ca

ANNEX A

SPECIFIC QUESTIONS OF THE CSA RELATING TO THE DRAFT MATERIALS

Definitions and Interpretation

1. Does the proposed definition of "contributing individual" capture (or fail to capture) all of the arrangements between contributing individuals and administrators? If not, please explain with concrete examples.

2. Is the proposed interpretation of "control" appropriate? Please explain with concrete examples.

Governance

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.

4. The determination of non-independence of members of the board of directors and the oversight committee by the boards of directors of administrators as set out in paragraphs 5(4)(d), 32(2)(d) and 36(2)(d) of the Draft Regulation includes a provision that if the director or oversight committee member has a relationship with the administrator that may, *in the opinion of the board of directors*, be reasonably expected to interfere with the exercise of the director's or oversight committee member's independent judgment, such director or oversight committee member would not be independent for purposes of the Draft Regulation. We are seeking comment on whether the CSA should replace the opinion of the board of directors with a "reasonable person" opinion in these paragraphs. Please explain with concrete examples.

Administrator Compliance Officer

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

6. Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in the Draft Regulation), 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.

Critical Benchmarks

7. Under the Draft Regulation, 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.

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 the Draft Regulation 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.

Conflicts of Interest

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

Designated Benchmarks

10. The Notice states that the current intention of the CSA is to designate only RBSL as an administrator and CDOR and CORRA as RBSL's designated benchmarks. Are there any other benchmark administrators that you believe should be designated under the Draft Regulation? If so, please:

    (a) identify the benchmark administrator,
    (b) identify any benchmark that the benchmark administrator administers that should also be designated, and
    (c) provide your rationale for why such designations are appropriate.

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

    (a) advise if you intend to apply for designation under the Draft Regulation,
    (b) advise of any benchmark you intend to also apply for designation under the Draft Regulation, and
    (c) the rationale for your intention.

Anticipated Costs and Benefits

12. The Notice sets out the anticipated costs and benefits of the Draft Regulation (in Ontario, additional detail is provided in a local annex). Do you believe the costs and benefits of the Draft Regulation have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain with concrete examples.