Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Notice of Publication

Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators

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

April 29, 2021

Introduction

The following members of the Canadian Securities Administrators (the **CSA** or **we**) are adopting *Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* (the **Regulation)** and *Policy Statement to Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* (the **Policy Statement**):

- British Columbia Securities Commission
- Alberta Securities Commission
- Financial and Consumer Affairs Authority of Saskatchewan
- Ontario Securities Commission
- Autorité des marchés financiers
- Financial and Consumer Services Commission, New Brunswick
- Nova Scotia Securities Commission

We expect that as the other CSA members introduce and enact the required amendments to their securities legislation that give them the authority to regulate benchmarks and benchmark administrators, benchmark contributors and benchmark users (including authority to designate benchmarks and benchmark administrators), they will adopt the Regulation.

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

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

In some jurisdictions, Ministerial approvals are required for the implementation of the Regulation and the Policy Statement. Subject to obtaining all necessary approvals, the Regulation will come into force and the Policy Statement will come into effect on July 13, 2021.

Commodity Benchmarks

Today, we are also publishing a separate Notice of Consultation on draft amendments to the Regulation and the Policy Statement regarding commodity benchmarks. The Notice of Consultation will also be available on the websites of the CSA members listed above and the comment period will end on July 28, 2021.

Substance and Purpose

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

The Regulation will 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,

- 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 who are already regulated in some capacity under Canadian securities legislation (**benchmark users** or **users**).

Background

On March 14, 2019, the CSA published a Notice of Consultation (the **March 2019 Notice**) proposing the Regulation and the Policy Statement.[1] As detailed in the March 2019 Notice, 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. Following the LIBOR controversies:

[1] Available online at https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/25-102/2019-03-14/2019mars14-25-102-avis-cons-en.pdf.

- the International Organization of Securities Commissions (**IOSCO**) published the *Principles for Oil Price Reporting Agencies*[2] and the *Principles for Financial Benchmarks*[3] (together, the **IOSCO Principles**);

- Canadian financial sector regulators pursued certain measures to reduce risk, such as:

    - encouraging contributors to the Canadian Dollar Offered Rate (**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 Refinitiv Benchmark Services (UK) Limited (**RBSL**) to agree to follow certain procedures to strengthen the integrity of CDOR and the Canadian Overnight Repo Rate Average (**CORRA**); and

- the European Union (**EU**) adopted *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (**EU BMR**).[4]

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

- there is a need to regulate CDOR and its administrator (i.e., RBSL) in light of the significant reliance placed by users and other market participants on CDOR;

- there is a need for the ability to regulate benchmark administrators and benchmark contributors due to the risk of benchmark-related misconduct that could adversely impact:[5]

    - investors,

    - 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

[2] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf.
[3] Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.
[4] Available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN.
[5] See, for example, the enforcement actions taken in the UK alone: https://www.fca.org.uk/markets/benchmarks/enforcement.

involving a benchmark that harms (or threatens to harm) investors, market participants and capital markets generally;

- such a regime would ensure the continuity of a viable designated critical benchmark by requiring certain benchmark contributors to provide information in relation to the designated critical benchmark for use by the designated benchmark administrator; and

- such a regime is necessary to reflect international developments in the regulation of benchmarks, including the IOSCO Principles and the fact that certain other major jurisdictions have either introduced benchmark regulations or taken measures to regulate key benchmarks or their methodologies.[6]

As discussed in more detail below:

- In Canada, RBSL is currently the administrator of a key domestically important benchmark, CDOR. Currently, the intention of the CSA is to designate only RBSL as a benchmark administrator, and only CDOR as a designated critical benchmark and a designated interest rate benchmark, under the Regulation.[7]

- CSA staff no longer intend to recommend that CORRA be designated as a critical benchmark and an interest rate benchmark at this time as the Bank of Canada is its current benchmark administrator.

- The CSA may designate other administrators and their associated benchmarks in the future on public interest grounds.

- The CSA is seeking to have the EU recognize the Regulation as "equivalent" under the EU BMR in the event that other Canadian benchmarks would like the benefit of a Canadian domestic regime that has been recognized as equivalent by the EU.

CDOR

Currently, the intention of the CSA is to designate only RBSL as an administrator, and only CDOR as a designated critical benchmark and a designated interest rate benchmark, under the Regulation. This intention is based on the significant reliance placed by users and other market participants on CDOR, which is used in various financial instruments with a notional value of at least $10.9 trillion

[6] 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* (December 18, 2019), online: https://www.fsb.org/wp-content/uploads/P181219.pdf.

[7] 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. Additional information on CDOR can be found at: https://www.refinitiv.com/en/financial-data/financial-benchmarks/interest-rate-benchmarks/canadian-interest-rates.

dollars.[8] This figure is approximately five times larger than the gross domestic product for Canada in 2019.[9]

For CDOR, 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 one of these events were to occur, the loss of confidence that Canadian capital markets would suffer and the costs that would be borne by Canadian financial markets (including investors) could be significant.

CORRA

In the March 2019 Notice, we indicated that the CSA also intended to designate CORRA as a critical benchmark and an interest rate benchmark. At the time of the March 2019 Notice, RBSL was the administrator of CORRA. Subsequently, on July 16, 2019, the Bank of Canada announced that it intended to become the administrator of CORRA when enhancements to CORRA were implemented in 2020. Those enhancements to CORRA have since taken effect and the Bank of Canada is now the administrator of CORRA.

Since central banks are exempted from the EU BMR and assuming that the Bank of Canada will continue to comply with the IOSCO Principles for Financial Benchmarks in respect of CORRA, at this time CSA staff do not expect to recommend that the Bank of Canada be designated as a benchmark administrator or that CORRA be designated as a designated benchmark.

However, given the expected importance of CORRA to capital markets in Canada, there may be possible situations in the future where CSA staff may recommend that CORRA be designated as a designated benchmark (and if relevant, that the Bank of Canada be designated as a benchmark administrator) for specific purposes. For example, if in the future CSA staff had concerns that a firm was directly or indirectly providing incomplete or inaccurate transaction data for purposes of CORRA and the firm was not otherwise subject to appropriate CSA regulation, staff of a securities regulatory authority may want to conduct a compliance review of the firm. Under applicable securities legislation in certain CSA jurisdictions, the securities regulatory authority in a jurisdiction may decide to designate CORRA as a designated benchmark (and the Bank of Canada as its designated benchmark administrator) for the purpose of allowing staff of the securities regulatory authority to rely on the provisions in its securities legislation for conducting compliance reviews of a "market participant" (which includes, in certain jurisdictions, a person that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a designated benchmark).

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[8] 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-financial-markets-size-scope-september-17-2018.pdf.

[9] See, for example: https://www.international.gc.ca/economist-economiste/statistics-statistiques/annual_ec_indicators.aspx?lang=eng.

As a second example, securities legislation in applicable jurisdictions provides that the securities regulatory authority may, in response to an application by the regulator, or, in Alberta and Québec, on its own initiative, require a person to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. If in the future the Bank of Canada encountered problems in obtaining transaction data from firms for purposes of determining CORRA on a daily basis, the securities regulatory authority in a jurisdiction may decide to designate CORRA as a designated benchmark (and the Bank of Canada as its designated benchmark administrator) for the purpose of allowing the securities regulatory authority in the jurisdiction to make an order requiring certain market participants to provide transaction data to the Bank of Canada for the purpose of determining CORRA.
There may be other situations or specific purposes in the future where CSA staff may recommend that CORRA be designated as a designated benchmark and that the Bank of Canada be designated as a benchmark administrator.

If CORRA were designated as a designated benchmark for a purpose, the Bank of Canada could, if necessary, be granted exemptive relief from having to comply with certain or all requirements in the Regulation applicable to a designated benchmark administrator. In the latter case, only the requirements in the Regulation applicable to certain benchmark contributors to CORRA and benchmark users of CORRA might apply (unless additional exemptive relief was granted).

Despite the current intention to no longer designate CORRA, the policy rationale for the Regulation continue. In particular,

- In the wake of the LIBOR scandal, there is still a need to:
    - regulate RBSL and CDOR, and
    - have the ability to regulate other benchmarks or categories of benchmarks in the future on public interest grounds, as discussed in more detail below.

- Given the EU equivalence deadline of January 1, 2024, there is a need to have the Regulation recognized as “equivalent” by the EU under the EU BMR in the event that other Canadian benchmarks would like the benefit of a Canadian domestic regime that has been recognized as equivalent by the EU.

Benchmarks other than CDOR and CORRA

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 a 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, 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 also refer to the separate notice of draft amendments to the Regulation and the Policy Statement regarding commodity benchmarks for circumstances in which a CSA jurisdiction may designate commodity benchmarks in the future.

EU Equivalence

Most of the provisions of the EU BMR came into effect on January 1, 2018. The EU BMR 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, 2024. In other words, a benchmark produced outside of the EU cannot be used by EU supervised entities after December 31, 2023, 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.[10]

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

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:

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

- *Equivalence* – where an equivalence 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 equivalence 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 equivalence 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 equivalence 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 equivalence 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.

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 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, prior to Brexit, RBSL secured such authorization from the United Kingdom's (**UK**) Financial Conduct Authority), 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 the EU equivalence deadline (i.e., January 1, 2024) 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) 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.

Therefore, the CSA is seeking a decision that would recognize the Regulation as equivalent for the purposes of EU BMR.

UK Equivalence

In addition, in connection with Brexit, the UK has adopted a UK version of the EU BMR (the **UK BMR**). Consequently, the CSA is also seeking a UK equivalence decision under the UK BMR. 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 Regulation after a UK equivalence deadline of January 1, 2026 (which is later than the EU equivalence deadline). We expect that a positive EU equivalence decision would lead to a positive UK equivalence decision.

Summary of Changes

Annex A to this Notice contains a summary of notable changes made to the Draft Regulation published for comment with the March 2019 Notice (the **Draft Regulation**). As these changes are not material, we are not publishing the changes for a further comment period.

In response to comments, we also made various changes to the Draft Policy Statement published with the March 2019 Notice (the **Draft Policy Statement**) in order to provide additional guidance.

Summary of Written Comments Received by the CSA

The comment period for the March 2019 Notice ended on June 12, 2019. We received 13 comment letters. We have considered the comments received and thank all of the commenters for their input. The names of the commenters and a summary of their comments, together with our responses, are contained in Annex B. The comment letters can be viewed on the websites of each of the:

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

Regulatory Model for Designation and Ongoing Regulatory Oversight of Benchmarks and Benchmark Administrators

In the March 2019 Notice, we noted that we were considering four options for processing the designation and regulation of benchmarks and benchmark administrators and for ongoing regulatory oversight. We have decided to use a regulatory model similar to that used for exchanges, self-regulatory organizations, clearing houses, trade repositories and matching services utilities.

To establish this regulatory model, we intend to enter into a memorandum of understanding (**MoU**) that sets out a lead/co-lead authority model. Under this model, each designated benchmark and benchmark administrator will have one or more CSA members that function as its lead authority or co-lead authorities and are primarily responsible for its oversight. Each designated benchmark and benchmark administrator will also have one or more "reliant authorities", which are CSA members that are also engaged in its oversight but rely on the lead authority or co-lead authorities for primary oversight. The MoU will provide that where there are co-lead authorities, the number of co-lead authorities should be limited to two or three in order to ensure the efficiency and effectiveness of oversight.

This regulatory model will allow for the effective oversight of designated benchmarks and benchmark administrators while limiting the number of CSA members by which they are designated and with which they will interact.

Subject to required approvals, the MoU is expected to be published on May 6, 2021 and come into effect on July 5, 2021.

For CDOR and RBSL, the Ontario Securities Commission and Autorité des marchés financiers will be co-lead authorities.

Local Matters

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

Contents of Annexes

This Notice includes the following annexes:

Annex A Summary of Notable Changes to the Draft Regulation

Annex B Summary of Comments and CSA Responses

Certain jurisdictions may also publish additional local information with this Notice.

Questions

Please refer your questions to any of the following:

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ANNEX A
SUMMARY OF NOTABLE CHANGES TO THE DRAFT REGULATION

Section Reference in the Draft Regulation	Section Reference in the Regulation	Summary of Change
1(1) – "limited assurance report on compliance" and "reasonable assurance report on compliance"	Same as in the Draft Regulation	Revised definitions to include references to International Standards on Assurance Engagements so that assurance reports can be prepared in accordance with either Canadian Standards on Assurance Engagements or International Standards on Assurance Engagements.
5 [*Board of directors*]	n/a	Removed section 5 in response to comments on the independence requirements for the board of directors of a designated benchmark administrator.
7(6)	6(6) and 10(1)(d)	In response to comments, clarified the restrictions on payments or other financial incentives provided by a designated benchmark administrator to its compliance officer or any DBA individual that reports directly to that officer. A corresponding requirement was added to the conflict of interest policies and procedures requirement in paragraph 10(1)(d).
8(3)	n/a	In response to comments, removed the requirement for the oversight committee of a designated benchmark administrator to assess decisions of the board of directors with regards to compliance with securities legislation.
12(1) and (3)	11(1) and (3)	Revised the requirements regarding reporting of contraventions to also require reports for the provision or attempted provision of false or misleading information in respect of a designated benchmark.
n/a	18(3)	In response to comments, added subsection 18(3) to accommodate situations where it may not be possible for a designated benchmark administrator to provide written notice to the regulator or securities regulatory authority of a proposed significant change to the methodology of a designated benchmark at least 45 days before its implementation.
n/a	20(1)	Added a requirement for a designated benchmark administrator to provide reasonable notice if it decides to cease providing a benchmark.

25(4)(a) and 40(4)(d)	24(4)(a) and 39(4)(d)	In response to comments, added language to clarify that records of telephone conversations are required to be kept by benchmark contributors.
n/a	30(2)	Added requirement for a benchmark contributor to a designated critical benchmark to continue to provide input data for up to 6 months after notifying the benchmark administrator that it will cease contributing input data. We also added guidance in the Policy Statement, including that we expect the period for which a benchmark contributor must continue contributing input data will be as short as practical while ensuring that the designated critical benchmark still accurately represents that part of the market or economy the designated benchmark is intended to represent.
32(2)(c) and 36(2)(c)	n/a	In response to comments, removed restriction that would have deemed a member of the oversight committee of a designated critical benchmark or a designated interest rate benchmark to no longer be independent after 5 years of service.
35 [*Accurate and sufficient data*]	34 [*Order of priority of input data*]	In response to comments, removed specified order to priority of input data for designated interest rate benchmarks. We also added corresponding guidance in the Policy Statement.
40(3)(d)	39(3)(d)	Revised a requirement for disciplinary procedures so it would apply to the provision or attempted provision of false or misleading information in respect of a designated interest rate benchmark.

ANNEX B
SUMMARY OF COMMENTS AND CSA RESPONSES

A. List of Commenters

1. The Canadian Advocacy Council for Canadian CFA Institute Societies
2. RBC Global Asset Management Inc.
3. Neo Exchange Inc.
4. Index Industry Association
5. S&P Dow Jones Indices LLC
6. International Swaps and Derivatives Association, Inc.
7. Investment Industry Association of Canada
8. The Canadian Commercial Energy Working Group
9. Refinitiv Benchmark Services (UK) Limited (**RBSL**)
10. Canadian Bankers Association
11. TMX Group Limited
12. London Stock Exchange Group
13. MSCI Inc.

B. Defined Terms

In this Annex,

"Policy Statement" means the final version of *Policy Statement to Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* published with the Notice.

"March 2019 Notice" means the CSA Notice of Consultation dated March 14, 2019 relating to Draft Regulation 25-102.

"Regulation 25-102" means the final version of *Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* published with the Notice.

"Notice" means this notice relating to Regulation 25-102 and the Policy Statement.

"Draft Regulation 25-102" means the version of *Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* published for comment on March 14, 2019.

Other terms defined in the Notice have the same meaning if used in this Annex.

C. Draft Regulation 25-102 and Draft Policy Statement

No.	Subject (references are to current or draft sections, items and paragraphs)	Summarized Comment	CSA Response
General comments			
1	General support for the draft regulation	Several commenters expressed their general support of Draft Regulation 25-102. Two of these commenters noted that they favour the use of benchmarks that are free from conflicts of interest and are based on inputs where prices are captured from liquid transparent and efficient markets. One of these commenters specifically agreed with the CSA's intention to implement a comprehensive regime for the designation and regulation of benchmarks, including specific requirements for designated critical benchmarks, and the designation and regulation of persons that regulate such benchmarks. Three other commenters agreed with the calibrated approach taken by the CSA in focusing on a limited number of benchmarks, which is consistent with most jurisdictions globally. These commenters also submitted that consistency with the IOSCO Principles is important as they are the global standard.	We thank the commenters for their comments in support of Draft Regulation 25-102. We note that Regulation 25-102 is, in part, based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider Regulation 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. As previously indicated, currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation. We will use our regulatory discretion to only designate benchmarks, which may include Canadian benchmarks that are regulated in a foreign jurisdiction, where such designation is in the public interest. We do understand that imposing inappropriate or unnecessarily burdensome requirement is

No.	Subject (references are to current or draft sections, items and paragraphs)	Summarized Comment	CSA Response
		One commenter expressed that it understood the CSA's motivation for Draft Regulation 25-102, but it had practical concerns regarding how it would apply in the global context without causing uncertainty, inefficiencies, overlap and potential conflicts with corresponding regulations in other jurisdictions. One commenter submitted that even worse than not regulating financial benchmarks in Canada would be to over-regulate them, to the point that the regulation itself would contribute to exacerbating the potential harms that the regulation is attempting to attenuate. The commenter encouraged the CSA to review its proposal and align the obligations to be imposed on administrators, contributors and users with the IOSCO Principles.	problematic and will consider regulatory burden before making any decision to designate a benchmark. Consequently, we don't believe that Regulation 25-102 will result in over-regulation of benchmarks in Canada. While we have revised certain provisions in Draft Regulation 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, to comply with Regulation 25-102.
2	Proposed designation of RBSL, CDOR and CORRA	One commenter was of the view that the structure of CDOR and CORRA could warrant a less onerous application of Draft Regulation 25-102on contributors, administrator and oversight committee. In support of this, the commenter noted that CORRA is based on transaction data from trades in domestic repo markets and CDOR is a committed rate at which benchmark contributors lend funds to corporate borrowers with existing credit facilities. The commenter observed that IOSCO has recognized that benchmarks anchored by observable transactions (e.g., CORRA) or committed quotes (e.g., CDOR) are of higher quality than	***Designation approach*** We thank the commenters for their comments in support of the "designation" approach to benchmark regulation in Draft Regulation 25-102. ***CORRA*** Certain provisions in Regulation 25-102 would not apply to benchmarks, like CORRA, that are determined using input data that is reasonably available to the administrator. However, as noted in the Notice, we don't currently

No.	Subject (references are to current or draft sections, items and paragraphs)	Summarized Comment	CSA Response
		benchmarks relying on indicative quotes. Another commenter also submitted that benchmarks based on committed rates (e.g., CDOR) should be subject to a less stringent application of the proposed rules. Three commenters expressed their support for the designation of CDOR and CORRA as benchmarks. Two of these commenters also noted their support of the CSA's approach of naming the benchmarks and administrator it intended to designate as it gives the market greater certainty than a "catch and release" approach that would assume all potential benchmarks and administrators are in scope unless otherwise explicitly stated.	intend to designate CORRA as a designated benchmark since the Bank of Canada is now acting as the benchmark administrator of CORRA. ***CDOR*** Certain provisions in Regulation 25-102 would apply to benchmarks, like CDOR, that are determined using input data from contributors that is not reasonably available to the administrator. • Such contributions of input data may involve the use of expert judgment and should therefore be subject to additional regulation (since the LIBOR scandal involved manipulations of this type of input data). • However, in response to the comments, we have included additional guidance in the Policy Statement.
3	Future designation of other benchmarks and benchmark administrators	Several commenters asked the CSA to provide greater clarity and transparency in terms of the assessment or method it will adopt for designating and de-designating a benchmark and its administrator. For example: • Will measures other than notional value of financial contracts outstanding be factored into the CSA's decision? • Before de-designating a benchmark, how much notice would be given to market participants and would contributors and administrators be given a reasonable amount of time to analyze the de-designation of a benchmark and submit	As previously indicated, currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. It is expected that RBSL and CDOR will be designated soon after Regulation 25-102 comes into force. We have provided additional guidance in the Policy Statement on what procedures (including advance notice to the market) may be followed by a CSA jurisdiction before: • designating another benchmark administrator or benchmark,

No.	Subject (references are to current or draft sections, items and paragraphs)	Summarized Comment	CSA Response
		comments? • For determining whether a benchmark is critical, how would the CSA determine the value of financial instruments, financial contracts and investment funds that use the benchmark as a reference? Two commenters urged the CSA prescribe that a public consultation period apply prior to the CSA designating any other administrator or benchmark under Draft Regulation 25-102. One of the commenters suggested a minimum consultation period of 90 days. Two other commenters noted that to the extent there is any information that can be publicly disclosed 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.	• changing the category of designation of a benchmark from designated benchmark to designated critical benchmark, or • suspending, revoking or cancelling the designation or amending or revoking the terms and conditions of a benchmark administrator or a benchmark.
4	EU equivalency	One commenter submitted that it is critical for Canadian designated benchmarks to be eligible for an equivalence determination in the EU as it allows them to be used by EU international market participants. One commenter was of the view that opportunities exist to better calibrate Draft Regulation 25-102 for the uniqueness of the Canadian market without detracting from the objective of having Canada's framework recognized as "equivalent" under the EU's "third country regime" benchmark regulation.	As indicated in the March 2019 Notice, we are seeking to have the EU recognize Regulation 25-102 as "equivalent" for purposes of the third country regime for benchmarks under the EU BMR. We note that: • Regulation 25-102 is based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider Regulation 25-102 to be generally aligned with the EU BMR and the IOSCO Principles.

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		One commenter was concerned that Draft Regulation 25-102 goes beyond EU BMR in certain significant respects and was of the view that it is not reasonable to assume that equivalency will require that the third-party country regime go beyond EU BMR. The commenter expressed that it understands that the CSA may want to have direct oversight of benchmark administrators administering Canadian benchmarks and that ensuring Canada may be deemed equivalent may be desirable, but it encouraged the CSA to consider already existing obligations and regimes applicable to foreign global benchmark providers and to ensure harmonization on a global level as much as possible. One commenter questioned why different terms were chosen under Draft Regulation 25-102 to refer to the same concepts under the IOSCO Principles as this creates interpretation challenges as market participants try to assess the impacts of the proposed regulation.	• Regulation 25-102 and the EU BMR are rules and therefore need to comply with applicable legislative drafting requirements, while the IOSCO Principles do not. • For Canadian legislative drafting purposes, Regulation 25-102 uses different language than the EU BMR. However, the language in Regulation 25-102 is comparable to the language in the EU BMR. • Currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation, which may include benchmarks used by EU market participants. Consequently, we don't believe that Regulation 25-102 will result in over-regulation of benchmarks in Canada. • While we have revised certain provisions in Draft Regulation 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, or other designated benchmark administrators to comply with Regulation 25-102.
5	Potential models for designation and ongoing regulatory oversight of benchmarks and benchmark	One commenter noted its preference would be for the CSA to use a model that replicates the approach used for exchanges and other marketplaces or, failing that, the passport model in a manner that mirrors the model	As indicated in the Notice, • The CSA has decided to pursue a Memorandum of Understanding (**MOU**) model for the process for the designation of benchmarks and benchmark

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	administrators	used for designated rating organizations. Another commenter submitted that a non-coordinated review model would not be in the interest of any stakeholder and the risk that two different regulatory authorities in Canada would take a different approach to the same benchmark is not desirable for any Canadian market participant.	administrators and for ongoing regulatory oversight after Regulation 25-102 comes into force. • The MOU model will be similar to that used for exchanges, self-regulatory organizations, clearing houses, trade repositories and matching service utilities. • Under the MOU model, the OSC and AMF would be co-lead regulators for RBSL and CDOR. Only the OSC and AMF would designate RBSL as an administrator and CDOR as a designated benchmark (which is expected to be designated as a critical benchmark and an interest rate benchmark) after Regulation 25-102 comes into force.
6	General concerns relating to costs of compliance	Several commenters expressed concerns with the cost of compliance given the differences among Draft Regulation 25-102, the EU BMR and the IOSCO Principles. The commenters made several suggestions as to how this could be addressed by the CSA: • ***Substituted compliance*** **-** Permit an administrator to satisfy the requirements of Regulation 25-102 by complying with the corresponding requirements of another recognized jurisdiction. The concept of substituted compliance is used by the CSA in National Instrument 71-101 *The Multijurisdictional Disclosure System, Regulation 94-102 respecting Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* and OSC Rule 91-507 *Trade Repositories and Derivatives Data*	As noted above, • Regulation 25-102 is based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider Regulation 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. • Regulation 25-102 and the EU BMR are rules and therefore need to comply with applicable legislative drafting requirements, while the IOSCO Principles do not. • For Canadian legislative drafting purposes, Regulation 25-102 uses different language than the EU BMR. However, the language in Regulation 25-102 is comparable to the language in the EU BMR.

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		Reporting. • ***Principles-based approach*** **-** Use a principles-based approach to provide the flexibility necessary to allow market participants to adopt compliance policies and procedures that are appropriately tailored for their specific business and size and to allow regulators and market participants to adapt to changing technology and evolving market practices. • ***Use of policy statement*** **-** Indicate in the final version of the Policy Statement that Regulation 25-102 will be interpreted and applied in a manner consistent with the IOSCO Principles, similar to the approach taken in *Policy Statement to Regulation 24-102 respecting Clearing Agency Requirements.* • ***Proportionality*** **-** Introduce a concept of proportionality. For example, EU BMR differentiates between significant and non-significant benchmarks and, for non-significant benchmarks, the administrator need not comply with certain requirements provided this is publicly disclosed. In other instances, non-significant benchmarks may be able to satisfy requirements differently. For example, the oversight committee in Draft Regulation 25-102 is a one-size fits all concept whereas EU BMR contemplates that the appropriate level of oversight for various benchmarks may differ and, for non-significant benchmarks, the oversight function may be performed by one individual rather than a committee.	• Currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation, which may include benchmark used by EU market participants. Consequently, we don't believe that Regulation 25-102 will result in over-regulation of benchmarks in Canada. • While we have revised certain provisions in Draft Regulation 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, or other designated benchmark administrators to comply with Regulation 25-102. ***Substituted compliance*** In general, when a provision in a CSA rule allows a market participant to comply with a comparable provision under the laws of foreign jurisdiction rather than a provision in the CSA rule, it is because the market participant has a limited connection to Canada (a **substituted compliance provision**). We don't believe that it's appropriate to include a substituted compliance provision in Regulation 25-102, since it is a "designation" regime rather than a "registration" or "licensing" regime. In addition, Part 9 of Regulation 25-102 provides the

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		One commenter was of the view that Draft Regulation 25-102 generally strikes a good balance in providing the needed flexibility but that it could be improved in the following areas: • Company structure, staffing and corporate governance (e.g., sections 24(2)(f)(ix) and 26(1) of Draft Regulation 25-102) – preserving flexibility in these areas helps ensure that certain market participants are not disadvantaged as a result of previous decision in entity formation or corporate organization. • Compliance policies and procedures (e.g., sections 24 and 25 of Draft Regulation 25-102) – Draft Regulation 25-102 is generally prescriptive to the kinds of compliance policies and procedures that would be required, which is an understandable approach given the nature of the regulatory subject, but the commenter encouraged the CSA to ensure a benchmark contributor has the flexibility to implement the required policies and procedures in a manner best suited for its business and operations. • Benchmark user obligations (e.g., sections 22(2) to (3) of Draft Regulation 25-102) – the commenter appreciated that Draft Regulation 25-102 provides flexibility in the decision-making process for benchmark users and, specifically, that the proposed obligations regarding contingency planning for benchmark users has a reasonable person standard.	authority to grant discretionary exemptions from provisions of Regulation 25-102 that may not be appropriate for a particular designated benchmark or designated benchmark administrator. Certain CSA jurisdictions intend to designate RBSL as a benchmark administrator and CDOR as its designated benchmark given the significant reliance placed by users and other market participants in Canada on CDOR. Given this connection to Canada, it would not be appropriate for RBSL to rely on a substituted compliance provision in respect of CDOR. Furthermore, if a non-EU registered benchmark administrator of another Canadian benchmark applied for designation under Regulation 25-102 so that it would have the benefit of a Canadian regime that has been recognized as equivalent by the EU, it would not be appropriate for such an administrator to rely on a substituted compliance provision. ***Non-significant benchmarks*** We don't believe that Regulation 25-102 needs to include provisions with lower requirements for non-significant benchmarks since it is a "designation" regime rather than a "registration" or "licensing" regime. In addition, as previously noted, Part 9 of Regulation 25-102 provides the authority to grant discretionary exemptions from provisions of Regulation 25-102 that may not be appropriate for a

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			particular designated benchmark or designated benchmark administrator.
7	Proposed exemptions	Two commenters submitted that Draft Regulation 25-102 should not apply if a benchmark is administered by a government, government statistical agency, central bank, crown corporation or similar public authority. One of these commenters noted that such entities are exempted from EU BMR. Another commenter submitted the following exemptions should be added: • Prices of single financial securities or instruments established by regulated exchanges, and prices produced exclusively for the purpose of risk management and settlement by regulated CCPs should not be considered benchmarks. • Exchanges and clearing houses should not be benchmark contributors to the extent that the data contributed are considered regulated-data. • Providers of input data that is otherwise publicly available should not be considered benchmark contributors. • Section 41 of Draft Regulation 25-102 should be broadened to exempt designated regulated-data benchmarks from obligations other than those related to transparency of the methodology and internal controls because the benchmarks can be replicated and verified by third parties.	***Exemptions*** Since Canadian securities legislation does not require that all benchmarks and benchmark administrators be designated, it does not need to include exemptions from designation. We do not intend to designate a benchmark or benchmark administrator where such designation would not be in the public interest. In addition, as previously noted, Part 9 of Regulation 25-102 provides the authority to grant discretionary exemptions from provisions of Regulation 25-102 that may not be appropriate for a particular designated benchmark or designated benchmark administrator. As indicated in the Notice, we don't currently intend to designate the Bank of Canada as a benchmark administrator or CORRA as its designated benchmark. We have also added language to the Policy Statement indicating that where public authorities (for example, national statistics agencies, universities or research centres) contribute data to, or provide or have control over the provision of, a benchmark for public policy purposes, we would generally not designate such a benchmark as a "designated benchmark" or its administrator as a "designed benchmark administrator".

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			Contributors of input data Subsection 1(3) of Regulation 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 Regulation 25-102. Given the above language, we don't propose to provide additional exemptions in Regulation 25-102 from the meaning of "benchmark contributor".

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			However, we have revised the Policy Statement to provide additional guidance on this matter. ***Regulated-data benchmarks*** We did not revise section 41 of Draft Regulation 25-102 (section 40 of Regulation 25-102) since it reflects comparable provisions in the EU BMR. In addition, as previously noted, Part 9 of Regulation 25-102 provides the authority to grant discretionary exemptions from provisions of Regulation 25-102 that may not be appropriate for a particular designated benchmark or designated benchmark administrator.
Specific questions of the CSA			
8	*Definitions and Interpretation* - 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.	None of the commenters provided a specific response to this question.	We have made no substantive changes to the definition of "contributing individual" but have clarified that it is an individual who contributes input data, as an employee or agent, on behalf of a benchmark contributor.
9	Definitions and Interpretation - Is the proposed interpretation of "control" appropriate? Please explain with concrete examples.	None of the commenters provided a specific response to this question.	We have revised the interpretation of "control" to include a paragraph to address when the second person is a trust. A person (first person) is considered to control another person (second person) if the second person is a trust and the first person is a trustee of the

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			trust.
10	*Governance* - 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.	Several commenters submitted that this requirement is not appropriate. Three commenters submitted that any requirement pertaining to the composition of the board of directors, or any other governance or oversight function, should not be prescribed and needs to be flexible to allow benchmark administrators to select a structure most appropriate to their business. This flexibility is recognized in the EU BMR, the Australian Benchmark Regulation and the IOSCO Principles. The commenters submitted the following: • Many benchmark administrators operate multiple index families globally and effective compliance with this requirement would necessitate the establishment of separate benchmark administrators for specific designated benchmarks. • Board members have legal duties under local law and requiring additional board duties and responsibilities, and dictating board membership eligibility, board numbers and board tenure, causes conflicts with local law and is inconsistent with benchmark regulation globally. • In other jurisdictions, the board should include individuals with decision making authority in relation to benchmark administration. If the board has decision making authority for benchmark administration, then individual board members must	We have removed this requirement from Regulation 25-102 and included additional language in the Policy Statement on provisions in Regulation 25-102 that will foster independence in the oversight of a designated benchmark and the proper management of potential conflicts of interest, which include: • subsection 6(6) – a designated benchmark administrator must not provide a payment or other financial incentive to a compliance officer referred to in subsection 6(1), or any DBA individual who reports directly to the officer, if the payment or other financial incentive would create a conflict of interest; • subsections 7(2) and (3) – a designated benchmark administrator must establish an oversight committee, the members of which must not be members of the board of directors; • subsections 7(4) and (9) – the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator and, if the oversight committee becomes aware that the board of directors has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting; • subsection 10(1) – a designated benchmark administrator must establish, document, maintain

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		have responsibility for benchmark administration (otherwise a board without requisite knowledge and experience will not be making informed decisions). • Index governance is fairly specialized requiring candidates with sufficient expertise who are typically employed elsewhere in the industry value-chain and, as a result, independent members may introduce conflicts of interest and outside members could adversely impact an administrator's independent status and be challenging to manage. • The IOSCO Principles rely heavily on the concept of proportionality and if the CSA wants to mandate independent boards it should focus on inherent or clear conflicts of interest that cannot otherwise be mitigated through other appropriate controls. • Independent administrators who do not trade in the underlying component securities nor directly create products for investors do not have the same conflicts of interest as self-indexed administrators and should not be required to have independent boards as it will unnecessarily increase costs for administration, which will likely be passed on to investors. One commenter submitted that consistency with the IOSCO Principles and, where appropriate, EU BMR requirements should be a key consideration in the development of a Canadian regime and noted that the IOSCO Principles are clear that an independent oversight function is required where conflicts arise due to ownership structures and that EU BMR requires two	and apply policies and procedures that are reasonably designed to, among other things, ensure that any expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised and protect the integrity and independence of the provision of a designated benchmark; • subsection 12(2) – a designated benchmark administrator must conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint; and • subsections 31(1) and 35(1) – for a designated critical benchmark and a designated interest rate benchmark, respectively, at least half of the members of the oversight committee of the designated benchmark administrator must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator. ***Effect of enactment of Regulation 25-102*** As noted above, • Regulation 25-102 is a "designation" regime rather than a "registration" or "licensing" regime. • Currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark.

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		independent directors on the oversight committee only for critical benchmarks. One commenter observed that the proposed requirements were based on those in *Regulation 25-101 respecting Designated Rating Organizations* but was of the view that board-related requirements appropriate for credit rating organizations (**CROs**) are not equally appropriate for benchmark administrators because the business models and corresponding conflicts of interest are demonstrably different. CROs are in the business of selling and promoting the use of their individual credit ratings, which directly impact an issuer's ability to raise funds and the cost of doing so and are relied upon by investors and, to a certain extent, regulators, whereby they serve a quasi-regulatory function in the market. There are no equivalent conflicts of interest in the context of market-wide, objectively determined benchmarks.	Consequently, we don't think the enactment of Regulation 25-102 will result in global benchmark administrators having any immediate or significant need to establish separate benchmark administrators.
11	*Governance* - 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 Draft Regulation 25-102 includes a	One commenter disagreed with the proposal that the legal entity board or oversight committee should be mandated to include external members because: • it would introduce potential conflicts of interest into administration, • by having employees serve these functions, the administrator can ensure those individuals are subject to their codes of conduct and ethics, • to the extent price sensitive information is involved, including external parties on the board	As noted above, we will not be preceding with the independence requirements for the board of directors of a designated benchmark administrator that were proposed in paragraph 5(4)(d) of Draft Regulation 25-102. However, we will be proceeding with the independence requirement for: • the oversight committee for a designated critical benchmark that was proposed in paragraph

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	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 Draft Regulation 25-102. 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.	could create issues with information sharing, • it is inconsistent with benchmark regulation globally, • if every jurisdiction begins mandating different requirements, benchmark administration for globally used benchmarks becomes difficult if not impossible. Another commenter submitted that Draft Regulation 25-102 should not introduce a new concept of independence but should use the existing criteria found in *Regulation 52-110 respecting Audit Committees*. Also, the commenter did not support adopting a reasonable person standard and was of the view that where this standard is used elsewhere in Draft Regulation 25-102, it will create interpretation, compliance and enforcement challenges. The commenter noted that where this standard is used elsewhere in securities legislation it is appropriate in the context (e.g., in the context of public companies' disclosure, the disclosures are intended for use by the public).	32(2)(d) of Draft Regulation 25-102 (paragraph 31(2)(c) of Regulation 25-102), and • the oversight committee for a designated interest rate benchmark that was proposed in paragraph 36(2)(d) of Draft Regulation 25-102 (paragraph 35(2)(c) of Regulation 25-102). We do not believe that it be unduly onerous for a designated benchmark administrator to comply with these requirements.
12	*Administrator Compliance Officer* - Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain	Several commenters submitted that this would be inappropriate or unworkable. Most benchmark administrators operate thousands of individual benchmarks and the responsibility for monitoring and overseeing the calculation of benchmarks has been delegated to operational teams. The role of the compliance officer is to ensure the appropriate	We thank the commenters for their comments. Regulation 25-102 does not contain a provision that specifically requires the compliance officer of a designated benchmark administrator to monitor the administrator's compliance with its own benchmark methodology.

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	with concrete examples.	governance and internal control framework are in place and are followed. In one commenter's experience, the approach taken by Article 7.2 of EU BMR works well as it allows an administrator to exercise discretion as to how to best match the capability and purpose of the monitoring. One commenter submitted that a committee and governance structure is more appropriate and is consistent with global regulation. The commenter noted that committees can draw on areas of expertise across members and avoid potential conflicts of interest of single individuals as well as any individual having the power to take unilateral decisions. With respect to critical benchmarks, one commenter observed that EU BMR requires that an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and EU BMR at least annually.	Several requirements in Regulation 25-102 foster a designated benchmark administrator's compliance with its own benchmark methodology, including: • paragraph 5(1)(b) – a designated benchmark administrator must establish, document, maintain and apply an accountability framework that documents policies and procedures that are reasonably designed to, for each designated benchmark it administers, ensure and evidence that the designated benchmark administrator follows the methodology applicable to the designated benchmark; • paragraph 6(3)(b) – at least once every 12 months, the compliance officer must submit a report to the designated benchmark administrator's board of directors that describes whether the designated benchmark administrator has followed the methodology applicable to each designated benchmark it administers; • paragraph 8(4)(a) – a designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that benchmark contributors comply with the standards for input data in the methodology of the designated benchmark; • paragraph 16(1)(c) – the accuracy and reliability of a methodology, with respect to determinations made under it, must be capable of being verified

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			including, if appropriate, by back-testing; and • paragraph 18(1)(c) – a designated benchmark administrator must publish the process for the internal review and the approval of the methodology and the frequency of such reviews. We have included guidance in the Policy Statement that, when complying with these requirements, a designated benchmark administrator should generally attempt to ensure that compliance with a benchmark methodology is monitored by staff that are independent of staff that determine and apply the methodology.
13	*Administrator Compliance Officer* - Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Draft Regulation 25-102), 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	One commenter saw no reason for the compliance function to be involved in the setting of compensation levels outside reporting lines. It submitted that conflicts of interest are better addressed through other governance processes and comprehensive control frameworks. Two commenters submitted that it is not appropriate or desirable for the compliance officer to be involved in the establishment of compensation levels for any DBA individual, other than its direct reports. 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 would not be appropriate because it is unlikely the compliance personnel would have the necessary expertise and	We thank the commenters for their comments. We have retained the requirement that was proposed in paragraph 7(4)(b) of Draft Regulation 25-102 (paragraph 6(4)(b) of Regulation 25-102) regarding a compliance officer's involvement in the determination of compensation for any DBA individuals that do not directly report to the compliance officer. We have added guidance to the Policy Statement that we expect that a designated benchmark administrator will consider compliance, including past compliance issues and how compensation policies may be used to manage conflicts of interest, when establishing compensation policies and determining compensation of any DBA individuals and we do not consider this to be prohibited by paragraph 6(4)(b) of Regulation

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	interest? Please explain with concrete examples.	market insight and the definition of "DBA individual" is broad and could potentially include a sizeable portion of individuals from varied disciplines. One commenter was of the view that remuneration should be set by the administrator's Board and Remuneration Committee in line with best practice and compliance can have a role in the overall discussion on how compensation can be a tool to manage conduct and conflicts of interest within the organization. The commenter noted the IOSCO Principles are clear that an administrator's conflicts of interest framework should ensure that staff who participate in the benchmark determination are not directly or indirectly rewarded or incentivised by the levels of the benchmark.	25-102 even if the compliance officer is providing input in relation to a DBA individual. We have also added paragraph 10(1)(d) of Regulation 25-102, which requires a designated benchmark administrator to establish, document, maintain and apply policies and procedures reasonably designed to ensure that the compliance officer, or any DBA individual that reports directly to the compliance officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affect the integrity of the benchmark determination.
14	*Critical Benchmarks* - Under Draft Regulation 25-102, 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	One commenter noted the proposed requirement with respect to administrators of designated critical benchmarks is in line with EU BMR. The commenter was of the view that it would be disproportionate to extend this requirement to non-critical designated benchmarks. Two commenters submitted that there is no justification for the CSA to mandate how corporate entities transact for license rights and information related to benchmarks as intellectual property owners have the right to determine the commercial terms on which they license such intellectual property. In the event that the CSA has identified a market failure or anticompetitive behaviour	We thank the commenters for their comments. We have retained the access requirement that was proposed in section 29 of Draft Regulation 25-102 (section 28 of Regulation 25-102), which only applies to the administrator of a designated critical benchmark and reflects a similar requirement in the EU BMR. We consider the access requirement to be appropriate for a designated critical benchmark. We don't believe that it will be unduly onerous for an administrator of a designated critical benchmark to comply with the requirement.

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	designated benchmarks? Please explain with concrete examples.	in the index industry, the commenter noted that there are existing competition laws and tools to prevent or punish any index providers or other market participants from exploiting their market power. The commenter was of the view that price control is particularly disproportionate in circumstances where there is no clear monopoly or dominant position and, furthermore, where there is no evidence of historic abusive practices and that it was not aware of any obstacles that users face in Canada to access data and information in relation to benchmarks. The commenter also submitted that the requirements for disclosure, especially in relation to the benchmark methodology, benchmark statement and any changes or cessations thereto, need to be balanced with the need for benchmark administrators to protect their intellectual property and the intellectual property of the underlying data providers. One commenter submitted that access/pricing restrictions should not apply if substitute benchmarks are available in the marketplace. The commenter was of the view that, by definition, a benchmark is not, and cannot be, a critical benchmark if there are other options for users to choose, otherwise Draft Regulation 25-102 would be creating an unlevel playing field across competitors, forcing some administrators to license their benchmarks on a fair, reasonable and non-discriminatory basis, while allowing others to license their benchmarks without those restrictions. Also, the proposed requirements would create market disruption	

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		for benchmarks used by and licensed to global clients, if they had to be licensed in Canada on a fair, reasonable and non-discriminatory basis, but could be licensed outside of Canada without those restrictions.	
15	*Critical Benchmarks* - 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 Draft Regulation 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.	One commenter submitted that it generally agrees with this requirement and that it aligns with the EU BMR. It noted that this requirement is especially desirable when there is no alternative to a particular benchmark as it is in the interest of the market to ensure continuity of the benchmark and avoid market disruption. One commenter expressed support for the requirement and proposed including a fixed time period with review clauses (rather than leaving it open ended) to give flexibility for adjustment. The commenter noted that EU BMR allows authorities to compel contributions to a critical benchmark for up to 24 months. One commenter submitted that the reason a benchmark contributor ceases to provide input data may not be within its control. For example, liquidity in markets, regulatory changes and other conditions could dictate no price or input data is available or prices may no longer exist. The commenter understood the logic that there could be a need for transition if the contributor was the only provider, or one of very few providers, of input data but cautioned against prescribing a one size fits all solution to the marketplace where many variables are not known beforehand.	We have revised section 31 of Draft Regulation 25-102 (section 30 of Regulation 25-102) to require the benchmark contributor to continue to provide data for up to six months after providing the notice contemplated by that section. We don't believe that it will be unduly onerous for a benchmark contributor to comply with this provision. We have also added guidance to the Policy Statement on this requirement. However, if a benchmark contributor was unable to comply with this requirement, it could apply for exemptive relief. We note that in Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario and Saskatchewan, securities legislation provides that a securities regulatory authority may make an order requiring the benchmark contributor to continue to provide data for a longer period. Section 30 of Regulation 25-102 is not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt this provision.

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		One commenter was concerned that this requirement may deter firms from being or becoming benchmark contributors. Two commenters submitted that it was unclear how these provisions would apply to and be enforceable against contributors globally.	
16	*Conflicts of Interest* – Is the requirement in subsection 11(3) of Draft Regulation 25-102 appropriate, particularly as it relates to a *risk* of a significant conflict of interest? Please explain with concrete examples.	Two commenters submitted that it is appropriate to limit publication to actual, significant conflicts of interest as it would be more effective and meaningful for its intended audience as expanding the requirement would make it more difficult for users to assess those conflicts of interest. Another commenter agreed that administrators should establish, document, implement and enforce policies for the identification, disclosure and management of conflicts of interest but requested clarification regarding the terms "significant conflict of interest" and "promptly publish". The commenter noted that the IOSCO Principles set out that administrators should "disclose any material conflicts of interest to their users and any relevant Regulatory Authority, if any". One commenter supported the general requirement to disclose conflicts of interest but was of the view that requiring disclosure down to the benchmark level would not be feasible for administrators that calculate	We have substantially retained the language in subsection 11(3) of Draft Regulation 25-102 (subsection 10(3) of the Regulastion). We don't believe that it will be unduly onerous for an administrator of a designated critical benchmark to comply with the requirement. We don't propose to limit the requirement to "actual, significant" conflicts of interest. Such a limit would be problematic as the conflict would need to crystallize before the publication contemplated by subsection 10(3) of Regulation 25-102. Only requiring publication of significant conflicts of interest once they have crystallized would not be appropriate. We have added a reasonable person standard in paragraph 10(3)(a) of Regulation 25-102 to introduce an objective test, rather than a subjective test, regarding the significance of the risk of harm to any person arising from the conflict of interest, or potential conflict of interest. We have added guidance to the

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		hundreds of thousands of indexes.	Policy Statement on the use of "reasonable person".
17	*Designated Benchmarks* – 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 Draft Regulation 25-102? 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.	One commenter was of the view that only benchmarks that are material to the functioning of Canada's financial markets, and the bodies administering them, be designated and, in the commenter's view, no current benchmarks other than CDOR and CORRA warrant designation. Another commenter submitted that Standard & Poor's and TMX should each be designated as a benchmark administrator and that the S&P/TSX 60 Index and the S&P/TSX Composite Index should each be designated as a regulated-data benchmark. The commenter estimated that the total value of assets using these indices in some way is in excess of $400 billion and they are key Canadian indices, each viewed as a significant tracker of the performance of Canadian publicly listed securities generally. This commenter was of the view that these benchmarks were not being administered in accordance with the IOSCO Principles or within the spirit of the TMX's recognition order.	As previously indicated, currently, the intention of certain CSA jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation. We will use our regulatory discretion to only designate benchmarks, which may include Canadian benchmarks that are regulated in a foreign jurisdiction, where such designation is in the public interest. We do not currently plan to designate any of the S&P/TSX indices as designated benchmarks. As a result of risks arising from the LIBOR scandal, we are currently focusing on interest rate benchmarks in Canada, rather than stock indices. It is beyond the scope of this rule-making project to determine whether the S&P/TSX indices comply with the IOSCO Principles or are within the spirit of the TMX's recognition order.
18	*Designated Benchmarks* – If your organization is a benchmark administrator, please: (a) advise if you intend to	One commenter, an administrator of benchmarks used in Canada, stated that it does not intend to voluntarily apply for designation as a benchmark administrator under Draft Regulation 25-102.	We thank the commenter for their comment.

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	apply for designation under Draft Regulation 25-102, (b) advise of any benchmark you intend to also apply for designation under Draft Regulation 25-102, and (c) the rationale for your intention.		
19	*Anticipated Costs and Benefits* – The Notice sets out the anticipated costs and benefits of Draft Regulation 25-102 (in Ontario, additional detail is provided in Annex D). Do you believe the costs and benefits of Draft Regulation 25-102 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.	One commenter submitted that consistency with the IOSCO Principles and EU BMR requirements will help ensure additional significant costs are not incurred by those currently in compliance with these requirements. In light of the evolving contemplation, development and implementation of benchmark regulations in other jurisdictions outside of Canada and the EU, the commenter believes it is important for outcome-based assessments of equivalence, under principles of proportionality, to be agreed and bilateral and multi-lateral levels to avoid duplicative and overlapping requirements on a global basis. Two commenters submitted that one of the most significant costs will be dual supervision because there is no acknowledgement or framework for those benchmark administrators outside of Canada. For example, if the CSA designates a benchmark that is also regulated in the EU, the administrator will have to comply with both regimes. They suggested that such costs can be reduced by reducing the scope of Draft	As noted above, • Regulation 25-102 is based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider Regulation 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. • Regulation 25-102 and the EU BMR are rules and therefore need to comply with applicable legislative drafting requirements, while the IOSCO Principles do not. • For Canadian legislative drafting purposes, Regulation 25-102 uses different language than the EU BMR. However, the language in Regulation 25-102 is comparable to the language in the EU BMR. • As noted above, we don't believe that it's appropriate to include a substituted compliance provision in Regulation 25-102, since it is a "designation" regime rather than a "registration" or "licensing" regime. • Currently, the intention of certain CSA

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		Regulation 25-102 so that it only captures critical, contribution-based benchmarks or replicating its requirements as close as possible to the IOSCO Principles or the requirements of other jurisdictions.	jurisdictions is to initially designate only RBSL as a benchmark administrator and only CDOR as its designated benchmark. We also anticipate that we may designate benchmarks that apply for designation, which may include benchmark used by EU market participants. Consequently, we don't believe that Regulation 25-102 will result in over-regulation of benchmarks in Canada. • While we have revised certain provisions in Draft Regulation 25-102 to address certain comments we received, we believe that it will not be unduly onerous for RBSL, as the designated benchmark administrator of CDOR, or other designated benchmark administrators to comply with Regulation 25-102.
Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators			
20	Definitions of types of benchmarks	One commenter submitted that Draft Regulation 25-102 should include definitions of "regulated-data benchmark", "interest rate benchmark" and "critical benchmark". Assuming the definition of "regulated-data benchmark" from the Policy Statement is used, the commenter was of the view that limiting input data to transaction data exclusively may be too limiting and IOSCO Principle 7 acknowledges that an administrator may rely on different forms of data tied to observable market data as an adjunct or supplement to transactions.	As noted above, Regulation 25-102 is a "designation" regime rather than a "registration" or "licensing" regime. Consequently, we think the following definitions in Regulation 25-102 are appropriate, provide sufficient flexibility and do not need to be further defined: • designated critical benchmark, • designated interest rate benchmark, and • designated regulated-data benchmark. We note that the Policy Statement provides further guidance on these terms, while providing for sufficient

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			flexibility. Like the EU BMR, Regulation 25-102 draws a distinction between: • regulated-data benchmarks (which are not based on input data from benchmark contributors), and • benchmarks that are based on input data from benchmark contributors. This distinction is recognized in section 41 of Draft Regulation 25-102 (section 40 of Regulation 25-102) which provides that regulated-data benchmarks do not have to comply with certain provisions applicable to benchmarks based on input data from benchmark contributors. As noted above, subsection 1(3) of Regulation 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person referred to in (ii) above for the purpose of determining a benchmark.

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21	DBA individuals and benchmark individuals	One commenter was unclear why the CSA introduced the concepts of "DBA individual" and "benchmark individual". The commenter was of the view that these definitions and the requirements associated with the definitions are cumbersome, disproportionate and burdensome and do not reflect how most global benchmark administrators are organized.	We disagree with the commenter. • The definitions of "benchmark individual" and "DBA individual" in Regulation 25-102 are appropriate for the provisions in which they are used. • The definition of "benchmark individual" represents a narrower class of persons than the definition of "DBA individual". • There are some provisions in Regulation 25-102 that should only apply to benchmark individuals, in order to limit regulatory burden.
22	Critical regulated-data benchmarks	Two commenters submitted that the authority to designate regulated-data benchmarks as critical should be removed. The commenters noted that this authority is a departure from other jurisdictions, such as the EU, who have acknowledged and understood the different risks between contributed benchmarks and those benchmarks based on data from transparent and regulated markets. EU BMR expressly excludes regulated-data benchmarks from being designated as critical and to do so would be inconsistent with the proportionality principles in the IOSCO Principles. The commenters also noted that there is no contributor in the context of a regulated-data benchmark so it was unclear how the concept of compelling a contributor to provide input data for a critical regulated-data benchmark, such as in section 31 of Draft	As noted above, Regulation 25-102 is a "designation" regime rather than a "registration" or "licensing" regime like the EU BMR. Consequently, we think the following definitions in Regulation 25-102 are appropriate, provide sufficient flexibility and do not need to be further defined: • designated critical benchmark, and • designated regulated-data benchmark. Although we currently have no plans to do so, we would like to preserve the flexibility in Regulation 25-102 of designating a regulated-data benchmark as a "critical benchmark". ***Contributors of input data*** As noted above, subsection 1(3) of Regulation 25-102

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		Regulation 25-102, would be applied.	provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 Regulation 25-102. We have revised Policy Statement to provide additional guidance on this matter.
23	Regulated-data benchmarks to receive input data entirely and directly from trading venues and exchanges	Two commenters submitted that the requirement that regulated-data benchmarks receive input data "entirely and directly" from trading venues and exchanges seems to have been imported from EU BMR but this	We have revised the guidance in the Policy Statement on the definition of "designated regulated-data benchmark" to remove the words "and directly".

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		terminology was recently amended. EU BMR removed the words "and directly", which accommodates the use of data aggregators. Benchmark administrators take prices from over 200 recognized stock exchanges and trading venues and the only way this is possible is to acquire the data from data aggregators who act purely as a technical link so the practice should not be deemed an outsourcing to a service provider (i.e., it should not be subject to section 14 of Draft Regulation 25-102).	We have revised the Policy Statement to provide guidance on section 14 of Draft Regulation 25-102 (section 13 of Regulation 25-102) in response to the comment.
24	External assurance reports for benchmark administrators	One commenter was of the view that all designated benchmarks should be required to obtain an assurance report from a qualified public accountant on the administrator's compliance with key sections of Draft Regulation 25-102, at least once every 12 months. Another commenter suggested that the CSA consider requiring an annual independent audit of compliance of benchmark administrators with the administrator's benchmark methodology (similar to CFA Institute Global Investment Performance Standards (**GIPS**) verification which applies to investment managers).	Regulation 25-102 contains provisions for assurance reports on the designated benchmark administrator of: • a designated critical benchmark (section 32), and • a designated interest rate benchmark (section 36). These provisions are based on corresponding provisions in the EU BMR. Given concerns about the costs of obtaining assurance reports and regulatory burden, we don't propose to expand these requirements as suggested by the commenters. We consider the requirements in section 32 and 36 of Regulation 25-102 to provide sufficient assurance reports in respect of a benchmark administrator.
25	External assurance reports for benchmark contributors	One commenter was of the view that the requirement in section 39 of Draft Regulation 25-102 may be onerous, costly and add little value over what can be done via the contributor's internal audit functions. The commenter recommended that the requirement be modified such that an external audit would only be required when the	Regulation 25-102 contains provisions for assurance reports on a benchmark contributor to: • a designated critical benchmark (section 33), and • a designated interest rate benchmark (sections 37 and 38).

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		oversight committee of the benchmark administrator determined there is a need for one. Another commenter submitted that section 39 of Draft Regulation 25-102 was a net new requirement that will be unduly onerous for contributors, when external audits are not required by the already comprehensive assurance provisions of the CDOR contributors' code of conduct or EU BMR in relation to CDOR. The commenter suggested: • The requirements in sections 34 and 38 of Draft Regulation 25-102 to provide an assurance report if requested to do so by the oversight committee are more reasonable and sufficient. • Should there be an audit requirement, it would be more appropriate for the contributor to conduct the audit internally and the results should only be made available to the regulators and not to the administrator.	These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. We don't consider them to be unduly onerous. We don't consider that an internal audit would be sufficient alternative. We consider it appropriate for the benchmark administrator to be provided with a copy of the assurance reports. Sections 33, 37 and 38 of Regulation 25-102 are not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt these provisions.
26	Scope of record keeping requirements for benchmark contributors	One commenter submitted that the proposed record keeping requirements are overly broad and would be burdensome for the following reasons: • The proposed scope could be read to cover back-office activities related to benchmark contributions and input data, which are largely mechanical in nature and the burden associated with keeping such records would not be offset by the minimal probative value they would provide. • It is not clear if the proposed requirements would require benchmark contributors to create and keep	Regulation 25-102 contains record keeping requirements for: • a benchmark administrator (Part 7), • a benchmark contributor to a designated benchmark (subsection 24(4)), and • a benchmark contributor to a designated interest rate benchmark (subsection 39(4)). We have revised subsections 24(4) and 39(4) to explicitly refer to telephone conversations for greater certainty and have added guidance in the Policy

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		voice recordings of relevant communications, which would be costly and burdensome. • Benchmark contributors would effectively be required to keep records showing their analytical and decision-making process, which is sensitive and proprietary, may not normally be retained in writing and would be extremely broad and burdensome. The commenter suggested that the CSA do the following, otherwise some benchmark contributors may refrain from contributing: • Limit the scope of record keeping obligations imposed on benchmark contributors to relevant information (not all information) pertaining to the actual submission to the benchmark administrator (not all surrounding circumstances). • Not require benchmark contributors to document their analytical or decision-making process. • Make clear that benchmark contributors and benchmark users are not required to make or retain voice records of phone calls or voicemail under the record keeping obligations. The commenter was of the view that if the issues it raised are not addressed, the burdens may cause some benchmark contributors to refrain from contributing, thus reducing the stability and accuracy of the relevant benchmark. Another commenter requested that the CSA provide	Statement. These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. We don't consider them to be unduly onerous. In particular, given the LIBOR scandal, we consider it appropriate for benchmark contributors to document their analytical and decision-making process. However, we have included additional guidance in the Policy Statement to address certain matters raised by the commenters. Subsections 24(4) and 39(4) of Regulation 25-102 are not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt these provisions.

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		guidance in the Policy Statement as to how a benchmark contributor would satisfy the requirement in section 25(4)(d) of Draft Regulation 25-102 to keep records relating a description of the potential for financial loss or gain. The commenter was also concerned that this information could contain proprietary commercially sensitive information and suggested the following alternatives, which would align more closely with EU BMR: • the requirement be narrowed, • the requirement only apply to the contributing individual, or • the requirement could be met in the context of identifying and mitigating conflicts of interest by amending draft section 25(4)(c). The commenter also submitted that, due to their sensitive nature, the records listed in section 25(4) of Draft Regulation 25-102 should only be required to be made available to the administrator if it required them to comply with the rule or in connection with an investigation by a Canadian securities regulatory authority.	
27	Record retention period for benchmark contributors and benchmark administrators	Two commenters expressed concern over the requirement for benchmark contributors to retain records for 7 years as the EU BMR requirement is 5 years except for records of telephone conversations or electronic communications, which are required to be held for 3 years. The commenters suggested the	Regulation 25-102 contains a 7-year record keeping requirement for: • a benchmark contributor to a designated benchmark (subsection 24(4)), • a benchmark administrator (paragraph 26(4)(a)), and

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		requirement should be aligned with EU BMR. Two other commenters noted that the requirement for benchmark administrators to retain records for 7 years is inconsistent with the EU BMR requirement, which is 5 years, and this inconsistency will increase costs to investors with little or no benefit.	• a benchmark contributor to a designated interest rate benchmark (subsection 39(4)). The 7-year requirement is reflected in other CSA rules applicable to market participants. We don't believe that it would be unduly onerous for designated benchmark administrators and contributors to a designated benchmark to comply with these requirements. Subsections 24(4) and 39(4) of Regulation 25-102 are not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt theses provisions.
28	Benchmark administrator must not use input data from benchmark contributor if it has any indication the benchmark contributor does not adhere to the code of conduct	One commenter submitted that strict compliance with section 16(2) of Draft Regulation 25-102 could result in unintended consequences because the prescribed content of the code of conduct includes a broad range of requirements. For example, the administrator could receive an indication that some of the record keeping requirements of a particular contributor's code of conduct are not being adhered to and would then be required to refuse that contributor's input data. The commenter suggested only requiring the benchmark administrator to refuse input data where it is aware of a "significant breach", meaning a breach that would impact the integrity or reputation of the benchmark. Another commenter asked for clarification about whether a benchmark administrator has unilateral	In response to the comments, we revised subsection 16(2) of Draft Regulation 25-102 (subsection 15(2) of Regulation 25-102) to refer to a "significant breach" of the code of conduct. We also provided guidance in the Policy Statement on the interpretation of "significant breach". Subsection 15(2) now provides that: *"A designated benchmark administrator must not use input data from a benchmark contributor if* *(a) a reasonable person would consider that the benchmark contributor has breached the code of conduct referred to in section 23, and* *(b) a reasonable person would consider that the*

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		authority to make a determination that a benchmark contributor is not adhering to the code of conduct required in respect of input data.	*breach is significant."* The use of the "reasonable person" standard addresses concerns about "unilateral authority".
29	Benchmark administrator's oversight of benchmark contributors	One commenter was concerned that Draft Regulation 25-102 would effectively grant benchmark administrators quasi-regulator status. For example, in certain circumstances, a benchmark administrator's oversight committee could require a benchmark contributor to engage a public accountant to provide a compliance report in accordance with its specifications. This is a concern because benchmark administrators, which may be private entities with a profit-making motive, would have extensive access into the business operations of benchmark contributors. The commenter suggested as an alternative that the extensive oversight and monitoring that benchmark contributors would be subject to by benchmark administrators could be replaced by a requirement for benchmark contributors to make authorized representations regarding compliance measures. This commenter also suggested that benchmark administrators should be required to consider input from benchmark contributors prior to imposing or changing obligations on benchmark contributors given the role that benchmark administrators would have in imposing certain standards on benchmark contributors.	We acknowledge that a designated benchmark administrator has certain responsibilities in relation to benchmark contributors in certain circumstances. As noted above, Regulation 25-102 contains provisions for assurance reports on a benchmark contributor to: • a designated critical benchmark (section 33), and • a designated interest rate benchmark (sections 37 and 38). These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. We don't consider them to be unduly onerous. Sections 33, 37 and 38 of Regulation 25-102 are not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt these provisions.
30	Obligations of benchmark	One commenter submitted that Draft Regulation 25-102	Regulation 25-102 contains requirements that apply to

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	contributors	goes too far in imposing a set of detailed obligations directly on contributors, which could discourage contributors to contribute. The IOSCO Principles do not impose obligations directly on contributors but rather on administrators to impose a code of conduct and other obligations on their contributors. If the CSA feels strongly about imposing requirements directly on contributors, a principles-based approach rather than prescriptive obligations may be a good alternative.	a benchmark contributor to: • a designated benchmark (Part 6), • a designated critical benchmark (section 30), and • a designated interest rate benchmark (section 39). These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. As noted above, we are seeking to have the EU recognize Regulation 25-102 as "equivalent" for purposes of the third country regime for benchmarks under the EU BMR. We don't consider these provisions to be unduly onerous. Certain of these provisions are not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt these provisions.
31	Code of conduct for benchmark contributors	One commenter submitted that the requirement under section 24(2)(f)(iv) of Draft Regulation 25-102 for pre-submission sign-off of input data would impede the process for collecting and disseminating input data. Regarding section 24(2)(f)(ix) of Draft Regulation 25-102, one commenter submitted that some indexes may have hundreds or thousands of contributors so it is unclear how the individual at the administrator could reasonably have direct access to all of the benchmark contributors' boards of directors or how that could be enforced globally.	In response to the comment, we have revised the Policy Statement to provide additional guidance on compliance with subparagraph 24(2)(f)(iv) of Draft Regulation 25-102 (subparagraph 23(2)(f)(v) of Regulation 25-102). As regards the comment on subparagraph 24(2)(f)(ix) of Draft Regulation 25-102 (subparagraph 23(2)(f)(x) of Regulation 25-102), we revised the provisions to clarify that it refers to an officer of the benchmark contributor, not the benchmark administrator.

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			Furthermore, we revised the Policy Statement to note that the code of conduct requirement in subsection 24(1) of Draft Regulation 25-102 (section 23(1) of Regulation 25-102) only applies if a designated benchmark is determined using input data from benchmark contributors. As noted above, subsection 1(3) of Regulation 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 Regulation 25-102.
32	Governance and control requirements for benchmark	***General*** One commenter submitted that section 25 of Draft	***General*** The requirements in section 25 of Draft

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	contributors	Regulation 25-102 is disproportionate to many types of indexes, in particular, those that rely on voluntary contributions from data contributors that may not be regulated financial services entities. The unintended consequence is that prescriptive requirements may dissuade contributors from contributing to the benchmark, which may ultimately reduce transparency in private markets. The commenter noted that the equivalent requirement in EU BMR is subject to the proportionality principle and may be waived. ***Sign-off on Input Data*** One commenter submitted that the requirement in section 25(2)(b) of Draft Regulation 25-102 for a benchmark contributor to have a process for sign-off on input data is unwarranted because the individual contributor has the expertise to make the contribution and the requirement is impractical from a timing perspective, as it would unnecessarily slow down the submission process. The commenter suggested that an annual attestation by senior management, such as that required by the CDOR code of conduct, is sufficient to tie senior management to the approval of the submission process. ***Physical Separation of Individuals Responsible for Submission*** One commenter questioned the requirement for the physical separation of individuals responsible for the benchmark rate submission and that such individuals be	Regulation 25-102 (section 24 of Regulation 25-102) are based on corresponding requirements in the EU BMR and we consider them to be appropriate. However, we revised the Policy Statement to note that the code of conduct requirement in subsection 24(1) of Draft Regulation 25-102 (section 23(1) of Regulation 25-102) only applies if a designated benchmark is determined using input data from benchmark contributors. As noted above, subsection 1(3) of Regulation 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or (ii) another person, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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"

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		located in an area that is "secure". Also, the requirement could work contrary to fostering expert judgment because individuals responsible for the contribution of benchmarks have a need for market views. The commenter was of the view that individuals on the trading floor should not be precluding from having responsibility for submitting their firm's contribution to the benchmark. Another commenter was unclear of the meaning of "organizational separation", "physically separated" and "secure area", specifically: • Does "organizational separation" refer to physical separation, separation within the contributor's organization structure, or both? • Is the requirement simply that contributing individuals not be co-located with other employees? • Do these terms require a physically segregated area with restricted access as contemplated by section 2.3 of OSC Policy 33-601 *Guidelines for Policies and Procedures Concerning Inside Information*? The commenter supported giving contributors flexibility in complying with these requirements and recommended that Regulation 25-102 include more definitive language authorizing such flexibility. Both of these commenters submitted that contributing individuals may have other responsibilities, which may require them to by physically located near select peers	for purposes of certain provisions relating to input data in Regulation 25-102. Section 24 of Regulation 25-102 is not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt this provision. ***Sign-off on Input Data*** In response to the comment, we have revised the Policy Statement to provide additional guidance on compliance with subsection 25(2) of Draft Regulation 25-102 (subsection 24(2) of Regulation 25-102). ***Physical Separation of Individuals Responsible for Submission*** In response to the comments, we have revised the Policy Statement to provide additional guidance on compliance with subparagraph 25(2)(d)(i) of Draft Regulation 25-102 (subparagraph 24(2)(d)(i) of Regulation 25-102).

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		or department functions, including sales and trading staff.	
33	Expert judgment	***Meaning of expert judgment*** One commenter requested clarification around what constitutes expert judgment and when expert judgment should be used. The commenter noted that with respect to CDOR expert judgment can be based on several factors including: • market data (e.g., T-Bill rates and OIS rates), • economic factors, • executional data, • dealers' inventories, and • other data. ***Record keeping*** Another commenter requested the CSA provide clarification regarding the types of records required to be retained under section 25(3)(b) of Draft Regulation 25-102, specifically whether the requirement is to address the circumstances in which expert judgment may be exercised in policies and procedures or whether the expectation is to record the rationale for the use of expert judgment in each and every daily submission. The commenter submitted that if the latter is required, it would place a significant burden both in terms of gathering and tracking of expert input. The commenter also submitted that the documentation of the use of expert judgment under section 25(3) should be tailored to CDOR and CORRA and mirror the	***Meaning of expert judgment*** In response to the comment, we have revised the Policy Statement to provide additional guidance on references to "expert judgment" in Regulation 25-102. ***Record keeping*** In response to the comment, we have revised the Policy Statement to provide additional guidance on compliance with paragraph 25(3)(b) of Draft Regulation 25-102 (paragraph 24(3)(b) of Regulation 25-102). Given the problems uncovered in the LIBOR scandal, we believe the requirement should apply if expert judgement is exercised in relation to input data. We don't believe that the requirements are unduly onerous. For example, where appropriate, a code of conduct for benchmark contributors can include templates or other methods to efficiently record matters relating to the exercise of expert judgment in relation to input data.

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		submission procedures under the CDOR code of conduct.	
34	Quality of input data	Two commenters expressed that 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. One commenter noted that one of the IOSCO Principles related to benchmark quality deals with benchmark design and indicates certain factors that a benchmark should take into account. This commenter was of the view that global standards for contributing and calculating benchmarks can help provide assurance to users of benchmarks of their comparability and quality and noted that the CFA Institute GIPS are global recognized standards for calculating and presenting investment performance.	Regulation 25-102 includes several requirements that reflect the importance of a designated benchmark accurately and reliably representing that part of the market or economy it is intended to record, including: • subsection 14(3) - if a reasonable person would consider that the input data results in a designated benchmark that does not accurately and reliably represent that part of the market or economy the benchmark is intended to represent, the designated benchmark administrator must do either of the following: (a) within a reasonable time, change the input data, the benchmark contributors or the methodology of the designated benchmark in order to ensure that it accurately and reliably represents that part of the market or economy it is intended to represent; (b) cease to provide the designated benchmark; and • paragraph 16(1)(a) – a designated benchmark administrator must not follow a methodology for determining a designated benchmark unless it is sufficient to provide a benchmark that accurately and reliably represents that part of the market or economy the benchmark is intended to represent. In addition, for a designated critical benchmark,

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			section 29 of Regulation 25-102 requires the designated benchmark administrator to, at least once in each 24-month period, submit to the regulator or securities regulatory authority an assessment of the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated critical benchmark is intended to represent.
35	Verification of input data from front office of a benchmark contributor or an affiliate	One commenter submitted that section 16(3)(a) of Draft Regulation 25-102 assumes there may be other sources for the input data but for some asset classes there may not be.	In response to the comment, we have revised the Policy Statement to provide additional guidance on compliance with paragraph 16(3)(a) of Draft Regulation 25-102 (paragraph 15(4)(a) of Regulation 25-102).
36	Order of priority for use of input data by designated interest rate benchmark	One commenter submitted that this requirement does not reflect the practical realities applicable to various types of interest rate benchmarks, including CDOR and CORRA, because: • In addition to input data received from benchmark contributors, interest rate benchmarks may be determined using input data from execution platforms, price assessments or from post-trade infrastructure such as settlement, clearing and reporting entities. • It is typical for a single source of input data to be specified for any given benchmark. • Even where multiple sources of input data may be used, in order to appropriately formulate an order of preference, the source of the data must be distinguished from the nature of the input data.	We have revised section 35 of Draft Regulation 25-102 (section 34 of Regulation 25-102) and added guidance in the Policy Statement to reflect the comments. ***Input data from benchmark contributors*** Furthermore, we revised the Policy Statement to note that the requirements in section 34 of Regulation 25-102 only apply if a designated interest rate benchmark is determined using input data from benchmark contributors. As noted above, subsection 1(3) of Regulation 25-102 provides that input data is considered to have been "contributed" if (a) it is not reasonably available to (i) the designated benchmark administrator, or

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		• It presupposes that an interest rate benchmark is representative of actual transactions in the underlying market, which is not always the case (e.g., CDOR). • The examples listed in section 35(1)(a)(i)-(iii) are not compatible with any interest rate benchmark that is not an unsecured bank deposit rate (e.g., CORRA). • The examples in section 35(1)(a)(iv) would fundamentally change the nature of any benchmark and should generally only be used in the absence of all other inputs to inform expert judgments. The commenter noted that EU BMR provides flexibility in this regard by using the following language: "in general the priority of use of input data shall be". The commenter suggested the general order of preference for the nature of input data should be: (1) transactions in the underlying market represented by the benchmark (2) executable quotes in that same underlying market (3) indicative quotes in that same underlying market (4) only where the input data in (1)-(3) is unavailable, market data from related markets to inform expert judgment to the extent possible The commenter submitted that an input data hierarchy may be of use for certain interest rate benchmarks that may be designated by the CSA in the future, but it is not	(ii) another person, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and (b) it is provided to the designated benchmark administrator or the other person referred to in (ii) above for the purpose of determining a benchmark. For example, since the input data for CORRA is reasonably available to Bank of Canada 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 Regulation 25-102.

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		at all relevant for CDOR or CORRA as they each use a single type of input data. For CORRA, the input data is readily available so the concept of benchmark contributors does not apply.	
37	Regulator or securities regulatory authority may require a person to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so	Two commenters submitted that given the extensive nature of the proposed obligations, a person should not be compelled to be a benchmark contributor. One of the commenters suggested that if the CSA maintains this position, the person being compelled should not be subject to the full set of regulatory obligations that would otherwise apply to voluntary benchmark contributors. The other commenter requested that the CSA adopt similar requirements to those set out in Article 23 of EU BMR, specifically: • Set out the specific circumstances under which a person is required to provide information to a designated benchmark administrator. • Limit the mandatory provision of information to a maximum of 24 months. • Require on a periodic basis (i.e., within one month and, if necessary, 12 months after the contributor was required to provide information) an assessment against specified criteria to determine if continued mandatory contribution is necessary for another specified period of time. • Confirm that contributors are not obligated to trade	As noted above, revised section 31 of Draft Regulation 25-102 (section 30 of Regulation 25-102) will require a benchmark contributor to a designated critical benchmark to continue to provide data for up to six months after notifying 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. Also, as noted above, under securities legislation of certain jurisdictions a securities regulatory authority may make an order requiring the benchmark contributor to continue to provide data for a longer period if the securities regulatory considers it in the public interest to do so. Section 30 of Regulation 25-102 is not currently being adopted in Québec as certain amendments to its *Securities Act* are required to adopt this provision.

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		or commit trades relating to the designated benchmark.	
38	Compliance officer of benchmark contributor	One commenter submitted that the requirement in section 26(2) of Draft Regulation 25-102 that the compliance officer be able to directly access the contributor's board of directors is impractical and that the compliance officer would lack the experience and expertise to make board submissions. The commenter suggested that it would be more reasonable to require the compliance officer to escalate matters up through senior management and the contributor's chief compliance officer could present matters directly to the board. This commenter also submitted that the requirement under subsection 40(6) should be to report significant issues, rather than findings, as this would be otherwise overly burdensome.	We have revised subsection 26(2) of Draft Regulation 25-102 (subsection 25(2) of Regulation 25-102) to include alternative language that permits the chief compliance officer of a benchmark contributor to present matters to the board of directors. We have also made a corresponding change to the code of conduct requirements in subparagraph 23(2)(f)(x) of Regulation 25-102. However, we have also added guidance to the Policy Statement to clarify that where the designated officer under subparagraph 25(1) of Regulation 25-102 and the chief compliance officer are different persons, each must be provided with direct access to the benchmark contributor's board of directors. We have revised subsection 40(6) of Draft Regulation 25-102 (subsection 39(6) of Regulation 25-102) to address the comment. Sections 25 and 39 of Regulation 25-102 are not currently being adopted in Québec as certain amendments to the *Securities Act* are required to adopt these provisions.
39	Designated benchmark administrator must provide written notice to regulator or	One commenter submitted that 45 days' notice may not be appropriate if there are market circumstances that require changes and that the regulator or securities	We have added a subsection (3) to provide certain exceptions to the 45-day notice requirement in subsection 19(2) of Draft Regulation 25-102

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	securities regulatory authority of a proposed significant change to the methodology of a benchmark at least 45 days before its implementation	regulatory authority should be informed of the implementation simultaneously with the market.	(section 18(2) of Regulation 25-102).
40	Role of oversight committee	***Monitoring input data*** One commenter submitted that it is not practical for the oversight committee to monitor input data. In practice, the monitoring of input data is done by the administrator's operational staff (first line of defence), which then reports on the quality of the input data to the oversight committee (second line of defence). The accuracy and depth of the monitoring done by the first line of defence is also further assessed by internal and external auditors (third line of defence). The commenter noted that the proposed language corresponds to Article 5.3(g) of EU BMR but recommended the CSA make a drafting clarification to make clear that this requirement may be complied with by overseeing the monitoring of the input data, as opposed to performing the first-line monitoring function. ***Role of oversight committee*** Another commenter submitted that the powers entrusted to the oversight committee are not consistent with corporate law principles that, in most jurisdictions, put ultimate corporate powers into the hands of the board of directors. The commenter noted that the proposal seems to go beyond was is contemplated under the IOSCO	***Monitoring input data*** We have added guidance in the Policy Statement regarding subsection 8(8) of Draft Regulation 25-102 (subsection 7(8) of Regulation 25-102) to address the matters raised by the commenter. ***Role of oversight committee*** The requirements for an oversight committee in section 8 of Draft Regulation 25-102 (section 7 of Regulation 25-102) are based on corresponding requirements in the EU BMR and we consider them to be appropriate. We note that the benchmark administrator of CDOR has established an oversight committee for that benchmark. In any event, Regulation 25-102 recognizes the appropriate role of the board of directors of a designated benchmark administrator in respect of the oversight committee: • Subsection 7(4) provides that the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the benchmark administrator. • Subsection 7(6) provides that the board of directors of the benchmark administrator must appoint the

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		Principles and is not workable in practice for the following reasons: • Day-to-day responsibilities for administration of benchmarks in most cases would be fulfilled by management, with the board or a committee of the board fulfilling oversight, but the proposal seems to contemplate almost the opposite. • There could be overlap between responsibilities of the management team, including the chief compliance officer, and the oversight committee. • The oversight committee is an external committee so it may not be able to fulfill all the obligations to the extent contemplated and it is not clear what type of liability these obligations create for oversight committee members. • It seems unusual to impose on obligations to report to securities regulators on such a committee.	members of the oversight committee. • Subsection 7(7) provides that the board of directors of the benchmark administrator must approve policies and procedures regarding the structure and mandate of the oversight committee.
41	Independence requirements for members of oversight committee	One commenter submitted that oversight committee members should not be restricted to an artificial, five-year maximum term. This commenter agreed that voting members of the oversight committee should not be involved in the executive management of the benchmark administrator or the day-to-day production of the benchmarks but was of the view that they should be permitted to be senior leaders of affiliated entities. The commenter noted that outside members with sufficient expertise in the index	In response to the comments, we have made certain changes to the independence requirements for: • the oversight committee for a designated critical benchmark that was proposed in subsection 32(2) of Draft Regulation 25-102 (subsection 31(2) of Regulation 25-102), and • the oversight committee for a designated interest rate benchmark that was proposed in subsection 36(2) of Draft Regulation 25-102 (subsection 35(2) of Regulation 25-102).

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		industry often have their own conflicts of interest and 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. Another commenter submitted that the requirements are overly prescriptive and do not allow sufficient flexibility for informed judgment. For example, the deemed loss of independence after 5 years of service would be counterproductive and inefficient. Sourcing subject matter experts is already difficult, and the loss of continuity, expertise and knowledge could be more disruptive and outweigh a theoretical gain underlying the proposal. The commenter recommended that the CSA move these independence factors to the Policy Statement as factors that may be considered in a determination of independence. The commenter also recommended that the CSA harmonize any independence requirements with EU BMR to allow for the application of a consistent test of independence for a benchmark administrator's various oversight committees, regardless of whether the primary regulator for the benchmark is in Canada, the UK or the EU.	In particular, we deleted the provision that an oversight committee member is not "independent" if they have served on the oversight committee for more than 5 years in total. We note that at least half of the members of the oversight committee are required to be independent of the benchmark administrator and any affiliated entity of the benchmark administrator.
42	Participation of board members in oversight committee meetings	One commenter asked the CSA to clarify that, despite subsection 8(2) of Draft Regulation 25-102, board members may be invited from time to time to oversight committee meetings, so long as they do so in a non-voting capacity. The commenter noted that a regulatory	We have revised the Policy Statement to include guidance that addresses the comment raised by the commenter.

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		technical standard under the EU BMR allows for this despite having a similar restriction that board members cannot be oversight committee members.	
43	Obligations of chief compliance officer of a benchmark administrator	One commenter submitted that the CSA should review the obligations imposed on the chief compliance officer of an administrator as several obligations have unusual or vague standards that create the potential for increased risks as opposed to reducing them. Specifically: • section 7(3)(c) – chief compliance officer to advise the board of suspected non-compliance instead of actual non-compliance, • section 11(3) – disclosure of a risk of significant conflict of interest, • section 12 – reporting conduct that might involve manipulation or attempted manipulation, and • section 16(2) – administrator must not use input data if it has any indication that the benchmark contributor does not comply with the code of conduct. The commenter was also of the view that it is not appropriate to prevent the chief compliance officer of an administrator from being compensated based on the financial performance of the administrator as this does not present a *de facto* conflict of interest. This restriction is not reasonable and may hinder administrators in recruiting qualified individuals in an environment where competition for talented compliance	We have revised subsection 16(2) of Draft Regulation 25-102 (subsection 15(2) of Regulation 25-102) in response to this comment. We have not revised the other provisions cited by the commenter. We do not believe that it would be appropriate to limit the language in these provisions to incidents of conflicts of interest, manipulation or non-compliance that have crystallized. We have revised subsection 7(6) of Draft Regulation 25-102 (subsection 6(6) of Regulation 25-102) to reflect the comments of the commenter.

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		officers is becoming increasingly competitive. The commenter agreed that the chief compliance officer's compensation should not be linked to the performance of a benchmark.	
44	Requirement for benchmark administrators to designate a compliance officer	One commenter urged the CSA to revisit the concept of a compliance officer under Draft Regulation 25-102 to allow greater flexibility for benchmark administrators to construct a governance and oversight function appropriate and proportionate to the benchmarks it administers. For example, the IOSCO Principles and EU BMR acknowledge 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.	We believe the requirement for a "compliance officer" in subsection 7(1) of Draft Regulation 25-102 (subsection 6(1) of Regulation 25-102) is appropriate.
45	Certain users of designated benchmarks required to have written plans to address cessation of designated benchmark	***Effective date*** One commenter requested that the CSA clarify that subsections 22(1) and (3) only apply to securities and derivatives that are entered into on or after the effective date of Regulation 25-102, as users will generally not have the legal right to compel existing securityholders and derivative counterparties to agree to changes to the terms of such financial instruments. ***Application of requirement*** Another commenter submitted that it is not appropriate to introduce obligations on benchmark users. The commenter suggested several alternatives:	***Effective date*** We have revised section 22 of Draft Regulation 25-102 (section 21 of Regulation 25-102) to address the concerns raised by the commenter. ***Application of requirement*** We believe that the requirement in section 22 of Draft Regulation 25-102 (section 21 of Regulation 25-102) is appropriate. We note that the requirement only applies

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		• The CSA or benchmark administrators could publish best practices for users. • The obligations should be incorporated in the regulations governing benchmark users rather than Draft Regulation 25-102. • Any obligations should align with EU BMR article 28, paragraph 2.	to registrants, reporting issuers and recognized entities that are currently regulated by CSA jurisdictions.
Appendix A to Regulation 25-102 – Definitions Applying in Certain Jurisdictions			
46	Definition of "benchmark"	One commenter asked the CSA to provide further guidance on what it means for a price, estimate, rate, index or value to be "made available to the public". Another commenter submitted it was unclear why the definition differs slightly from that in the IOSCO Principles.	The phrase "made available to the public" is commonly used in securities law and we don't believe it is necessary to add guidance to the Policy Statement regarding its meaning. We note that certain jurisdictions have a definition of "benchmark" in their *Securities Act*, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of Regulation 25-102.
47	Definition of "benchmark administrator"	One commenter noted that the definition is circular and questioned why the foundation definition of "administration" was not included in Draft Regulation 25-102.	We note that certain jurisdictions have a definition of "benchmark administrator" in their *Securities Act*, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of Regulation 25-102. We don't believe it is necessary to define "administration" for the purposes of Regulation 25-102.
48	Definition of "benchmark	One commenter suggested that the definition of	We note that certain jurisdictions have a definition of

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	contributor"	"benchmark contributor" should be included in Regulation 25-102.	"benchmark contributor" in their *Securities Act*, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of Regulation 25-102.
49	Definition of "benchmark user"	One commenter stated that the definition is unclear and requires further detail to understand what users and products are within the scope of Draft Regulation 25-102. Another commenter submitted that the CSA should add commentary to clarify that the determination of initial margin and variation margin under derivatives contracts would not constitute the use of a benchmark as a reference under Draft Regulation 25-102, whether such benchmark is used to calculate interest payable on margin delivered or the amount of margin to be delivered in the first place. The commenter submitted that this interpretation would be consistent with how ESMA interprets the "use of a benchmark" under EU BMR.	We note that certain jurisdictions have a definition of "benchmark user" in their *Securities Act*, while other jurisdictions do not. This matter is addressed in subsections 1(5) to (8) of Regulation 25-102. We don't believe it is necessary to further define "benchmark user" for the purposes of Regulation 25-102. As noted above, Regulation 25-102 is a "designation" regime rather than a "registration" or "licensing" regime.
Form 25-102F1 *Designated Benchmark Administrator Annual Form*			
50	Item 13 – Specified Revenue	Two commenters were of the view that the rationale for this requirement is unclear and that it does not contribute toward protecting the integrity of the benchmark determination process.	We believe that Item 13 is appropriate. We don't believe that is would be unduly onerous for a designated benchmark administrator to comply with this requirement.
Form 25-102F2 *Designated Benchmark Annual Form*			
51	Item 3 – Benchmark	Two commenters were of the view that the rationale for	We believe that Item 3 is appropriate. We don't

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	Distribution Model	this requirement is unclear and that it does not contribute toward protecting the integrity of the benchmark determination process.	believe that is would be unduly onerous for a designated benchmark administrator to comply with this requirement.
General comments not specifically related to Draft Regulation 25-102			
52	Additional research and investor education	One commenter suggested that additional consideration should be given to more oversight of the use of benchmarks by investors, even benchmarks that are not ultimately designated benchmarks, as 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 users. This commenter noted that even if such 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.	We thank the commenter for their comment. However, the additional research suggested by the commenter is beyond the scope of the current CSA rule-making project for Regulation 25-102.