

Draft Regulation

Securities Act

(chapter V-1.1, s. 331.1, par. (9.2.1), (9.3), (9.5) and (9.6), and s. 333)

Regulation to amend Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators

Notice is hereby given by the Autorité des marchés financiers (the "AMF" or the "Authority") that, in accordance with sections 331.1 and 331.2 of the *Securities Act* (CQLR, chapter V-1.1), the following regulation (the "Draft Regulation"), the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Québec Minister of Finance for approval, with or without amendment, after 30 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation to amend Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators*

The text of the draft amendments to the following policy statement (the "Draft Policy Statement") is also published hereunder:

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

The text of the Draft Regulation and the Draft Policy Statement is also available under "Public consultations" on the AMF's website at www.lautorite.qc.ca.

Background

On April 29, 2021, the AMF published *Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* (CQLR, chapter V-1.1, r. 8.2) ("Regulation 25-102") and *Policy Statement to Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators* (the "Policy Statement").¹ The regulation and policy statement came into effect on July 13, 2021, and were amended on September 27, 2023.

Regulation 25-102 implemented a comprehensive regime for:

- the designation and regulation of benchmarks;
- the designation and regulation of persons that administer such benchmarks;
- the regulation of persons, if any, that contribute certain data that will be used to determine such designated benchmarks; and

¹ Regulation 25-102 and the Policy Statement are available on the AMF website at: <https://lautorite.qc.ca/en/professionals/regulations-and-obligations/securities/2-certain-capital-market-participants-21-101-a-25-101/25-102-designated-benchmarks-and-benchmark-administrators>.

- the regulation of certain users of designated benchmarks who are already regulated in some capacity under Canadian securities legislation.

Objective and description of proposed amendments

Through this Draft Regulation, the AMF is proposing to further amend Regulation 25-102 primarily to add provisions that set out the conditions and criteria based on which the AMF may designate a benchmark and those a designated benchmark must fulfill to be designated as one of the following in Québec:

- critical benchmark;
- regulated-data benchmark;
- interest rate benchmark; and
- commodity benchmark.

Currently, the Policy Statement provides detailed guidance regarding certain reasons that may be considered by a securities regulatory authority, at its discretion, in designating a benchmark and the factors on the basis of which staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark as one of the above.

The Draft Regulation proposes to replace, in Québec, the factors described in the Policy Statement, which are provided only as guidance, with formal requirements relating to the above benchmark categories—that is, the conditions and criteria that a designated benchmark must fulfill before the AMF may assign it to one (or more) of the benchmark categories and consequently make the designated benchmark and its administrator subject to the requirements applicable to the benchmark category concerned. Clearly specifying such criteria and conditions in Regulation 25-102 should provide more certainty and predictability to designated benchmark administrators, contributors and users by reducing the risk of discretionary interpretation of the criteria and conditions for assigning a benchmark to any of the benchmark categories indicated above. The criteria and conditions specific to each benchmark category are proposed in subsections (8.1) to (8.4) of section 1 of the Draft Regulation.

The Draft Regulation also proposes to circumscribe in Regulation 25-102, in Québec, the reasons why the AMF may exercise its discretionary authority to designate a benchmark. It should be recalled that the regime for the designation of benchmarks and benchmark administrators, as established in section 186.2.0.1. of the *Securities Act* and Regulation 25-102, is not a registration regime or recognition regime in that there is no requirement for benchmarks and their administrators to be designated by a securities regulatory authority in order to operate in a jurisdiction of Canada, including Québec. Establishing the reasons for designation in Regulation 25-102 should provide further certainty and predictability to designated benchmark administrators, contributors and users by reducing the risk of discretionary interpretation of the reasons for designating a benchmark. These reasons are proposed in subsection (8.5) of section 1 of the Draft Regulation.

The AMF also intends to make consequential amendments to the Policy Statement in order to specify that, in Québec, the above Policy Statement guidance has been replaced by the provisions of the Draft Regulation. These amendments are included in the Draft Policy Statement.

Request for Comments

Comments regarding the above may be made in writing by **June 25, 2024**, to the following:

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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Fax: 418-525-9512
E-mail: consultation-en-cours@lautorite.qc.ca

Unless otherwise noted, comments will be posted on the AMF's website at www.lautorite.qc.ca. Please do not include personal information directly in comments to be published and state on whose behalf you are making the submission.

Further information

Further information is available from:

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May 23, 2024