

**Nova Scotia Securities Commission**

**Amendments to  
Rule 25-102 *Designated Benchmarks and Benchmark Administrators*  
(the Rule Amendments)**

**-and-**

**Changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators*  
(the Policy Changes)**

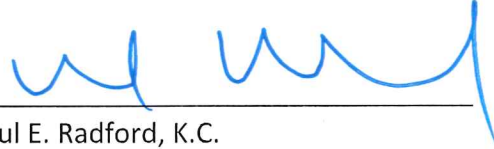
**WHEREAS:**

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements; and
3. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

**NOW THEREFORE the Commission hereby:**

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule Amendments as attached and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policy Changes as attached as a policy statement of the Commission; and
- (c) declares that the rule approved and made pursuant to clause (a) and the issuance of the policy statement pursuant to clause (b) shall both take effect on September 27, 2023 or on such other date as may be specified by the Minister, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

**IN WITNESS WHEREOF** this Instrument has been signed by the Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 28<sup>th</sup> day of June, 2023.

A handwritten signature in blue ink, consisting of a series of loops and a final vertical stroke, positioned above a horizontal line.

Paul E. Radford, K.C.  
Chair

Attachments

**AMENDMENTS TO  
RULE 25-102  
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS**

1. *Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators is amended by this Instrument.*

2. *Subsection 1(1) is amended*

(a) *by adding the following definitions:*

“designated commodity benchmark” means a benchmark that is

(a) determined by reference to or an assessment of an underlying interest that is a commodity other than a currency, and

(b) designated for the purposes of this Instrument as a “commodity benchmark” by a decision of the securities regulatory authority;

“front office” means any department, division or other internal grouping that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;

“front office employee” means any employee or agent that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor; *and*

(b) *in the definition of “subject requirements” by*

(i) *deleting “and” at the end of paragraph (d),*

(ii) *replacing “,” with “, and” at the end of paragraph (e), and*

(iii) *adding the following paragraph*

(f) paragraphs 40.13(1)(a) and (b);.

3. *Subsection 6(3) is amended*

(a) *by repealing paragraph (a) and substituting the following:*

(a) in the case of a benchmark

- (i) that is not a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8, and
- (ii) that is a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3;  
**and**

***(b) by repealing subparagraph (b)(ii) and substituting the following:***

- (ii) in the case of a benchmark that is not a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8,
- (ii.1) in the case of a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and.

***4. Subparagraph 13(2)(c)(v) is amended by replacing the lettering of clauses “(i)” and “(ii)” with “(A)” and “(B)”.***

***5. Section 15 is amended***

***(a) in subsection (4) by adding “, or front office employee,” after “from any front office”, and***

***(b) by repealing subsection (5).***

***6. Paragraph 39(3)(e) is amended by replacing “conflict of interest identification and management procedures and communication controls,” with “measures to identify and eliminate or manage conflicts of interest, including, for greater certainty, communications controls,”.***

***7. Section 40 is repealed and the following substituted:***

**Provisions of this Instrument not applicable in relation to designated regulated-data benchmarks**

**40.** The following provisions do not apply to a designated benchmark administrator or a benchmark contributor in relation to a designated regulated-data benchmark:

- (a) subsections 11(1) and (2);
- (b) subsection 14(2);
- (c) subsections 15(1), (2) and (3);
- (d) sections 23, 24 and 25;
- (e) paragraph 26(2)(a)..

**8.** *The following Part is added:*

**PART 8.1  
DESIGNATED COMMODITY BENCHMARKS**

**Provisions of this Instrument not applicable in relation to dual-designated benchmarks**

**40.1.(1)** Sections 30 to 33 do not apply to a designated benchmark administrator in relation to a benchmark that is

- (a) a designated commodity benchmark, and
- (b) a designated critical benchmark.

**(2)** This Part does not apply to a designated benchmark administrator in relation to a designated commodity benchmark if

- (a) the benchmark is a designated critical benchmark, and
- (b) the underlying interest of the benchmark is gold, silver, platinum or palladium.

**(3)** Subsection (4) applies to a designated benchmark administrator in relation to a designated commodity benchmark if all of the following apply:

- (a) the benchmark is determined from input data arising from transactions of the commodity that is the underlying interest of the benchmark;
- (b) the commodity is of a type in respect of which parties to the transactions referred to in paragraph (a), in the ordinary course of business, make or take physical delivery of the commodity;

- (c) the benchmark is a designated regulated-data benchmark.
- (4) The following provisions do not apply in the circumstances referred to in subsection (3):
  - (a) subsections 11(1) and (2);
  - (b) section 40.8;
  - (c) section 40.9, other than subparagraph (f)(ii);
  - (d) paragraph 40.11(2)(a);
  - (e) section 40.13.

**Provisions of this Instrument not applicable in relation to designated commodity benchmarks**

- 40.2.** The following provisions do not apply to a designated benchmark administrator, a benchmark contributor or any other person or company specified in the provisions in relation to a designated commodity benchmark:
- (a) Part 3, other than subsection 5(1) and sections 6, 11, 12 and 13;
  - (b) Part 4, other than section 17;
  - (c) sections 18 and 21;
  - (d) Part 6;
  - (e) Part 7.

**Control framework**

- 40.3.(1)** A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated commodity benchmark is provided in accordance with this Instrument.
- (2)** Without limiting the generality of subsection (1), with respect to the provision of a designated commodity benchmark, a designated benchmark administrator must ensure that its policies, procedures and controls address all of the following:
- (a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

- (b) business continuity and disaster recovery plans;
- (c) contingencies in the event of a disruption to the provision of the designated commodity benchmark or the process applied to provide the designated commodity benchmark.

### **Methodology**

**40.4.(1)** A designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless

- (a) the methodology is sufficient to provide a designated commodity benchmark that accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market that the benchmark is intended to represent, and
- (b) the accuracy and reliability of the designated commodity benchmark are verifiable.

**(2)** A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of the designated commodity benchmark, including, for greater certainty, all of the following:

- (a) all criteria and procedures used to determine the designated commodity benchmark, including the following, as applicable:
  - (i) how input data is used;
  - (ii) the reason that a reference unit is used;
  - (iii) how input data is obtained;
  - (iv) identification of how and when expert judgment may be exercised;
  - (v) any model, method, assumption, extrapolation or interpolation that is used for analysis of the input data;
- (b) the procedures reasonably designed to ensure that benchmark individuals exercise expert judgment in a consistent manner;
- (c) the relative importance assigned to the criteria used to determine the designated commodity benchmark, including, for greater certainty, the type of input data used and how and when expert judgment may be exercised;
- (d) any minimum requirement for the number of transactions or for the volume for each transaction used to determine the designated commodity

benchmark;

- (e) if the methodology of the designated commodity benchmark does not require a minimum number of transactions or minimum volume for each transaction used to determine the designated commodity benchmark, an explanation as to why a minimum number or volume is not required;
- (f) the procedures used to determine the designated commodity benchmark in circumstances in which the input data does not meet the minimum number of transactions or the minimum volume for each transaction required in the methodology of the designated commodity benchmark, including, for greater certainty,
  - (i) any alternative methods used to determine the designated commodity benchmark, including, for greater certainty, any theoretical estimation models, and
  - (ii) if no transaction data exists, procedures to be used in those circumstances;
- (g) the time period during which input data must be provided;
- (h) the means used to contribute the input data, whether electronically, by telephone or by other means;
- (i) the procedures used to determine the designated commodity benchmark if one or more benchmark contributors contribute input data that constitutes a significant proportion of the total input data for the determination of the designated commodity benchmark, including specifying what constitutes a significant proportion of the total input data for the determination of the benchmark;
- (j) the circumstances in which transaction data may be excluded in the determination of the designated commodity benchmark.

#### **Additional information about the methodology**

**40.5.** A designated benchmark administrator must, with respect to the methodology of a designated commodity benchmark, publish all of the following:

- (a) the rationale for adopting the methodology, including, for greater certainty,
  - (i) the rationale for any price adjustment techniques, and
  - (ii) a description of why the time period for the acceptance of input data is adequate for the input data to accurately and reliably represent the



value of the underlying interest of the designated commodity benchmark;

- (b) the process for the internal review and the approval of the methodology referred to in section 40.6 and the frequency of those reviews and approvals;
- (c) the process referred to in section 17 for making significant changes to the methodology.

#### **Review of methodology**

**40.6.** A designated benchmark administrator must, at least once every 12 months, carry out an internal review and approval of the methodology of each designated commodity benchmark that it administers to ensure that the designated benchmark administrator complies with subsection 40.4(1).

#### **Quality and integrity of the determination of a designated commodity benchmark**

**40.7.(1)** A designated benchmark administrator must specify, and document and publish a description of, the commodity that is the underlying interest of a designated commodity benchmark.

**(2)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the quality and integrity of each determination of a designated commodity benchmark, including for greater certainty, policies and procedures reasonably designed

- (a) to ensure that input data is used in accordance with the order of priority specified in the methodology of the designated commodity benchmark,
- (b) to identify transaction data that a reasonable person would conclude is anomalous or suspicious,
- (c) to ensure that the designated benchmark administrator maintains records of each decision, including the reasons for the decision, to exclude transaction data from the determination of the designated commodity benchmark,
- (d) so that a benchmark contributor is not discouraged from contributing all of its input data that meets the designated benchmark administrator's criteria for the determination of the designated commodity benchmark, and
- (e) to ensure that benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.

#### **Transparency of determination of a designated commodity benchmark**

**40.8.** A designated benchmark administrator must publish for each determination of a

designated commodity benchmark, as soon as reasonably practicable, all of the following:

- (a) an explanation of how the designated commodity benchmark was determined, including, for greater certainty, all of the following:
  - (i) the number of transactions and the volume for each transaction;
  - (ii) with respect to each type of input data
    - (A) the range of volumes and the average volume,
    - (B) the range of prices and the volume-weighted average price, and
    - (C) the approximate percentage of each type of input data to the total input data;
- (b) an explanation of how and when expert judgment was used in the determination of the designated commodity benchmark.

#### **Integrity of the process for contributing input data**

**40.9.** A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure the integrity of the process for contributing input data for a designated commodity benchmark, including, for greater certainty, all of the following:

- (a) criteria for determining who may contribute input data;
- (b) procedures to verify the identity of a benchmark contributor and a contributing individual and the authorization of the contributing individuals to contribute input data on behalf of the benchmark contributor;
- (c) criteria for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;
- (d) criteria for determining the appropriate contribution of transaction data by the benchmark contributor;
- (e) if transaction data is contributed from any front office, or front office employee, of a benchmark contributor, or of an affiliated entity of a benchmark contributor, procedures to confirm the reliability of the input data, and the criteria upon which the reliability is measured, in accordance with its policies;
- (f) procedures to

- (i) identify any communications between contributing individuals and benchmark individuals that might involve manipulation or attempted manipulation of the determination of the designated commodity benchmark for the benefit of any trading position of the benchmark contributor, any contributing individual or third party,
- (ii) identify any attempts to cause a benchmark individual not to apply or follow the designated benchmark administrator's policies, procedures and controls,
- (iii) identify benchmark contributors or contributing individuals that engage in a pattern of contributing transaction data that a reasonable person would consider is anomalous or suspicious, and
- (iv) ensure that the appropriate supervisors within the benchmark contributor are notified, to the extent possible, of questions or concerns by the designated benchmark administrator.

#### **Governance and control requirements**

**40.10.(1)** A designated benchmark administrator must establish and document its organizational structure in relation to the provision of a designated commodity benchmark.

- (2)** The organizational structure referred to in subsection (1) must establish well-defined roles and responsibilities for each person or company involved in the provision of the designated commodity benchmark, and include, if applicable, segregated reporting lines, to ensure that the designated benchmark administrator complies with the provisions of this Instrument.
- (3)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the integrity and reliability of the determination of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to ensure
  - (a) that each of its benchmark individuals has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual,
  - (b) that the provision of the designated commodity benchmark can be made on a consistent and regular basis,
  - (c) that succession plans exist to ensure the designated benchmark administrator follows the policies and procedures described in paragraphs (a) and (b) on an ongoing basis,
  - (d) that each of its benchmark individuals is subject to management and

supervision to ensure that the methodology of the designated commodity benchmark is properly applied, and

- (e) that the approval of an individual holding a position senior to that of a benchmark individual is obtained before each publication of the designated commodity benchmark.

#### **Books, records and other documents**

**40.11.(1)** A designated benchmark administrator must keep the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated commodity benchmarks.

**(2)** A designated benchmark administrator must keep books, records and other documents of all of the following:

- (a) all input data, including how the data was used;
- (b) each decision to exclude a particular transaction from input data that otherwise met the requirements of the methodology applicable to the determination of a designated commodity benchmark, and the rationale for doing so;
- (c) the methodology of each designated commodity benchmark administered by the designated benchmark administrator;
- (d) any exercise of expert judgment by the designated benchmark administrator in the determination of the designated commodity benchmark, including the basis for the exercise of expert judgment;
- (e) changes in or deviations from policies, procedures, controls or methodologies;
- (f) the identities of contributing individuals and of benchmark individuals;
- (g) all documents relating to a complaint.

**(3)** A designated benchmark administrator must keep the records referred to in subsection (2) in a form that

- (a) identifies the manner in which the determination of a designated commodity benchmark was made, and
- (b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited

assurance report on compliance or reasonable assurance report on compliance.

- (4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section
- (a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,
  - (b) in a safe location and a durable form, and
  - (c) in a manner that permits those books, records and other documents to be provided promptly on request to the regulator or securities regulatory authority.

#### **Conflicts of interest**

**40.12.(1)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

- (a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,
- (b) ensure that expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised,
- (c) protect the integrity and independence of the provision of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to
  - (i) ensure that the provision of a designated commodity benchmark is not influenced by the existence of, or potential for, financial interests, relationships or business connections between the designated benchmark administrator or its affiliates, its personnel, clients and any market participant or persons connected with them,
  - (ii) ensure that each of its benchmark individuals does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator, including, for greater certainty, outside employment, travel and acceptance of entertainment, gifts and hospitality provided by the designated benchmark administrator's clients or other commodity market participants,

- (iii) keep separate, operationally, the business of the designated benchmark administrator relating to the designated commodity benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated commodity benchmark, and
    - (iv) ensure that each of its benchmark individuals does not contribute to a determination of a designated commodity benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator,
  - (d) ensure that an officer referred to in section 6, or any DBA individual who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affects the integrity of the benchmark determination,
  - (e) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under sections 19, 20, 40.4, 40.5 and 40.8, and
  - (f) identify and eliminate or manage conflicts of interest that exist between the provision of a designated commodity benchmark by the designated benchmark administrator, including all benchmark individuals who participate in the determination of the designated commodity benchmark, and any other business of the designated benchmark administrator.
- (2) A designated benchmark administrator must ensure that its other businesses have appropriate policies, procedures and controls designed to minimize the likelihood that a conflict of interest will adversely affect the integrity of the provision of a designated commodity benchmark.
  - (3) In establishing an organizational structure, as required under subsections 40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities of each person or company involved in the provision of a designated commodity benchmark administered by the designated benchmark administrator do not cause a conflict of interest or a potential conflict of interest.
  - (4) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated commodity benchmark
    - (a) if a reasonable person would consider the risk of harm to any person or

company arising from the conflict of interest, or the potential conflict of interest, is significant, and

- (b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.
- (5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in paragraph (1)(e), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

**Assurance report on designated benchmark administrator**

**40.13.(1)** A designated benchmark administrator must engage a public accountant to provide a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated commodity benchmark it administers, regarding the designated benchmark administrator's

- (a) compliance with subsection 5(1) and sections 11 to 13, 40.3, 40.4, 40.6, 40.7, and 40.9 to 40.12, and
  - (b) following of the methodology applicable to the designated commodity benchmark.
- (2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once every 12 months.
- (3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish the report and deliver a copy of the report to the regulator or securities regulatory authority..

9. (1) This Instrument comes into force on September 27, 2023.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 27, 2023, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

**CHANGES TO  
COMPANION POLICY 25-102  
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS**

1. *Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators is changed by this Document.*
2. *Part 1 is changed*

*(a) in the first bullet of the second paragraph under the subheading of “Designation of Benchmarks and Benchmark Administrators” by adding “or commodity” after “financial”,*

*(b) in the third paragraph under the subheading of “Designation of Benchmarks and Benchmark Administrators” by adding “regardless of who applies for the designation,” after “Furthermore,”,*

*(c) by adding after the second paragraph under the subheading of “Categories of Designation” the following paragraph*

Designated commodity benchmarks, benchmarks dually designated as commodity and regulated-data benchmarks or dually designated as commodity and critical benchmarks are subject to the requirements as specified under Part 8.1 of the Instrument.,

*(d) in the second sentence of the third paragraph under the subheading of “Categories of Designation” by*

*(i) replacing “or” with “,” before “a designated regulated-data benchmark”, and*

*(ii) adding “or a designated commodity benchmark” before the period,*

*(e) in the bullets of the third paragraph under the subheading of “Categories of Designation”*

*(i) by deleting “and” in the first bullet,*

*(ii) by replacing “.” with “, but not if it is a commodity benchmark,” in the second bullet, and*

*(iii) by adding after the second bullet the following two bullets:*

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



*(f) in the fourth paragraph under the subheading of “Categories of Designation” by*

*(i) replacing “ or” with “,” before “a regulated-data benchmark”, and*

*(ii) adding “or a commodity benchmark” before the period,*

*(g) by adding the following under the heading “Definitions and Interpretation”*

**Subsection 1(1) – Definition of designated commodity benchmark**

The Instrument defines a “designated commodity benchmark” to ensure, to the extent possible, a consistent interpretation of this term across the various CSA jurisdictions, despite possible differences in statutory definitions of “commodity”. The definition specifically excludes a benchmark that has, as an underlying interest, a currency.

By “commodity benchmark”, we generally mean a benchmark based on a commodity with a finite supply that can be delivered either in physical form or by delivery of the instrument evidencing ownership of the commodity. We consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark based on these intangible commodities as a “commodity benchmark” for the purposes of the Instrument.

**Subsection 1(1) – Definitions of front office and front office employee in relation to a benchmark contributor**

“Front office” is used in the context of a benchmark contributor, or of an affiliated entity of a benchmark contributor, and means any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of the benchmark contributor or the affiliated entity of the benchmark contributor. “Front office employee” is used in the same context and means any employee or agent of a benchmark contributor, or of an affiliated entity of a benchmark contributor, who performs any of those functions. In general, we consider front office employees to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.,

*(h) by adding the following at the end of the first paragraph under the heading of “Subsection 1(1) – Definition of designated critical benchmark”*

However, if a designated commodity benchmark is also designated as a critical benchmark, then subsections 40.1(1) and (2) of the Instrument will specify the requirements applicable to such a benchmark.,

- (i) *in the first sentence of the second paragraph under the heading of “Subsection 1(1) – Definition of designated critical benchmark” by adding “or commodity” before “markets”, and*
- (j) *by adding the following at the end of the first paragraph under the heading of “Subsection 1(1) – Definition of designated regulated-data benchmark”*

However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections 40.1(3) and (4) of the Instrument will specify the requirements applicable to such a benchmark..

3. ***Part 4 Input Data and Methodology is changed***

- (a) *by adding “or front office employee” after “from front office” in the subheading of “Subsection 15(4) – Verification of input data from front office of a benchmark contributor”,*
- (b) *by adding “or front office employee” after “from any front office” in the first paragraph under the subheading “Subsection 15(4) – Verification of input data from front office or front office employee of a benchmark contributor”, and*
- (c) *by deleting the following*

**Subsection 15(5) – Front office of a benchmark contributor**

Subsection 15(5) of the Instrument provides that “front office” of a benchmark contributor or an applicable affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliated entity..

4. ***The Companion Policy is changed by adding the following part***

**PART 8.1  
DESIGNATED COMMODITY BENCHMARKS**

**Publication of information**

Under Part 8.1, there are several provisions that require a designated benchmark administrator to publish information relating to a designated commodity benchmark, including:

- subsection 40.4(2) - the elements of the methodology of the designated commodity benchmark;

- section 40.5 - the rationale for adopting the methodology, the process for internal review and approval of the methodology, and the process for making significant changes to the methodology;
- subsection 40.7(1) - a description of the commodity that is the underlying interest of the designated commodity benchmark;
- section 40.8 - an explanation of each determination of the designated commodity benchmark;
- subsection 40.12(4) - a description of a conflict of interest, or a potential conflict of interest, in respect of the designated commodity benchmark; and
- section 40.13 - the publication of a limited assurance report or a reasonable assurance report.

For the purposes of Part 8.1, we generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification in these contexts. However, we recognize that a news release generally will not be necessary for the explanation of each determination of a designated commodity benchmark required under section 40.8. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of publication by email.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the applicable information on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

#### **Subsections 40.1(1) and (2) – Dual designation as a commodity benchmark and a critical benchmark**

A designated commodity benchmark may also be designated as a critical benchmark and, in such case, would still be subject to the requirements under Part 8.1. As there are no specific requirements under Part 8.1 for benchmark contributors, such dually-designated benchmarks would not be subject to the requirements under sections 30 to 33 of the Instrument.

If the underlying commodity is gold, silver, platinum or palladium, then rather than being subject to the requirements under Part 8.1, the requirements under Parts 1 to 8 would apply.

#### **Subsections 40.1(3) and (4) – Dual designation as a commodity benchmark and a regulated-data benchmark**

If a commodity benchmark is designated as a regulated-data benchmark, then it is not subject to Part 8.1, rather the requirements under Parts 1 to 8 would apply. However, some commodity benchmarks may be determined from transactions where the parties, in the ordinary course of business, make or take physical delivery of the commodity, and those same commodity benchmarks may also meet the requirements for regulated-data

benchmarks. Generally, these transactions would also be arm's length transactions. Regulated-data benchmarks determined from such transactions would more closely resemble commodity benchmarks, rather than financial benchmarks, and they would be dually designated as commodity and regulated-data benchmarks. Benchmark administrators of such dually-designated benchmarks would be subject to the requirements under Part 8.1.

However, as provided by subsection 40.1(4), such benchmark administrators would be exempted from certain policy and control requirements relating to the process of contributing input data, from the requirement to publish certain explanations for each determination of the benchmark, and from the requirement for an assurance report. The exemptions under subsection 40.1(4) are meant to ensure that administrators of benchmarks dually designated as commodity and regulated-data benchmarks receive comparable treatment under Part 8.1 as administrators of designated regulated-data benchmarks under Parts 1 to 8.

Given the interpretation provided by paragraph 1(3)(a) of the Instrument as to when input data is considered to have been "contributed", as described earlier in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed, would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-data benchmark. Examples include the requirements in paragraphs 40.4(2)(g), (h) and (i), paragraphs 40.7(2)(d) and (e) and section 40.9.

For clarity, we would not designate a regulated-data benchmark that is also a commodity benchmark, whether dually designated as such or only as a regulated-data benchmark, as a critical benchmark.

## **Section 40.2 – Non-application to designated commodity benchmarks**

Physical commodity markets have unique characteristics which have been taken into account in determining which requirements should be imposed on designated benchmark administrators in respect of designated commodity benchmarks. Consequently, section 40.2 includes a number of exemptions from certain requirements for such benchmark administrators, either because some are not suitable or because more appropriate substituted requirements are provided under Part 8.1 of the Instrument. Requirements that are relevant to designated benchmark administrators of designated commodity benchmarks have been excepted from the exemptions in section 40.2, and include, among others, the requirements for:

- policies and procedures as set out in subsection 5(1),
- a compliance officer as set out in section 6,
- reporting on contraventions in section 11,
- policies and procedures regarding complaints, as set out in section 12,
- outsourcing under section 13,
- the publishing of a benchmark statement under section 19, and

- providing notice of changes to and cessation of a benchmark, as provided under section 20.

In addition to the guidance provided in this Policy with respect to paragraph 12(2)(c), we expect disputes as to pricing determinations that are not formal complaints to be resolved by the designated benchmark administrator of a commodity benchmark with reference to its appropriate standard procedures. In general, we would expect that if a complaint results in a change in price, whether the complaint is formal or informal, then the details of that change in price will be communicated to stakeholders as soon as possible.

With respect to section 13, for the purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Paragraph 19(1)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market the designated benchmark is intended to represent. This relates to the benchmark's purpose. A commodity benchmark may be intended to reflect the characteristics and operations of the referenced underlying physical commodity market and may be used as a reference price for a commodity and for commodity derivative contracts.

#### **Section 40.4 – Methodology to ensure the accuracy and reliability of a designated commodity benchmark**

We expect that the methodology established and used by a designated benchmark administrator will be based on the applicable characteristics of the relevant underlying interest of the designated commodity benchmark for that part of the market that the designated commodity benchmark is intended to represent, such as the grade and quality of the commodity, its geographical location, seasonality, etc., and will be sufficient to provide an accurate and reliable benchmark. For example, the methodology for a crude oil benchmark should reflect the following, but not be limited to, the specific crude grade (e.g., sweet or heavy), the location (e.g., Edmonton or Hardisty), the time period within which transactions are concluded during the trading day, and the month of delivery.

We further expect that, where consistent with the methodology of the designated commodity benchmark, priority will be given to input data in the order of priority set out below:

- (a) concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;
- (b) if the input data referred to in paragraph (a) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, bids and offers in the market described in paragraph (a);

- (c) if the input data referred to in paragraphs (a) and (b) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, any other information relating to the market described in paragraph (a) that is used to determine the designated commodity benchmark; and
- (d) in any other case, expert judgments.

**Subparagraph 40.4(2)(a)(ii) – Specific reference unit used in the methodology**

The specific reference unit used in the methodology will vary depending on the underlying commodity. Examples of possible reference units include barrels of oil or cubic meters (m<sup>3</sup>) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

**Paragraph 40.4(2)(c) – Relative importance assigned to each criterion used in the determination of a designated commodity benchmark**

The requirement in paragraph 40.4(2)(c) regarding the relative importance assigned to each criterion, including the type of input data used and how and when expert judgment may be exercised, is not intended to restrict the specific application of the relevant methodology, but to ensure the quality and integrity of the determination of the designated commodity benchmark.

**Paragraph 40.4(2)(j) – Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark**

Where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, we expect that a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. This is not intended to reduce or restrict a benchmark administrator's flexibility to determine the methodology or to determine whether certain input data is consistent with that methodology. Rather, it is intended to clarify that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

We consider "concluded transactions" to mean transactions that are executed but not necessarily settled.

**Section 40.6 – Review of methodology**

We expect that a designated benchmark administrator will determine the appropriate frequency for carrying out an internal review of a designated commodity benchmark's methodology based on the specific nature of the benchmark (such as the complexity, use and vulnerability of the benchmark to manipulation) and the applicable characteristics of

the part of the market (or changes thereto) that the benchmark is intended to represent. In any event, the administrator must review the methodology at least once every 12 months.

**Paragraph 40.7(2)(a) – Quality and integrity of the determination of a designated commodity benchmark**

While we recognize a benchmark administrator's flexibility to determine its own methodology and use of market data, we expect an administrator to use input data in accordance with the order of priority specified in its methodology.

Furthermore, we expect that the designated benchmark administrator will employ measures reasonably designed to ensure that input data contributed and considered in the determination of a designated commodity benchmark is *bona fide*. By *bona fide* we mean that parties contributing the input data have executed or are prepared to execute transactions generating such input data and that executed transactions were concluded between parties at arm's length. If the latter is not the case, then particular attention should be paid to transactions between affiliated entities and consideration given as to whether this affects the quality of the input data to any extent.

**Section 40.8 – Transparency of determination of a designated commodity benchmark**

We expect that, in providing an explanation of the extent to which, and the basis upon which, expert judgment was used in the determination of a designated commodity benchmark, a designated benchmark administrator will address the following:

- (a) the extent to which a determination is based on transactions or spreads, and interpolation or extrapolation of input data;
- (b) whether greater priority was given to bids and offers or other market data than to concluded transactions, and, if so, the reason why;
- (c) whether transaction data was excluded, and, if so, the reason why.

Section 40.8 requires a designated benchmark administrator to publish the specified explanations for each determination of a designated commodity benchmark. However, we recognize that, to the extent that there have been no significant changes, a standard explanation may be acceptable, and any exceptions in the explanation must then be noted for each determination. We generally expect that the specified explanations will be provided contemporaneously with the determination of a benchmark, but recognize that unforeseen circumstances may cause delays, in which case, we still expect that explanation to be published as soon as reasonably practicable.

**Section 40.9 – Policies, procedures, controls and criteria of the designated benchmark administrator to ensure the integrity of the process of contributing input data**

There are no specific requirements under Part 8.1 for benchmark contributors with respect to commodity benchmarks, as under Part 6 for financial benchmarks, nor, consequently, obligations on designated benchmark administrators to ensure that the benchmark contributors adhere to such requirements. However, section 40.9 does require an administrator to ensure the integrity of the process for contributing input data. We are of the view that such policies, procedures, controls and criteria will promote the accuracy and integrity of the determination of the commodity benchmark.

**Paragraph 40.9(d) – Criteria relating to the contribution of transaction data**

In establishing criteria that determine the appropriate contribution of transaction data by benchmark contributors, we would expect that the criteria would include encouraging benchmark contributors to contribute transaction data from the back office of the benchmark contributor. We consider the back office of a benchmark contributor to be any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any administrative and support functions, including, as applicable, settlements, clearances, regulatory compliance, maintaining of records, accounting and information technology services on behalf of the benchmark contributor or of the affiliated entity of the benchmark contributor. In general, we consider the back office of a benchmark contributor, or of an affiliated entity of a benchmark contributor, to be comprised of employees or agents who support the generation of revenue for the benchmark contributor or the affiliated entity.

**Subsection 40.10(3) – Governance and control requirements**

To foster confidence in the integrity of a designated commodity benchmark, we are of the view that benchmark individuals involved in the determination of a commodity benchmark should be subject to the minimum controls set out in subsection 40.10(3). A designated benchmark administrator must decide how to implement its own specific measures to achieve the objectives set out in paragraphs (a) to (e).

**Section 40.11 – Books, records and other documents**

Subsection 40.11(2) sets out the minimum records that must be kept by a designated benchmark administrator. We expect an administrator to consider the nature of its benchmarks-related activity when determining the records that it must keep.

In addition to the record keeping requirements in the Instrument, securities legislation generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with securities law of the jurisdiction.



#### **Section 40.12 – Conflicts of interest**

We expect the policies and procedures required under subsection 40.12(1) for identifying and eliminating or managing conflicts of interest to provide the parameters for a designated benchmark administrator to

- identify conflicts of interest,
- determine the level of risk, to both the benchmark administrator and users of its designated commodity benchmarks, that a conflict of interest raises, and
- respond to a conflict of interest by eliminating or managing the conflict of interest, as appropriate, given the level of risk that it raises.

In establishing an organizational structure, as required under subsections 40.10(1) and (2), that addresses the conflict of interest requirements under subsection 40.12(3), the designated benchmark administrator should ensure that persons responsible for the determination of the designated commodity benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities of the administrator.

#### **Section 40.13 - Assurance report on designated benchmark administrator**

Under Part 8.1, there is no requirement for an oversight committee, as provided by section 7. Therefore, for purposes of section 40.13, there is no oversight committee to specify whether a limited assurance report on compliance or a reasonable assurance report on compliance needs to be provided by a public accountant. We would expect the designated benchmark administrator to determine which report is appropriate, based on the specific nature of the designated commodity benchmark, including the complexity, use and vulnerability of the benchmark to manipulation, and the applicable characteristics of the market that the benchmark is intended to represent, or other relevant factors regarding the administration of the benchmark..

5. These changes become effective on September 27, 2023.