

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



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

26 July 2021

Ref: **CSA Proposed Amendments to Multilateral Instrument 25-102, Designated Benchmarks and Benchmark Administrators, and Changes to Companion Policy 25-102, Designated Benchmarks and Benchmark Administrators**

A. INTRODUCTION

Fastmarkets is grateful for the opportunity to comment on the Canadian Securities Administrators (CSA)'s proposed amendments, which incorporate provisions for a Canadian regulatory regime for commodity benchmarks and their administrators. We hope that our submission will be helpful to the Authorities.

Fastmarkets is an independent media company and Price Reporting Agency (PRA) with over 130 years of specialist commodity news, analysis, events and price reporting expertise. Since 1882, we have worked with those involved in the buying, selling and trading of commodities to deliver market-reflective prices and insights. In October 2018, we have rebranded to unify our news and pricing businesses (Metal Bulletin, American Metal Markets, Fastmarkets, Industrial Minerals, RISI, FOEX, Random Length, etc) under the umbrella name of Fastmarkets.

Although Fastmarkets does not have a physical presence in Canada – its parent company Euromoney Institutional Investor plc does – some of its price assessments are Canada-based including some wood panel and pulp prices.

Our global editorial team of over 160 price reporters publish news reports, analysis and over 5,000 proprietary prices, which are used as reference or benchmark in physical trades, inventory valuation and financial derivatives contracts. A small number of Fastmarkets prices are used for settlement by global exchanges in cash-settled contracts but none of our benchmarks are critical or even significant in value terms.

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



Our pricing activities are backed by transparent methodologies (www.Fastmarkets.com/methodology) and robust governance and pricing processes. Fastmarkets applies IOSCO's Oil PRA Principles to all its price assessments. The few price assessments that are used as benchmarks as well as the key prices that are used as reference in physical contracts, are externally audited each year for compliance with these Principles.

Fastmarkets operates in a competitive marketplace in all markets it covers (agriculture, metals & mining, forest products), which is an additional safeguard that underpins the quality of PRA benchmarks.

B. SHORT SUMMARY OF FASTMARKETS' KEY POINTS:

We ask the Authorities to always keep in mind, when assessing the appropriateness of their proposals for commodity benchmarks, that the Regulation's defined term "benchmark individual" in Section 1.(1) will, in the cases of Fastmarkets and other PRAs, apply to their journalists who produce PRA price assessments as well as the market commentaries, news and other information. This is a very different world to financial benchmarks.

Moreover, Fastmarkets does not have a separate dedicated team of "benchmark individuals" who focus exclusively - or even primarily - on the provision of benchmarks. All journalists can be expected at various times to participate in the provision of benchmarks.

This means that the governance and other requirements that the Authorities are proposing adding from the regime for administrators of financial benchmarks, could cover Fastmarkets' entire editorial operation.

This would be unprecedented.

Our main points are:

- We are concerned about the proportionality of a number of the Authorities' proposals and commend to them IOSCO's guidance for regulators in its opening "*Summary of the Principles*":

"...the application and implementation of the Principles should be proportional to the size and risks posed by each Benchmark and/or Administrator and the Benchmark setting process".¹

¹ Although included in the Summary to IOSCO's Principles for Financial Benchmarks [page 9] this is of general application.

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



In particular, the additional requirements listed in Question 2, which are not present in the IOSCO PRA Principles or EU's Benchmark Regulation, are in our view disproportionate and not *"appropriate in the context of commodity benchmarks"*;

- We suggest the Authorities offer administrators of commodity benchmarks the option of an assurance report based on compliance with IOSCO's PRA Principles, as an alternative to the proposed assurance report based on compliance with the Canadian regime;
- We support the Authorities' proposal to offer a voluntary designation option for administrators of commodity benchmarks but suggest that this option could extend to other third country jurisdictions and not, as is proposed, limited only to the EU;
- Our strong preference is for the text of the Regulation, as it relates to commodity benchmarks, to align as closely as possible to the text of IOSCO's PRA Principles, as the EU's Annex II for commodity benchmarks has done. Regulators and markets participants have a good understanding of the PRA Principles and their implementation by the PRAs. We query whether the frequent minor variations from the IOSCO text are necessary. A "plainer vanilla" regulatory underpinning of IOSCO's PRA Principles, aligning closely to its text, could lend greater credibility and international recognition to a Canadian commodities benchmark regime.

In summary, we respectfully request the CSAs to reconsider its proposals and to bring them into alignment with IOSCO's PRA Principles.

C. RESPONSES TO CONSULTATION QUESTIONS

Question 1: Interpretation: Definition of "benchmark"

We suggest that the definition of benchmark in Section 40.1 be narrowed to apply only to price assessments that are linked to derivatives contracts. As now drafted, the definition would apply to price assessments that are used for non-trading purposes, which could create uncertainties for many users of price assessments.

The Authorities could consider adopting the definition of "benchmark" used in the EU's BMR.

Question 2: Adding in Requirements from the Financial Benchmarks Regime:

The Authorities propose applying to commodity benchmark administrators several requirements that are taken from the regulatory regime for financial benchmarks. Question 2 asks whether this is "appropriate": We do not believe that this is appropriate and consider it would cause damage to commodity benchmarks if confirmed.

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



The Authorities are not the first to have considered applying financial benchmark requirements to administrators of commodity benchmarks. This was reviewed during the workstream on IOSCO's Financial Benchmarks, which concluded at page 6 in its Final Report published in July 2013 that the regimes should be kept separate. The point was considered again in IOSCO's "Report on the Implementation of the Principles for Price Reporting Agencies" published in September 2014. The conclusion on page 16 was emphatic

"IOSCO does not believe that further alignment of PRA Principles with those for Financial Benchmarks is justified"

In the same report IOSCO recorded that:

"the majority of stakeholders held the view that attempts to extend the financial Benchmark Principles...would be disruptive" ².

The EU Benchmark workstream also reviewed the scope for further alignment, before concluding, as IOSCO had done, that this was not appropriate.

We now consider each of the proposed additions from the Financial Benchmarks regime:

Section 11 Requirements to report contraventions

This section would require a PRA to report to the regulator any

"conduct by.... a benchmark contributor that might involve the following:

- (a) Manipulation or attempted manipulation of a designated benchmark;*
- (b) Provision or attempted provision of false or misleading information in respect of a designated benchmark."*

We strongly oppose this proposal and commend to the Authorities the approach set out in Section 2.4(d) of IOSCO's PRA Principles, which has been applied by the EU. The approach requires the PRA to escalate any suspicions of abuse within the contributor's company, and not to the regulator.

Our reasons are

- **the approach is disproportionate:** Price contributions can often appear anomalous, but this does not signify abuse. There can be entirely legitimate reasons. Placing a PRA under an obligation to report to the Authorities any conduct by a contributor that "might" be abusive is excessive;
- **it would discourage contributions.** As IOSCO reminded us in the Introduction to the PRA Principles:

² Page 12;

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



“It is important to understand these principles recognize that there is no requirement on any physical oil market participant to submit transaction data to PRAs”

IOSCO’s 2014 Implementation Report added ³:

“The PRAs and stakeholders are conscious of increasing risks around the quality and quantity of submitted data used in price assessments. Consequently, IOSCO has concluded that this is a particularly important development to analyse, given thethe potential for data submitters to regard submission to PRAs as representing a significant regulatory risk”

During the IOSCO PRA workstream, a number of warnings were made about the risk that regulatory intervention could discourage the voluntary contributions to PRA benchmarks, leading in turn to less reliable benchmarks. This was why neither IOSCO’s PRA Principles nor the EU’s Benchmark Regulation impose obligations on contributors to commodity benchmarks.

Requiring PRAs to report to the Authorities any anomalous contributions would have precisely these negative consequences. Contributors would be unwilling to incur avoidable additional regulatory risk. Their contributions would dry up.

The dangers inherent in the Authorities’ proposed approach were well summarized by Ofgem, the UK energy regulator:

“Some types of regulation may introduce risks to the process. In particular, greater regulatory scrutiny of the information flows could introduce a perception of risk (irrespective of whether the risk is real) to those providing the information. Regulation should increase the quality of the information provided, but could reduce the willingness of parties to provide it. Information is provided on a voluntary basis and the simplest way to mitigate this risk may be to withdraw cooperation and decline to provide it. This in turn can lead to a breakdown in the quality of the price assessment process, with negative consequences for the market and for consumers.”⁴

We cannot overstate the efforts that PRAs have to make to encourage contributors to provide price information, which many contributors regard as an unrewarded chore. We ask the Authorities not to make that task harder still.

- **the requirement would be inconsistent with the important legal safeguards under Canadian and international law that protect contacts between journalists and their sources.**

PRAs are editorial entities staffed by journalists. It is not the role of journalists to report their sources to the Authorities, or to have to configure their editorial systems and controls to facilitate this as the Authorities suggest in Annex D

³ Page 15;

⁴ “Pricing benchmarks in gas and electricity markets-a call for evidence” 2013 p 13

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



“we expect the benchmark administrator’s systems and controls would enable the designated benchmark administrator to provide all relevant information to the regulator or securities regulatory authority”.

We ask the Authorities to uphold these safeguards for journalists, which are essential to their vital role in bringing transparency to commodity markets.

For the above reasons, we request the Authorities to follow the approach recommended by IOSCO and adopted by the EU.

Section 40 (4) Control Framework

We do not believe it appropriate to apply these aspects, also taken from the regime for financial benchmarks.

As with the Authorities’ proposed reporting obligations, these requirements have no place in either IOSCO’s PRA Principles or the EU’s Benchmark Regulation’s Annex II regime for administrators of commodity benchmarks.

- **they are unnecessary and disproportionate:**

In its “Second Implementation Review of the PRA Principles” published in September 2015, IOSCO concluded at page 12:

“Based on the totality of inputs considered, and in particular the external assurance reviews conducted under the higher reasonable standard, IOSCO concludes that the PRAs have made the PRA Principles an integral part of their management policies and operational practices”;

In the context of the requirements in Section 40.4(1), the Authorities should be able to rely on PRAs implementing all the necessary controls since, at the end of the day, this will be scrutinized in the annual assurance report.

In relation to the requirements set out in Section 40(4)(2), the Authorities should again be able to rely on PRAs implementing whatever controls and procedures are necessary and proportionate, keeping in mind that their benchmark activities:

- take place in a competitive benchmark market characterized by product substitutability from competing suppliers;
- Do not pose systemic risks; and
- represent a small percentage of a PRA’s overall activities and business income.

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



- **The Authorities should not interfere in the governance of media companies**

With respect, it is not appropriate for financial regulators to seek to impose control frameworks on media companies

Section 40.11 Governance and Control Requirements

Once again, we ask the Authorities always to keep in mind, when assessing the appropriateness of their proposals for commodity benchmarks, and especially in the context of this particular Section, that the Regulation's defined term "*benchmark individual*" in Section 1(1) means for Fastmarkets and other PRAs the journalists who produce PRA price assessments. Every reference to a "*benchmark individual*" in Section 40.11(3) is a reference to a journalist.

With regards to Sections 40.11 (1) and (2), we respectfully ask the Authorities not to intervene in the organizational structures of what are editorial operations. We invite them to leave this to the PRAs who have extensive experience in producing editorially-based services. Fastmarkets' journalists operate according to a Code of Conduct that sets rigorous standards appropriate for an editorial operation. The Code of Conduct, which is reviewed and updated as necessary, is underpinned by a continuous program of training. The Code is published [here](#).

With regards to the provisions in Section 40(11)(3), these are intended to mirror Sections 2.5-2.8 of IOSCO's PRA Principles and are therefore, in principle, appropriate. However, as is so often the case, the Authorities have redrafted these provisions to align them more closely to the language used for financial benchmarks. Our preference is to retain IOSCO's language as the EU's Benchmark Regulation has done in Annex II. IOSCO's text was carefully crafted to take account of the particular characteristics of PRAs and their price assessment activities.

Question 3: Dual Designation as a Commodity Benchmark and a Critical Benchmark

We have no comments on this Question. None of Fastmarkets' benchmarks are "critical".

Question 4: Dual Designation as a Commodity Benchmark and a Regulated Data Benchmark

We have no comments.

Questions 5 and 6: Input Data

Fastmarkets respectfully suggests that the CSAs simply follow the approach of IOSCO's PRA Principles (especially Principle 2.2) and the EU BMR, and queries whether the variations from the IOSCO text are necessary.

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



Question 7: Methodology

Fastmarkets respectfully suggests that the CSAs simply follow the approach of IOSCO's PRA Principles and queries whether the variations from the IOSCO text are necessary.

Question 8: Conflicts of Interest

We do not believe that it is appropriate to amend the conflict-of-interest provisions in IOSCO's PRA Principles to align them more closely with the regime for financial benchmarks. The PRA editorial model is not susceptible to conflicts of interest as financial benchmarks often are. Moreover, PRAs have no financial interest in whether market prices rise or fall, as their service revenues are subscription-based.

As Ofgem, the UK energy regulator has commented:

*"PRAs sell services to subscribers in a competitive environment and may be deemed to have a strong commercial incentive ensure that their customers retain confidence in their products."*⁵

We also return to IOSCO's guidance referred to earlier in this response:

"...the application and implementation of the Principles should be proportional to the size and risks posed by each Benchmark and/or Administrator and the Benchmark setting process"

We request the Authorities to implement the proportionate approach taken in IOSCO's PRA Principles, as the EU BMR has done in Annex II. It works well and there is no reason to amend it.

Question 9: Assurance Report on Designated Benchmark Administrator

As we suggested in our opening summary, we suggest the Authorities offer administrators of commodity benchmarks the option of an assurance report based on compliance with IOSCO's PRA Principles, as an alternative to an assurance report based on compliance with the Canadian regime. This is because the expectation among trading venues and other market participants internationally is that PRAs will be audited against IOSCO's PRA Principles.

The European Securities and Markets Authority (ESMA) has clarified that it will accept this option as an alternative to an assurance report based on the EU's Benchmark Regulation.

Regarding the query raised by the Authorities on the differences between the frequency of assurance reports for administrators of commodity and interest rate benchmarks, we agree that seems anomalous that PRA benchmark administrators should be audited more frequently. However, this is what the markets have come to expect and we doubt it can be changed.

⁵ "Pricing Benchmarks in gas and electricity markets-a call for evidence" June 2013 page 15.

Fastmarkets

8 Bouverie Street +44 (0)20 7827 9977
London
United Kingdom fastmarkets.com
EC4Y 8AX



Question 10: Concentration Risk

We do not believe there is any need for additional requirements to Part 8.1.

As Ofgem made clear in the passage quoted in our answer to Question 8 “*PRAs sell services to subscribers in a competitive environment*”.

Question 11: Designated Benchmarks

Fastmarkets is authorized in Finland as a benchmark administrator for the purposes of the EU’s Benchmark Regulation.

Although we have no plans to seek authorization in any other jurisdictions, we intend to keep the development of the Canadian benchmark regime under review. The proposed voluntary designation option could, in principle, prove attractive for administrators of commodity benchmarks seeking international regulatory credibility for their benchmarks. However, the Canadian benchmark regime would have to be aligned closer to IOSCO’s PRA Principles than is currently proposed for this to be a viable option.

Question 12: Anticipated Costs and Benefits

We have no comments on this Question.