

July 28, 2021

VIA ELECTRONIC MAIL

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

c/o:

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Director, Legal Affairs
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Re: Comments on Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Changes to Companion Policy 25-102

Dear Sir or Madam:

I. INTRODUCTION

On behalf of The Canadian Commercial Energy Working Group (the "**Working Group**"), Eversheds Sutherland (US) LLP submits this letter in response to the request for public comment from the Canadian Securities Administrators ("**CSA**") on Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* ("**MI 25-102**") and the related Changes to Companion Policy 25-102

(collectively, the "**Proposed Amendments**").¹ The Working Group welcomes the opportunity to provide comments on the Proposed Amendments and looks forward to working with Canadian regulators throughout the rulemaking process.

The Working Group is a diverse group of commercial firms that are active in the Canadian energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. The Working Group considers and responds to requests for comment regarding developments with respect to the trading of energy commodities, including derivatives, in Canada.

II. COMMENTS OF THE WORKING GROUP

The Working Group appreciates the efforts of the Canadian regulators to amend MI 25-102 to account for the unique aspects of commodities markets and supports the contemplated framework in the Proposed Amendments, which provides an appropriate level of oversight without imposing undue burdens on commodity benchmark contributors and users. Further, the Working Group is pleased that the Proposed Amendments generally relieve commodity benchmark contributors and users from obligations imposed on contributors to and users of other types of benchmarks that are not necessarily appropriate in the commodities context.

The Working Group is supportive of the regulatory framework that the Proposed Amendments would establish and appreciates the CSA's efforts to model the Proposed Amendments on the ISOCO Principles for Oil Price Reporting Agencies and the European Union's benchmark regulation, which do not focus on the regulation of contributors of input data.²

As the CSA is aware, under the Proposed Amendments, certain provisions of MI 25-102 would not apply to a designated benchmark administrator, benchmark contributor, or a specified person or company in relation to a designated commodity benchmark.³ Additionally, benchmark contributors would not be required to comply with governance and control requirements or designate a compliance officer.⁴ These changes to MI 25-102 are appropriate for commodities benchmarks given the wide range of entities that are users of and contributors to commodities benchmarks.

Further, failure to amend MI 25-102 in the manner contemplated by the Proposed Amendments could have material adverse consequences for the representativeness of any commodities benchmark designated under MI 25-102. Specifically, there is concern among participants in certain commodity markets that participation rates in price index formation are in danger of being low enough to raise concerns that the resulting prices may not accurately represent market realities. To the extent that additional regulatory obligations are imposed on contributors to such benchmarks, that concern would likely be exacerbated. As such, the

¹ See CSA Notice and Request for Comment, Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (Apr. 29, 2021) ("**CSA Notice**"), <https://www.albertasecurities.com/securities-law-and-policy/-/media/EB29E0392B404412836D920A01DCBD92.ashx>.

² CSA Notice at 7.

³ CSA Notice at 72; See also Proposed Section 40.3 of MI 25-102.

⁴ CSA Notice at 72; See also Proposed Section 40.3 of MI 25-102.

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Working Group fully supports the common sense changes to MI 25-102 set out in the Proposed Amendments.

III. CONCLUSION

The Working Group appreciates this opportunity to comment on and support the Proposed Amendments.

If you have any questions, please contact the undersigned.

Respectfully submitted,
/s/ Alexander S. Holtan
Alexander S. Holtan
Kimberly R. Thomasson