

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

28 July 2021

Via electronic mail to navdeep.gill@asc.ca; comment@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

RE: Specific Questions of the Authorities Relating to the Proposed Amendments

Dear Sir/Madam,

Introduction:

We are grateful for the opportunity to respond to the specific questions of the Authorities relating to the Proposed Amendments to the Multilateral Instrument 25-102 and Companion Policy 25-102 regarding commodity benchmarks.

S&P Global Platts (Platts), a division of S&P Global Inc, is the leading publisher of price assessments for the physical commodities markets including the oil markets.

At Platts we share the goal of ensuring integrity and transparency in commodity benchmarks. We seek to ensure availability of sound price assessments based on data derived from orderly and transparent trading in the commodity physical and futures markets and fully recognize the need for confidence among all stakeholders in the processes and outcomes associated with commodity benchmarks. As such, our price assessment processes are underpinned by robust governance and control systems.

Platts does not participate directly or indirectly in the markets it observes. Its proprietary price assessments use information received directly from market participants, transactional data (e.g., physical transaction and futures prices from exchanges) using editorial judgement in conformance with its published methodologies.

Platts has been fully adherent to the IOSCO's Principles for Oil Price Reporting published in October 2012 (PRA Principles) and which are the globally recognized standards for commodity benchmark administration. As per IOSCO's request when it disseminated the PRA Principles, Platts price assessments licensed for use in derivative contracts in all commodities globally are in scope for its IOSCO adherence process, not just in oil. Currently around 250 of its assessments are in scope for IOSCO. As part of Platts' long established efforts to demonstrate its commitment to these principles, which are broadly aligned to our editorial beliefs, Platts has completed annual assurance reviews demonstrating alignment with these principles since 2013.

Platts also currently publishes 7 assessments that are in scope for the European Benchmarks

Regulation, Regulation (EU) 2016/1011 (BMR). Platts Benchmark B.V. is the administrator for Platts EU Benchmarks under the BMR and since 2020 has been supervised by the Dutch Authority for Financial Markets (AFM). Because Title II of the BMR does not apply to Article 19 benchmark administrators, the applicable provisions of the BMR to commodity benchmark administrators found in Annex II are nearly identical to the IOSCO PRA Principles. Importantly, these are intentionally distinct from the principles found in the IOSCO Principles for Financial Benchmarks published in July 2013 and Title II of the BMR given the sector specific characteristics of commodity benchmarks as recognized by the Authorities in citing the preamble of the BMR in the Notice.

As per ESMA guidance published in its Q&A for Benchmark Regulation, the annual IOSCO assurance review report by Platts' independent external auditor is used by the AFM to ensure compliance with the requirements of the BMR.

While the Authorities have indicated no intent to designate commodity benchmarks at this time, Platts nevertheless thinks it is important to engage to draw attention to some issues the Notice raises. This is also important because Platts is unclear as to what the jurisdictional nexus is for being in scope. For example, while the Authorities have laid out that there must be an impact on Canadian commodity and or financial markets, and we understand that there is a voluntary process to become supervised, unlike the BMR there does not seem to be a requirement that financial instruments based on a benchmark are traded on a Canadian trading venue.

In this regard, we offer some key points below for your consideration which aim to summarize the spirit of our response to the consultation:

- Platts believes that should the Authority find it is necessary to include commodity benchmarks in the Measures, then like the BMR the requirements should align fully with requirements of the IOSCO Principles and not go beyond those requirements. The Authorities state in the Notice that "it is of the view that amending MI 25-102 to incorporate the commodity benchmark provisions would codify international best practices, as articulated under the IOSCO PRA Principles." Platts agrees completely. A consistent approach will result in more choices for investors by encouraging broader participation in the Canadian markets by qualified benchmark administrators. Further, if a stated goal of the Authority's approach is to achieve equivalence with the BMR, then there is no need to go beyond the requirements of the BMR. Some of the requirements that would be applicable to all benchmark providers (see Notice Pages 7-8) go beyond what's required of commodity benchmark administrators under the BMR.
- Platts believes the Authority should provide greater clarity and transparency in terms of the assessment and/or method it will adopt to designate benchmark administrators and/or benchmarks in the future in order to avoid market disruption and ensure continued innovation in Canada's benchmarking industry.
- Platts has developed a robust governance framework which includes responsibility for monitoring and overseeing the calculation of its IOSCO and BMR benchmarks and the development and maintenance of their methodologies, a framework which has been deemed acceptable by its existing supervisor and has been reviewed by an external auditor annually since 2013. Requiring a benchmark administrator to re-write its control and oversight frameworks for benchmarks designated by the Authority would be counter-productive and disproportionate to the associated risks. Requirement pertaining to governance or oversight functions should not be inconsistent

with existing regulatory frameworks and need to be sufficiently flexible to allow benchmark administrators to select a structure most appropriate for their businesses rather than prescribed regardless of the type of commodity benchmark or organizational structure of the existing benchmark administrator.

- Physical commodity markets vary in liquidity. Any particular market analyzed on its own will typically demonstrate rising and falling levels of transactional activity through time. Platts is committed to providing an assessment of value for every market that it covers, equally well in times of heightened or reduced liquidity. All information received by a price reporting agency is processed through a verification process seeking to ensure the appropriateness of the data. These and other safeguards against manipulation are specifically designed to ensure rigour in the price assessment process used to publish our benchmarks while not causing a retreat from participation in the price assessment and index formation process, which could occur if benchmark administrators are required to make a judgement call in identifying communications that might involve manipulation or attempted manipulation of a designated commodity benchmark. As was agreed with IOSCO, a more calibrated approach has been for PRAs to identify anomalous data, as opposed to suspicious data. The dual designation of commodity and regulated data commodity benchmarks (See Notice Pages 9-10) is confusing and we believe unnecessary. Importantly, for example, it is unclear what is meant when Authorities indicates that dually-designated benchmarks would be subject to Part 8.1 requirements, but exempted from certain requirements as provided by subsection 40.2(4) because that subset of regulated-data benchmarks is determined from transactions where, in the ordinary course of business, parties make or take physical delivery of the commodity...” Many physical commodity price assessments are markets where parties take physical delivery, regardless of whether the data are regulated. We would be happy to engage further on the Authority’s objectives for these designations and why they are taking a different approach from the BMR in order to provide more focused feedback.
- Similarly, the criteria for designating a commodity benchmark as “critical” are unclear and do not appear consistent with the BMR. We would welcome additional clarity on the Authority’s goal here and how it differs from the EU’s objectives.

Interpretation

- 1. The definition for “commodity benchmark” excludes a benchmark that has, as an underlying interest, a currency or a commodity that is intangible. Is the scope of the proposed definition, and the guidance in the CP, appropriate to cover the commodity benchmark industry in Canada? Please explain with concrete examples.**

The definition of a “commodity benchmark” in the Proposed Amendments is not clear and therefore leads to regulatory uncertainty. Unlike in the BMR, there is no indication what the use of the commodity price assessment or index would be in order to come into scope. The definition should provide additional clarity in order for price reporting agencies and other stakeholders to understand which benchmarks could be designated as designated commodity benchmarks under the Proposed Instrument.

Applicable Requirements from the Financial Benchmarks Regime

- 2. Despite a different proposed regime for commodity benchmarks, the Authorities expect that certain requirements, applicable to financial benchmarks, would also be applicable, sometimes with minor modifications, to commodity benchmarks. These include, for example, the requirements to report contraventions (section 11), the requirement for a control framework (section 40.4), and governance and control requirements (section 40.11). Are these requirements appropriate in the context of commodity benchmarks? Please explain with concrete examples.**

It is important to recognize that because Title II of the BMR does not apply to Article 19 commodity benchmark administrators, the requirements are different as well in that they remain consistent with the IOSCO PRA Principles as per Annex II of the BMR. These differences include the governance structure and control framework applicable to commodity benchmark providers. Any requirement pertaining to the composition of any governance or oversight function and control framework in the Proposed Amendments should not be prescribed but instead be flexible enough to allow benchmark administrators to select a structure most appropriate to their businesses. This flexibility is also recognized in both the BMR and the IOSCO Principles for commodity benchmark administrators. The guiding principles that have been established in most legislative frameworks for benchmarks are proportionality and the avoidance of excessive administrative burden.

As an example, Platts has adopted a three-tier risk governance framework often described as the three lines of defense model, which distinguishes between the management, control, and assurance of risk and compliance management. Platts' governance structure consists of multiple committees and functions, each performing a subset of the oversight responsibilities and tasks. Certain functions are responsible for governing the methodologies for provision of our benchmarks. These individuals have the skills and expertise to assess and challenge the editorial decisions made during the benchmark determination process. Other functions and committees are responsible for ensuring those who govern the benchmarks and corresponding methodologies comply with Platts policies, procedures and best practices. Physical commodity markets are complex and many transactions are non-standardized and, as such, the ability to properly monitor data inputs is best managed by individuals with market expertise and good knowledge of the requirements of the methodology employed to generate an assessment or index. The inclusion of requirements to report contraventions by market participants could deter the voluntary nature of commodity market participation with price reporting agencies. Price reporting agencies such as Platts have editorial protocols and corresponding controls that filter out input data that could result in price distortions. These issues were discussed at length during the IOSCO process and Level 1 BMR process, with recognition that it is important not to deter the voluntary contribution of market data to price reporting agencies. Additional regulatory requirements such as reporting contraventions however could make it increasingly difficult for Platts to assess value, particularly in less liquid markets and to adapt quickly and institute methodology changes in the face of changing market conditions. Over time this could erode the quality of physical price benchmarks.

Dual Designation as a Commodity Benchmark and a Critical Benchmark

- 3. Where the underlying commodity is gold, silver, platinum or palladium, a benchmark dually designated as a commodity benchmark and a critical benchmark would be subject to the requirements applicable to critical financial benchmarks, rather than critical commodity benchmarks. Do you think that there are benchmarks in Canada that could be dually designated as critical commodity benchmarks where the underlying is gold, silver, platinum or palladium, and is there a need to provide for the specific regulation of such benchmarks?**

Platts is not aware of any such benchmarks. Further, Platts is of the view that multiple designations could cause market confusion and be very difficult for benchmark administrators to administer.

Dual Designation as a Commodity Benchmark and a Regulated-Data Benchmark

- 4. Subsection 40.2(4) provides for certain exemptions for benchmarks dually designated as commodity and regulated-data benchmarks, where such benchmarks are determined from transactions in which the transacting parties, in the ordinary course of business, make or take physical delivery of the commodity. Is carving out such a subset of dually-designated benchmarks necessary for appropriate regulation of commodity benchmarks in Canada? If so, are the exemptions provided for, which generally mirror exemptions for regulated-data benchmarks from Parts 1 to 8 requirements, appropriate? Please explain with concrete examples:**

No. It is inconsistent and disproportionate for the Authority to have powers to designate regulated data benchmarks as commodity benchmarks and vice versa. The BMR has created discrete regulation applicable to each since the two are considered mutually exclusive. Platts sees no reason for a dual designation regime, which could cause market confusion and would be very difficult for benchmark administrators to implement and administer.

While it is true that certain commodity benchmarks use regulated data, all dimensions of a commodity market combine to represent value of the underlying commodity and hence dual designation is unnecessary and cumbersome, with an unclear regulatory objective. Given the reduced regulatory burden placed on regulated data benchmarks under the BMR, it would be more straightforward to have a regime that applies to commodity benchmarks regardless of whether they use regulated data.

Input Data

- 5. We have distinguished between input data that is “contributed” for the purposes of the Instrument (see subsection 1(3)), and data that is otherwise obtained by the administrator. Certain provisions in Part 8.1 impose requirements on a designated benchmark administrator if input data is “contributed”, whereas other obligations are imposed irrespective of how input data is obtained. Where the word “contributed” is not specifically used or implied, we mean all the input data, not only “contributed” data. Taking into consideration the obligations imposed on designated benchmark administrators of commodity benchmarks, through the use or lack of use of “contributed”, are the obligations imposed under the provisions of Part 8.1 appropriate? Please explain with concrete examples.**
- 6. The guidance on paragraph 40.8(2)(a) of the CP states that, where consistent with the methodology, we expect the administrator to give priority to input data in a certain order. Does the order of priority of use of input data for purposes of determination of a commodity benchmark, as stated in the CP, reflect the methodology used for your commodity benchmarks? Are there any other types of input data that should be specified in the order of priority?**

The distinction between requirements for contributed and non-contributed data for commodity benchmarks (not regulated data benchmarks) is unnecessary. Platts’ objective is to ensure that all input data that editors use to inform price assessments is of the highest quality. The focus is

therefore on controls and management of input data, rather than whether it is contributed or non-contributed. For example, Platts endeavors to transparently publish all information received that meets Platts editorial standards so that it can be fully tested by the market at large. Platts excludes data in the price assessment process that cannot be verified in the market to the extent deemed appropriate.

Platts sets out its approach to prioritizing data here [platts-assessments-methodology-guide.pdf \(spglobal.com\)](#). Platts believes its approach is sound and consistent with regulatory objectives, including under the IOSCO PRA Principles and BMR.

Methodology

- 7. Under the Proposed Amendments, designated administrators are expected to ensure that particular requirements are met whenever their methodology is implemented and a designated benchmark is determined. Are the elements of the methodology that we propose to regulate, specifically within section 40.5, sufficiently clear such that an administrator would be able to comply with the requirements?**

Broadly speaking an administrator would be able to comply with the requirements where they align to those of the globally-accepted IOSCO PRA Principles. The requirement in draft Section 40.5(1) stating that *“a designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless the accuracy and reliability of the designated commodity benchmark determined using the methodology is verifiable”* is vague and seemingly tautological. In order to maintain confidence in a benchmark, an administrator’s priority is to follow a published methodology. An administrator of a commodity benchmark should be required to regularly examine its methodologies for the purpose of ensuring they reliably reflect the physical market under assessment and any change should include a process for taking into account the views of relevant users. This is consistent with the IOSCO and BMR approach. The key is transparency and market consultation when material changes are being made to a benchmark methodology, which is a practice followed by Platts and other PRAs who adhere to the IOSCO PRA Principles.

Conflicts of Interest

- 8. Paragraphs 40.13(1)(a), (b) and (d) mirror the conflict of interest requirements under paragraphs 10(1)(a), (b) and (d) of the Instrument, to ensure that certain overarching requirements apply to all designated benchmark administrators. Is this approach appropriate? Do commodity benchmark administrators face potential conflicts of interest that are not addressed by these or the other conflict of interest provisions?**

It is appropriate to identify and avoid conflicts of interest where an individual directly involved in the provision of a commodity benchmark may be compromised due to a personal relationship or personal financial interests. The objective is to protect the integrity and independence of the provision of the benchmark. Platts maintains and strictly enforces its Conflicts of Interest policy, as is expected under the IOSCO PRA Principles and BMR. The requirements found there are fit for purpose and Platts would suggest appropriate for the Proposed Instrument.

Assurance Report on Designated Benchmark Administrator

9. **Subsection 40.14(2) requires a designated benchmark administrator of a designated commodity benchmark, whether or not the benchmark is also designated as a critical benchmark, to engage a public accountant to provide a limited or reasonable assurance report on compliance once in every 12-month period. In contrast, pursuant to subsection 36(2), an administrator of a designated interest rate benchmark is required to engage a public accountant to provide such a report, once in every 24-month period, albeit a report is required 6 months after the introduction of a code of conduct for benchmark contributors. Given the general risks raised by the activities of administrators of commodity benchmarks versus of interest rate benchmarks, are the proposed requirements appropriate? Please explain your response.**

Yes. The BMR recognizes the IOSCO PRA Principles and as such requires an annual review of IOSCO's Principles for Oil Price Reporting by an independent external auditor to demonstrate compliance with the requirements of the BMR. This approach is efficient and sound.

Concentration Risk

10. **Pursuant to subsection 20(1), designated benchmark administrators of designated commodity benchmarks would be subject to certain obligations when they cease to provide a designated commodity benchmark. However, market users may potentially have more limited benchmarks to utilize for purposes of their transactions (concentration risk) where a designated benchmark administrator that administers a number of designated commodity benchmarks unexpectedly delays in providing or ceases to provide those benchmarks. Do you think that additional requirements should be added under Part 8.1 to address this concentration risk? If yes, what requirements should be added?**

No additional requirements are needed under Part 8.1 to address concentration risk. As per the BMR, a benchmark administrator should be required to maintain a certain level of continuity, but such an approach should be proportional. The Authorities should avoid excessive administrative burden on administrators whose benchmarks poses less cessation risk to the wider financial system, including where there are alternatives available from competitors, which is generally the case with regard to commodity benchmarks.

Designated Benchmarks

11. **If your organization is a benchmark administrator of commodity benchmarks, please: a) advise if you intend to apply for designation under MI 25-102, b) advise of any benchmark you intend to also apply for designation under MI 25- 102, and c) indicate the rationale for your intention**

Platts is unsure what the jurisdictional nexus is for the Proposed Amendments as it is unclear what contacts the benchmark administrator must have with Canada in order for the measures to apply. It is unclear whether the Proposed Amendments reach beyond the EU institutional market participants that the Authority holds important. Platts does not intend to voluntarily apply for designation as a benchmark administrator under the Proposed Instrument.

Anticipated Costs and Benefits

- 12. The Notice sets out the anticipated costs and benefits of the Proposed Amendments (in Ontario, additional detail is provided in Annex F). Do you believe the costs and benefits of the Proposed Amendments have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain and/or identify further costs or benefits.**

The Proposed Instrument provides no acknowledgement or framework for those benchmark administrators based outside of Canada. Therefore, the example does not include one of the most significant costs which will be faced by those benchmark administrators subject to other benchmark regulations. Where the Authorities designate benchmarks that are also regulated in the EU for example the benchmark administrator will be subject to dual supervision and have to comply with the regulation in both jurisdictions. Such costs can be reduced by explicitly excluding commodity benchmarks, or if not making the requirements as close as possible to the IOSCO PRA Principles and BMR to reduce administrative burden and implementation costs given the demonstrated success of those other regimes.

Yours faithfully,



Elzbieta Rabalska
Managing Director
Platts Benchmarks BV