

B.1.2 OSC Notice of Amendments to Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators and Changes to Companion Policy 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators

**OSC NOTICE OF
AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS
AND
CHANGES TO
COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS**

June 29, 2023

Introduction

The Ontario Securities Commission (the **OSC** or **we**) are adopting amendments to Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (**OSC Rule 25-501**), and changes to Companion Policy 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (the **CP**).

The text of the amendments to OSC Rule 25-501 and changes to the CP (together, the **Amendments**) are contained in Annex A and Annex B of this Notice, respectively.

The Amendments incorporate provisions for a regime for commodity benchmarks and their administrators. The Amendments are based on, and consistent with, amendments and changes (the **MI 25-102 Amendments**) to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102**) and Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* that were published today by certain members of the Canadian Securities Administrators (the **CSA Notice**). OSC Rule 25-501 and the Amendments are required in Ontario because MI 25-102 would not apply to Ontario commodity futures law.

Currently, OSC Rule 25-501 provides a comprehensive regime for the designation and regulation of specific benchmarks and their administrators, and the regulation of contributors and of certain users. An overview of this regime was provided in the April 29, 2021 OSC Notice of OSC Rule 25-501, the CP and consequential amendments¹ and the April 29, 2021 OSC Notice and Request for Comment on Proposed Amendments to OSC Rule 25-501 and Proposed Changes to the CP (the **2021 OSC Request for Comment**).² The Amendments in this Notice are the amendments that were contemplated in the 2021 OSC Request for Comment.

The Amendments will implement a comprehensive regime for:

- the designation and regulation of commodity benchmarks, including specific requirements (or exemptions from requirements) for benchmarks dually designated as designated critical benchmarks and designated commodity benchmarks, and for benchmarks dually designated as designated regulated-data benchmarks and designated commodity benchmarks, and
- the designation and regulation of persons or companies that administer such benchmarks (**designated benchmark administrators** or **administrators**).

Substance and Purpose

We are adopting the Amendments for the same reasons as the MI 25-102 Amendments. In particular, the Amendments will codify international best practices and establish a commodity benchmarks regulatory regime that will ensure the integrity of Canada's commodity and capital markets, thereby protecting Canadian investors and other Canadian market participants.

Summary of Changes

For details of all changes made, Annex C and Annex D contain blacklines of the Amendments compared to the proposed amendments published under the 2021 OSC Request for Comment (the **Proposed Amendments**).

¹ Available online at: https://www.osc.ca/sites/default/files/2021-05/csa_20210429_25-102_designated-benchmarks.pdf
² Available online at: https://www.osc.ca/sites/default/files/2021-05/csa_20210429_25-102_designated-benchmarks.pdf

The notable changes made are the same as the notable changes made to the MI 25-102 Amendments. As these changes are not material, we are not publishing the changes for a further comment period. Notable changes include:

(1) Definition of “commodity benchmark”

We have removed the definition of “commodity benchmark” from section 40.1 of the Proposed Amendments and added the substance of that definition to the definition for “designated commodity benchmark” in subsection 1(1) of the Instrument. In addition, we have removed the reference to a commodity that is intangible from the definition in the Instrument. We also revised the guidance in the CP regarding the scope of the definition, to clarify that we consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and that we may include other intangible products, such as certain crypto assets, that develop as international markets evolve.

(2) Definitions of “front office” and “front office employee”

For clarity, we have split the definition of “front office” into two definitions: “front office” and “front office employee”. Since the definitions are used in both section 15 of the Instrument and section 40.10 of the Proposed Amendments (section 40.9 of the Amendments), the definitions were moved to subsection 1(1) of the Instrument. We have also included additional guidance in the CP regarding the meaning of both terms. These changes were made for clarity but do not affect the substance of the requirements where these definitions are used.

(3) Scope of MI 25-102

We added language to sections 40.3 [*Control framework*] (section 40.4 of the Proposed Amendments) and 40.10 [*Governance and control requirements*] (section 40.11 of the Proposed Amendments) of the Instrument to clarify that those provisions apply to the business operations of a designated benchmark administrator only in so far as those operations involve the administration and provision of a designated commodity benchmark.

(4) Publication of information

We added guidance in Part 8.1 [*Designated Commodity Benchmarks*] of the CP regarding our expectations for how a designated benchmark administrator may satisfy the requirements in the Part 8.1 of the Instrument to publish information relating to a designated commodity benchmark. 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. However, we recognize that a news release generally will not be necessary for each determination of a designated commodity benchmark under section 40.8 of the Instrument.

(5) Types of input data

Subparagraph 40.5(2)(a)(i) of the Proposed Amendments required a designated benchmark administrator to establish, document and publish how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information to determine a designated commodity benchmark.

For clarity, while subparagraph 40.4(2)(a)(i) of the Amendments still requires a designated benchmark administrator to establish, document and publish how it uses input data to determine a designated commodity benchmark, we have removed the reference to “the volume of transactions, concluded and reported transactions, bids, offers and any other market information” from the Amendments and revised the guidance in section 40.4 [*Methodology to ensure the accuracy and reliability of a designated commodity benchmark*] of the CP to clarify our general expectations regarding the priority given to different types of input data in the methodology of a designated commodity benchmark.

(6) Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

We added guidance in paragraph 40.4(2)(j) [*Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark*] of the CP on our expectation that, where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. In addition, we have clarified 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.

Summary of Written Comments Received

The comment period for the 2021 OSC Request for Comment ended on July 28, 2021. No comment letters were received.

However, five comment letters were received in respect of the proposed version of the MI 25-102 Amendments. The names of commenters and a summary of their comments, together with the CSA's responses, are contained in Annex A of the CSA Notice.

Anticipated Costs and Benefits of the Amendments

The anticipated costs and benefits of the Amendments are substantially the same as described in the 2021 OSC Request for Comment.

Authority for the Amendments

The rule making authority for the Amendments is provided in paragraph 34 to 39 of subsection 65(1) of the CFA.

Delivery to the Minister of Finance

The Amendments and other required materials were delivered to the Minister of Finance on June 28, 2023.

The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action by August 28, 2023, the Amendments will come into force on September 27, 2023.

Contents of Annexes

This Notice includes the following annexes:

- Annex A: Amendments to OSC Rule 25-501
- Annex B: Changes to CP
- Annex C: Amendments to OSC Rule 25-501, blacklined to show changes from Proposed Amendments
- Annex D: Changes to CP, blacklined to show changes from Proposed Amendments

Questions

Please refer your questions to either of the following:

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ANNEX A

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

1. **Ontario Securities Commission Rule 25-501 (Commodity Futures Act) 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 Rule as a “commodity benchmark” by a decision of the Commission;

“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 Ontario commodity futures law 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 Ontario commodity futures law 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 Ontario commodity futures law 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 Ontario commodity futures law 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 Rule 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 Rule 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 Rule 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 Rule.
- (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 Rule.
- (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 Director.

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 Director.

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 Director..
9. This Instrument comes into force on September 27, 2023.

ANNEX B

**CHANGES TO
COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS**

1. ***Companion Policy 25-501 (Commodity Futures Act) 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 Rule.,

(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 Rule defines a “designated commodity benchmark” to ensure, to the extent possible, a consistent interpretation of this term. 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 Ontario commodity futures law, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of the Commission may recommend that the Commission designate a benchmark based on these intangible commodities as a “commodity benchmark” for the purposes of the Rule.

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 Rule 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 Rule 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 Rule 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 Rule.

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 Rule 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 Rule. 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 Ontario commodity futures law, a designated benchmark administrator remains responsible for compliance with the Rule despite any outsourcing arrangement.

Paragraph 19(1)(a) of the Rule 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 (m³) 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 Rule, Ontario commodity futures law generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with Ontario commodity futures law.

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.

ANNEX C

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS,
BLACKLINED TO SHOW CHANGES FROM THE PROPOSED AMENDMENTS

1. *Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators is amended by this Instrument.*
2. *Subsection 1(1) is amended*
 - (a) *by adding the following ~~definition:~~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 Rule as a “commodity benchmark” by a decision of the Commission;

“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) *~~adding~~replacing “.” with “ and” at the end of paragraph (e), and*
 - (iii) *adding the following paragraph:*
 - (f) paragraphs ~~40.14(1)~~40.13(1)(a) and (b);.
- ~~3. Paragraph 6(3)(a) is amended by adding “in the case of a benchmark that is not a designated commodity benchmark,” before “monitor.”~~
3. *4. Subsection 6(3) is amended*
 - (a) *by ~~adding the following~~repealing paragraph: (a.1) 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 ~~subsection 5(1), section 40.4 and~~ Ontario commodity futures law 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
- ~~5. Subparagraph 6(3)(b)(i) is amended by adding “or (a.1), as applicable” before “.”.~~
- ~~6. Subparagraph 6(3)(b)(ii) is amended~~
 - ~~(iii)~~ *(a) ~~by adding “in the case of a benchmark that is not a designated commodity benchmark,” before “monitor and assess compliance” by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3; and~~*
 - ~~(b)~~ *_____*
 - (b) *by ~~deleting “and” at the end of the~~repealing subparagraph.*

~~7. Paragraph 6(3)(b) is amended by adding the following 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 Ontario commodity futures law 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 ~~subsection 5(1), section 40.4 and~~ Ontario commodity futures law relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and.~~

~~4. (a) 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:~~

~~A designated regulated data benchmark is exempt from the following:” with “~~

~~Provisions of this Rule 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 or any person or company specified in such provisions 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 Rule is amended by adding the following Part is added:~~

**PART 8.1
DESIGNATED COMMODITY BENCHMARKS**

Interpretation

~~40.1. In this Part, “commodity benchmark” means a benchmark that is determined by reference to or an assessment of an underlying interest that is a commodity, but does not include a benchmark that has, as an underlying interest, a currency or a commodity that is intangible.~~

Application—

~~Provisions of this Rule not applicable in relation to dual-designated benchmarks~~

~~40.240.1.(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 ~~that is also,~~ 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 ~~also~~ a designated critical benchmark, and
 - (b) the underlying interest of the benchmark is gold, silver, platinum or palladium.
- (3) ~~The provisions set out in subsection~~ Subsection (4) ~~do not apply~~ 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 ~~also~~ a designated regulated-data benchmark.
- (4) ~~For the purposes of subsection (3), the~~ The following provisions do not apply in the circumstances referred to in subsection (3):
- (a) subsections 11(1) and (2);
 - (b) section ~~40.9~~ 40.8;
 - (c) section ~~40.10~~ 40.9, other than subparagraph (4)(f)(ii);
 - (d) paragraph ~~40.12(2)~~ 40.11(2)(a);
 - (e) section ~~40.14~~ 40.13.

Provisions of this Rule not applicable in relation to designated commodity benchmarks

~~40.3~~ 40.2. The following provisions do not apply to a designated benchmark administrator, a benchmark contributor or ~~a specified~~ 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

~~40.4~~ 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 Rule.

- (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

~~40.5~~ 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 ~~determined using the methodology is~~ are verifiable.
- (2) A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of ~~a~~ the designated commodity benchmark, including, for greater certainty, all of the following:
- (a) all criteria and procedures used to determine ~~a~~ the designated commodity benchmark, including, ~~but not limited to~~ the following, as applicable:
 - (i) how ~~the designated benchmark administrator will use input data, including, for greater certainty, how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information used to determine the designated commodity benchmark~~ input data is used;
 - (ii) the reason that a ~~specific~~ reference unit ~~will be~~ is used;
 - (iii) how input data ~~will be~~ is obtained;
 - (iv) identification of how and when expert judgment may be exercised ~~in the determination of the designated commodity benchmark~~;
 - (v) ~~the assumptions and the any~~ model ~~or, method that will be used for the~~ assumption, extrapolation and/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 ~~quantity of~~ requirement for the number of transactions or for the volume for each transaction ~~data to be~~ used to determine the designated commodity benchmark;
 - ~~(e) if minimum quantity thresholds referred to in paragraph (d) are not provided, the rationale as to why minimum requirements are not provided;~~
 - (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 ~~for used to determine~~ the ~~determination of a~~ designated commodity benchmark in circumstances in which the input data does not meet the minimum ~~threshold for either the quantity of number of transactions or the minimum volume for each~~ transaction ~~data or required in the quality methodology~~ of the ~~input data~~ 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 ~~if no transaction data exists~~;
 - (g) the time period ~~when~~ during which input data must be provided;
 - (h) the means ~~of contribution of~~ used to contribute the input data, whether electronically, by telephone or by other means;
 - (i) the procedures ~~for how a~~ used to determine the designated commodity benchmark ~~is determined~~ 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

~~40.6~~40.5. A designated benchmark administrator must, with respect to the methodology ~~used for~~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 ~~such~~those reviews and approvals;
- (c) the process referred to in section 17 for making significant changes to the methodology.

Review of methodology

~~40.7~~40.6. A designated benchmark administrator must, at least once ~~in every 12-month period~~ months, carry out an internal review and approval of the methodology ~~for~~of each designated commodity benchmark that it administers to ensure that the designated ~~commodity benchmark determined under the methodology accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market the benchmark is intended to represent~~benchmark administrator complies with subsection 40.4(1).

Quality and integrity of the determination of a designated commodity benchmark

~~40.8~~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 ~~that~~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) ~~do not discourage~~so that a benchmark ~~contributors~~contributor is not discouraged from contributing all of ~~their~~its input data that meets the designated benchmark administrator's criteria for the determination of the designated commodity benchmark~~;~~;
 - (e) ~~to the extent that is reasonable,~~ ensure that
 - ~~(i) input data contributed is representative of the benchmark contributors' concluded transactions relating to the underlying interest of the designated commodity benchmark, and~~
 - ~~(ii) benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.~~

Transparency of determination of a designated commodity benchmark

~~40.9~~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) ~~a plain language~~an explanation of how the designated commodity benchmark was determined, ~~which explanation includes~~including, for greater certainty, all of the following:
 - (i) the number ~~and the volume~~ of ~~the~~ transactions ~~submitted~~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 indicativeapproximate percentage of each type of input data to the total input data;
- (b) ~~a plain language~~an explanation of ~~the extent to which,~~how and ~~the basis upon which,~~when expert judgment was used in the determination of the designated commodity benchmark, ~~including, if applicable, the reasons for not giving priority to concluded and reported transactions.~~

Integrity of the process for contributing input data

~~40.10.(1)~~40.9. A designated benchmark administrator must establish, document, maintain and apply policies, procedures, and controls ~~and criteria~~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 ~~that determine~~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 ~~such~~the contributing individuals to contribute input data on behalf of the benchmark contributor;
- (c) criteria ~~that determine~~for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;
- (d) criteria ~~that determine~~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 ~~that~~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 ~~to~~ 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.

~~(2) In this section, “front office” means any department, division or other internal grouping of a benchmark contributor, or any employee or agent of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the benchmark contributor.~~

Governance and control requirements

~~40.11~~40.10.(1) A designated benchmark administrator must establish and document ~~an~~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 ~~a~~the designated commodity benchmark ~~administered by the administrator~~, and include, ~~as necessary if applicable~~, segregated reporting lines, to ensure that the designated benchmark administrator complies with the provisions of this Rule.

(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

~~(i) that each of its benchmark individuals continues to have the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual, and~~

~~(ii) the provision of the designated commodity benchmark on a consistent~~administrator follows the policies and procedures described in paragraphs (a) and regular (b) on an ongoing basis,

(d) that each of its benchmark individuals is subject to ~~adequate~~ management and supervision to ensure that the methodology of the designated commodity benchmark is properly applied, and

(e) ~~a procedure for obtaining~~that the approval of an individual holding a position senior to that of a benchmark individual ~~prior to~~is obtained before each publication of the designated commodity benchmark.

Books, records and other documents

~~40.12~~40.11.(1) A designated benchmark administrator must keep ~~such~~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 ~~applicable to the determination~~ 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 Director.

Conflicts of interest

- ~~40.13~~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 ~~any~~ 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, ~~by policies and procedures reasonably designed to~~
 - (i) ~~ensuring~~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) ~~ensuring~~ensure that each ~~of its~~ benchmark ~~individual~~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) ~~keeping~~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) ~~ensuring~~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 ~~that~~who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely ~~affect~~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, ~~40.6~~ and ~~40.9~~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 ~~40.11(1)~~40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities ~~for~~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 ~~perception of 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 Director.

Assurance report on designated benchmark administrator

- ~~40.14~~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, ~~40.5~~40.6, 40.7, ~~40.8~~, and ~~40.10~~40.9 to ~~40.13~~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 ~~in every 12-month period~~ 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 Director.

~~9.9~~ This Instrument comes into force on ~~September 27, 2023~~.

ANNEX D

**CHANGES TO
COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS,
BLACKLINED TO SHOW CHANGES FROM THE PROPOSED AMENDMENTS**

1. Companion Policy ~~(Commodity Futures Act)~~ 25-501 (Commodity Futures Act) 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.”,

~~(b)~~(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 Rule.,

~~(e)~~(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,

~~(d)~~(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., ~~and~~

~~(e)~~(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 Rule defines a “designated commodity benchmark” to ensure, to the extent possible, a consistent interpretation of this term. 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 Ontario commodity futures law, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of the Commission may recommend that the Commission designate a benchmark based on these intangible commodities as a “commodity benchmark” for the purposes of the Rule.

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.

~~3.~~ Subsection 1(1) with heading of “Definition of designated critical benchmark” is changed

~~(a)~~ **in the first paragraph by adding at the end of that first paragraph the following sentence:**

(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 ~~40.2(4)~~40.1(1) and (2) of the Rule will specify the requirements applicable to such a benchmark., ~~and~~

~~(i)(b)~~ **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)4.~~ **by adding the following at the end of the first paragraph under the heading of “Subsection 1(1) with the heading of “ – Definition of designated regulated-data benchmark” is changed by adding at the end of the first paragraph the following sentence:**

However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections ~~40.2(3)~~40.1(3) and (4) of the Rule will specify the requirements applicable to such a benchmark..

35. 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 Rule 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**

~~Section 40.1 Definition of commodity benchmark~~

~~The Instrument defines a “commodity benchmark” to ensure, to the extent possible, a consistent interpretation of this term. The definition specifically excludes a benchmark that has, as an underlying interest, a currency, or an intangible commodity that can only be delivered in digital format, including crypto and digital assets.~~

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 ~~40.2~~[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 Rule.

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 ~~40.2~~[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 ~~40.2~~[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 ~~40.2~~[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 Rule 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 ~~40.5~~[\(240.4\(2\)\(g\), \(h\) and \(i\), and paragraphs 40.8](#)~~(240.7(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 ~~40.3~~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 ~~40.3~~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 Rule. Requirements that are relevant to designated benchmark administrators of designated commodity benchmarks have been excepted from the exemptions in section ~~40.3~~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 Ontario commodity futures law, a designated benchmark administrator remains responsible for compliance with the Rule despite any outsourcing arrangement.

Paragraph ~~19(2)~~19(1)(a) of the Rule 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 ~~40.5~~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 ~~completed~~concluded during the trading day, and the month of delivery, ~~and the assessment method used such as a volume-weighted average.~~

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:

- concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;
- 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);
- 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
- in any other case, expert judgments.

Subparagraph 40.5(2)(a)(i) – Reference to concluded transactions

~~In a number of instances, under Part 8.1, we refer to concluded transactions. For clarity, by concluded transactions, we mean transactions that are executed but not necessarily settled.~~

Subparagraph 40.5(240.4(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 (m³) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

Paragraph 40.5(240.4(2)(c) – Relative importance assigned to each criterion used in the determination of a designated commodity benchmark

The requirement in paragraph 40.5(240.4(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 40.740.6 – 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 ~~in every 12-month period~~ months.

~~Paragraph 40.8(2)(a) – Order of priority of input data specified in the methodology~~ 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. ~~We further expect that, where consistent with such methodology, priority will be given to input data in the following order: (1) concluded and reported transactions, (2) bids and offers, and (3) other information.~~

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 ~~concluded~~executed transactions were ~~executed~~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 40.940.8 – Transparency of determination of a designated commodity benchmark

We expect that, in providing ~~a plain language~~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 ~~and reported~~ transactions, and, if so, the reason why;

(c) [whether transaction data was excluded](#), and, if so, the reason why.

Section ~~40.9~~[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 ~~required~~[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 ~~40.10~~[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 ~~40.10~~[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 ~~40.10(1)~~[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 ~~would~~ consider the back office of a benchmark contributor to be any department, division, ~~group~~ or ~~personnel~~[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 staff to be the individuals 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 ~~40.11(3)~~[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 ~~40.11(3)~~[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 ~~40.12~~[40.11](#) - Books, records and other documents

Subsection ~~40.12(2)~~[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 Rule, Ontario commodity futures law generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with Ontario commodity futures law.

Section ~~40.13~~[40.12](#) - Conflicts of interest

We expect the policies and procedures required under subsection ~~40.13(1)~~[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 ~~appropriately to conflicts~~[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 ~~40.11(1)~~[40.10\(1\)](#) and (2), that addresses the conflict of interest requirements under subsection ~~40.13(3)~~[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 ~~40.14~~[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 ~~40.14~~[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.

~~65.~~ These changes become effective on ~~September 27, 2023.~~