

B.5 Rules and Policies

B.5.1 Amendments to Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators

AMENDMENTS TO MULTILATERAL INSTRUMENT 25-102 *DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS*

1. *Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators is amended by this Instrument.*
2. *Subsection 1(1) is amended*
 - (a) *by adding the following definitions:*

“designated commodity benchmark” means a benchmark that is

 - (a) determined by reference to or an assessment of an underlying interest that is a commodity other than a currency, and
 - (b) designated for the purposes of this Instrument as a “commodity benchmark” by a decision of the securities regulatory authority;

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

“front office employee” means any employee or agent that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor; **and**
 - (b) *in the definition of “subject requirements” by*
 - (i) *deleting “and” at the end of paragraph (d),*
 - (ii) *replacing “;” with “, and” at the end of paragraph (e), and*
 - (iii) *adding the following paragraph*
 - (f) paragraphs 40.13(1)(a) and (b);.
3. *Subsection 6(3) is amended*
 - (a) *by repealing paragraph (a) and substituting the following:*
 - (a) in the case of a benchmark
 - (i) that is not a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8, and
 - (ii) that is a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3; **and**
 - (b) *by repealing subparagraph (b)(ii) and substituting the following:*
 - (ii) in the case of a benchmark that is not a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to

benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8,

- (ii.1) in the case of a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and.

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

5. Section 15 is amended

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

(b) by repealing subsection (5).

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

7. Section 40 is repealed and the following substituted:

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

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

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

8. The following Part is added:

**PART 8.1
DESIGNATED COMMODITY BENCHMARKS**

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

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

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

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

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

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

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

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

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

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

Control framework

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

Methodology

- 40.4.(1) A designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless
- (a) the methodology is sufficient to provide a designated commodity benchmark that accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market that the benchmark is intended to represent, and
 - (b) the accuracy and reliability of the designated commodity benchmark are verifiable.
- (2) A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of the designated commodity benchmark, including, for greater certainty, all of the following:
- (a) all criteria and procedures used to determine the designated commodity benchmark, including the following, as applicable:
 - (i) how input data is used;
 - (ii) the reason that a reference unit is used;

- (iii) how input data is obtained;
- (iv) identification of how and when expert judgment may be exercised;
- (v) any model, method, assumption, extrapolation or interpolation that is used for analysis of the input data;
- (b) the procedures reasonably designed to ensure that benchmark individuals exercise expert judgment in a consistent manner;
- (c) the relative importance assigned to the criteria used to determine the designated commodity benchmark, including, for greater certainty, the type of input data used and how and when expert judgment may be exercised;
- (d) any minimum requirement for the number of transactions or for the volume for each transaction used to determine the designated commodity benchmark;
- (e) if the methodology of the designated commodity benchmark does not require a minimum number of transactions or minimum volume for each transaction used to determine the designated commodity benchmark, an explanation as to why a minimum number or volume is not required;
- (f) the procedures used to determine the designated commodity benchmark in circumstances in which the input data does not meet the minimum number of transactions or the minimum volume for each transaction required in the methodology of the designated commodity benchmark, including, for greater certainty,
 - (i) any alternative methods used to determine the designated commodity benchmark, including, for greater certainty, any theoretical estimation models, and
 - (ii) if no transaction data exists, procedures to be used in those circumstances;
- (g) the time period during which input data must be provided;
- (h) the means used to contribute the input data, whether electronically, by telephone or by other means;
- (i) the procedures used to determine the designated commodity benchmark if one or more benchmark contributors contribute input data that constitutes a significant proportion of the total input data for the determination of the designated commodity benchmark, including specifying what constitutes a significant proportion of the total input data for the determination of the benchmark;
- (j) the circumstances in which transaction data may be excluded in the determination of the designated commodity benchmark.

Additional information about the methodology

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

- (a) the rationale for adopting the methodology, including, for greater certainty,
 - (i) the rationale for any price adjustment techniques, and
 - (ii) a description of why the time period for the acceptance of input data is adequate for the input data to accurately and reliably represent the value of the underlying interest of the designated commodity benchmark;
- (b) the process for the internal review and the approval of the methodology referred to in section 40.6 and the frequency of those reviews and approvals;
- (c) the process referred to in section 17 for making significant changes to the methodology.

Review of methodology

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

Quality and integrity of the determination of a designated commodity benchmark

- 40.7.(1)** A designated benchmark administrator must specify, and document and publish a description of, the commodity that is the underlying interest of a designated commodity benchmark.
- (2)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the quality and integrity of each determination of a designated commodity benchmark, including for greater certainty, policies and procedures reasonably designed
- (a) to ensure that input data is used in accordance with the order of priority specified in the methodology of the designated commodity benchmark,
 - (b) to identify transaction data that a reasonable person would conclude is anomalous or suspicious,
 - (c) to ensure that the designated benchmark administrator maintains records of each decision, including the reasons for the decision, to exclude transaction data from the determination of the designated commodity benchmark,
 - (d) so that a benchmark contributor is not discouraged from contributing all of its input data that meets the designated benchmark administrator's criteria for the determination of the designated commodity benchmark, and
 - (e) to ensure that benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.

Transparency of determination of a designated commodity benchmark

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

Integrity of the process for contributing input data

- 40.9.** A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure the integrity of the process for contributing input data for a designated commodity benchmark, including, for greater certainty, all of the following:
- (a) criteria for determining who may contribute input data;
 - (b) procedures to verify the identity of a benchmark contributor and a contributing individual and the authorization of the contributing individuals to contribute input data on behalf of the benchmark contributor;
 - (c) criteria for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;
 - (d) criteria for determining the appropriate contribution of transaction data by the benchmark contributor;
 - (e) if transaction data is contributed from any front office, or front office employee, of a benchmark contributor, or of an affiliated entity of a benchmark contributor, procedures to confirm the reliability of the input data, and the criteria upon which the reliability is measured, in accordance with its policies;

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

Governance and control requirements

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

Books, records and other documents

- 40.11.(1)** A designated benchmark administrator must keep the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated commodity benchmarks.
- (2)** A designated benchmark administrator must keep books, records and other documents of all of the following:
 - (a) all input data, including how the data was used;
 - (b) each decision to exclude a particular transaction from input data that otherwise met the requirements of the methodology applicable to the determination of a designated commodity benchmark, and the rationale for doing so;
 - (c) the methodology of each designated commodity benchmark administered by the designated benchmark administrator;
 - (d) any exercise of expert judgment by the designated benchmark administrator in the determination of the designated commodity benchmark, including the basis for the exercise of expert judgment;

- (e) changes in or deviations from policies, procedures, controls or methodologies;
 - (f) the identities of contributing individuals and of benchmark individuals;
 - (g) all documents relating to a complaint.
- (3) A designated benchmark administrator must keep the records referred to in subsection (2) in a form that
- (a) identifies the manner in which the determination of a designated commodity benchmark was made, and
 - (b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance.
- (4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section
- (a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,
 - (b) in a safe location and a durable form, and
 - (c) in a manner that permits those books, records and other documents to be provided promptly on request to the regulator or securities regulatory authority.

Conflicts of interest

- 40.12.(1)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to
- (a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,
 - (b) ensure that expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised,
 - (c) protect the integrity and independence of the provision of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to
 - (i) ensure that the provision of a designated commodity benchmark is not influenced by the existence of, or potential for, financial interests, relationships or business connections between the designated benchmark administrator or its affiliates, its personnel, clients and any market participant or persons connected with them,
 - (ii) ensure that each of its benchmark individuals does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator, including, for greater certainty, outside employment, travel and acceptance of entertainment, gifts and hospitality provided by the designated benchmark administrator's clients or other commodity market participants,
 - (iii) keep separate, operationally, the business of the designated benchmark administrator relating to the designated commodity benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated commodity benchmark, and
 - (iv) ensure that each of its benchmark individuals does not contribute to a determination of a designated commodity benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator,

- (d) ensure that an officer referred to in section 6, or any DBA individual who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affects the integrity of the benchmark determination,
 - (e) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under sections 19, 20, 40.4, 40.5 and 40.8, and
 - (f) identify and eliminate or manage conflicts of interest that exist between the provision of a designated commodity benchmark by the designated benchmark administrator, including all benchmark individuals who participate in the determination of the designated commodity benchmark, and any other business of the designated benchmark administrator.
- (2) A designated benchmark administrator must ensure that its other businesses have appropriate policies, procedures and controls designed to minimize the likelihood that a conflict of interest will adversely affect the integrity of the provision of a designated commodity benchmark.
- (3) In establishing an organizational structure, as required under subsections 40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities of each person or company involved in the provision of a designated commodity benchmark administered by the designated benchmark administrator do not cause a conflict of interest or a potential conflict of interest.
- (4) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated commodity benchmark
- (a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and
 - (b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.
- (5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in paragraph (1)(e), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

Assurance report on designated benchmark administrator

- 40.13.(1)** A designated benchmark administrator must engage a public accountant to provide a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated commodity benchmark it administers, regarding the designated benchmark administrator's
- (a) compliance with subsection 5(1) and sections 11 to 13, 40.3, 40.4, 40.6, 40.7, and 40.9 to 40.12, and
 - (b) following of the methodology applicable to the designated commodity benchmark.
- (2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once every 12 months.
- (3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish the report and deliver a copy of the report to the regulator or securities regulatory authority..
- 9.(1) This Instrument comes into force on September 27, 2023.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 27, 2023, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.