



***BY ELECTRONIC MAIL: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca) and [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)***

June 12, 2019

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, rue du square Victoria, 4e étage  
C.P. 246, Place Victoria  
Montréal, Québec H4Z 1G3

**Re: Proposed National Instrument 25-102 and Proposed Companion Policy 25-102; Designated Benchmarks and Benchmark Administrators**

Dear Sirs/Mesdames:

London Stock Exchange Group (“LSEG”) welcomes the opportunity to respond to the Canadian Securities Administrators (“CSA” or “Administrators”) proposed National Instrument and Companion Policy 25-102 (“Proposal”) for the designation and regulation of benchmarks and benchmark administrators.<sup>1</sup> LSEG is a global financial market infrastructure group providing products and services across our capital markets, information services, post trade services and technology divisions. LSEG businesses include a regulated benchmark administrator, FTSE Russell. Benchmarks are also used by clients of our capital markets and post trade businesses.

FTSE Russell is one of the world’s largest multi-asset index, analytics and data solutions providers. FTSE Canada fixed income indexes are used by investors as a measure of performance for a broad range of CAD debt markets, offering over 40 years of history. FTSE International Limited is an authorized

---

<sup>1</sup> [https://www.osc.gov.on.ca/en/SecuritiesLaw\\_rule\\_20190314\\_25-501\\_commodity-futures-act.htm](https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20190314_25-501_commodity-futures-act.htm)

Benchmark administrator, regulated by the UK Financial Conduct Authority (FCA) under the EU Benchmark Regulation (“EU BMR”) Article 34.

LCH Group is an international, multi-asset class group of clearing houses, or central counterparties (“CCPs”), that manage risks of many diverse portfolios of cleared derivatives. LCH Ltd’s SwapClear service has been designated as systemically important by the Bank of Canada (“BoC”) and is recognized as a clearing agency by the Ontario Securities Commission (“OSC”) and Autorité des marchés financiers (“AMF”).<sup>2</sup> LCH has been pleased to serve as an Observer on the Canadian Alternative Reference Rate Working Group (“CARR”).<sup>3</sup>

We elaborate on the following points in our responses to the questions in Annex C below:

1. **Governance** – A robust governance framework protects the integrity of benchmarks and is a key pillar of benchmark regulation. It is important that governance approaches adhere to the IOSCO Principles on Financial Benchmarks (“IOSCO Principles”).<sup>4</sup> IOSCO is clear that an independent oversight function is required where conflicts arise due to ownership structures.
2. **Administrator Compliance Officer** – The administrator compliance officer role is important for adherence to all applicable benchmark regulations. Responsibilities for setting compensation levels should remain with the Board, and compliance with internal methodologies is more appropriately managed within the broader oversight function, in line with the IOSCO Principles.
3. **Critical Benchmarks** – If FRAND requirements are deemed necessary, they should align with similar requirements under the EU BMR.
4. **Conflicts of Interest** – We agree that administrators should establish, document, implement and enforce policies for the identification, disclosure and management of conflicts of interest as set out in the IOSCO Principles and EU BMR.
5. **Anticipated Costs and Benefits** – In light of the evolving contemplation, development and implementation of benchmark regulations in other jurisdictions, we believe it is important for outcome-based assessments of equivalence, under principles of proportionality, to be agreed and implemented to avoid unnecessary duplication and costs.

---

<sup>2</sup> LCH Group is the leading multi-asset class and multi-national group of clearing houses, serving major international exchanges and platforms as well as a range of OTC markets. LCH Group clears a broad range of asset classes including securities, exchange-traded derivatives, foreign exchange derivatives, interest rate swaps, credit default swaps, and euro and sterling denominated bonds and repos. LCH Group Limited is majority owned by the London Stock Exchange Group.

<sup>3</sup> LCH is an observer in the Canadian Alternative Reference Rate Working Group (CARR), to support Canada’s reform of the Rates Markets benchmarks. <https://www.bankofcanada.ca/markets/canadian-alternative-reference-rate-working-group/>

<sup>4</sup> Principles for Financial Benchmarks, IOSCO, <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf> (last visited May 9, 2019).

## **Responses to Specific Questions in Annex C**

### **Governance**

*3. Is the requirement for the board of directors of an administrator to be comprised of a minimum of 3 directors, of which at least half must be independent, appropriate? If not, please explain with concrete examples.*

We support the objectives of this regulation to ensure that benchmarks are produced in a transparent and reliable manner and contribute to well-functioning and stable markets and investor protection. FTSE Russell has been supportive of the IOSCO Principles and has been publishing IOSCO compliance statements since 2014. We have been closely engaged throughout the development and implementation of the EU BMR and related initiatives in other jurisdictions. We believe consistency with IOSCO Principles and, where appropriate, the EU BMR requirements should be a key consideration in the development of a Canadian regime for the designation and regulation of benchmarks and benchmark administrators.

It is important for an administrator to have appropriate governance arrangements to protect the integrity of the benchmark and to address conflicts of interest. In line with IOSCO Principles, this should include an oversight function to review and provide challenge which can include independent members. However, we do not believe it would be proportionate or appropriate to require a board of directors of which at least half must be independent. This is not in line with IOSCO Principles and EU BMR which focus on the role and responsibilities of the oversight function. We note that EU BMR requires two independent directors on the oversight committee only for critical benchmarks.

...

### **Administrator Compliance Officer**

*5. Should the compliance officer of an administrator also monitor the administrator's compliance with its own benchmark methodology? Please explain with concrete examples.*

We agree that an administrator should have in place an accountability framework that provides evidence of compliance with relevant regulations. EU BMR requires that for critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and EU BMR at least annually. For non-critical benchmarks, we suggest that the internal accountability framework and control functions should monitor the administrator's compliance with benchmark methodologies. The role of the compliance officer should include ensuring that the first line of defense and business internal controls on methodology compliance are appropriate and are followed.

*6. Should the compliance officer of an administrator not be involved in the establishment of compensation levels for any DBA individual (as defined in Proposed NI 25-102), other than for a DBA individual that reports directly to the compliance officer? For example, are there cases where compliance officer involvement in the compensation setting process is appropriate or desirable to, for example, reduce conflicts of interest? Please explain with concrete examples.*

Remuneration should be set by the administrator's Board and Remuneration Committee in line with best practice. We believe that compliance can have a role in the overall discussion on how compensation can be a tool to manage conduct and conflicts of interest within the organization. IOSCO is clear that an administrator's conflicts of interest framework should ensure that staff who participate in the benchmark determination are not directly or indirectly rewarded or incentivised by the levels of the benchmark.

### **Critical Benchmarks**

*7. Under Proposed NI 25-102, only an administrator of a designated critical benchmark must take reasonable steps to ensure that access rights to, and information relating to, the designated critical benchmark are provided to all benchmark users on a fair, reasonable, transparent and non-discriminatory basis. Should such access rights be afforded to all benchmark users for all designated benchmarks? Please explain with concrete examples.*

Under the Proposal, an administrator of a designated critical benchmark must take reasonable steps to ensure that this benchmark is provided on a FRAND basis, which is in line with EU BMR approach. Although the scope of the Proposal is limited, we believe as a general policy matter it would be disproportionate to extend FRAND requirements to non-critical designated benchmarks.

*8. Section 31 requires a benchmark contributor to a designated critical benchmark to notify the designated benchmark administrator for that benchmark of the benchmark contributor's decision to cease contributing input data in relation to the designated critical benchmark. Should Proposed NI 25-102 include a requirement that the benchmark contributor continue to provide data for a period of time to allow the benchmark administrator and regulators to consider the impact of the benchmark contributor's decision.*

From the perspective of an index provider and working with benchmark users, we would support the inclusion of a requirement for critical benchmark contributors to continue to provide data for a period of time following a decision to cease contributions. We propose including a fixed time period with review clauses (rather than leaving it open ended) to give flexibility for adjustment. We note that the EU BMR allows authorities to compel contributions to a critical benchmarks for up to 24 months.

### **Conflicts of Interest**

*9. Is the requirement in subsection 11(3) of Proposed NI 25-102 appropriate, particularly as it relates to a risk of a significant conflict of interest? Please explain with concrete examples.*

We agree that administrators should establish, document, implement and enforce policies for the identification, disclosure and management of conflicts of interest as set out in this regulation, IOSCO Principles and EU BMR. We would recommend clarification regarding a "significant conflict of interest" and "promptly publish". We note that IOSCO Principles set out that administrators should "disclose any material conflicts of interest to their users and any relevant Regulatory Authority, if any."

...

## Anticipated Costs and Benefits

12. *The Notice sets out the anticipated costs and benefits of Proposed NI 25-102 (in Ontario, additional detail is provided in Annex D). Do you believe the costs and benefits of Proposed NI 25-102 have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain with concrete examples.*

We believe that consistency with the IOSCO Principles and EU BMR requirements will help to ensure additional significant costs are not incurred by those currently in compliance with these requirements. LSEG has broadly supported harmonization of regulatory requirements across jurisdictions to promote consistency for market participants. In light of the evolving contemplation, development and implementation of benchmark regulations in other jurisdictions outside of Canada and the EU, we believe it is important for outcome-based assessments of equivalence, under principles of proportionality, to be agreed at bilateral and multi-lateral levels to avoid duplicative and overlapping requirements on a global basis.

\* \* \*

LSEG is grateful for the opportunity to comment on the Proposal. Please do not hesitate to contact us regarding any questions raised by this submission or to discuss our comments in greater detail.

Yours sincerely,



Jonathan Jachym

Global Head of Regulatory Strategy  
Head of Government Relations, Americas  
London Stock Exchange Group

cc: Paul Bowes, Country Head, FTSE Russell Canada  
John Horkan, COO and Head of North America, LCH Group