

**MSCI'S FEEDBACK ON THE
CANADIAN SECURITIES
ADMINISTRATION REQUEST FOR
COMMENTS ON THE PROPOSED
NATIONAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS
AND BENCHMARK
ADMINISTRATORS AND
COMPANION POLICY**

MSCI

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INTRODUCTION

MSCI appreciates the opportunity to comment on the Canadian Securities Administrators' Request for Comments on the Proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy.

About MSCI

MSCI is a leading provider of investment decision support tools to institutional investors globally, including asset managers, banks, hedge funds and pension funds. MSCI products and services include indexes, ESG research and tools, and portfolio risk and performance analytics. MSCI is headquartered in New York, with research and commercial offices around the world.

MSCI's flagship equity indexes include the MSCI Global Equity Indexes and MSCI as been calculating indexes for more than 45 years. MSCI Global Equity Index families include country and regional indexes, size indexes (large cap, small cap, and micro-cap), sector indexes, style (value/growth) indexes, strategy indexes, thematic indexes and ESG indexes. MSCI also calculates custom indexes at the request of clients, by applying client screens and constraints to MSCI Global Equity Indexes.

MSCI Global Equity Indexes are used worldwide by:

- assets owners to help them with their mandate decisions and with reviewing their managers' performance;
- active asset managers so that they can actively manage their funds against an index and report performance;
- passive fund managers to issue passive funds and ETFs based on the indexes;
- broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally;
- stock exchanges to create equity index linked futures and options contracts; and
- CCPs to calculate the risks of its positions for index linked futures and options contracts.

During 2013 and 2014, MSCI implemented the IOSCO Principles, was externally audited during each of 2014, 2015 and 2016 for the MSCI equity indexes and select MSCI private real estate indexes, and posted the adherence statements and external audit reports on the Index Regulation page of www.msci.com. During 2017, 2018 and 2019, MSCI devoted those resources to implementing the BMR across MSCI's benchmark families. MSCI's current IOSCO adherence statements can be found on the Index Regulation page of www.msci.com.

On 5 March 2018, MSCI Limited, which is a UK subsidiary of MSCI Inc., was granted authorization by the UK FCA as a UK administrator under the EU benchmark regulation ("BMR") for the MSCI equity indexes. MSCI was the first major global equity index provider to become authorized under the BMR. We are currently implementing the BMR for the MSCI private real estate indexes.

MSCI'S FEEDBACK

General

We agree with the calibrated approach taken by the Canadian Securities Administrators (CSA) in focusing on a limited number of local benchmarks, which is consistent with most jurisdictions globally.

We also believe that consistency with the IOSCO Principles is important as the IOSCO Principles are the global standard.

If additional indexes were to be included in the National Instrument the future, we believe that it would be important for the CSA to obtain the views of market participants through a consultation because

- Different types of indexes measure different markets, many aspects of benchmark administration can be very different,
- Many proposals seem to be focused on Canadian entities, but may be unworkable or not feasible for multinational organizations,
- Many proposals focus on small administrators with single or a few benchmarks and would be disproportional or unworkable for administrators that calculate hundreds or thousands or hundreds of thousands of benchmarks.

To avoid unintended consequences, any regulation would need to take those differences into consideration. The IOSCO Principles accounts for these differences by embedding a key concept of "proportionality" through a "comply or explain" regime. We strongly recommend that the concept of proportionality be used in the National Instrument.

Feedback on Specific Questions/Sections

Question Number	MSCI response
3	We disagree with the proposal around board members. Board members have legal duties under local law. Requiring additional board duties and responsibilities, and dictating board membership eligibility, board numbers and board tenure, causes conflicts with local law. It is also inconsistent with benchmark regulation globally. In other jurisdictions, the board should include individuals with decision making responsibility in relation to benchmark administration. If the board has decision making authority for benchmark administration, then individual board members must have responsibility for benchmark administration (otherwise a board without requisite knowledge and experience will not be making informed decisions).
4	We disagree with the proposal that the legal entity board or oversight committee should be mandated to include external members. We believe that this introduces potential conflicts of interest into administration. By having employees serve these functions, the administrator can ensure those individuals are subject to their codes of conduct and ethics. Further, to the extent price sensitive information is involved, including external parties on the board could create issues with information sharing. Finally, it is also inconsistent with benchmark regulation globally. If every jurisdiction begins mandating different requirements for membership of boards and oversight committees for globally used benchmarks, benchmark administration by global administrators becomes difficult, if not impossible.

5	<p>We believe that a committee oversight and governance structure is more appropriate and is consistent with global regulation. Committees can draw on areas of expertise across members. Committees avoid potential conflicts of interest of single individuals as well as any individual having the power to take unilateral decisions.</p>
7	<p>To assist the market and provide a level of certainty, we would recommend that the CSA provide some guidelines around what constitutes a designated critical benchmark.</p> <p>We believe that access/pricing restrictions should not apply if substitute benchmarks are available in the marketplace. By definition, we believe that a critical benchmark is not, and cannot be critical, if there are other options for users to choose, otherwise the regulation would be creating an unlevel playing field across competitors, forcing some administrators to license their benchmarks on a “fair reasonable and non-discriminatory” basis, while allowing others to license their benchmarks without those restrictions. It would also create a market disruption for benchmarks that are used and licensed to global clients, if they had to be licensed in Canada on “fair reasonable and non-discriminatory” basis, but without those restrictions outside of Canada.</p>
8	<p>It is unclear how these provisions would apply to, be enforceable against, contributors globally.</p>
9	<p>We support the CSA with the general requirement to disclose conflicts of interest, but requiring disclosures down to the benchmark level would not be feasible for administrators that calculate hundreds of thousands of indexes.</p>
Other	<p>Article 16(3)(a) assumes there may be other sources for the data. For some asset classes, there may not be other sources for the data.</p> <p>Article 19(2) – Forty-five days notice may not be appropriate if there market circumstances that require changes. Further, we believe that the regulator or securities regulatory authority should be informed of an implementation simultaneously with the market.</p> <p>Article 24(ix) – As some indexes may have hundreds or thousands of contributors, it is unclear how the requirement for the individual at the administrator could reasonably have direct access all of the benchmark contributors’ boards of directors or how that could be enforced globally.</p> <p>Article 25 – We believe that this article is disproportionate to many types of indexes, in particular, those that rely on voluntary contributions from data contributors that may not be regulated financial services entities. The unintended consequence is that prescriptive requirements may dissuade contributors from contributing to the benchmark.</p> <p>Benchmarks provide transparency, which is particularly important in private markets that are traditionally opaque. Without contributions, there will be no benchmark, and that ultimately reduces transparency in private markets. Because of that risk, we note that the equivalent requirement in the EU benchmark regulation is subject to the proportionality principle and may be waived.</p>



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