

## CSA Notice Amendments to National Instrument 81-102 *Investment Funds* Pertaining to Crypto Assets

April 17, 2025

### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting

- amendments (the **Amendments**) to National Instrument 81-102 *Investment Funds* (**NI 81-102**), and
- changes (the **CP Changes**) to Companion Policy 81-102 *Investment Funds* (**81-102CP**)

(collectively, the **Amendments and CP Changes**).

The Amendments and CP Changes pertain to reporting issuer investment funds that seek to invest directly or indirectly in crypto assets (**Public Crypto Asset Funds**).

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **July 16, 2025**.

### Substance and Purpose

The Amendments and CP Changes are intended to provide greater regulatory clarity with respect to certain key operational matters regarding Public Crypto Asset Funds, such as:

- criteria regarding the types of crypto assets that Public Crypto Asset Funds are permitted to purchase, use or hold,
- restrictions on investing in crypto assets by Public Crypto Asset Funds or other types of reporting issuer investment funds, and
- requirements concerning custody of crypto assets held on behalf of a Public Crypto Asset Fund.

The Amendments will codify practices of existing Public Crypto Asset Funds, developed mainly through the prospectus review process, as well as codify exemptive relief previously granted to existing Public Crypto Asset Funds. The Amendments and CP Changes will provide investment fund managers with greater regulatory clarity concerning investments in crypto assets. The intent

is to facilitate new product development while also ensuring that appropriate risk mitigation measures are built directly into the investment fund regulatory framework.

## Background

The Amendments and CP Changes are a key phase of the CSA's implementation of a regulatory framework for Public Crypto Asset Funds (the **Project**). The Project's objectives are to review existing requirements, provide guidance, and then implement a regulatory framework relating to Public Crypto Asset Funds that ensures adequate investor protection and mitigates potential risks while providing greater regulatory clarity for product development and management. The Project is a recognition by the CSA that the existing regulatory framework in NI 81-102 needs to be adapted to properly account for the unique aspects of crypto assets as an investment product for publicly distributed investment funds.

The Project is being carried out in three phases.

### *Phase 1 – CSA Staff Notice*

Phase 1 of the Project entailed communicating information to stakeholders on areas we believe required greater regulatory guidance, including new developments relating to Public Crypto Asset Funds. Phase 1 was completed with the publication of CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers* (the **Staff Notice**) on July 6, 2023.<sup>1</sup>

The Staff Notice provided guidance to stakeholders and outlined CSA staff's views and expectations regarding the operations of Public Crypto Asset Funds within the current framework of NI 81-102, including:

- providing an overview of the Public Crypto Asset Funds market and clarifying the application of existing securities regulatory requirements to them,
- discussing key findings from previous reviews conducted by CSA staff, and
- communicating CSA staff expectations for stakeholders with respect to various matters related to Public Crypto Asset Funds, including key considerations for investing in crypto assets, expectations regarding custody of crypto assets on behalf of Public Crypto Asset Funds, issues concerning staking and other similar yield-generating activities, and reminding registrants of their know-your-product, know-your-client and suitability obligations.

### *Phase 2 – The Amendments*

The Amendments and CP Changes represent the second phase of the Project. As discussed in greater detail below, the purpose of this phase of the Project is to build on the guidance in the Staff

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<sup>1</sup> CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers*, available at <https://www.osc.ca/en/securities-law/instruments-rules-policies/8/81-336/csa-staff-notice-81-336-guidance-crypto-asset-investment-funds-are-reporting-issuers>.

Notice by focusing on targeted amendments that reflect priority issues regarding investment funds investing in crypto assets. This phase seeks to codify policies and practices of existing Public Crypto Asset Funds, many of which were developed and adopted through the prospectus review process and were also cited in the Staff Notice. Also, where appropriate, the Amendments codify routinely granted exemptive relief for these products.

We first published proposed amendments (the **Proposed Amendments**) and CP Changes relating to this phase of the Project for a 90-day comment period, on January 18, 2024.<sup>2</sup>

### *Phase 3 – Consultation Paper and Possible Future Amendments*

Phase 3 of the Project will involve a public consultation concerning a broader and more comprehensive regulatory framework for Public Crypto Asset Funds.

## **Summary of Amendments and CP Changes**

The following is a description of the Amendments and CP Changes. The Summary of Changes to the Proposed Amendments in Annex A describes how the Amendments and CP Changes differ from what was initially published for comment.

### *Amendments to NI 81-102*

#### **(i) Part 1 – Definitions**

*“alternative mutual fund”*

The definition of “alternative mutual fund” is being amended to also include a mutual fund that invests in crypto assets.

#### **(ii) Part 2 – Investments**

### *Section 2.3 – Restrictions Concerning Types of Investments*

We are amending the investment restrictions in section 2.3 to permit only alternative mutual funds and non-redeemable investment funds to buy, sell, hold or use crypto assets directly. This restriction would also apply to investing indirectly in crypto assets through specified derivatives. Mutual funds, other than alternative mutual funds, will only be permitted to invest in crypto assets by (a) investing in underlying alternative mutual funds or non-redeemable funds that invest in crypto assets, subject to the fund of fund restrictions in subsection 2.5(2) of NI 81-102 or (b) investing in a specified derivative for which the underlying interest is a crypto asset, provided the specified derivatives meets the criteria described below.

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<sup>2</sup> See “CSA Notice and Request for Comment – Proposed Amendments to National Instrument 81-102 *Investment Funds* Pertaining to Crypto Assets” available at <https://www.osc.ca/en/securities-law/instruments-rules-policies/8/81-102-81-102cp/csa-notice-and-request-comment-proposed-amendments-national-instrument-81-102-0>.

Investment funds will only be permitted to invest in fungible crypto assets that are listed for trading on, or are the underlying interest for a specified derivative that trades on, an exchange that is recognized by a securities regulatory authority in Canada.

**(iii) Part 6 – Custodianship of Portfolio Assets**

We are including provisions that will apply specifically to custodians and sub-custodians that hold crypto assets on behalf of an investment fund (a **Crypto Custodian**) as described below. These provisions largely codify existing practices of Crypto Custodians and are supplemented by additional guidance in 81-102CP:

- section 6.5.1 will require a Crypto Custodian to keep crypto assets in offline storage (usually referred to as “cold wallet” storage), except as needed to facilitate purchases and sales or other portfolio transactions in the fund.
- section 6.7 will be amended to include a requirement for a Crypto Custodian to obtain, on an annual basis, a report prepared by a public accountant assessing the Crypto Custodian’s service commitments and system requirements relating to its custody of crypto assets and to deliver this report to the fund. If the Crypto Custodian is the fund’s sub-custodian, the report will also have to be delivered to the fund’s custodian.

**(iv) Part 9 – Sale of Securities of an Investment Fund**

***Section 9.4 – Delivery of Funds and Settlement***

Subsection 9.4(2) is being amended to permit mutual funds that hold crypto assets to accept those crypto assets as subscription proceeds, subject to the following conditions:

- the mutual fund is permitted to purchase the applicable crypto asset, the crypto asset is acceptable to the fund’s portfolio advisor, and holding the asset is consistent with the fund’s investment objectives, and
- the crypto assets accepted by the mutual fund as subscription proceeds for the mutual fund’s securities must be of at least equal value to the issue price of the mutual fund’s securities received in exchange.

***Changes to 81-102CP***

***Section 2.01 – Guidance on what are considered to be “crypto assets”***

We are adding guidance relating to what the CSA will generally consider to be crypto assets for the purposes of investment funds regulation, though we note this is not intended to be a legal definition of the term.

### *Section 3.3.01 – Investing in crypto assets*

We are adding a new section 3.3.01 which will clarify that the listing on a “recognized exchange” requirement for funds investing crypto assets in section 2.3 of NI 81-102 is not intended to restrict funds to only purchasing crypto assets through such an exchange. A fund may purchase crypto assets from other sources as well, including crypto trading platforms, as long as the crypto asset meets the criteria set out in subsection 2.3(1.3) of NI 81-102.

### *Section 8.1 – Custody standard of care*

We are adding a new subsection 8.1(2) which provides guidance as to how the standard of care for custodians and sub-custodians set out in section 6.6. of NI 81-102 might apply in the context of Crypto Custodians, including best practice suggestions.

### *Section 8.3*

We are adding a new subsection 8.3(2) which will clarify that the reporting requirement for Crypto Custodians in section 6.7. of NI 81-102 can be met by obtaining a System and Organization Controls 2 Type II Report, prepared by a public accountant, in accordance with the framework developed by the American Institute of Chartered Public Accountants.

## **Summary of Written Comments Received by the CSA**

During the comment period we received submissions from 16 commenters. We have considered the comments received and thank all the commenters for their input. The names of the commenters and a summary of their comments together with our responses is provided in Annex B of this Notice.

## **Summary of Changes to the Proposed Amendments**

After considering the comments received, we have made some revisions to the materials that were originally published for comment under the Proposed Amendments and CP Changes. These revisions are reflected in the Amendments and CP changes that we are publishing in Annex A of this Notice. We do not consider these changes to be material and accordingly, we are not publishing the Amendments for a further comment period. A summary of the key changes to the Proposed Amendments is provided in Annex A of this Notice.

## **Local Matters**

An annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

## Questions

Please refer your questions to any of the following CSA staff:

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## **Contents of Annexes**

The text of the Amendments and CP Changes, the Summary of Changes to the Proposed Amendments, and the Summary of Comments and the CSA's Responses is contained in the following annexes to this Notice and is available on the websites of members of the CSA:

Annex A – Summary of Changes to the Proposed Amendments

Annex B – Summary of Public Comments Received and CSA Responses

Annex C – Amendments to National Instrument 81-102 *Investment Funds*

Annex D – Changes to Companion Policy 81-102CP *Investment Funds*