CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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.[1]

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 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

[1] 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.

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.[2]

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.

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.

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[2] 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.

(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*

ANNEX A

SUMMARY OF CHANGES TO THE PROPOSED AMENDMENTS

The following summarizes the changes we made to the Proposed Amendments in response to the comments we received. We do not consider these changes to be material.

Part 2 – Investments

1. Section 2.3 was changed to permit mutual funds that are not alternative mutual funds to also invest in specified derivatives for which the underlying interest is a crypto asset, up to 10% of the fund's net asset value at the time of purchase, provided the specified derivative fits the criteria outlined in subsection (1.4) (i.e. that it is listed for trading on an exchange that is recognized by a securities regulatory authority in Canada).

2. We removed paragraph 13 of subsection 2.12(1) which stated that for securities lending transactions by a fund, neither the loaned securities nor the collateral delivered to the funds can include crypto assets.

3. We removed paragraph 12 of subsection 2.13(1) which stated that no securities transferred by an investment fund as part of a repurchase agreement transaction can be crypto assets.

4. We removed paragraph 10 of subsection 2.14(1) which stated that none of the securities transferred in a reverse repurchase agreement can be crypto assets.

5. We removed the reference to "crypto assets" in subsection 2.18(2) with respect to what constitutes a "money market fund".

Part 6 – Custodianship of Portfolio Assets

6. We removed subsection 6.6(3.1), which would have required a custodian or sub-custodian holding crypto assets on behalf of a fund to maintain insurance in regard to its custody of crypto assets. The CP Changes will still include guidance that investment fund managers take matters such as the amount and nature of insurance maintained by a custodian or sub-custodian as a relevant factor to consider as part of its due diligence in selecting a custodian or approving the selection of a sub-custodian to hold crypto assets for the investment fund, consistent with the investment fund manager's fiduciary obligations.

7. We changed the provisions in section 6.7 that require a custodian or sub-custodian holding portfolio assets of a fund to obtain a report providing reasonable assurance opinion concerning the design and operational effectiveness of service commitments and system requirements for that custodian or sub-custodian as follows:

    (a) the annual report must relate to a 12-month period, but that period does not have to be the custodian or sub-custodian's financial year. However, the same 12-month period must be used for subsequent reports obtained,

    (b) the report must be obtained no later than 90 days from the end of the period it relates to, instead of 60 days,

    (c) a custodian or sub-custodian cannot hold crypto assets on behalf of a fund unless it has obtained the applicable report relating to a period ending no more than 15 months prior to holding crypto assets on behalf of the fund.

Part 9 – Sale of Securities of an Investment Fund

8. We changed the wording in proposed paragraph 9.4(2)(c) that permits funds holding crypto assets to accept in-kind purchases to better align with the wording in paragraph 9.4(2)(b), and with the wording used in the exemptive relief orders the provision is codifying.

ANNEX B

SUMMARY OF PUBLIC COMMENTS AND CSA RESPONSES

INTRODUCTION

We received comment letters from 16 different commenters on all aspects of the Amendments and CP Changes, as well as the additional consultation questions for which we sought specific comment (the **Consultation Questions**). A summary of the comments received, and the CSA's responses are provided below. The names of the commenters are provided at the end.

GENERAL COMMENTS		
ISSUE	**COMMENTS**	**RESPONSES**
General Support for Proposals	A commenter indicated their general support of the Amendments and CP Changes. However, this commenter expressed concern that there may be more pressing matters concerning NI 81-102, that should be prioritized over digital assets. They also expressed concern that the Amendments do not sufficiently contemplate future trends and emerging activities and that the Amendments may be overly prescriptive.	**We thank the commenter for the support. The concern is noted.**
	Another commenter welcomes the CSA's efforts to foster greater clarity regarding the regulation and oversight of crypto assets and broader digital markets. They welcome well-designed and appropriate regulation of crypto assets and broader digital asset markets that avoids creating negative unintended consequences, in terms of economic growth and further innovation.	**We thank the commenter for the support.**

Ongoing Engagement with Stakeholders	A commenter stated that collaboration between market participants and regulatory authorities is crucial in addressing emerging challenges, promoting innovation, and maintaining investor confidence.	**We agree.**
SPECIFIC COMMENTS ON PROPOSED AMENDMENTS		
Part I – Definitions		
"Alternative Mutual Fund"	Three commenters support the proposal to include mutual funds that invest in crypto assets within the definition of "alternative mutual fund" and that this supports the notion of alternative mutual funds being permitted to have increased exposure to certain alternative investment classes or strategies, relative to other funds. One commenter sought clarification on whether the Amendments would automatically reclassify existing crypto asset exchange-traded funds as "alternative mutual funds".	**We thank the commenters for the support.** **The existing Public Crypto Asset Funds that invest in crypto assets are currently all classified as alternative mutual funds so this will not have any impact on how existing funds are classified.**
Definition of "Crypto Asset"	Two commenters support our proposal to introduce guidance on defining "crypto asset" and that the proposed guidance aligns with the general understanding of the term amongst market participants. Some commenters also noted the current absence of an internationally recognized taxonomy or classification system for crypto assets. The commenters believe that establishing such a taxonomy will become essential for regulatory certainty and consistency for market participants and would also mitigate regulatory fragmentation, foster innovation and support clarity for	**We thank the commenters for the support.** **We acknowledge the current absence of internationally recognized taxonomy for crypto assets which is why we believe the proposed guidance on what we believe constitutes a crypto asset for the purpose of NI 81-102 serves to provide the necessary clarity to market participants without creating**

	investors and providers. This taxonomy should be designed to remain flexible and adaptable and evolve alongside technological advancements. They encourage the CSA to engage with market participants as well as international regulatory bodies in support of development of such a taxonomy.	**inconsistencies between our proposed regulatory framework and those abroad.**
	Another commenter indicated that the definition of "crypto asset" as proposed is broad and does not appear to link the asset to a taxonomy that can be relied upon by market participants to determine the application of securities laws. Inclusion in 81-102CP of indicia as to what elements would facilitate the review and analysis of the application of securities laws to these assets would further enhance the application of the proposed framework and ensure consistency with other jurisdictions in which these assets may circulate.	**NI 81-102 is a regulatory framework applicable to publicly distributed investment funds and includes provisions that govern how a fund may invest in certain types of assets, but beyond that, it is not intended to broadly determine the applicability of securities laws to any particular asset type, including crypto assets.**
	Some commenters highlight that the guidance in the CP Changes is much broader than the definition used by the CSA in the context of crypto asset trading platforms as it includes crypto assets that are securities or derivatives. The concern being that using the term in a manner that is different from what the market is accustomed to could create unnecessary confusion. The commenters suggested that the CP Changes should clarify that any crypto assets that are securities are subject to the same requirements as all other securities/derivatives.	**The guidance in the CP Changes is there only to provide greater context as to the type of assets that we consider to be crypto assets for the purposes of the provisions referencing that term in NI 81-102. We disagree that it creates any confusion with the term as it is used with respect to the crypto trading platforms because the context is different.**
	Some commenters also suggested that the use of a different term, such as "digital assets" may address the concern about market confusion.	**We thank the commenters for the suggestion. However, we are of the view that the term "digital assets" is too broad when referring to crypto assets that are held by Public Crypto Asset Funds.**

	One commenter indicated that to ensure a regulatory framework consistent with the industry, they support the CSA's collaboration with all Canadian regulators to ensure a harmonized definition. The commenter raises the point that some crypto assets, such as non-fungible tokens, do not secure transactions but are nevertheless considered part of the crypto asset domain. To this end, the commenter believes that the last part of the proposed definition of crypto assets should be reworded more simply as: "for the purpose of recording transactions." This change would harmonize the proposed guidance with the definition proposed by the Ontario Securities Commission. Two commenters supported providing guidance on what constitutes a crypto asset but suggested that the CSA consider adding guidelines outlining current views on the classification of tokens that are crypto assets, such a value-referenced crypto assets, utility tokens, security tokens, commodity tokens, and currency tokens.	**As stated above, the guidance in the CP changes is there only to provide greater context as to the type of assets that we consider to be crypto assets for the purposes of the provisions referencing that term in NI 81-102. However, we agree with the commenter that the proposed guidance on what we believe constitutes a crypto asset includes non-fungible tokens and we have made the change accordingly in the CP changes.** **We thank the commenters for their comments but note that the suggestions provided refer to matters that are beyond the scope of this Project.**
Part 2 – Investments		
Section 2.3 - Restrictions Concerning Types of Investments	Some commenters agreed with the proposal to restrict direct investment in crypto assets to alternative mutual funds and non-redeemable investment funds. Some commenters are seeking clarity on the proposal to limit investment in crypto assets to those traded on or referenced by derivatives trading on a recognized exchange in Canada, specifically whether the actual spot crypto asset must be listed on a recognized exchange and	**We thank the commenters for the support.** **The Amendments indicate the crypto asset must trade on a recognized exchange or be the underlying interest of a specified derivative that trades on a recognized exchange; this is not necessarily restricted to Canadian exchanges as there are several**

	expressed concern that these provisions may stifle market and product development and potentially drive investors toward less-regulated markets and products with inadequate investor protections.	**large international exchanges that are recognized by a securities regulatory authority in Canada. We are of the view that this requirement is essential in determining the suitability of a crypto asset as a portfolio holding for a Public Crypto Asset Fund. The market integrity and price discovery provided by recognized exchanges can help ensure that a fund is investing in assets for which there is sufficient regulated trading.**
	Multiple commenters indicated that these restrictions would be unnecessarily restrictive and would limit the crypto assets that can be held by a Public Crypto Asset Fund to what would currently be only a few crypto assets, i.e. Bitcoin (BTC) and Ether (ETH). Other crypto assets are available to Canadian investors on CTPs which are currently registered or operating under a pre-registration undertaking in Canada or which are regulated in a comparable foreign jurisdiction. The commenters suggests that the CSA should consider allowing the use of a regulated investment vehicle such as a mutual fund or exchange-traded fund to hold these crypto assets so that investors can benefit from an established and supervised structure as well as increased guidance and advisory services compared to holding crypto assets directly.	**We acknowledge that very few crypto assets would currently meet the requirements under the Amendments. However, we believe these restrictions provide clarity and transparency as to whether a crypto asset would be considered an appropriate investment for a Public Crypto Asset Fund by ensuring those funds are only investing in crypto assets for which there exists a robust regulatory trading framework. We note that CTPs are registered as dealers and in some jurisdictions, as alternative trading systems. They are not regulated and recognized exchanges in Canada, and therefore do not address our concerns with market integrity. We also note that CTPs are not permitted to list crypto assets that are securities or derivatives which could ultimately be more restrictive to funds than the criteria we have proposed. We are of the view that restricting Public Crypto Asset Funds to holding crypto assets that are traded on CTPs would be an inappropriate criterion in establishing the suitability of a crypto asset as a portfolio holding for such funds.**

	One commenter suggested that the restriction be expanded to permit funds to invest in any of the top ten crypto assets by market capitalization.	**Change not made. In our view, market capitalization is not an appropriate criterion by which a crypto asset can be deemed suitable as a portfolio holding for Public Crypto Asset Funds nor would such a restriction be workable as crypto assets' market capitalization constantly fluctuate.**
	Another commenter recommended that funds be restricted to invest in crypto assets that have worldwide institutional grade liquidity and are in the top five in terms of market capitalization.	**Change not made. See previous response.**
	Other commenters disagreed with the proposal to entirely prohibit Public Crypto Asset Funds from investing in non-fungible crypto assets. They believe that despite some challenges, the potential of NFTs remains significant and contend that under certain circumstances, it could be appropriate to permit funds to invest in NFTs, though they recognize the need for specific regulatory parameters. They recommend NFTs be permitted concurrently with investor protection measures for funds seeking to hold these crypto assets.	**Change not made. We do not agree that it would be appropriate for Public Crypto Asset Funds to invest in non-fungible crypto assets as they present valuation, liquidity and reliability challenges that are better addressed through a prohibition rather than specific regulatory parameters. However, we will continue to observe the non-fungible crypto asset market to ascertain if this market matures to a point where the aforementioned challenges are addressed or can be addressed through regulatory parameters.**
	One commenter believes the proposed restrictions are unnecessary and inconsistent with other recent amendments to NI 81-102. Specifically, the commenter recommends amending the restrictions in paragraph 2.3(1)(j) to permit mutual funds that are not alternative mutual funds to also invest in specified derivatives of which the underlying interests are crypto assets. The commenter believes this change will be consistent with similar restrictions on those mutual funds investing in physical commodities or other alternative assets.	**We agree. We have amended section 2.3(1)(j) accordingly.**

	One commenter stated that the recognized exchange requirement will hinder Canada's ability to remain a global leader in the continued development and issuance of Public Crypto Asset Funds, as it will suppress new product development in that space.	**We acknowledge but disagree with the comment regarding the recognized exchange requirement as any crypto asset could potentially come into compliance with the restrictions. We believe that as institutional support for a particular crypto asset develops, so too will new crypto asset fund products develop.**
	The same commenter indicates that under section 2.4 of NI 81-102, investment funds are subject to restrictions on the proportion of "illiquid assets" that can be held in their portfolios and refers to an Ontario Securities Commission decision which determined that BTC is not an illiquid asset under NI 81-102. The commenter further states that for the same reason, many crypto assets that do not meet the recognized exchange requirement are liquid assets.	**The recognized exchange requirement does not seek to address only liquidity issues but rather to determine if a specific crypto asset is suitable as a portfolio holding of a Public Crypto Asset Fund due to the presence of a reliable and appropriately regulated market.**
	The same commenter proposes that Public Crypto Asset Funds can accurately and consistently value their crypto assets, even if the particular crypto asset does not meet the recognized exchange requirement, notably through the use of publicly available indices. By using these indices, Public Crypto Asset Funds would be able to mitigate price discovery concerns while not necessarily meeting the recognized exchange requirement. The commenter also highlights that when the CSA approved the first ETH-focused Public Crypto Asset Fund in 2020, ETH did not meet the Recognized Exchange Requirement.	**As publicly available indices often reflect crypto assets prices on CTPs, using this source of pricing information would not address our market integrity concerns. We receipted the first ETH-focused Public Crypto Asset Fund when the proposed framework was not being developed.**

	The same commenter indicates the suggestion in CSA Staff notice 81-336 that the presence of a regulated futures market for a given crypto asset generally correlates with institutional support for that particular crypto asset does not accurately reflect the current markets conditions in Canada as futures are often thinly traded and are not themselves a significant indicator of the underlying trading volumes or liquidity in the reference asset.	**We acknowledge the comment. However, we believe that a regulated futures market for a given crypto asset, while it could be thinly traded, often consists of the sole provider of a reliable and active market comprising actual and regularly occurring market transactions and price discovery, all of which are essential towards the fair valuation of a crypto asset fund's net asset value.**
	The same commenter also proposed ensuring that investment fund managers have policies and procedures designed to confirm the reliability of the pricing of the crypto assets in which their crypto asset funds that are reporting issuers invest.	**We agree with the proposal and believe investment fund managers should have such policies and procedures in place as a good practice, but we intend to examine the question of establishing a requirement to that effect in Phase 3 of the Project.**
	Two commenters suggest that the Amendments also incorporate a definition of non-fungible crypto assets that describe these assets with sufficient clarity as this impacts the accounting treatment and disclosures in financial statements. The commenters also caution that the long-term uses of NFTs are not yet known and encourage the CSA to continue to monitor developments in this area and remain flexible in the event of innovation and related market developments.	**Change not made. We do not think a separate definition of non-fungible crypto asset is necessary in the context of these amendments. We are satisfied that the terms "fungible" and "non-fungible" are sufficiently understood in common usage.**
	One commenter believes that restricting the asset class to alternative investment funds and non-redeemable funds is an issue as they are needlessly onerous in comparison to other jurisdictions.	**We disagree as restricting the asset class to alternative investment funds and non-redeemable funds is consistent with other restricted asset classes such as permitted precious metals and physical commodities.**

	Another commenter suggested that while the offering of an ETF is challenging without a regulated futures market for digital assets as it poses challenges for authorized participants to hedge their position, the commenter suggests closed-end fund vehicles still serve as more efficient products for investors than closed-end trusts due to their annual redemption mechanism, without the need for a futures market. While these closed-end funds can trade at premiums and discounts, the investment manager has mechanisms to limit the dislocation to the underlying value of the fund. The commenter suggests that by potentially limiting innovation and blocking additional products to come to market, it puts investors at a disadvantage. Closed-end funds strike a balance by offering investors an annual redemption feature at NAV, providing a more regulated and liquid vehicle to access a crypto asset. The same commenter seeks clarity on the restriction that Public Crypto Asset Funds must hold crypto assets that trade on, or are reference assets for, specified derivatives that trade on a recognized exchange in Canada. The commenter notes that this rule would render all existing ETH ETFs non-compliant as only BTC futures are listed for trading on such recognized exchange.	**We thank the commenter for their comment, but we continue to believe that whether they are held by ETFs or closed-end funds, crypto assets, without the institutional support provided by a regulated futures market, are unsuitable as a portfolio holding for a Public Crypto Asset Funds.** **There are derivatives for which ETH is an underlying reference asset that trade on a recognized exchange, so existing ETH funds will be unaffected by this criterion.**
Sections 2.12, 2.13, 2.14 – Securities Loans, Repurchase Agreements, Reverse	A commenter disagrees with the proposal to ban entirely the use of crypto assets in securities lending, repurchase or reverse repurchase transactions, as loaned securities, transferred securities or collateral. The commenter believes that while there may be challenges today, it is	**Change made. We are no longer proposing to explicitly exclude crypto assets from these types of transactions. We note, however, that NI 81-102 only permits funds to lend portfolio assets that are securities and only under the conditions set out in**

Repurchase Agreements	conceivable that safeguards could be implemented over time, rendering such activities as viable solutions.	**that instrument. To the extent a fund is holding crypto assets that are not securities, the existing prohibitions on lending portfolio assets that are not securities will continue to apply.**
	Two commenters noted that the prohibitions would even prohibit the use of crypto assets in these transactions even if it were possible to do so within the existing NI 81-102 framework. They sought clarification at least on whether this stance will be subject to review as capabilities mature and market structures progress.	**See previous response.**
	A different commenter noted that investor appetite for lending services related to crypto may cause investors to pursue opportunities through less regulated channels.	**See our response above.**
	Another commenter suggested this restriction may lead to assets flowing to other vehicles such as crypto exchange traded products in the US and Europe as other foreign jurisdictions provide products that add more value to end investors.	**See our response above.**
	One commenter stated that while challenges exist, it would encourage the CSA to further explore and consider whether the use of crypto assets in securities lending, repurchase or reverse repurchase transactions may be possible as the capabilities and crypto asset market progresses and whether there is any role that these types of transactions can play for investment strategies of crypto asset funds that are reporting issuers.	**See our response above.**
	One commenter recommended that crypto assets be permitted to be used by an investment fund as collateral	**See our response above.**

	but not loaned in securities lending transactions as an outright ban would restrict innovation, minimize investor purchasing power and reduce investor protection by encouraging investors to seek opportunities outside the Canadian regulatory landscape. They also recommended that the CSA continue to assess these transactions on a case-by-case basis to account for nuances and differing circumstances and whether the proposed ban would apply to indirect crypto asset holdings.	
Section 2.18 – Money Market Funds	One commenter agrees with the proposal to prohibit money market funds from investing in crypto assets.	**We thank the commenter for the support. However, upon further examination, we believe the current conditions under which a fund qualifies as a money market fund would already prohibit them from holding crypto assets. Given the proposed prohibition would be redundant, we have removed it from the Amendments.**
Part 6 – Custodianship Of Portfolio Assets		
Section 6.5.1 – Holding of Portfolio Assets that are crypto assets	Some commenters support mandating crypto custodians to maintain crypto assets in offline storage or cold wallets except as needed to facilitate portfolio transactions. Two commenters question allowing omnibus wallets to be used for either online or offline storage and believe this does not align with established best practices.	**We thank the commenters for the support.** **We have removed the reference to omnibus wallets in the CP Changes.**

Section 6.6 – Standard of Care	A commenter agrees with the need for flexibility regarding requirements for crypto custodians to maintain insurance. However, the commenter disagrees with not requiring a minimum amount and the CSA's approach to establish a "reasonably prudent" standard for obtaining insurance. Other commenters also cautioned against being overly prescriptive in the CP Changes concerning the standard of care for crypto custodians. They suggested instead that the CP Changes take a more principles-based approach and advocate for allowing crypto custodians to make operational decisions regarding custodial solutions based on their circumstances. They recommend the inclusion of broader language designed to communicate an expected outcome.	**We have clarified this in the CP Changes.** **No change made. We do not believe the guidance proposed in the CP Changes regarding the standard of care to be overly prescriptive. It is our view that it reflects standard industry practices.**
Section 6.7 – Review and Compliance Reports	A commenter agreed with the proposal to mandate crypto custodians obtaining an annual report from a public accountant evaluating internal management and controls but disagreed with specifying a particular type of report, such as a Service Organization (SOC) report. The commenter noted that SOC-2 reporting largely overlaps with the scope of a SOC-1 Type II examination but covers some additional controls that may be of interest for purpose other than financial reporting. The commenter noted that bank-owned custodians and trust companies, for example have existing control coverage via SOC-1, have ISO27001 certifications and penetration testing attestations among other reports. The commenter recommends the CSA take a principles-based approach to this kind of reporting.	**We thank the commenter for the support. The guidance in the CP Changes does not prescribe or mandate a specific report – it is intended to clarify that we would consider obtaining a SOC-2 Type II report to be compliant with the provision.** **The intent with the provision and the guidance in the CP Changes is to reflect current practices. We intend to address the topics of certification reports and potentially expanding the scope of the reporting requirement set out in the Amendments and CP Changes in Phase 3 of the Project.**

	Another commenter approves the use of the SOC-2 Type II report as a necessary element in the protection of customers assets. The commenter indicates that it does not necessarily provide investors with sufficient assurances regarding the security of crypto assets. The commenter proposes that the CSA should ensure that the required certifications reports cover at least an assessment of the robustness of IT security features, key management and operations practices, such as a review of all key management procedures and recovery mechanisms, practices for assessing the effectiveness of monitoring and verification measures. These certifications reports should also include verification of insurance policies to ensure that they provide adequate coverage for the risks associated with the safekeeping of crypto assets and staff training and awareness assessing in particular the effectiveness of training programs on the best security and risk management practices for staff. The commenter also believes that the audit should not only be limited to the custodian but also to the entire operating model for the fund's administrator and other parties involved in the exchange and transfer of crypto assets to ensure the security of the entire process.	**See our response above.**
	Another commenter indicates that the proposed recommendations relating to the custodianship of crypto assets and its focus on the SOC-2 Type II report requirement may be overly prescriptive. Given the unique and limited technological underpinnings associated with the custodianship of these assets, suggested alternatives could include a requirement for a SOC-2 Type I report focussed on security and that alternatives such as an ISO 27001 certification or	**See our response above.**

	independent systems review by an external audit firm may also be sufficient for the purposes of obtaining assurances regarding the platform. The commenter also proposes that the language in the definitions of "acceptable third-party custodian" set forth in CSA Staff Notice 21-332 Crypto Asset Trading Platforms: Pre-Registration Undertakings Changes to Enhance Canadian Investor Protection could be sufficient for this purpose. The commenter also suggested this proposal appears to only contemplate fintech companies as custodians in this space and suggested that should the Amendments require a financial institution to obtain a SOC-2 Type II report, the prohibitive cost of doing so may prevent banks and traditional custodians from entering into the business of crypto assets' custody, which the commenter feels would be detrimental from a consumer protection perspective.	**See our response above.**
Part 9 – Sale Of Securities Of An Investment Fund	A few commenters agree with codifying exemptive relief to allow crypto asset funds that are reporting issuers to accept crypto assets as subscription proceeds.	**We thank the commenters for their support.**
Other Comments		
Staking	Several commenters believe that Public Crypto Asset Funds should be permitted to engage in staking through one or more CTPs that offer staking services given that CTPs are permitted to offer staking services subject to terms and conditions agreed upon with the CSA and that	**The concern is noted. We may consider matters such as specific regulatory requirements pertaining to staking as part of Phase 3 of this Project.**

	existing registered firms are permitted to engage in staking. Two commenters asked if the CSA considered having any requirements regarding crypto asset staking and recommended that the CSA considers including provisions that clarify these requirements. These would include liquidity thresholds, the types of funds that may engage in staking, thresholds regarding the maximum amount of portfolio assets that may be staked, requirement related to validators and clarifications regarding bridge financing and other borrowing arranges are permissible to alleviate liquidity concerns with respect to unstaking assets.	**See our response above.**
Value-Referenced Crypto Assets (VRCA)	One commenter notes that the CSA's working group on VRCAs permits CTPs to offer one or more VRCAs, and believes that the CSA should allow Public Crypto Asset Funds to purchase, sell, use or hold any such VRCAs notwithstanding the fact that they may not meet the investment criteria set out in the Amendments.	**The concern is noted. We are not proposing to create different criteria for funds holding VRCAs relative to other crypto assets. This is a topic that we may consider exploring as part of Phase 3 of this Project.**
Tokenization of money market funds	One commenter recommended that the CSA consider introducing provisions that address and allow for digital tokenization of money market funds, which in their view would offer benefits including greater liquidity shorter trade settlement windows and readily adherence to current regulatory requirements, in particular KYC requirements and AML provisions.	**We thank the commenter for this comment but note that it refers to matters that are beyond the scope of this Project.**
Custody	One commenter states that the CSA should consider whether the definition of "qualified custodian" should be amended to incorporate a larger grouping of	**We thank the commenter for this comment. This is a topic that we may consider exploring as part of Phase 3 of this Project.**

	platforms, such as those who would otherwise be "acceptable third-party custodians" to regulated CTPs and CIRO registrants, and whether or not the corresponding definition under CIRO Rules as to what constitutes an "acceptable securities location" should be reviewed in tandem. The commenter submits there is a risk of concentration of assets on a very limited number of large (and primarily non-domestic) digital custodian platforms because of the reliance on qualified custodians status which precludes the ability of a number of sophisticated platforms from delivering their services to Public Crypto Asset Funds in the absence of exemptive relief.	
	Two commenters agreed with the appropriateness of the guidance regarding best practices of crypto custodians on the use of strong passwords, multi-factor authentication and encryption of client information to limit the risk of hacking. However, the commenters state that the reliance on the use of multi-signature technology to mitigate points of failure can be applied at either the blockchain protocol layer or at the business logic layer. Although inclusion of such a distinction in the guidance may not be warranted, the guidance should also generally ensure it is not overly prescriptive. For example, multi-signature technology is sometimes deployed via an Ethereum based smart contract which should not be deemed sufficient for safekeeping purposes.	**We thank the commenters for their support. The proposed guidance seeks to reflect an inexhaustive list of best practices. We may consider exploring the distinction highlighted by the commenters as part of Phase 3 of this Project.**
	One of the commenters recommended that the custodial solutions in the guidance be a non-exhaustive list and for guidance purposes only, and that this would be	**We agree and confirm that the custodial solutions presented in the CP are non-exhaustive.**

	consistent with the CSA's technology-neutral approach in other instruments.	
Amendment to NI 81-106	One commenter asked if the CSA has also considered amending or intends to amend NI 81-106 for these instruments, in addition to NI 81-102.	**We do not intend to amend NI 81-106.**
Recognized Exchange	One commenter asked how the CSA defines a "recognized exchange" in the context of NI 81-102 and the crypto asset industry.	**The term "recognized exchange" is defined in securities legislation. The securities regulatory authorities in Canada publish a list of exchanges that are recognized in their respective jurisdictions.**
Avoid overlapping jurisdictional issues	One commenter suggested that in order to avoid overlapping jurisdictional issues, the securities regulatory framework must evolve in tandem with other regulatory frameworks in Canada such as retail payments and prudential regulations and consider global developments.	**We agree and thank the commenter for this comment.**
Development of a comprehensive crypto asset regulatory framework	Two commenters suggested that Canadian stakeholders would benefit from understanding the CSA's intention for the entire framework for regulating crypto assets in Canadian securities law and how those rules would intersect with external regulatory frameworks such as payments and prudential regulation, PCMLTFA and that it is essential for the CSA to dedicate sufficient resources, including training, to develop other rules to accommodate crypto assets. The commenters further proposed that the CSA's assertions that crypto assets are securities and/or derivatives must be supported by a clear legal analysis and go through the proper rule-making process, which involves public consultation to create a holistic regulatory framework and roadmap that	**We thank the commenters for their comments but note that they refer to matters that are beyond the scope of this Project.**

	covers the entire capital market. The commenters expressed concern about the piecemeal approach to rulemaking by the CSA, relying on Staff Notices, which are non-binding guidance, and enforcement actions through existing Canadian judicial and regulatory regimes, rather than establishing a comprehensive, individual framework for crypto assets.	
Lifting trading limits on CTPs	One commenter suggests that more work is needed for the CSA and CIRO to develop a regulatory framework that might lead to developments such as the lifting the trading limits currently placed on regulated Canadian crypto trading platforms.	**We thank the commenter for this comment but note that it refers to matters that are beyond the scope of this Project.**

COMMENTS IN RESPONSE TO CONSULTATION QUESTIONS

1. We are seeking feedback as to whether the guidance in the CP Changes provides sufficient clarity in understanding the type of assets that will be considered crypto assets for the purpose of NI 81-102.

Comments	**Responses**
One commenter stated that currently, the Amendments do not contain a definition of crypto assets but rather, 81-102CP contains a description of what the CSA will generally consider to be crypto assets and that a proper definition of crypto assets is a necessary starting point to achieve consistency across the entire capital markets regulatory framework. The same commenter states that the CSA is out of line with global capital markets, which have already begun to adopt global definitions (e.g., International Organization of Securities Commissions (IOSCO), Financial Stability Board, Office of the Superintendent of Financial Instruments) and indicate that there is	**Given the current absence of international recognized taxonomy for crypto assets, we believe the proposed guidance on defining crypto assets for the purpose of NI 81-102 serves to provide the necessary clarity to market participants without creating inconsistencies within our proposed regulatory framework with those abroad.** **We thank the commenter for this comment but note that it refers to matters that are beyond the scope of this Project. The proposed definition only applies to the investment fund context.**

no explanation why the CSA is not adopting these global definitions. To support this point, the commenter asserts that complex uniform market rules have been adopted in other jurisdictions, pointing to Market In Crypto Assets regulation of the European Union, which he said offers more clarity to industry participants than the current framework offered by Canadian regulators.	
One commenter indicated that the absence of a definition of crypto assets in NI 81-102 presents challenges, particularly in areas where securities legislation intersects with other legislation pertaining to retail payments and that additional clarity is essential to accommodate the tokenization of real world assets. They recommend that a definition of crypto assets be included in the rule so that all stakeholders can determine how the definition will impact these intersections. The commenter further encourages the CSA to indicate which situations the CSA uses a modified definition of crypto assets from that used by international standard setters such as IOSCO.	**See previous response. We believe proposed guidance on defining crypto assets for the purpose of NI 81-102 provides the necessary clarity.**
One commenter asked to clarify whether it is the intent of the Amendments that only alternative mutual funds be allowed to hold tokenized asset such as stocks and bonds as these would fall in the proposed description of crypto assets.	**That is correct. The matter of tokenized assets as portfolio assets for investment funds will be specifically addressed in future projects.**

2. The Proposed Amendments contemplate restricting publicly distributed investment funds to only holding fungible crypto assets. We are seeking feedback on whether this is a reasonable restriction in light of the risks that are generally associated with holding non-fungible crypto assets in an investment context. If not, please be specific as to why you think the scope of permitted crypto assets should be expanded to include non-fungible crypto assets and what investor protection measures are appropriate for crypto asset funds that are reporting issuers to hold these types of assets.	
Comments	**Responses**
A commenter was supportive of investment funds being restricted to only investing in fungible crypto assets. The commenter felt that the benefits of holding non-fungible crypto assets were limited while the risk of investor harm was high.	**We thank the commenter for the support.**
One commenter recommends that if the CSA intends to place a restriction on publicly distributed investment funds, that the CSA provide a proper definition of a fungible crypto asset, specifying that fiat-backed stablecoins are a type of fungible crypto asset and should be a permitted type of holding for tokenized investment fund products.	**Change not made. We do not think a separate definition of non-fungible crypto asset is necessary in the context of these amendments. We are satisfied that the terms "fungible" and "non-fungible" are sufficiently understood in common usage. We may address VRCAs during Phase 3 of the Project.**
The same commenter believes the CSA should be open to specifying the principles/criteria, such as liquidity and valuation risks which can be addressed through fund structure using appropriate pricing indices based on auditable parameters or by applying fund concentration limits to fund holdings. This would allow market participants to assess whether certain non-fungible crypto assets would also be permissible for the purposes of NI 81-102.	**Change not made. We do not agree that it would be appropriate for Public Crypto Asset Funds to invest in non-fungible crypto assets as these assets present valuation, liquidity and reliability challenges that are better addressed through a prohibition rather than specific regulatory parameters. However, we will continue to observe the non-fungible crypto assets market to ascertain if this market matures to a point where the aforementioned challenges are addressed or can be addressed by regulation.**

3. The Proposed Amendments also contemplate restricting publicly distributed investment funds to holding crypto assets that trade on, or are reference assets for specified derivatives that trade on, a "recognized exchange". This reflects market integrity concerns with certain crypto asset markets and is intended to limit funds to holding those crypto assets for which spot prices can be derived through regulated sources that reflect institutional support and promote price discovery, which is not dissimilar to how more traditional fund portfolio assets trade. We are seeking feedback as to whether this is a reasonable qualifying criterion. If not, please provide feedback on what criteria may be more appropriate for determining when a crypto asset should be deemed an appropriate investment for an investment fund directed at retail investors.	
Comments	**Response**
One commenter supports this qualifying criterion and believes it provides necessary protection to retail investors. The commenter felt that permitting investment in non-exchange traded crypto assets presents too high of a risk for broad availability to retail investors. One commenter suggests the criterion is overly restrictive and recommends that crypto assets that are listed on regulated crypto trading platforms be permissible under NI 81-102.	**We thank the commenter for the support.** **As stated above, we are of the view that this requirement is essential in determining the suitability of a crypto asset as a portfolio holding for Public Crypto Asset Funds. The market integrity and price discovery provided by recognized exchanges can help ensure that a fund is investing in assets for which there is sufficiently regulated trading.**

4. The Proposed Amendments include a requirement that custodians or sub-custodians that hold crypto assets on behalf of an investment fund obtain an annual assurance report prepared by a public accountant that assesses the design and effectiveness of various internal controls and policies concerning their obligations to custody crypto assets. The CP Changes clarify that obtaining a SOC-2 Type 2 will be considered to comply with the requirement, without prescribing that specific report. We are seeking feedback regarding other assurance reports that may be comparable to a SOC-2 Type 2 that we should also consider sufficient for complying with this requirement. We are also seeking feedback regarding the appropriate scope of any reporting to be provided under this requirement.	
Comments	**Responses**
A commenter noted that a SOC-2 examination largely overlaps with the scope of a SOC-1 Type II examination but covers off some additional controls that may be of interest for purpose other than financial reporting. The commenter noted that bank-owned custodians and trust companies, for example, have existing control coverage via the SOC-1, have ISO27001 certifications, penetration testing attestations among other reports. The commenter recommends the CSA take a principles-based approach to this kind of reporting.	**We changed the guidance in the CP to include a more principle-based approach. This is a topic that we may consider further exploring as part of Phase 3 of this Project.**
Another commenter believes that requiring a SOC-2 Type II Report to be completed "within 60 days after the end of the custodian's most recently completed financial year" creates an unnecessary burden as entities often schedule their SOC-2 Type II Reports to be completed just prior to year-end for audit and due diligence purposes. They recommend that the wording be changed to "within 60 days of the end of the custodian's most recently completed financial year" to allow for better alignment with existing SOC schedules.	**We changed the amending instrument to allow for greater flexibility in obtaining the report.**
Some commenters stated that a SOC-2 Type II Report should be considered an essential requirement of digital asset custodian as this has become a standard safeguard within the digital asset industry.	**We thank the commenters for their suggestions. We believe the requirements in the Amendments and the guidance provided in the CP reflects current industry practices. Penetration testing**

They believe that specifying a SOC-2 Type II report as an example of control effectiveness is not only necessary but should evolve further. The commenters suggest digital asset custodians should be expected to obtain additional, proportional specified assurances that test the effectiveness of essential functions within the business. One such additional protection would be requiring proof of reserves audits for custodians, which would assure stakeholders, such as investment funds, that the assets a custodian holds are confirmed to be accurate by a third-party auditor. Another reassurance for both regulators and investment funds alike would be to specify that the custodian should undergo penetration testing on their systems to certify the security of both crypto assets and any stored information. Finally, custodians should have to provide evidence of having undergone AML effectiveness reviews. In Canada, these are required by FINTRAC to be undertaken every two years. Domestic custodians should be held to this standard, and international custody providers should be held to an equivalent standard.	**and AML reviews are topics that we may consider further exploring in Phase 3 of this Project.**
One commenter indicates that the digital asset industry continues to grow making the demand for custody increase in parallel. Now, digital asset custodians are expected to provide several ancillary services as blockchain technology develops and the industry continues to create new use case and financial tools. They recommend that when an investment fund utilizes an ancillary service from a custodian that involves client funds, it should be required to ensure that the custodian has the necessary controls in place specifically for those services.	**No change made. We believe existing requirements applicable to investment fund managers such as their obligation to conduct due diligence, and beyond those already established in the broader regulatory framework do not require further enhancement.**
One commenter states that increasing the number of custody options will be beneficial to the progress of the industry, as it will create competition and improve standards, quality and choice for Canadian investors. It will also mitigate the growing reliance on international custodians, which is currently not the case due to the	**No change made. We believe the risk highlighted by the commenter isn't unique to crypto asset custodians. Review of the custodian framework applicable to investment funds that are reporting issuers is out of scope for this phase of the Project and may be considered in Phase 3.**

concentration of Canadian investment fund assets with a single international sub-custodian. The CSA should consider approaches to stimulate the development of local options, to reduce dependence on foreign offerings.	
Another commenter wants the CSA to ensure that reporting requirements for crypto custodians enable investment funds and their investors to meaningfully assess the integrity of crypto custodians, rather than be pro form exercises.	**We agree and we believe the Amendments will achieve this.**
One commenter noted that there appears to be an insistence on a SOC-2 Type II Report covering all five pillars of security, availability, privacy, confidentiality and processing integrity. This requirement is somewhat unreasonably high as a SOC-2 Type I Report on the security pillar, an ISO 27001 certification or an independent systems review performed by an auditing firm should be sufficient.	**We thank the commenter for the suggestion. We removed any reference to a particular type of report in the Amendments. The SOC-2 Type II Report referred in the companion policy is an example of a report that we would consider meeting the requirement. We changed the amending instrument to remove some of the report's requirements in light of the suggestion.**
One commenter says that the "*reasonably prudent person*" standard for insurance that custodians are required to maintain is an obligation that is too strict for industry participants. "Commercially reasonable efforts to obtain" or "vigilant owner of similar goods in similar circumstances" might be more appropriate standards to consider.	**We have removed the insurance requirement and have reformulated it in the form of guidance in the CP.**
One commenter recommend that the CSA establish expectations regarding the scope and/or a baseline set of high-level control objectives or system requirements that may be relevant in a controls assurance engagement for a crypto custodian. In establishing the scope of the assurance engagement, consider what assurance report options may exist. For example, consider whether a SOC-1 Report, covering the expected scope and control objectives, may be	**See response above. We thank the commenter for the suggestion. We removed any reference to a particular type of report in the Amendments. The SOC-2 Type II Report referred in the companion policy is an example of a report that we would consider meeting the requirement.**

appropriate (or necessary) in addressing regulatory expectations for controls assurance as an alternative or in addition to a SOC2 Report.	
Two commenters recommend that the CSA reference which Canadian assurance standard should be used by the independent professional accountant when performing the SOC engagement, to enhance clarity of the requirements and consistency in practice.	**No change made. The guidance in the CP seeks to reflect current best industry practices.**
One commenter recommends that the CSA clarify the intent regarding whether the assurance report must be prepared by an independent professional accountant, such as a CPA assurance practitioner, and use consistent terminology in both the Proposed Amendments (public accountant) and CP Changes (external auditor).	**The CP has been changed to specify that the report must be prepared by a public accountant.**
The same commenter suggests that the CSA further specify the period covered by the annual assurance report for scenarios where the SOC engagement reporting period does not align with the financial year-end; for example, including specificity on the minimum period covered by the SOC report and on the maximum number of months that the SOC reporting period can differ from the financial year.	**We changed the Amendments to provide greater flexibility regarding the reporting period of the assurance report.**
Another commenter suggests the custodial requirements be updated to address the technology risks related to asset tokenization and that other internationally recognized technical reports beyond the SOC-2 Type II Report such as the ISO standard for blockchain and Distributed Ledger Technology ISO/TR 23244:2020 would address the safeguarding of assets that use distributed ledger/blockchain technology.	**No change. We may consider further exploring the topic of custodial requirements related to asset tokenization as part of Phase 3 of this Project.**

The same commenter seeks clarity as to whether the use of "other comparable reports" implies pre-approval or the requirement of consent for these reports and suggests to clarify that such consent is not required when the reports are prepared under International Auditing and Assurance Standards or other internationally recognized standards.	**Such pre-approval or consent by the CSA is not required for the report if the requirements under the Amendments are respected.**
5. We are seeking comments on other issues or considerations relating to investment funds that invest in crypto assets that the CSA should also be considering. This feedback will help inform the broader consultations for the third phase of the Project.	
Comments	**Responses**
One commenter expressed concern about the potential concentration of crypto assets with a traditional fund of fund structure. Specifically, the concern is that the fund of fund provisions in subsection 2.5(2) of NI 81-102 may not address the potential for traditional mutual funds to invest across multiple asset management funds, each of which could have significant exposure to crypto assets.	**The provisions of NI 81-102 are drafted to limit a traditional mutual fund's indirect exposure to 10% of NAV, whether through specified derivatives or fund of fund investing. We also note that traditional mutual funds will not be permitted to directly hold crypto assets in their portfolios.**
One commenter indicated that as digital assets remain on a decentralized blockchain, where the private key to those assets resides is the most relevant consideration when faced with the custodian's default due to the legalities of retrieving the assets. If the private key resides with a domestic, regulated custodian, investment funds can rest assured that the wind up of the custodian will follow a predictable course of action as established under Canadian laws. Given the regulations and legal proceeding from another jurisdiction would take precedence with an international custodian, there is an inherent and unavoidable level of extraterritorial risk.	**No change made. We believe the risk highlighted by the commenter isn't unique to crypto asset custodians holding crypto assets versus other types of assets, and note that funds holding crypto assets under NI 81-102 are still required to have a Canadian custodian with primary responsibility for custody of the fund's assets including supervisions of any sub-custodians holding fund assets. Review of the custodian framework applicable to investment funds that are reporting issuers is out of scope for this phase of the Project and may be considered in Phase 3.**

The same commenter expressed concern about the concentration risk regarding custodians and sub-custodians. CSA data indicates there are five custodians and three sub-custodians that custody on behalf of crypto asset investment funds, all sub-custodians are U.S. based. Therefore, this creates a systemic concentration risk for Canadian investors, whose assets would be subject to U.S. courts and regulations in the case of any defaults as the sub-custodians hold the private keys – and therefore access to the assets. Compounding the international jurisdictional risk is that the regulatory environment in the U.S. at present is far less aligned with industry participants when compared to Canadian regulation. They suggest that this dependence on U.S. based providers should be reduced.	**No change made. We believe the risk highlighted by the commenter isn't unique to crypto asset custodians. Review of the custodian framework applicable to investment funds that are reporting issuers is out of scope for this phase of the Project and may be considered in Phase 3.**
The same commenter states that not all regulated trust companies are built equally, and relying on regulations from foreign jurisdictions can create a false sense of security. Furthermore, these risks should be disclosed to the investors. This disclosure would be in line with IOSCO recommendations for digital assets.	**See previous comment.**
The same commenter indicated that for reasons of national security, the Patriot Act and the Foreign Intelligence Service Act (FISA) allow for the U.S. government to collect data and information held by its corporations. By using U.S. based custody solutions, investment funds expose Canadian retail investors to the U.S. data collection laws and their associated risks. Therefore, they recommend that NI 81-102 should include measures to address and reduce the systemic risk to international custodians and support the continuing evolution of the domestic custody landscape.	**See above response.**
The same commenter proposes that NI 81-102 should include requirements for a certain minimum percentage of digital assets to be held with regulated domestic custodians.	**See above response.**

The same commenter indicates that unlike traditional assets, an entity has custody of a digital asset simply by holding the private key on behalf of the asset holder, ensuring that it cannot be accessed by any other party, making the digital asset sub-custodian solely responsible for safekeeping the private keys for cold and hot wallet infrastructure, and actioning instructions upon approval of the primary custodian. This means the primary custodian is responsible for not only monitoring and client interaction as in traditional finance, but also for approving client instructions on chain, managing the governance and the set-up of accounts, and performing the due diligence on any new assets or services. Given the major role that the custodian holds in the digital asset sub-custody arrangement, the commenter believes the digital asset custodian of an investment fund should be required to demonstrate their capability to custody unique and nuanced asset classes such as cryptocurrencies which require specialized knowledge and involvement, rather than depend on the knowledge and capability of a sub-custodian. This will ensure the existence of purpose built controls, with input by Canadian regulators; specialized policies, procedures, training, and monitoring; expert knowledge and understanding to identify red flags and respond to concerns; and activity specific audits by digital asset experts. In this case, the aforementioned foreign regulatory risk is eliminated, along with the risks that come with digital asset inexperience and inadequate handling of digital assets.	**We have made changes to the CP to reflect current industry best practices for custodians and sub-custodians.**
One commenter suggested that provisions that require the use of multiple qualified custodians be incorporated so as to allow for diversification of the custody of crypto assets and increased protection. In the commenter's view, the use of only one crypto sub-custodian increases risk, including liquidity risk.	**No change made. We believe the risk highlighted by the commenter isn't unique to crypto asset custodians. Review of the custodian framework applicable to investment funds that are reporting issuers is out of scope for this phase of the Project and may be considered in Phase 3.**

The same commenter suggested that requirements or related criteria for investment fund managers of Public Crypto Asset Funds, such as knowledge, proficiency, governance, and security, be enhanced in recognition of the particularities of crypto assets. The CSA should consider including minimum security standards that managers must institute such as those concerning platform access, transaction activities, security of application programming interfaces and technical knowledge and proficiency standards.	**No change made. We believe existing requirements applicable to investment fund managers, beyond those already established in the broader regulatory framework do not require further enhancement.**
Another commenter suggests that the definition of "qualified custodian" be reviewed so to consider other requirements for investment funds holding digital assets such as the disclosure of the percentage of digital assets held by domestic and/or foreign custodians and sub-custodians, the percentage of digital assets held in hot/cold wallets and the reason why foreign custodian or sub-custodian use is appropriate. Minimum operating standards should be required to provide digital asset custody services.	**No change made. We believe these issues aren't unique to crypto asset custodians. Review of the custodian framework applicable to investment funds that are reporting issuers is out of scope for this phase of the Project and may be considered in Phase 3.**
This same commenter suggests that 81-102CP be updated to require crypto asset funds to address the unique legal risks associated with digital assets held outside of Canada, as Canadian regulators should be enabled to directly manage systemic and concentration risks.	**No change made. We believe crypto asset fund managers are already required to address and disclose such risks. Review of the custodian framework applicable to investment funds that are reporting issuers is out of scope for this phase of the Project and may be considered in Phase 3.**

COMMENTERS

No.	Commenter
1.	Canadian Blockchain Consortium's Policy and Advocacy Committee
2.	Canadian Web3 Council
3.	OSC's Investor Advisory Panel (Ilana Singer)
4.	CIBC Mellon (Richard Anton, Tedford Mason, Ronald Landry, Brent Merriman)
5.	Investment Industry Association of Canada (per Laura Paglia)
6.	Wildeboer Dellelce LLP
7.	Fasken Martineau DuMoulin LLP (John Kruk, Jonathan Halwagi, Daniel Fuke, Marcelo Ciecha)
8.	Mouvement Desjardins (Giuseppina Marra)
9.	Alternative Investment Management Association (Jiri Kroll)
10.	3iQ Corp. (Pascal St. Jean)
11.	Purpose Investments Inc. (Vlad Tasevski)
12.	Borden Ladner Gervais LLP (Carol Derk, Julie Mansi, Jason Brooks, Jon Doll)
13.	Tetra Trust Company (Stephen Oliver)
14.	Quanta Law P.C. (Bekhzod Nazarov)
15.	Chartered Professional Accountants of Canada (Rosemary McGuire)
16.	Francis Soto

ANNEX C

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2025-1
(Section 149.1, The Securities Act)

AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

1. *National Instrument 81-102 Investment Funds is amended by this Instrument.*

2. *Section 1.1 is amended in the definition of "*alternative mutual fund*" by adding* ", crypto assets" *before* "or specified derivatives".

3. *Section 2.3 is amended*

(a) in paragraph (1)(e) by adding "or a crypto asset" *before* "if, immediately" *and by adding* "and crypto assets" *after* "physical commodities",

(b) in paragraph (1)(g) by deleting "or" *after* "sections 2.7 to 2.11",

(c) in paragraph (1)(i) by replacing "." with ";",

(d) in subsection (1) by adding the following paragraph:

(j) purchase, sell, use or hold a crypto asset or a specified derivative of which the underlying interest is a crypto asset except to the extent permitted by paragraph (e) or subsections (1.3) or (1.4).**,**

(e) by adding the following subsections:

(1.3) Paragraph (1)(j) does not apply to an alternative mutual fund with respect to the purchase, sale, use or holding of a crypto asset if,

(a) except in British Columbia, the crypto asset is fungible and either of the following apply:

(i) the crypto asset trades on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada;

(ii) the crypto asset is the underlying interest of a specified derivative that trades on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada, or

(b) in British Columbia, the crypto asset is fungible and either of the following apply:

(i) the crypto asset trades on an exchange recognized in British Columbia or designated for the purposes of this paragraph;

(ii) the crypto asset is the underlying interest of a specified derivative that trades on an exchange recognized in British Columbia or designated for the purposes of this paragraph.

(1.4) Paragraph (1)(j) does not apply to a mutual fund with respect to the fund entering into a specified derivative that trades on an exchange if,

(a) except in British Columbia, the exchange is recognized by a securities regulatory authority in a jurisdiction of Canada, or

(b) in British Columbia, the exchange is recognized in British Columbia or designated for the purposes of this subsection*., and*

(f) in subsection (2) by replacing "." with ";" at the end of paragraph (c) and by adding the following paragraphs:

(d) purchase, sell, use or hold a crypto asset unless it is a crypto asset referred to in subsection (1.3);

(e) enter into a specified derivative the underlying interest of which is a crypto asset, unless the specified derivative is a specified derivative referred to in subsection (1.4)**.**

4. *Part 6 is amended by adding the following section:*

6.5.1 Holding of Portfolio Assets that are Crypto Assets

Despite subsections (3) and (4) of section 6.5, a custodian or a sub-custodian that holds portfolio assets that are crypto assets must hold the private cryptographic keys to those assets in offline storage unless the assets are required to facilitate a portfolio transaction of the investment fund**.**

5. *Section 6.7 is amended*

(a) by adding the following subsections:

(1.1) A custodian or sub-custodian of an investment fund that holds portfolio assets that are crypto assets must, on a periodic basis not less frequently than annually, and no more than 90 days after the end of the period it references, obtain a report prepared by a public accountant that expresses a reasonable assurance opinion concerning the design and operational effectiveness of the service commitments and system requirements of the custodian or sub-custodian relating to its custody of crypto assets during a 12-month period.

(1.2) If a report referred to in subsection (1.1) is required to be obtained by the custodian of an investment fund, then the custodian must deliver a copy of the report to the investment fund promptly after receipt.

(1.3) If a report referred to in subsection (1.1) is required to be obtained by a sub-custodian of an investment fund, then the sub-custodian must deliver a copy of the report to the investment fund's custodian and to the investment fund promptly after receipt.

(1.4) A custodian or sub-custodian of an investment fund must not hold portfolio assets of the investment fund that are crypto assets unless

(a) the custodian or sub-custodian has obtained a report referred to in subsection (1.1) that relates to a 12-month period ended no more than 15 months before the date on which the custodian or sub-custodian first holds portfolio assets of the investment fund that are crypto assets, and

(b) the custodian or sub-custodian has delivered a copy of the report, before the date it first holds crypto assets that are portfolio assets of the investment fund,

(i) if the report is obtained by the custodian under paragraph (a), to the investment fund, or

(ii) if the report is obtained by the sub-custodian under paragraph (a), to the investment fund and the custodian.

(1.5) For the purposes of subsection (1.4), if a custodian or sub-custodian ceases to hold portfolio assets of an investment fund that are crypto assets, paragraphs (1.4)(a) and (b) apply to each subsequent period during which the custodian or sub-custodian holds crypto assets that are portfolio assets of the investment fund as if the custodian or sub-custodian were holding portfolio assets of the investment fund that are crypto assets for the first time***., and***

(b) in subsection (2) by deleting "and" at the end of paragraph (b), by replacing "." with ";" at the end of paragraph (c) and by adding the following paragraph:

(d) whether the custodian or each sub-custodian that holds portfolio assets of the investment fund that are crypto assets, has delivered a copy of the report referred to in subsection (1.1)**.**

6. *Subsection 9.4(2) is amended by replacing "." at the end of subparagraph (b)(iii) with "*;*" and adding the following paragraph:*

(c) by making good delivery of crypto assets that are not securities if

(i) the mutual fund would at the time of payment be permitted to purchase those crypto assets,

(ii) the crypto assets are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund's investment objectives, and

(iii) the value of the crypto assets is at least equal to the issue price of the securities of the mutual fund for which they are payment, valued as if those crypto assets were portfolio assets of the mutual fund**.**

Effective date

7.(1) This Instrument comes into force on July 16, 2025.

7.(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after July 16, 2025, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX D

CHANGES TO
COMPANION POLICY 81-102 *INVESTMENT FUNDS*

1. ***Companion Policy 81-102 Investment Funds is changed by this Document.***

2. ***Section 2.01 is changed by adding the following subsection:***

(4) The term "crypto asset" is not defined in the Instrument, but for the purposes of the Instrument, the Canadian securities regulatory authorities will generally consider a crypto asset to include any digital representation of value that uses cryptography and distributed ledger technology, or a combination of similar technology, to record transactions**.**

3. ***Part 3 is changed by adding the following section:***

3.3.01 Investing in Crypto Assets

Subsection 2.3(1.3) of the Instrument provides an exception to the general prohibition on mutual funds investing in crypto assets in paragraph 2.3(1.2)(j) to permit alternative mutual funds to invest in crypto assets provided the crypto asset is either (a) listed for trading or (b) is the underlying interest in a specified derivative that is listed for trading, on an exchange that has been recognized by a securities regulatory authority in Canada. Subsection 2.3(2) provides a similar exception for non-redeemable investment funds. For greater clarity, this is not intended to restrict investment funds to only purchasing crypto assets through a recognized exchange. It is meant to be the criteria to determine whether a fund can invest in a particular type of crypto asset. Funds will continue to be permitted to acquire crypto assets from other sources, such as crypto asset trading platforms, provided the crypto asset qualifies under the criteria set out in subsection 2.3(1.3) and subject to any other existing requirements that may impact how an investment fund acquires its portfolio assets**.**

4. ***Section 8.1 is changed:***

(a) by renumbering it as subsection "8.1(1)***", and***

(b) by adding the following subsections:

(2) The Canadian securities regulatory authorities expect that custodians and sub-custodians responsible for the custody of portfolio assets that are crypto assets implement policies and procedures that address the unique risks concerning safeguarding of crypto assets compared to other asset types. We also expect that investment fund managers take note of these policies and procedures in conducting their due diligence on custodians or sub-custodians to hold crypto assets for an investment fund, consistent with their fiduciary obligations. Examples of what we understand to be industry best practices may include, but are not limited to:

(a) having specialist expertise and infrastructure relating to the custody of crypto assets;

(b) storing private cryptographic keys to the investment fund's crypto assets in segregated wallets separate from wallets the custodian or sub-custodian uses for its other customers so that unique public and private keys are maintained on behalf of an investment fund and visible on the blockchain;

(c) maintaining books and records in a way that enables the investment fund, at any time, to confirm its transactions and ownership of the crypto assets it holds. Custody and record-keeping controls (e.g., reconciliation to the blockchain) that ensure investors' crypto assets exist, are appropriately segregated and protected, and that ensure transactions with respect to those assets are verifiable, should be maintained;

(d) using hardware devices to hold private cryptographic keys that are subject to robust physical security practices, with effective systems and processes for private key backup and recovery;

(e) using effective cybersecurity solutions that minimise single point of failure risk, such as the use of multi-signature wallets;

(f) maintaining robust systems and practices for the receipt, validation, review, reporting and execution of instructions from the investment fund;

(g) maintaining website security measures that include two-factor authentication, strong password requirements that are cryptographically hashed, encryption of user information and other state-of-the-art measures to secure client information and protect the custodian and sub-custodian's website from hacking attempts;

(h) maintaining robust cyber and physical security practices for their operations, including appropriate internal governance and controls, risk management and business continuity practices;

(i) maintaining insurance with respect to the crypto assets in their custody that is reasonable and appropriate. The Canadian securities regulatory authorities expect investment fund managers to use their best judgment, consistent with their fiduciary obligation to the investment fund, to determine whether the insurance maintained by the custodian or sub-custodian is satisfactory in the circumstances, which would include a consideration of whether the amount and nature of the insurance is consistent with standard industry practices where applicable.

(3) For the purposes of section 6.5.1, the Canadian securities regulatory authorities generally consider offline storage to mean the storage of private cryptographic keys in a manner that prevents any connection to the internet**.**

5. ***Section 8.3 is changed by renumbering it as subsection 8.3(1) and by adding the following subsections:***

(2) Subsection 6.7(1.1) requires a custodian or sub-custodian of an investment fund that holds portfolio assets of that investment fund that are crypto assets to obtain a report prepared by a public accountant to assess its internal management and controls. The Canadian securities regulatory authorities would consider obtaining a System and Organization Controls 2 Type II report, generally referred to as a "SOC-2 Type II" report, prepared in accordance with the framework developed by the American Institute of Certified Public Accountants, to satisfy this requirement.

(3) We are not prescribing a specific 12-month period the report required under subsection 6.7(1.1) must refer to. However, we expect that report will generally refer to the same 12-month period each year, similar to how other types of annual reporting, such as financial reporting is provided**.**

Effective date

6. These changes become effective on July 16, 2025.

ANNEX E

LOCAL MATTERS

There are no local matters to consider at this time.