CSA finalizes amendments to Public Crypto Asset Fund rules

May 21, 2025

On April 17, 2025, the Canadian Securities Administrators (CSA) published final amendments (the Amendments) to National Instrument 81-102 *Investment Funds* (NI 81-102) and the Companion Policy to NI 81-102 (CP 81-102) in relation to reporting issuer investment funds that seek to invest directly or indirectly in crypto assets (Public Crypto Asset Funds).

With the publication of the Amendments, the CSA intend to provide greater regulatory clarity and to codify routinely granted exemptive relief regarding the types of crypto assets that may be purchased or held by Public Crypto Asset Funds, the restrictions on investing in crypto assets, and the custodial requirements for crypto assets held on behalf of such funds.

Implementation

The Amendments come into force on July 16, 2025, subject to obtaining all necessary ministerial approvals.

Background to the Amendments

The Amendments form part of a phased approach in the CSA's development of a regulatory framework for Public Crypto Asset Funds (the Project). The Project has, to date, included the publication of initial guidance to stakeholders that outlined CSA staff's views and expectations regarding the operations of Public Crypto Asset Funds within the current framework of NI 81-102 and the publication of the CSA's notice and request for comments on Jan. 18, 2024 (the Project Consultation) relating to the proposed amendments and changes to NI 81-102 and CP 81-102 (the Proposed Amendments). It is expected that the third and final phase of the Project will involve further public consultation concerning a broader and more comprehensive regulatory framework for funds investing in crypto assets.

We anticipate a number of crypto asset-related developments from south of the border in the coming months. To date in his role as Chair of the United States Securities and Exchange Commission, Paul Atkins has been championing market participants' need

for “clear regulatory rules of the road”, noting that regulatory uncertainty has stifled cryptocurrency sector innovation.

Summary of the changes to the Proposed Amendments

As part of the Project Consultation, the CSA reviewed and considered stakeholder feedback and made non-material revisions to the Proposed Amendments that were originally published for comment. For a summary of the Proposed Amendments, see our Bulletin from Feb. 13, 2024 here.

We have outlined the changes made by the CSA that now form the Amendments. All sections noted below refer to NI 81-102.

Investments in crypto assets

The investment restrictions in section 2.3 were changed to permit mutual funds that are **not** alternative mutual funds to also invest up to 10 per cent of the fund’s net asset value at the time of purchase in specified derivatives for which the underlying interest is a crypto asset, provided the specified derivative is listed for trading on a recognized exchange.

- Paragraphs 13 of subsection 2.12(1), 12 of subsection 2.13(1) and 10 of 2.14(1) have been removed, which results in Public Crypto Asset Funds being permitted to engage in securities lending, repurchase transactions and reverse repurchase transactions that involve crypto assets. However, the CSA note that NI 81-102 only permits funds to lend portfolio assets that are securities and only under the conditions set out in that instrument. Accordingly, to the extent a Public Crypto Asset Fund is holding crypto assets that are not securities, the existing prohibitions on lending portfolio assets that are not securities will continue to apply.
- The reference to “crypto assets” in subsection 2.18(2) with respect to what constitutes a “money market fund” has been removed. The CSA determined this change in the Proposed Amendments to be redundant because the current conditions under which a fund qualifies as a money market fund already prohibit such funds from holding crypto assets.

Custodianship of portfolio assets

- The Proposed Amendments would have required a custodian or sub-custodian holding crypto assets to maintain insurance relating to its custody of crypto assets, this requirement has been removed. It is noteworthy, however, that the Amendments to CP 81-102 continue to include guidance to investment fund managers that, in selecting a custodian or approving a sub-custodian to hold crypto assets for the Public Crypto Asset Funds, consideration should be given to matters such as the amount and nature of the insurance they carry.
- The Amendments reflect changes to the annual report that a Public Crypto Asset Fund must obtain from a custodian or sub-custodian to provide a reasonable assurance opinion concerning the design and operational effectiveness of

service commitments and system requirements for that custodian or sub-custodian, as follows:

- the annual report must relate to any 12-month period that is not limited to the custodian or sub-custodian's financial year, but that same 12-month period must be used for subsequent reports;
- the report must be obtained no later than 90 days from the end of the period it relates to, instead of 60 days; and
- a custodian or sub-custodian cannot hold crypto assets on behalf of a Public Crypto Asset 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 Public Crypto Asset Fund.

Sale of securities of a mutual fund

The Proposed Amendments codified exemptive relief that permits existing Public Crypto Asset Funds to accept crypto assets as subscription proceeds in lieu of cash. The Amendments reflect further changes to align the wording in paragraph 9.4(2)(b) and (c) with the wording used in the exemptive relief orders.

Our commentary

While we commend the regulatory guidance provided by the Amendments, we continue to look for regulatory proposals that are broader in scope and that create more alignment with investment funds regulation.

Recognizing that there is likely to be an ongoing, delicate dance between regulatory developments in the crypto asset space between Canada and the United States, we nevertheless believe that greater alignment between the regulatory regime established for crypto asset trading platforms and investment funds would afford crypto asset investors the benefits of the robust investment funds regulatory regime as well as access to the investment knowledge brought by portfolio managers.

How BLG Digital Assets team can help

BLG's Digital Assets team helps clients to determine their regulatory status and to work closely with the regulators to obtain appropriate registrations or exemptions. We understand the digital asset business and we work with our clients to put into place a plan that balances investor protection concerns with the need for innovation while securing a feasible business model. We are also aware that domestic and global participants may be faced with different challenges and obstacles and need to plan accordingly.

For more information on the digital assets industry, reach out to your usual BLG lawyer or any of the key contacts listed below.

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