

April 17, 2024

Submitted via Email

**SUBMITTED VIA EMAIL**

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

Attention:

The Secretary  
Ontario Securities Commission  
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[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

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Dear Sirs / Mesdames:

**RE: PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-102 INVESTMENT FUNDS PERTAINING TO CRYPTO-ASSETS  
("PROPOSED AMENDMENTS")**

The Investment Industry Association of Canada (the IIAC) is the national association representing investment firms that provide products and services to Canadians. Our members manufacture and

distribute a range of investment products including mutual funds, exchange traded funds and prospectus exempt products.

We provide the following analysis of the Proposed Amendments for your consideration:

### **Restrictions on Investing in Crypto Assets**

While we acknowledge and recognize that the Proposed Amendments to section 2.3 of NI 81-102 are aimed at addressing the CSA's concerns with respect to a portfolio manager's ability to determine the suitability of a crypto asset as a portfolio holding of a Public Crypto Asset Fund, we believe that the limits on the crypto assets that Public Crypto Asset Funds can invest in – i.e., only in crypto assets that either trade on a recognized exchange or that are the underlying interest of a specified derivative that trades on a recognized exchange – are unnecessarily restrictive.

As the CSA is aware, no crypto asset trades on a recognized exchange, so the proposed limits restrict a Public Crypto Asset Fund's investment to only those crypto assets for which futures are offered on an exchange that is recognized in Canada. Currently, that is only Bitcoin and Ethereum. These restrictions stand in stark contrast with the much larger number of crypto assets that can be purchased by retail investors on the crypto asset trading platforms (CTPs) that are currently registered or that operate under a pre-registration undertaking in Canada. Therefore, while we appreciate the CSA's suitability concerns, we respectfully submit that investors may be better protected if they are able to gain exposure to crypto assets through a regulated investment product, such as a Public Crypto Asset Fund, rather than purchasing crypto assets directly through CTPs. Accordingly, we recommend that Public Crypto Asset Funds be permitted to invest in any of the crypto assets that are offered by one or more CTPs.

### **Proposed Changes to the Companion Policy**

#### **Definition of Crypto Asset**

Based on our review of the Proposed Changes to section 2.01 of the Companion Policy, we respectfully submit that the statement made in Companion Policy as to what is generally considered to be a crypto asset for purposes of the Proposed Amendments is much broader than the definition of crypto assets used by the CSA in the context of CTPs. In fact, the statement made in the Companion Policy includes digital assets that are also securities and/or derivatives. We are concerned that the use of the term "crypto asset" in a manner that is different from what the market is accustomed to may be misleading and may cause unnecessary confusion. We submit that the use of a different term, such as "digital asset", may address this concern. We also respectfully suggest that a statement should be included in the Companion Policy that makes it clear that any "crypto asset" that is a security and/or a derivative is subject to the same requirements as all other securities and/or derivatives.

#### **Other Matters**

Although the Proposed Amendments codify existing exemptive relief and other practices and policies of existing Public Crypto Asset Funds and their custodians, we note that the CSA does not address the following matters:

- *Staking* – The Proposed Amendments do not address the ability of Public Crypto Asset Funds to engage in the staking of crypto assets. As you are aware, certain CTPs offer staking services subject to a number of terms and conditions that have been agreed to with the CSA. We also

note that existing registered firms in Canada are permitted to engage in lending or staking activities as an investment strategy for private investment funds (that are not subject to NI 81-102) managed by such firms. We submit that Public Crypto Asset Funds should be permitted to engage in staking through one or more CTPs that offer staking services.

- *Value-referenced crypto assets* – The Proposed Amendments do not permit Public Crypto Asset Funds to purchase and hold value-referenced crypto assets. However, if the CSA’s working group on value-referenced crypto assets permits CTPs to offer one or more value-reference crypto assets, then we submit that Public Crypto Assets Funds should be permitted to purchase, sell, use or hold any such value-reference crypto assets notwithstanding the fact that these value-referenced crypto assets will not meet the investment criteria set out in the Proposed Amendments.

We ask the CSA to provide commentary on whether Public Crypto Asset Funds may be permitted to engage in staking and to invest in and hold value-referenced crypto assets.

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Thank you for this opportunity to express our comments about the Proposed Amendments and Proposed Changes.

Yours truly,

**INVESTMENT INDUSTRY ASSOCIATION OF CANADA**

*Laura Paglia*

Per: Laura Paglia, President and Chief Executive Officer