

ANNEX B

PROPOSED 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 create, verify and secure 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 would expect these policies and procedures to include:

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

- (b) storing private cryptographic keys in segregated wallets or in an omnibus wallet visible on the blockchain so that unique public and private keys are maintained on behalf of an investment fund, so long as in each case the custodian or sub-custodian's books and records clearly reflect the investment fund's ownership of the crypto assets held by it;
 - (c) 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;
 - (d) using signing approaches, such as the use of multi-signature technology, that minimise single point of failure risk;
 - (e) maintaining robust systems and practices for the receipt, validation, review, reporting and execution of instructions from the investment fund;
 - (f) 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;
 - (g) maintaining robust cyber and physical security practices for their operations, including appropriate internal governance and controls, risk management and business continuity practices.
- (3) For the purposes of section 6.5.1 of the Instrument 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.
- (4) Subsection 6.6(3.1) of the Instrument requires the custodian or sub-custodian of an investment fund that holds crypto assets on behalf of the investment fund to maintain insurance with respect to its custody of crypto assets of a type and in an amount that a reasonably prudent person would maintain. The Canadian securities regulatory authorities expect this to include using their best judgement, consistent with their custodial or sub-custodial obligations and standard of care to the fund to determine whether the insurance maintained by the custodian or sub-custodian is sufficient or appropriate in the circumstances, including taking into account how the insurance compares to industry standards. The Canadian securities regulatory authorities also remind investment fund managers of the need to understand the material terms and amounts of such insurance coverage and make their own determination of whether they consider the insurance sufficient considering the relevant circumstances, consistent with their fiduciary obligation to the investment fund..

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

- (2) Subsection 6.7(1.1) of the Instrument 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 an external auditor to assess its internal management and controls.

The provision does not specify the exact report that must be obtained. However, it is the view of the Canadian securities regulatory authorities that a Service Organization Control 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 Chartered Public Accountants, will satisfy this requirement, though other comparable reports may also be considered from time to time..

6. These changes become effective on [●].