

ANNEX A

PROPOSED 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 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.,

(b) 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) the crypto asset is fungible, and
 - (b) 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.
- (1.4) Paragraph (1)(j) does not apply to an alternative mutual fund with respect to the fund entering into a specified derivative transaction that trades on an exchange that is recognized by a securities regulatory authority in a jurisdiction of Canada., **and**

(c) in subsection (2) 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 transaction the underlying interest of which is a crypto asset, unless it is a specified derivative referred to in subsection (1.4)..

4. Subsection 2.12(1) is amended by adding the following item :

- 13. Neither the loaned securities nor the collateral delivered to the investment fund includes a crypto asset..

5. Subsection 2.13(1) is amended by adding the following item :

- 12. No securities transferred by the investment fund as part of the transaction are crypto assets..

6. Subsection 2.14(1) is amended by adding the following item :

- 10. No securities transferred as part of the transaction are crypto assets..

7. Subsection 2.18(2) is replaced with the following:

- (2) Despite any other provision of this Instrument, a mutual fund that describes itself as a “money market fund” must not use a specified derivative, sell securities short or purchase, sell, use or hold a crypto asset..

8. 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 required to facilitate a portfolio transaction of the investment fund..

9. Section 6.6 is amended by adding the following subsection:

- (3.1) The custodian or sub-custodian of an investment fund that holds portfolio assets that are crypto assets must maintain insurance with respect to those crypto assets, of a type and amount that a reasonably prudent person would maintain..

10. Section 6.7 is amended

(a) by adding the following subsections:

- (1.1) The 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 within 60 days after the end of its most recently completed financial year, 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 set for the custodian or sub-custodian relating to security, availability, confidentiality, processing integrity and privacy controls with respect to its custodial or sub-custodial obligations during its most recently completed financial year.
- (1.2) A custodian or sub-custodian referred to in subsection (1.1) must deliver a copy of the report referred to in subsection (1.1) to the investment fund, promptly after receipt,
and

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

- (d) whether the custodian or each sub-custodian, as applicable, of an investment fund that holds portfolio assets that are crypto assets has delivered a copy of the report referred to in subsection (1.2)..

11. 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 if
 - (i) the mutual fund is an alternative fund,
 - (ii) the crypto assets are not securities,
 - (iii) the mutual fund would at the time of payment be permitted to purchase those crypto assets,
 - (iv) the crypto assets are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund’s investment objectives, and
 - (v) 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

- 12.** (1) This Instrument comes into force on [●].
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [●], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.