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. 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. The concern is noted.** **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