

Autorité des marchés financiers
Notice of Local Publication
Regulation to amend Regulation 81-102 respecting Investment Funds
Pertaining to Crypto Assets

March 27, 2025

Introduction

The Autorité des marchés financiers (the **Autorité** or **we**) is adopting

- *Regulation to amend Regulation 81-102 respecting Investment Funds* amendments (**Regulation 81-102**) (the **Amendments**), and
- related Changes to *Policy Statement to Regulation 81-102 respecting Investment Funds* (**Policy Statement 81-102**) (the **Changes**)

(collectively, the **Amendments and Changes**).

The Amendments and Changes pertain to reporting issuer investment funds that seek to invest directly or indirectly in crypto assets (**Public Crypto Asset Funds**).

The Amendments will be made under section 331.1 of the *Securities Act* and will be submitted to the Minister of Finance for approval, with or without amendment. The Amendments will come into force on the date of their publication in the *Gazette officielle du Québec* or on a later date indicated in the Amendments. The Changes will be adopted as a policy and will take effect concomitantly with the Amendments.

The other members of the Canadian Securities Administrators (the **CSA**) consider adopting amendments and changes in substantially the same form at a later time. We anticipate that they will be fully harmonized across Canada.

Substance and Purpose

The Amendments and Changes are intended to provide greater regulatory clarity with respect to certain key operational matters regarding Public Crypto Asset Funds, such as:

- criteria regarding the types of crypto assets that Public Crypto Asset Funds are permitted to purchase, use or hold,
- restrictions on investing in crypto assets by Public Crypto Asset Funds or other types of reporting issuer investment funds, and
- requirements concerning custody of crypto assets held on behalf of a Public Crypto Asset Fund.

The Amendments will codify practices of existing Public Crypto Asset Funds, developed mainly through the prospectus review process, as well as codify exemptive relief previously granted to existing Public Crypto Asset Funds. The Amendments and Changes will provide investment fund managers with greater regulatory clarity concerning investments in crypto assets. The intent is to facilitate new product development while also ensuring that appropriate risk mitigation measures are built directly into the investment fund regulatory framework.

Background

The Amendments and Changes are a key phase of the CSA's implementation of a regulatory framework for Public Crypto Asset Funds (the **Project**). The Project's objectives are to review existing requirements, provide guidance, and then implement a regulatory framework relating to Public Crypto Asset Funds that ensures adequate investor protection and mitigates potential risks, while providing greater regulatory clarity for product development and management. The Project is a recognition by the CSA that the existing regulatory framework in Regulation 81-102 needs to be adapted to properly account for the unique aspects of crypto assets as an investment product for publicly distributed investment funds.

The Project is being carried out in three phases.

Phase 1 – CSA Staff Notice

Phase 1 of the Project entailed communicating information to stakeholders on areas we believe required greater regulatory guidance, including new developments relating to Public Crypto Asset Funds. Phase 1 was completed with the publication of CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers* (the **Staff Notice**) on July 6, 2023.¹

The Staff Notice provided guidance to stakeholders and outlined CSA staff's views and expectations regarding the operations of Public Crypto Asset Funds within the current framework of Regulation 81-102, including:

- providing an overview of the Public Crypto Asset Funds market and clarifying the application of existing securities regulatory requirements to them,
- discussing key findings from previous reviews conducted by CSA staff, and
- communicating CSA staff expectations for stakeholders with respect to various matters related to Public Crypto Asset Funds, including key considerations for investing in crypto assets, expectations regarding custody of crypto assets on behalf of Public Crypto Asset Funds, issues concerning staking and other similar yield-generating activities, and

¹ CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers*, available at <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilières/0-avis-acvm-staff/2023/2023juil06-81-336-avis-acvm-en.pdf>

reminding registrants of their know-your-product, know-your-client and suitability obligations.

Phase 2 – The Amendments

The Amendments and Changes represent the second phase of the Project. As discussed in greater detail below, the purpose of this phase of the Project is to build on the guidance in the Staff Notice by focusing on targeted amendments that reflect priority issues regarding investment funds investing in crypto assets. This phase seeks to codify policies and practices of existing Public Crypto Asset Funds, many of which were developed and adopted through the prospectus review process and were also cited in the Staff Notice. Also, where appropriate, the Amendments codify routinely granted exemptive relief for these products.

We first published draft amendments (the **Draft Amendments**) and Changes relating to this phase of the Project for a 90-day comment period, on January 18, 2024.²

Phase 3 – Consultation Paper and Possible Future Amendments

Phase 3 of the Project will involve a public consultation concerning a broader and more comprehensive regulatory framework for Public Crypto Asset Funds.

Summary of Amendments and Changes

The following is a description of the Amendments and Changes. The Summary of Changes to the Draft Amendments in Annex A describes how the Amendments and Changes differ from what was initially published for comment.

Amendments to Regulation 81-102

(i) Part 1 – Definitions

“alternative mutual fund”

The definition of “alternative mutual fund” is being amended to also include a mutual fund that invests in crypto assets.

(ii) Part 2 – Investments

Section 2.3 – Restrictions Concerning Types of Investments

We are amending the investment restrictions in section 2.3 to permit only alternative mutual funds and non-redeemable investment funds to buy, sell, hold or use crypto assets directly. This

² See “CSA Notice of Consultation, *Draft Regulation to amend Regulation 81-102 respecting Investment Funds and Draft Amendments to Policy Statement to Regulation 81-102 respecting Investment Funds pertaining to crypto assets*” available at: <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/81-102/2024-01-18/2024janv18-81-102-avis-cons-crypto-en.pdf>

restriction would also apply to investing indirectly in crypto assets through specified derivatives. Mutual funds, other than alternative mutual funds, will only be permitted to invest in crypto assets by (a) investing in underlying alternative mutual funds or non-redeemable funds that invest in crypto assets, subject to the fund of fund restrictions in subsection 2.5(2) of Regulation 81-102 or (b) investing in a specified derivative for which the underlying interest is a crypto asset, provided the specified derivatives meets the criteria described below.

Investment funds will only be permitted to invest in fungible crypto assets that are listed for trading on, or are the underlying interest for a specified derivative that trades on, an exchange that is recognized by a securities regulatory authority in Canada.

(iii) Part 6 – Custodianship of Portfolio Assets

We are including provisions that will apply specifically to custodians and sub-custodians that hold crypto assets on behalf of an investment fund (a **Crypto Custodian**) as described below. These provisions largely codify existing practices of Crypto Custodians and are supplemented by additional guidance in Policy Statement 81-102:

- section 6.5.1 will require a Crypto Custodian to keep crypto assets in offline storage (usually referred to as “cold wallet” storage), except as needed to facilitate purchases and sales or other portfolio transactions in the fund.
- section 6.7 will be amended to include a requirement for a Crypto Custodian to obtain, on an annual basis, a report prepared by a public accountant assessing the Crypto Custodian’s service commitments and system requirements relating to its custody of crypto assets and to deliver this report to the fund. If the Crypto Custodian is the fund’s sub-custodian, the report will also have to be delivered to the fund’s custodian.

(iv) Part 9 – Sale of Securities of an Investment Fund

Section 9.4 – Delivery of Funds and Settlement

Subsection 9.4(2) is being amended to permit mutual funds that hold crypto assets to accept those crypto assets as subscription proceeds, subject to the following conditions:

- the mutual fund is permitted to purchase the applicable crypto asset, the crypto asset is acceptable to the fund’s portfolio advisor, and holding the asset is consistent with the fund’s investment objectives, and
- the crypto assets accepted by the mutual fund as subscription proceeds for the mutual fund’s securities must be of at least equal value to the issue price of the mutual fund’s securities received in exchange.

Changes to Policy Statement 81-102

Section 2.01 – Guidance on what are considered to be “crypto assets”

We are adding guidance relating to what the CSA will generally consider to be crypto assets for the purposes of investment funds regulation, though we note this is not intended to be a legal definition of the term.

Section 3.3.01 – Investing in crypto assets.

We are adding a new section 3.3.01 which will clarify that the listing on a “recognized exchange” requirement for funds investing crypto assets in section 2.3 of Regulation 81-102 is not intended to restrict funds to only purchasing crypto assets through such an exchange. A fund may purchase crypto assets from other sources as well, including crypto trading platforms, as long as the crypto asset meets the criteria set out in subsection 2.3(1.3) of Regulation 81-102.

Section 8.1 – Custody standard of care

We are adding a new subsection 8.1(2) which provides guidance as to how the standard of care for custodians and sub-custodians set out in section 6.6. of Regulation 81-102 might apply in the context of Crypto Custodians, including best practice suggestions.

Section 8.3

We are adding a new subsection 8.3(2) which will clarify that the reporting requirement for Crypto Custodians in section 6.7 of Regulation 81-102 can be met by obtaining a System and Organization Controls 2 Type II Report, prepared by a public accountant, in accordance with the framework developed by the American Institute of Chartered Public Accountants.

Summary of Written Comments Received by the CSA

During the comment period the CSA received submissions from 16 commenters. We have considered the comments received and thank all the commenters for their input. The other members of the CSA may provide a summary of comments received together with the CSA’s responses at a later time.

Summary of Changes to the Draft Amendments

After considering the comments received, we have made some revisions to the materials that were originally published for comment under the Draft Amendments and Changes. These revisions are reflected in the Amendments and Changes that we are publishing with this Notice. We do not consider these changes to be material and accordingly, we are not publishing the Amendments for a further comment period. A summary of the key changes to the Draft Amendments is provided in Annex A of this Notice.

Questions

Please refer your questions to any of the following staff of the Autorité:

Bruno Vilone

Director,
Investment Products Oversight
Autorité des marchés financiers
bruno.vilone@lautorite.qc.ca

Philippe Lessard

Investment fund analyst,
Investment Products Oversight
Autorité des marchés financiers
philippe.lessard@lautorite.qc.ca

Ayoub Belhoucine

Investment fund analyst,
Investment Products Oversight
Autorité des marchés financiers
ayoub.belhoucine@lautorite.qc.ca

Gabriel Vachon

Investment fund analyst,
Investment Products Oversight
Autorité des marchés financiers
gabriel.vachon@lautorite.qc.ca

Contents of Annexes

The text of the Amendments and Changes and the Summary of Changes to the Draft Amendments is published with this Notice and is available on the Autorité's website:

Annex A – Summary of Changes to the Draft Amendments

REGULATION TO AMEND REGULATION 81-102 RESPECTING INVESTMENT FUNDS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (4.1), (8), (11), (16) and (34))

1. Section 1.1 of Regulation 81-102 respecting Investment Funds (chapter V-1.1, r. 39) is amended by inserting, in the definition of “alternative mutual fund” and after “physical commodities”, “, crypto assets”.

2. Section 2.3 of the Regulation is amended:

(1) in paragraph (1):

(a) by inserting, in subparagraph (e), “or a crypto asset” after “physical commodity” and “and crypto assets” after “physical commodities”;

(b) by adding, after subparagraph (i), the following, and making the necessary adaptations:

“(j) purchase, sell, use or hold a crypto asset or a specified derivative of which the underlying interest is a crypto asset except to the extent permitted by paragraph (e) or subsections (1.3) or (1.4).”;

(2) by inserting, after paragraph (1.2), the following:

“(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 a mutual fund with respect to the fund entering into a specified derivative that trades on an exchange that is recognized by a securities regulatory authority in a jurisdiction of Canada.”;

(3) by adding, in paragraph (2) and after subparagraph (c), the following, and making the necessary adaptations:

“(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 the underlying interest of which is a crypto asset, unless the specified derivative is a specified derivative referred to in subsection (1.4).”.

3. Section 2.12 of the Regulation is amended by replacing all occurrences of “garantie”, in the French text of paragraph (1), by “sûreté”.

4. Section 2.16 of the Regulation is amended by replacing “garanties”, in the French text of subparagraph (c) of paragraph (2), by “sûretés”.

5. The Regulation is amended by inserting, after section 6.5, the following:

“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 the assets are required to facilitate a portfolio transaction of the investment fund.”.

6. Section 6.7 of the Regulation is amended:

(1) by inserting, after paragraph (1), the following:

“(1.1) A 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 no more than 90 days after the end of the period it references, 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 of the custodian or sub-custodian relating to its custody of crypto assets during a 12-month period.

“(1.2) If a report referred to in subsection (1.1) is required to be obtained by the custodian of an investment fund, then the custodian must deliver a copy of the report to the investment fund promptly after receipt.

“(1.3) If a report referred to in subsection (1.1) is required to be obtained by a sub-custodian of an investment fund, then the sub-custodian must deliver a copy of the report to the investment fund’s custodian and to the investment fund promptly after receipt.

“(1.4) A custodian or sub-custodian of an investment fund must not hold portfolio assets of the investment fund that are crypto assets unless

(a) the custodian or sub-custodian has obtained a report referred to in subsection (1.1) that relates to a 12-month period ended no more than 15 months before the date on which the custodian or sub-custodian first holds portfolio assets of the investment fund that are crypto assets, and

(b) the custodian or sub-custodian has delivered a copy of the report, before the date it first holds crypto assets that are portfolio assets of the investment fund,

(i) if the report is obtained by the custodian under paragraph (a), to the investment fund, or

(ii) if the report is obtained by the sub-custodian under paragraph (a), to the investment fund and the custodian.

“(1.5) For the purposes of subsection (1.4), if a custodian or sub-custodian ceases to hold portfolio assets of an investment fund that are crypto assets, paragraphs (1.4)(a) and (b) apply to each subsequent period during which the custodian or sub-custodian holds crypto assets that are portfolio assets of the investment fund as if the custodian or sub-custodian were holding portfolio assets of the investment fund that are crypto assets for the first time.”;

(2) by adding, in paragraph (2) and after subparagraph (c), the following, and making the necessary adaptations:

“(d) whether the custodian or each sub-custodian that holds portfolio assets of the investment fund that are crypto assets, has delivered a copy of the report referred to in subsection (1.1).”.

7. Section 6.8 of the Regulation is amended by replacing “garantie”, in the French text of paragraph (5), by “sûreté”.

8. Section 8.1 of the Regulation is amended by replacing “plan contractuel”, in the French text of the text preceding paragraph (a), by “plan d’épargne”.

9. Section 9.4 of the Regulation is amended by adding, in paragraph (2) and after subparagraph (b), the following:

“(c) by making good delivery of crypto assets that are not securities if

(i) the mutual fund would at the time of payment be permitted to purchase those crypto assets,

(ii) the crypto assets are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund’s investment objectives, and

(iii) 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

10. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.