



CURRENT DEVELOPMENTS

Canadian Securities Matters

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Canadian securities: New guidance

CSA Notice of Publication of Amendments and Changes to Implement an Access Model for Prospectuses of Non-Investment Fund Reporting Issuers

On January 11, 2024, Staff of the Canadian Securities Administrators (CSA staff) published this notice to propose amendments to:

- National Instrument 41-101 General Prospectus Requirements,
- National Instrument 44-101 Short Form Prospectus Distributions,
- National Instrument 44-102 Shelf Distributions,
- National Instrument 44-103 Post-Receipt Pricing,

and changes to:

- Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements,
- Companion Policy 44-102CP to National Instrument 44-102 Shelf Distributions,
- Companion Policy 44-103CP to National Instrument 44-103 Post-Receipt Pricing

as well as related consequential changes to:

- National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means,

to implement an access model for prospectuses for non-investment fund reporting issuers as an alternative procedure to provide access to the final prospectus or preliminary prospectus (as applicable), such that, providing public electronic access to a prospectus and alerting investors that the document is accessible through SEDAR+ will satisfy delivery exemption in British Columbia, Québec and New Brunswick and shall constitute a delivery of a prospectus in other jurisdictions.

On March 5, 2024, the Ontario Minister of Finance approved the proposed amendments and made changes to implement the access model for prospectuses of non-investment fund reporting issuers. The Final Amendments and the Final Changes have an effective date of April 16, 2024.

OSC Rule 45-508 Extension to Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption

On January 30, 2024, the Ontario Securities Commission (the OSC) made a rule under the Securities Act (Ontario) local OSC Rule 45-508 Extension (issued on October 25, 2022) to provide a temporary extension to the exemption provided in Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption (Interim Class Order) for an additional 18-month period. The rule was initially issued in response to the Capital Markets Modernization Taskforce Final Report (dated January 22, 2021) to foster competitive capital markets and capital formation. More specifically, it was recommended that OSC expand the accredited investor definition to those individuals who have completed and passed relevant proficiency requirements indicating a high degree of understanding of investments and markets.

The Interim Class Order provided a relief to non-investment fund issuers with a head office in Ontario from the requirement to file a prospectus in respect of the distribution of securities to a Self-Certified Investor¹, or a Self-Certified Investor's permitted designate, provided that certain conditions are met.

This rule comes into force on April 25, 2024.

CSA Staff Notice 81-334 (Revised) ESG-Related Investment Fund Disclosure

On March 7, 2024, the CSA staff published this notice to update and replace a prior version of this Notice that was issued on

¹ Self-certified investor is an individual who confirms that they, for example, hold a Chartered Financial Analyst Charter from the CFA Institute, hold a Chartered Investment

Manager designation from the Canadian Securities Institute, hold a Chartered Business Valuator designation from the CBV Institute, etc.

January 19, 2022 (the 2022 Notice), to address developments and issues that have arisen since the publication of the 2022 Notice, as well as to provide guidance for specific types of ESG-Related Funds. In summary, this notice provides an overview of common ESG-related terms and strategies, summarizes scope and purpose of, and key findings from the ESG-Focused Reviews, and provides updated, relevant and practical guidance for investment funds, particularly ESG-Related Funds, and their IFMs to enhance the ESG-related aspects of the funds' regulatory disclosure documents and ensure that the sales communications of such funds are not untrue or misleading and are consistent with the funds' regulatory offering documents.

The major changes in this Notice compared to the 2022 Notice are as follows:

- Inclusion of an explanation of the different levels of disclosure expectations for funds that do not reference ESG factors in their investment objectives but that use ESG strategies, depending on the degree of significance to which the consideration of ESG factors is given in the fund's investment process, i.e. depending on whether the fund is an ESG Strategy Fund or ESG Limited Consideration Fund
- Inclusion of specific guidance for certain types of funds and funds in certain circumstances, including, but not limited to: (a) funds that track the performance of an ESG-related index; (b) funds that invest in underlying funds; (c) funds with carbon offset series; (d) funds that are subject to an investment fund managers (IFMs) general proxy voting or engagement approach that addresses ESG matters; and (e) funds managed by IFMs that apply an ESG strategy to more than one of their funds
- Inclusion of a reminder to IFMs about existing requirements relating to written ESG-related policies and procedures
- Clarification of whether certain ESG-related communications are sales communications, and on the use of disclaimers or explanatory language in sales communications.

Multilateral CSA Staff Notice 96-305 Derivatives Data Reporting Guidance for CDOR Transition

On March 7, 2024, Staff of the Alberta Securities Commission and staff of OSC published this notice to provide guidance to market participants with respect to over-the-counter (OTC) derivatives data reporting requirements in connection with life-cycle events that occur for OTC derivatives that reference certain interest rate benchmarks. Certain OTC derivatives incorporate or reference certain tenors of the Canadian dollar offered rate (CDOR). As all tenors of CDOR will cease to be published following a final publication on June 28, 2024, these OTC derivatives are required to transition under fallback

provisions to appropriate alternative reference rates by July 2, 2024 (the CDOR transition).

However, due to the large number of OTC derivatives that are expected to transition under fallback provisions on or before July 2, 2024, Staff recognize that this deadline may result in operational burden to reporting counterparties in this situation.

Staff expressed their view that there is no public interest in recommending or pursuing an enforcement action against reporting counterparties in respect of late reporting of life-cycle event data under section 32 of the Trade Reporting Rules where both:

- the CDOR transition life-cycle event occurs on or before July 2, 2024, and
- life-cycle event data relating to the CDOR transition life-cycle event is reported on or before the end of the fifth business day after the day on which the CDOR transition life-cycle event occurs.

Staff provided similar guidance last year in relation to the U.S. dollar London interbank offered rate under Multilateral CSA Staff Notice 96-304 Derivatives Data Reporting Guidance for USD LIBOR Transition. Staff of the ASC and OSC stated that other Canadian Securities Administrators jurisdictions are considering requests for blanket orders to address this matter.

Canadian securities: Proposed guidance

Proposed Amendments to National Instrument 81-102 Investment Funds pertaining to Crypto Assets

On January 18, 2024, the CSA staff published for a 90-day comment period, proposed amendments to National Instrument 81-102 Investment Funds, as well as proposed changes to Companion Policy 81-102CP Investment Funds, to provide greater regulatory clarity with respect to certain key operational matters regarding these investments, 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 Proposed Amendments and CP Changes will codify practises of existing Public Crypto Asset Funds, developed mainly through the prospectus review process, as well as codifying exemptive relief previously granted to existing Public Crypto Asset Funds. The Proposed Amendments and CP Changes will provide investment fund managers greater regulatory clarity concerning investments in crypto assets.

Comment period expires April 17, 2024.

Contact us

Julia Suk
Partner
416-777- 8131
juliasuk@kpmg.ca

Shival Sehgal
Senior Manager
604-403- 5230
shivalsehgal@kpmg.ca



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