

CURRENT DEVELOPMENTS

Canadian Securities Matters

Q3 2025

Table of contents

This edition provides a summary of newly effective and forthcoming regulatory matters in Canada in the quarter ended September 30, 2025.

03 Canadian Securities: New guidance

- 03 CSA Staff Notice 51-366 Regulatory Concerns with Certain Asset or Business Acquisitions
- 03 Notice of Ministerial Approval of Amendments to National Instrument 81-102 Investment Funds
- 04 CSA Notice Regarding Coordinated Blanket Order 81-930 Exemptions from Certain Repurchase Transactions Requirements for Investment Funds
- 05 OSC Staff Notice 33-759 Registration, Inspections and Examinations Division
- 05 Notice of Commission Approval of OSC Rule 32-510 Extension to Ontario Instrument 32-508 Not-For-Profit Angel Investor Group Registration Exemption and OSC Rule 32-511 Extension to Ontario Instrument 32-509 Early Stage Business Registration Exemption
- 05 CSA Notice of Amendments to National Instrument 44-102 Shelf Distributions Relating to Well-known Seasoned Issuers
- 06 Notice of Coming into Force of OSC Rule 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs and OSC Rule 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs
- 06 Notice of Ministerial Approval of Amendments of Certain National Instruments and OSC Rules related to the Senior Tier of the Canadian Securities Exchange, the Cboe Canada Inc. and AQSE Growth Market Name Changes, and Majority Voting Form of Proxy Requirements

Canadian securities: New guidance

CSA Staff Notice 51-366 Regulatory Concerns with Certain Asset or Business Acquisitions

On July 3, 2025, the Canadian Securities Administrators (CSA) have identified regulatory concerns with certain transactions, primarily taking place in venture markets, in which reporting issuers distribute a significant number of securities to acquire assets or businesses that appear to have little or no actual value or operating history at what appear to be significantly inflated prices.

The problematic acquisitions that this notice refers to typically have the following attributes:

- Significant number of securities issued

The reporting issuer distributes a significant number of securities that carry either no resale restrictions or a short hold period to acquire an asset or business having little or no actual value.

- An asset or business with little or no actual value or operating history acquired at what appears to be a significantly inflated price

The reporting issuer ascribes a significant value to the asset or business to be acquired but then provides subsequent continuous disclosure that calls into question the reasonableness of the ascribed value, and that indicates that the acquired business or asset

- i) has a minimal carrying value,
- ii) is at a very early stage of development, or
- iii) was recently acquired by a vendor from a third party with the vendor having made no significant expenditures to develop the asset or advance the business prior to selling it to the reporting issuer.

The concerns include:

1. whether the reporting issuer's continuous disclosure record is potentially misleading or contains a misrepresentation, which could lead to:
 - a. information asymmetry as investors purchase securities at a potentially inflated price without benefit of appropriate disclosure regarding the value of the acquisition, and
 - b. a significant number of securities being re-sold in the secondary market before information about the actual value of the asset or business is publicly disclosed
2. whether there is a lack of a reasonable basis for the value initially ascribed to the asset or business being acquired giving rise to concerns about misleading disclosure or misrepresentations;
3. whether the reporting issuer has
 - a. recorded all or a substantial portion of the consideration transferred as intangible assets or goodwill based on unreasonable and/or unsupportable assumptions, and
 - b. impaired substantially all of the value assigned to the intangible assets or goodwill in a short period of time after the acquisition
4. whether promotional campaigns about the acquisition are truthful and balanced, and
5. whether the ascribed value is based on reasonable and supportable valuations

The CSA reminds audit committee members that they are responsible for reviewing the reporting issuer's financial statements, MD&A, and annual and interim profit or loss press releases before the reporting issuer publicly discloses this information.

Notice of Ministerial Approval of Amendments to National Instrument 81-102 Investment Funds

On June 3, 2025, the Minister of Finance approved the amendments to National Instrument 81-102 Investment Funds and changes to Companion Policy 81-102CP.

The Amendments and CP 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.

Amendments

- (i) The definition of "alternative mutual fund" is being amended to also include a mutual fund that invests in crypto assets.
- (ii) Amendments to investment restriction in section 2.3 to permit only alternative mutual funds and nonredeemable investment funds to buy, sell, hold or use crypto assets directly. This 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 nonredeemable funds that invest in crypto assets, subject to the fund of fund restrictions in subsection 2.5(2) of NI 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.
- (iii) Inclusion of provision that will apply specifically to custodians and sub-custodians that hold crypto assets on behalf of an investment fund (a Crypto Custodian). These provisions largely codify existing practices of Crypto Custodians and are supplemented by additional guidance in 81-102CP (a) section 6.5.1 will require 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 and (b) 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 subcustodian, the report will also have to be delivered to the fund's custodian.

(iv)

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 (a) 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 (b) 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 81-102CP

(i)

Guidance is being added relating to what the CSA will generally consider to be crypto assets for the purpose of investment funds regulation, though it is noted that this is not intended to be the legal definition of the term.

(ii)

A new section is being added (3.3.01) which will clarify that the listing on a "recognized exchange" requirements for funds investing crypto assets in section 2.3 of NI 81-102 is not intended to restrict funds to only purchasing crypto assets through such 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 NI 81-102.

(iii)

A new subsection 8.1(2) is being added which provides guidance as to how the standard of care for custodians and sub-custodians set in section 6.6 of NI 81-102 might apply in the context of Crypto Custodians.

(iv)

A new subsection 8.3(2) is being added which will clarify that the reporting requirement for Crypto Custodians in section 6.7 of NI 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.

The Rule Amendments and the Policy Changes have an effective date of July 16, 2025.

CSA Notice Regarding Coordinated Blanket Order 81-930 Exemptions from Certain Repurchase Transactions Requirements for Investment Funds

The CSA are publishing substantively harmonized exemptions from certain repurchase transaction requirements in National Instrument 81-102 Investment Funds (NI 81-102) to allow investment funds to access the Bank of Canada's repurchase facility, the Contingent Term Repo Facility (CTRF).

The purpose of the Coordinated Blanket Order is to provide investment funds with exemptions from certain repurchase transaction requirements in NI 81-102 (collectively, the certain repurchase transaction requirements) to facilitate access to the CTRF offered by the Bank of Canada should it become activated in the future.

We recognize that during times when the CTRF is activated, an investment fund with exposure to Canadian dollar money markets and/or fixed income securities may need to access the CTRF to manage its liquidity during periods of severe market-wide liquidity stresses in the Canadian dollar money markets and/or fixed income markets. However, accessing the CTRF would result in an investment fund being unable to comply with the certain repurchase transaction requirements. The Coordinated Blanket Order provides investment funds with exemptive relief to facilitate access to the CTRF on the conditions that:

- it would be in the best interest of the investment fund to do so;
- the cash delivered to the investment fund as consideration for sold securities in the CTRF is used for liquidity management of the investment fund; and
- certain reporting requirements are complied with.

The CSA is of the view that it would not be prejudicial to the public interest to grant the exemptions from the certain repurchase transactions requirements.

The Coordinated Blanket Order came into effect on July 24, 2025.

OSC Staff Notice 33-759 Registration, Inspections and Examinations Division

On July 24, 2025, the Registration, Inspection and Examination Division (RIE) of the Ontario Securities Commission shared this year's Summary Report for Dealers, Advisers and Investment Fund Managers (Summary Report), which provides an overview of their work during the 2023- 2024 fiscal year. This Summary Report is designed to assist registrants by providing information about:

- Part 1 - Education and outreach - provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants
- Part 2 - Regulatory oversight activities and guidance - can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision
- Part 3 - Impact of upcoming initiatives- provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations

Looking ahead, the compliance review activity for 2025-2026 and is aimed at promoting improved and streamlined regulation of securities dealers, better allocation of resources across the regulatory ecosystem and enhanced investor protection.

Notice of Commission Approval of OSC Rule 32-510 Extension to Ontario Instrument 32-508 Not-For-Profit Angel Investor Group Registration Exemption and OSC Rule 32-511 Extension to Ontario Instrument 32-509 Early Stage Business Registration Exemption

On June 19, 2025, the OSC made as rules under the Securities Act local OSC Rule 32-510 and OSC Rule 32-511.

The Rules extend the class orders issued on May 9, 2024 by Ontario Instrument 32-508 *Not-For-Profit Angel Investor Group Registration Exemption* and Ontario Instrument 32- 509 *Early-Stage Business Registration Exemption*, by 18 months.

The Angel Investor Group Registration Exemption provides an exemption from dealer registration for not-for-profit angel investor groups that carry on certain activities, subject to terms and conditions.

The Early-Stage Business Registration Exemption provides Ontario early-stage businesses with an exemption from the dealer registration requirement so that they may engage in permitted promotional activities and raise capital up to \$3M from accredited investors and self-certified investors, provided that certain conditions are met.

Currently, the OSC Class Orders will cease to be effective on October 25, 2025. Subject to ministerial approval, the Rules will extend the relief provided in the OSC Class Orders for an additional 18-month period.

CSA Notice of Amendments to National Instrument 44-102 Shelf Distributions Relating to Well-known Seasoned Issuers

On August 28, 2025, the CSA are publishing in final form amendments to National Instrument 44-102 Shelf Distributions, changes to Companion Policy 44-102CP to NI 44-102, changes to National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions (NP 11-202), and amendments to local securities laws.

The CSA received feedback on Consultation Paper 51-404 indicating that certain base shelf context creates unnecessary regulatory burden for large, established reporting issuers that have strong market following and up-to-date disclosure records. The feedback recommended enhancing the current prospectus system by amending the base shelf prospectus rules to implement a Canadian WKSI regime. On December 6, 2021, the CSA published temporary exemptions from certain base shelf prospectus requirements for qualifying WKSIs through local blanket orders that are substantively harmonized across the country. Since this, the CSA have evaluated the appropriateness of the eligibility criteria and other conditions, including feedback from various stakeholders which resulted in the publication for comment of proposed amendments.

The Amendments introduce an expedited shelf prospectus regime for well-known seasoned issuers (WKSI) in Canada. Specifically,

the Amendments permit issuers that satisfy the qualification criteria and certain conditions to:

- file a final base shelf prospectus and be deemed to receive a receipt for that prospectus without first filing a preliminary base shelf prospectus or undergoing any regulatory review,
- omit certain disclosures from the base shelf prospectus (for example, the aggregate dollar amount of securities that may be raised under the prospectus), and
- benefit from receipt effectiveness for a period of 37 months from the date of its deemed issuance, subject to the requirement for the issuer to reassess its qualification to use the WKSI regime annually.

The Amendments will become effective in all CSA jurisdictions on November 28, 2025.

Notice of Coming into Force of OSC Rule 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs and OSC Rule 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs

On September 1, 2025, the following rules came into force:

- OSC Rule 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; and
- OSC Rule 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs (together, the Rules).

In connection with the Rules, the Ontario Securities Commission also adopted:

- Companion Policy 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; and
- Companion Policy 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under

Disgorgement Orders and Payment of Related Administrative Costs (together, the Companion Policies).

The Rules and Companion Policies are effective September 1, 2025.

Notice of Ministerial Approval of Amendments of Certain National Instruments and OSC Rules related to the Senior Tier of the Canadian Securities Exchange, the Cboe Canada Inc. and AQSE Growth Market Name Changes, and Majority Voting Form of Proxy Requirements

On September 18, 2025, the OSC published a notice of Ministerial Approval of Amendments to Certain National Instruments and OSC Rules. Amendments have been made to

- NI 41-101 *General Prospectus Requirements*
- NI 44-101 *Short Form Prospectus Distributions*
- NI 45-106 *Prospectus Exemptions*
- NI 51-102 *Continuous Disclosure Obligations*
- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*
- NI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- NI 52-110 *Audit Committees*
- NI 58-101 *Disclosure of Corporate Governance Practices*
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*
- NI 62-104 *Take-Over Bids and Issuer Bids*
- NI 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

- NI 81-101 *Mutual Fund Prospectus Disclosure*

As well as final form changes to

- Companion Policy 44-101CP to NI 44-101 *Short Form Prospectus Distribution*
- National Policy 46-201 *Escrow for Initial Public Offerings*

The purpose of the Amendments and Changes is to address the following:

- the Canadian Securities Exchange (the CSE) creating, by amendments to its listing policies, a senior tier (the CSE Senior Tier), which is intended to be a non-venture tier but is currently categorized as a venture marketplace in securities legislation,
- ensuring that CSE Senior Tier issuers are treated the same way under securities legislation as issuers listed on other non-venture exchanges,
- the name change of the PLUS markets to AQSE Growth Market as a result of PLUS Markets Group plc selling those markets,
- the name change of Aequitas Neo Exchange Inc. (NEO) to Cboe Canada Inc. as a result of Cboe Global's acquisition of NEO, and
- amendments to the Canada Business Corporations Act (CBCA) dealing with "majority voting", which amendments may have created uncertainty about the voting options required to be provided to securityholders in uncontested director elections of CBCA-incorporated reporting issuers and those required under securities legislation.

The Amendments are effective as of September 19, 2025.

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