



THE MANITOBA
SECURITIES
COMMISSION

THE SECURITIES ACT

)

Order No. 7559

MSC Rule 91-507

)

August 19, 2021

)

CO-ORDINATED REVIEW

DETERMINATION

COINBERRY LIMITED

The Manitoba Securities Commission makes the same determination on the application as the Principal Jurisdiction, a copy of which is attached, and opts in on the attached Decision Document.



Director

**In the Matter of the Securities Legislation of Ontario
(the Jurisdiction) and Alberta, British Columbia, Manitoba, New Brunswick,
Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince
Edward Island, Québec, Saskatchewan, and Yukon**

And

**In the Matter of
The Process for Exemptive Relief Applications in Multiple Jurisdictions**

And

**In the Matter of
Coinberry Limited
(the Filer)**

Decision

Background

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (CSA SN 21-327)*, if crypto assets that are securities and/or derivatives are traded on a platform, such platform would be subject to securities legislation. In addition, securities and/or derivatives legislation may apply to platforms that facilitate the buying and selling of crypto assets, including crypto assets that are commodities, because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered an interim, time-limited regulatory framework that would allow crypto asset platforms to operate within a regulated environment, with regulatory requirements tailored to the crypto asset platform's operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer operates a proprietary and fully automated, internet-based platform (the **Platform**) that enables clients of the Filer to buy, sell, hold, deposit and withdraw crypto assets such as bitcoin, ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that are not themselves securities or derivatives (each a **Crypto Asset**, collectively the **Crypto Assets**) through the Filer. The Filer filed an application to be registered in the category of restricted dealer and an application to be exempted from certain requirements under applicable securities legislation. While registered as a restricted dealer, the Filer intends to seek membership with the Investment Industry Regulatory Organization of Canada (**IIROC**). This Decision has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Applicable Jurisdictions (as defined below) will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction has received an application from the Filer (the **Passport Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold and sell Crypto Assets (the **Prospectus Relief**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions referred to in **Appendix A** (the **Coordinated Review Decision Makers**) have received an application from the Filer (collectively with the Passport Application, the **Application**) for a decision under the securities legislation

of those jurisdictions exempting the Filer from certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**, and together with the Prospectus Relief, the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a hybrid application):

- (a) the Ontario Securities Commission is the principal regulator for this Application (the **Principal Regulator**),
- (b) in respect of the Prospectus Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**), and
- (c) the decision in respect of the Trade Reporting Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker.

Interpretation

For the purposes of this Decision:

- (a) "Accredited Crypto Investor" means
 - (i) an individual
 - A. who, alone or with a spouse, beneficially owns financial assets (as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**)) and crypto assets, if not included in financial assets, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000,
 - B. whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year,
 - C. whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year, or
 - D. who, alone or with a spouse, beneficially owns net assets of at least \$5,000,000,
 - (ii) a person or company described in paragraphs (a) to (i) of the definition of "accredited investor" as defined in subsection 73.3(1) of the *Securities Act* (Ontario) (the **Act**) or section 1.1 of NI 45-106, or
 - (iii) a person or company described in paragraphs (m) to (w) of the definition of "accredited investor" as defined in section 1.1 of NI 45-106.
- (b) "App" means the applications described in representation 21.
- (c) "Crypto Asset Statement" means the statement described in representations 22(b)(v) and 28.
- (d) "Eligible Crypto Investor" means
 - (i) a person whose
 - A. net assets, alone or with a spouse, in the case of an individual, exceed \$400,000,

- B. net income before taxes exceed \$75,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
- C. net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

(ii) an Accredited Crypto Investor.

- (e) "IOSCO" means the International Organization of Securities Commissions.
- (f) "Risk Statement" means the statement of risks described in representation 22(b).
- (g) "Specified Crypto Asset" means the crypto assets, digital or virtual currencies, and digital or virtual tokens listed in Appendix B to this Decision.
- (h) "Website" means the website described in representation 21.

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this Decision, unless otherwise defined.

Representations

This decision (the **Decision**) is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation incorporated under the federal laws of Canada with its principal office in Toronto, Ontario.
2. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada. However, the Filer has entered into a letter of intent with respect to a reverse takeover of Cinaport Acquisition Corp. III, whose common shares are listed on the TSX Venture Exchange.
3. The Filer's books and records, financial controls and compliance systems (including its policies and procedures) are in compliance with the requirements set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
4. The Filer's personnel consist, and will consist, of software engineers, compliance professionals and finance professionals who each have experience operating in a regulated financial services environment and expertise in blockchain technology. All of the Filer's key personnel have passed, and new personnel will have passed, criminal records and credit checks.
5. The Filer is not in default of securities legislation of any of the Applicable Jurisdictions, other than in respect of the subject matter to which this Decision relates.

Coinberry

6. The Filer operates under the business name of "Coinberry". The Filer operates a proprietary and fully automated, internet-based Platform that enables clients of the Filer to facilitate the buying, selling, deposit and withdrawal of Crypto Assets through the Filer.

7. The Filer has established the Platform, whereby clients are able enter into Crypto Contracts with the Filer to deposit, buy, sell and withdraw Crypto Assets through the Filer.
8. The Filer's trading of Crypto Contracts is consistent with activities described in CSA SN 21-327 and constitutes the trading of securities and/or derivatives.
9. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not manage any discretionary accounts.
10. The Filer will not be a member firm of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets custodied will not qualify for CIPF coverage. The Risk Statement (defined below) will include disclosure that there will be no CIPF coverage for the Crypto Assets and clients must acknowledge that they have read and understood the Risk Statement before opening an account with the Filer.
11. The Filer maintains bonding insurance in accordance with section 12.3 of NI 31-103.
12. The Filer has provided and will continue to provide audited annual financial statements in accordance with section 12.10 of NI 31-103.

Crypto Assets Made Available through the Platform

13. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on its Platform to enter into Crypto Contracts to buy and sell the Crypto Asset on its Platform. Such review includes, but is not limited to, publicly-available information concerning:
 - (a) The creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;
 - (b) The supply, demand, maturity, utility and liquidity of the Crypto Asset;
 - (c) Material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and
 - (d) Legal and regulatory risks associated with the Crypto Asset, including any pending, potential, or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the Crypto Asset.
14. The Filer intends to only offer and only allows clients to enter into Crypto Contracts to buy and sell Crypto Assets that are not each themselves a security and/or a derivative.
15. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset or affiliates or associates of such persons.
16. The Filer has established and applies policies and procedures to determine whether a Crypto Asset that a client may enter into a Crypto Contract to buy and sell is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:
 - (a) Consideration of statements made by any regulators or securities regulatory authorities of the Applicable Jurisdictions, other regulators in IOSCO-member jurisdictions, or the

regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or derivative; and

- (b) If the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of the Applicable Jurisdictions.
17. The Filer monitors ongoing developments related to the Crypto Assets available on its Platform that may cause a Crypto Asset's legal status or the assessment conducted by the Filer described in paragraphs 03 and 146 above to change.
 18. The Filer acknowledges that any determination made by the Filer as set out in paragraphs 13 to 16 of this Decision does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell is a security and/or derivative.
 19. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

Account Opening

20. Subject to the Filer determining that it is appropriate for an account to be opened, the Platform will be available to any individual who is resident in Canada, who has reached the age of majority in the jurisdiction in which they are resident, and who has the legal capacity to open a securities brokerage account and to any company located in Canada.
21. Clients of the Filer can access the Platform through its website at <https://www.coinberry.com> (the **Website**) and on its iOS and Android applications (the **Apps**).
22. As part of the account opening process:
 - (a) the Filer collects know-your-client information to verify the identity of the client and collects information necessary for the Filer to conduct a trade-by-trade suitability assessment for each client;
 - (b) the Filer will provide a prospective client with a separate Risk Statement that clearly explains the following in plain language:
 - (i) the Crypto Contracts;
 - (ii) the risks associated with the Crypto Contracts;
 - (iii) a prominent statement that no securities regulatory authority has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the Platform, including an opinion that the Crypto Assets are not themselves securities and/or derivatives;
 - (iv) the due diligence performed by the Filer before making a Crypto Asset available through the Platform, including the due diligence taken by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities legislation of each of the jurisdictions of Canada and the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;

- (v) that the Filer has prepared a plain language description of each Crypto Asset made available through the Platform, with instructions as to where on the Platform the client may obtain the descriptions (each, a **Crypto Asset Statement**);
 - (vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Platform, including criteria that would be considered by the Filer, options available to clients holding such a Crypto Asset, any notification periods and any risks to clients;
 - (vii) the location and manner in which Crypto Assets are held for the client, the risks and benefits to the client of the Crypto Assets being held in that manner;
 - (viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner;
 - (ix) the Filer is not a member of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection; and
 - (x) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision.
23. In order for a prospective client to open and operate an account with the Filer, the Filer will obtain an electronic acknowledgement from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective client as part of the account opening process.
24. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Platform.
25. The Filer will have policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, Crypto Assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, existing clients of the Filer will be promptly notified and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, existing clients of the Filer will be promptly notified through in-App and website disclosures, with links provided to the updated Crypto Asset Statement.
26. For clients with pre-existing accounts with the Filer at the time of this Decision, the Filer will:
- (a) collect know-your-client information to verify the identity of the client and collect information necessary for the Filer to conduct a trade-by-trade suitability assessment for each client, and
 - (b) deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement,
- at the earlier of (i) before placing their next trade or deposit of Crypto Assets on the Platform and (ii) the next time they log in to their account with the Filer. The Risk Statement

must be prominent and separate from other disclosures given to the client at that time, and the acknowledgement must be separate from other acknowledgements by the client at that time.

27. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or Apps.
28. Each Crypto Asset Statement will include:
 - (a) a prominent statement that no securities regulatory authority in Canada has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the Platform, including an opinion that the Crypto Assets are not themselves securities and/or derivatives,
 - (b) a description of the Crypto Asset, including the background of the team that first created the Crypto Asset, if applicable,
 - (c) a description of the due diligence performed by the Filer with respect to the Crypto Asset,
 - (d) any risks specific to the Crypto Asset,
 - (e) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the Platform,
 - (f) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision, and
 - (g) the date on which the information was last updated,
29. The Filer will also periodically prepare and make available to its clients, educational materials and other informational updates about trading on the Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets.

Platform Operations

30. All Crypto Contracts entered into by clients to buy, sell, withdraw and deposit Crypto Assets will be placed with the Filer through the Apps or its Website. Clients will be able to submit buy and sell orders, either in units of the applicable Crypto Asset or in Canadian dollars, 24 hours a day, 7 days a week. Clients will be able to deposit and withdraw Crypto Assets and Canadian dollars, 24 hours a day, 7 days a week.
31. The Filer uses technology to facilitate the determination of whether entering into a Crypto Contract to buy or sell a specific Crypto Asset is suitable for a client before accepting an instruction from that client to enter into the Crypto Contract.
32. The Filer does not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps
 - (a) as set out in paragraph 13, to review the Crypto Asset, including the information specified in paragraph 13, to determine whether it is appropriate for its clients,

- (b) as set out in paragraph 13, to approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients,
 - (c) as set out in paragraph 31 and required under securities laws, to determine that entering into the Crypto Contract to buy and sell Crypto Assets is suitable for the client, and
 - (d) as set out in paragraph 17, to monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.
33. The Filer will rely upon at least two Crypto Asset trading firms or marketplaces (**Liquidity Providers**) to purchase or sell Crypto Assets for its clients with one Liquidity Provider acting as the primary provider and other Liquidity Provider used for back-up.
 34. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis, but at least once a quarter, against global benchmarks to confirm that it is providing fair and reasonable pricing to its clients. If the Filer concludes from its quarterly review that it is not providing fair and reasonable pricing to its clients it will take steps to address this with its Liquidity Providers up to and including using new Liquidity Providers if its concerns are not addressed in a timely manner.
 35. The Filer has or will take reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions.
 36. The Filer does not charge a trade commission; rather it is compensated by the "spread" between the price it sells Crypto Assets to its clients, and the price for which it buys the Crypto Assets through its Liquidity Providers or the price for which it buys the Crypto Assets from its clients and the price for which it sells the Crypto Asset through its Liquidity Providers. Any additional charges shall be fully disclosed to the client prior to trading.
 37. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.
 38. A Crypto Contract is a bilateral contract between a client and the Filer. Accordingly, the Filer will be the counterparty to each buy or sell transaction initiated by a client. For each client transaction, the Filer will also be a counterparty to a corresponding Crypto Assets buy or sell transaction with a Liquidity Provider.
 39. After the order has been initiated by a client, the Platform will obtain a price for the Crypto Asset from a Liquidity Provider, after which the Platform will incorporate a "spread" to compensate the Filer, and will present this adjusted price to the client as the price at which the Filer is willing to transact against the client along with the approximate cost to the client as a result of the aforementioned "spread". The Filer will be compensated by the spread on trades and a fee charged for Crypto Asset withdrawals.
 40. If the client finds the price agreeable, the client will accept the price and agree to the trade.
 41. The Filer will not extend margin, credit or otherwise offer leverage to clients, and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts.
 42. The Filer will confirm the transaction with the applicable Liquidity Provider.
 43. The Filer will record in its books and records the particulars of each trade.
 44. The Filer will promptly, and no later than two business days after the trade, settle transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets, the

Filer will arrange for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer will arrange for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider.

45. Clients will receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their account with the Filer. Clients will also be able to view their transaction history and account balances in real time by accessing their account with the Filer.
46. The Filer will comply with all reporting obligations set out in Part 14 Division 5 of NI 31-103.
47. Clients will be permitted to transfer into their account with the Filer, Crypto Assets they purchased outside the Platform or withdraw from their account with the Filer, Crypto Assets they have purchased pursuant to their Crypto Contracts with the Filer. Upon request by a client, the Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client, subject to first satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements.
48. The Filer has expertise in and has developed anti-fraud and anti-money laundering monitoring systems, for both fiat and Crypto Assets, to reduce the likelihood of fraud, money laundering, or client error in sending or receiving Crypto Assets to incorrect wallet addresses.
49. In addition to the Risk Statement, Crypto Asset Statement and ongoing education initiatives described in paragraphs 22 to 29 above, and assessing suitability for clients on a trade-by-trade basis described in paragraph 31 above, the Filer will also monitor client activity, and engage clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a client's account.

Custody of Crypto Assets

50. The Filer will maintain its own hot and cold wallets to hold limited amounts of Crypto Assets that will be used to facilitate client deposit and withdrawal requests. However, the majority of Crypto Assets will be held with the Gemini Trust Company, LLC (**Gemini**), a third-party custodian. Gemini is a licensed digital asset exchange and a New York trust company regulated by the New York State Department of Financial Services. Gemini is a "qualified custodian" for purposes of NI 31-103 and has completed a SOC 2 Type 2 examination. The Filer has conducted due diligence on Gemini, including a review of the SOC 2 Type 2 examination report, and has not identified any material concerns.
51. Gemini will operate a custody account for the Filer to use for the purpose of holding a majority of the Filer's clients' Crypto Assets. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.
52. Those Crypto Assets that Gemini will hold in trust for clients of the Filer will be held in a segregated account in the name of the Filer and separate and distinct from the assets of the Filer, the Filer's affiliates, and all of Gemini's other clients.
53. Gemini has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

54. The Filer has assessed the risks and benefits of using Gemini and, has determined that in comparison to a Canadian custodian (as that term is defined in NI 31-103) it is more beneficial to use Gemini, a U.S. custodian, to hold client assets rather than using a Canadian custodian.
55. Gemini currently maintains \$200 million *in specie* coverage for digital assets, including the Crypto Assets owned by clients of the Filer, held in Gemini's cold storage system. Gemini also maintains separate commercial crime insurance coverage for any digital assets that may be temporarily custodied in its "hot wallet", including the Crypto Assets owned by clients of the Filer.
56. Where the Filer holds Crypto Assets for operational purposes, it does so separate and distinct from the assets held for its clients.
57. The Filer is proficient and experienced in holding Crypto Assets and has established and applied policies and procedures that manage and mitigate custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets. The Filer also maintains appropriate policies and procedures related to IT security, cyber-resilience, disaster recovery capabilities, and business continuity plans.
58. The third-party insurance obtained by the Filer includes coverage for the Crypto Assets held by the Filer in cold storage in the event of loss or theft in accordance to the terms of the insurance policy in question. The Filer holds cash with an account at a Canadian financial institution, separate from the Filer's operational accounts and Filer's client accounts, in an amount that is the same as or greater than the value of the Crypto Assets held in the Filer's hot storage and that will be used to purchase Crypto Assets in the event of loss of Crypto Assets from the Filer's hot wallet.

Marketplace and Clearing Agency

59. The Filer will not operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, subsection 1(1) of the Act.
60. The Filer will not operate a "clearing agency" or a "clearing house" as the terms are defined or referred to in securities legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of a Crypto Asset dealer. Any activities of the Filer that may be considered the activities of a clearing agency or clearing house are related to the Filer arranging or providing for settlement of obligations resulting from agreements entered into on a bilateral basis and without a central counterparty.

Decision

The Principal Regulator is satisfied that the Decision satisfies the test set out in the Legislation for the Principal Regulator to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief satisfies the test set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief.

The Decision of the Principal Regulator under the Legislation is that the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation in its jurisdiction is that the Trade Reporting Relief is granted, provided that:

- A. Unless otherwise exempted by a further decision of the Principal Regulator, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.

- B. The Filer is registered as a restricted dealer or investment dealer in the Jurisdiction and the jurisdiction in which the client is resident.
- C. The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets, and performing its obligations under those contracts. The Filer will seek the appropriate approvals from the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Applicable Jurisdiction, prior to undertaking any other activity governed by securities legislation.
- D. The Filer will not operate a "marketplace" as the term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, in subsection 1(1) of the Act or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities legislation.
- E. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with a custodian that meets the definition of a "qualified custodian" under NI 31-103, unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with a "qualified custodian".
- F. Before the Filer holds Crypto Assets with a custodian referred to in condition E, the Filer will take reasonable steps to verify that the custodian:
 - a) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;
 - b) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian;
 - c) has obtained a SOC 2 Type 2 report within the last 12 months, unless the Filer has obtained the prior written approval of the Principal Regulator to alternatively verify that the custodian has obtained a SOC 1 Type 1 or Type 2 report or a SOC 2 Type 1 report within the last 12 months.
- G. The Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, or the New York State Department of Financial Services, makes a determination that the Filer's custodian is not permitted by that regulatory authority to hold client Crypto Assets.
- H. For the Crypto Assets held by the Filer, the Filer:
 - a) Will hold the Crypto Assets for its clients separate and distinct from the assets of the Filer;
 - b) Will ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and
 - c) Will have established and apply written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.
- I. The Filer will only use a Liquidity Provider that it has verified is registered and/or licensed, to the extent required in its home jurisdiction, to execute trades in the Crypto Assets and is not in default of securities legislation in any of the Applicable Jurisdictions, and will promptly stop using a Liquidity Provider if (i) the Filer is made aware that the Liquidity Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determines it to be, not in compliance with securities legislation.

- J. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.
- K. Before each prospective client opens an account, the Filer will deliver to the client a Risk Statement, and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.
- L. The disclosure in condition K will be prominent and separate from other disclosures given to the client as part of the account opening process, and the acknowledgement will be separate from other acknowledgements by the client as part of the account opening process.
- M. For each client with a pre-existing account at the date of this Decision, the Filer will deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement at the earlier of (a) before placing their next trade or deposit of Crypto Assets on the Platform and (b) the next time they log in to their account with the Filer.
- N. The disclosure in condition M will be prominent and separate from other disclosures given to the client at that time, and the acknowledgement will be separate from other acknowledgements by the client at that time.
- O. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements in the client's dashboard.
- P. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or Apps and includes the information set out in paragraph 28.
- Q. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Asset, and,
 - a) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement, and
 - b) in the event of any update to a Crypto Asset Statement, will promptly notify clients through in-App and website disclosures, with links provided to the updated Crypto Asset Statement.
- R. Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client to the Principal Regulator.
- S. The Filer will monitor client activity, and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required.
- T. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets, that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may enter into Crypto Contracts to purchase and sell on the Platform (calculated on a net basis and is an amount not less than \$0) in the preceding 12 months:
 - a) in the case of a client that is not an Eligible Crypto Investor, does not exceed a net acquisition cost of \$30,000;

- b) in the case of a client that is an Eligible Crypto Investor, but is not an Accredited Crypto Investor; does not exceed a net acquisition cost of \$100,000;
 - c) in the case of an Accredited Crypto Investor, is not limited.
- U. In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that jurisdiction.
- V. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:
- a) change of or use of a new custodian; and
 - b) material changes to the Filer's ownership, its business operations, including its systems, or its business model.
- W. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of its or its custodian's system of controls or supervision, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.
- X. The Filer will only trade Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.
- Y. The Filer will evaluate Crypto Assets as set out in paragraphs 13 to 17.
- Z. The Filer will not trade Crypto Contracts based on crypto assets, digital or virtual currencies, and digital or virtual tokens listed in Appendix C to this Decision.
- AA. Except to allow clients to liquidate their positions in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts where the underlying is a Crypto Asset that (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, a security and/or derivative.

Data Reporting

- BB. The Filer will provide the following information to the Principal Regulator, and to the securities regulatory authority or regulator in each of the Non-Principal Jurisdictions with respect to clients in those jurisdictions individually, within 30 days of the end of each March, June, September and December:
- a) aggregate reporting of activity conducted pursuant to Crypto Contracts that will include the following:
 1. number of client accounts opened each month in the quarter;
 2. number of client accounts closed each month in the quarter;
 3. number of client accounts rejected each month in the quarter;
 4. number of trades in each month of the quarter;
 5. number of client-directed trades each month of the quarter;
 6. average value of the trades in each month of the quarter;
 7. number of client accounts with a net acquisition cost greater than \$30,000 of Crypto Assets at the end of each month in the quarter;
 8. number of client accounts with no trades during the quarter;
 9. number of client accounts that have not been funded at the end of each month in the quarter; and

10. number of client accounts that hold a positive amount of Crypto Assets at the end of each month in the quarter;
 - b) the details of any client complaints received by the Filer during the calendar quarter and how such complaints were addressed;
 - c) the details of any fraudulent activity or cybersecurity incidents on the Platform during the calendar quarter, any resulting harms and effects on clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future;
 - d) the amount of crypto assets held in hot storage, the name of the financial institution and the amount of money held at the end of the quarter in an account with the financial institution, separate from the Filer's operational accounts and Filer's client accounts, that will be used to purchase Crypto Assets in the event of loss of Crypto Assets from the Filer's hot storage; and
 - e) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.
- CC. The Filer will deliver to the regulator or the securities regulatory authority in each of the Applicable Jurisdictions, in a form and format acceptable to the regulator or the securities regulatory authority, a report that includes the following anonymized account-level data for activity conducted pursuant to a Crypto Contract for each client within 30 days of the end of each March, June, September and December:
- a) unique account number and unique client identifier, as applicable;
 - b) jurisdiction where the client is located;
 - c) the date the account was opened;
 - d) the amount of fiat held with the Filer at the beginning of the reporting period and at the end of the reporting period;
 - e) cumulative realized gains/losses since account opening in CAD;
 - f) unrealized gains/losses as of the report end date in CAD;
 - g) quantity traded, deposited and withdrawn by Crypto Asset during the quarter in number of units;
 - h) Crypto Asset traded by the client;
 - i) quantity held of each Crypto Asset by the client as of the report end date in units;
 - j) CAD equivalent aggregate value for each Crypto Asset traded by the client, calculated as the amount in (h) multiplied by the market price of the asset in (i) as of the report end date
 - k) age of account in months.
- DD. The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either (A) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets, and authorizations to access the wallets) previously delivered to the Principal Regulator or (B) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.
- EE. In addition to any other reporting required by Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian and the Crypto Assets held by the Filer's custodian, that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in the Decision, in a format acceptable to the Principal Regulator.
- FF. Upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the Non-Principal Jurisdictions with aggregated and/or

anonymized data concerning client demographics and activity on the Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.

GG. The Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer or by the Principal Regulator arising from the operation of the Platform.

HH. The Filer will, if it intends to operate the Platform in Ontario after the expiry of the Decision, take the following steps:

- a) submit an application to the OSC to become registered as an investment dealer no later than 12 months after the date of the Decision;
- b) submit an application with IIROC to become a dealer member no later than 12 months after the date of the Decision;
- c) work actively and diligently with the OSC and IIROC to transition the Platform to investment dealer registration and obtain IIROC membership.

II. This Decision shall expire on the date that is two years from the date of this Decision.

JJ. This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.

In respect of the Prospectus Relief:

Date: August 19, 2021

"Wendy Berman"

Wendy Berman
Vice Chair
Ontario Securities Commission

"Tim Moseley"

Tim Moseley
Vice Chair
Ontario Securities Commission

In respect of the Trade Reporting Relief:

Date: August 19, 2021

"Kevin Fine"

Kevin Fine
Director, Derivatives
Ontario Securities Commission

File no. 2020/0652

Appendix A - Local Trade Reporting Rules

In this Decision the "Local Trade Reporting Rules" collectively means each of the following:

- (a) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**);
- (b) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**);
- (c) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**).

Appendix B – List of Specified Crypto Assets

- Bitcoin
- Ether
- Bitcoin cash
- Litecoin

Appendix C – Prohibited Crypto Assets

- Tether