



THE MANITOBA
SECURITIES
COMMISSION

THE SECURITIES ACT)
)
NP 11-203)

Order No. 7572
November 16, 2021

CO-ORDINATED REVIEW

DETERMINATION

FIDELITY DIGITAL ASSET SERVICES, LLC

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

Headnote

Application for time-limited relief from prospectus requirement and trade reporting requirements – relief to allow the Filer to distribute Crypto Contracts to permitted clients – relief granted subject to certain conditions set out in the decision, including disclosure and reporting requirements – relief is time-limited – relief will expire upon two (2) years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

Statute cited

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 1(1), 53 & 74

Instrument, Rule or Policy cited

Multilateral Instrument 11-102 *Passport System*, s. 4.7

National Instrument 21-101 *Marketplace Operation*, s. 1.1

OSC Rule 91-506 *Derivatives: Product Determination*, ss. 2 & 4

OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Part 3

**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, QUEBEC,
SASKATCHEWAN, AND YUKON**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
FIDELITY CLEARING CANADA ULC
(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 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 time-limited relief from certain securities law requirements 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 is currently registered as an investment dealer and is a member of IIROC (as defined below) and it wishes to offer to its Clients (as defined below) the ability to deposit, buy, hold, sell, and withdraw bitcoin, ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that itself is not a security or derivative (collectively, **Crypto Assets**) through the Filer. The Filer filed an application to be exempted from certain requirements under applicable securities legislation. This decision (the **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, custody 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 the definition of Local Trade Reporting Rules (as defined below) (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 in respect of Crypto Contracts (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 (the **Principal Regulator**) for the Application;
- (b) the Filer has provided notice that, in the jurisdictions where required, section 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**, together with Ontario, the **Applicable Jurisdictions**) in respect of the Prospectus Relief; 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

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this Decision, unless otherwise defined. In addition to the terms defined above, the following terms shall have the following meanings:

Act means the *Securities Act* (Ontario).

Clients means the clients described in representation 6.

Crypto Asset Statement means the statement described in representations 13(v) and 16.

FCC Digital Assets Custody Account means the portion of FDAS' books and records system that records the amount of Crypto Assets held by FDAS in the name of the Filer on behalf of the Filer's Clients.

FCC Sub-Account means the portion of the FDAS Bank Account that is segregated on FDAS' books and records in the name of the Filer.

FDAS means Fidelity Digital Asset Services, LLC.

FDAS Bank Account means the omnibus bank account at a depository institution in the name of FDAS, for the benefit of the FDAS' clients, holding FDAS' clients' cash.

FDAS Service means the service provided by FDAS comprised of the custody of Crypto Assets and facilitating the purchase, sale, and settlement of trades involving Crypto Assets for its clients.

FDAS Wallets means the FDAS omnibus digital wallets holding FDAS clients' Crypto Assets.

IIROC means the Investment Industry Regulatory Organization of Canada.

Local Trade Reporting Rules means: (i) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; (ii) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; and (iii) 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.

NI 31-103 means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

New FCC Service means the two new services that the Filer proposes to offer to Clients: the custody of Clients' Crypto Assets and the ability to enter into Crypto Contracts with the Filer to purchase and sell Crypto Assets, which services include the delivery by the Filer to Clients of Crypto Asset account statements and trade confirmations in compliance with IIROC rules.

Notice 21-329 means Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 21-329 *Guidance for Crypt-Asset Trading Platforms: Compliance with Regulatory Requirements*.

Risk Statement means a statement of risks as described in representation 13.

Specified Foreign Jurisdiction means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, Republic of Korea, New Zealand, Singapore, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Representations

This Decision is based on the following facts represented by the Filer:

1. The Filer is registered as an investment dealer in each of the provinces and territories of Canada, a futures commission merchant in Ontario, a dealer (futures commission merchant) in Manitoba and a derivatives dealer in Québec. As an investment dealer, the Filer is a member of IIROC. The Filer is also approved by IIROC to act as a carrying broker.
2. FDAS is a limited liability trust company organized under New York law authorized pursuant to Section 102-a of the New York Banking Law to engage in all activities described in Sections 96 and 100 of the New York Banking Law, with the exception of accepting deposits and making loans (other than pursuant to the exercise of its fiduciary powers). FDAS provides custody and trade execution services for digital assets. As a New York State-chartered trust company, FDAS is regulated by the New York State Department of Financial Services. In addition, FDAS is registered as a "money services business" with Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury. FDAS is not registered in any capacity in Canada.
3. Both the Filer and FDAS are part of the Fidelity group of companies known globally as Fidelity Investments®. The Filer will be a client of FDAS and will be the only Canadian client of FDAS. FDAS will have other non-Canadian clients.

4. The Filer is not in default of securities legislation of any jurisdiction of Canada.

New FCC Service

5. In addition to its current services, the Filer now wishes to offer Clients the New FCC Service, which will consist of two new services: the custody of the Clients' Crypto Assets and the ability of Clients to enter into Crypto Contracts with the Filer to buy and sell Crypto Assets.
6. The Filer will offer the New FCC Service to Clients who are: (i) IIROC investment dealers for whom the Filer acts as carrying broker (**Introducing Brokers**); (ii) financial institutions, pension plans, governmental entities, corporations, trusts and partnerships; and (iii) portfolio managers acting on behalf of managed accounts. Each Client will be (i) an Institutional Customer (as defined under the IIROC rules) and (ii) a Permitted Client (as defined in NI 31-103).
7. A Crypto Contract is a bilateral contract or arrangement between a Client and the Filer. Accordingly, the Filer will be the counterparty to each buy or sell transaction initiated by a Client. To fulfil its obligations under each Crypto Contract, the Filer, in turn, will be a counterparty to a corresponding buy or sell transaction through FDAS. In connection with each Crypto Contract that involves a purchase by a Client, the Filer arranges for such applicable Crypto Assets to be custodied by FDAS.
8. All trading by Clients with the Filer in Crypto Contracts shall be done on a suitability exempt basis in accordance with IIROC rules.
9. 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.
10. The Filer will not hold any proprietary position in Crypto Assets for itself other than in connection with the Crypto Contracts; it will not take a long or short position in a Crypto Asset with any party, including Clients.
11. The Filer does not have any authority to act on a discretionary basis on behalf of Clients and will not manage any discretionary accounts.
12. In addition to any other agreement that a Client may have with the Filer, each Client that will want to access the New FCC Service will have a written agreement with the Filer that will provide, among other things, that the Filer will custody the cash and Digital Assets of the Client deposited with the Filer. This agreement will clearly state that with respect to the custody of any Crypto Asset, the Filer has retained FDAS as a foreign custodian. The agreement will further provide that a Client may enter into Crypto Contracts to purchase and/or sell Crypto Assets from or to the Filer through the New FCC Service. For these services, the Filer will charge Clients a fee based on the amount of Crypto Assets held and a transaction fee for each Crypto Contract to purchase or sell Crypto Assets. The Filer may also charge other fees related to the crypto business. All fees for the New FCC Service will be agreed to with each Client.

13. The agreement with the Client will include a Risk Statement that clearly explains, in plain language:
 - (i) the Crypto Contracts;
 - (ii) the risks associated with the Crypto Contracts;
 - (iii) prominently, that no securities regulatory authority has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the New FCC Service, including any 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 New FCC Service, including the due diligence taken by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities and derivatives laws of each of the jurisdictions of Canada and the 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 New FCC Service, with instructions as to where the Client may obtain the descriptions (a **Crypto Asset Statement**);
 - (vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading through the New FCC Service, 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, and 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) that the Filer is a member of the Canadian Investor Protection Fund (**CIPF**), but the Crypto Assets held by the Filer (directly or indirectly) 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.
14. Each Client will be required to acknowledge that the Client has received, read and understood the Risk Statement before opening an account with the Filer for Crypto

Contracts. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective Client as part of the account opening process. A copy of the Risk Statement acknowledged by a Client and each Crypto Asset Statement delivered in the manner contemplated below to a Client will be made available to the Client in the same place as the Client's other statements.

15. Before a Client enters into a Crypto Contract to buy a Crypto Asset for the first time, 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 Filer's website.
16. Each Crypto Asset Statement will include:
 - (i) 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 New FCC Service, including an opinion that the Crypto Assets are not themselves securities and/or derivatives;
 - (ii) a description of the Crypto Asset, including the background of the team that first created the Crypto Asset, if applicable;
 - (iii) a description of the due diligence performed by the Filer with respect to the Crypto Asset;
 - (iv) any risks specific to the Crypto Asset;
 - (v) 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 New FCC Service;
 - (vi) 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
 - (vii) the date on which the information was last updated.
17. The Filer will have policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material change to the disclosure or include any material risk 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, Clients 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 with Crypto Contracts in respect of that Crypto Asset will be promptly notified, with links provided to the updated Crypto Asset Statement.
18. The Filer will not maintain its own hot or cold storage for Crypto Assets. The Filer will

retain FDAS as a foreign custodian in respect of the custody of Crypto Assets and in order to execute the trades with the Filer that relate to the Filer's obligations regarding the purchase and sale of Crypto Assets pursuant to the Crypto Contracts. In that regard, the Filer will enter into a services agreement with FDAS for the FDAS Service. While FDAS will provide services to the Filer, FDAS will have no contractual relationship with the Clients and the only direct interaction that FDAS will have with the Clients will relate solely to the actual transfer of Crypto Assets for custody purposes, as described below. The Filer will be responsible for all applicable "know your client" account opening requirements and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations.

19. The Filer has verified that FDAS is appropriately registered and/or licensed to trade in the Crypto Assets in its home jurisdiction and that it is not in default of securities and banking legislation in any jurisdiction of Canada.
20. Clients will not be able to negotiate the price of the Crypto Assets. The Filer has verified that FDAS has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation in connection with its trading activities in Crypto Assets.
21. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow Clients to enter into Crypto Contracts to buy and sell the Crypto Asset through the New FCC Service. Such review includes, but is not limited to:
 - (i) the creation, governance, usage and design of the Crypto Asset, including, the source code relating to the Crypto Asset, the security protocols connected to the Crypto Asset, any plan for growth in the developer community that is connected to the Crypto Assets and, if applicable, the background of the developer(s) that created the Crypto Asset;
 - (ii) the supply, demand, maturity, utility and liquidity of the Crypto Asset;
 - (iii) 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
 - (iv) 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.
22. The Filer wishes 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.
23. 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 person.
24. The Filer has established and applies policies and procedures to determine whether a

Crypto Asset is a security and/or a derivative and is being offered in compliance with securities laws, which include, but are not limited to:

- (i) 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 a derivative; and
 - (ii) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under Canadian securities legislation.
25. The Filer monitors ongoing developments related to the Crypto Assets available on through the New FCC Service that may cause a Crypto Asset's legal status or the assessment conducted by the Filer described in representations 21 and 24 above to change.
26. The Filer acknowledges that any determination made by the Filer as set out in representations 21 to 24 of this Decision does not prejudice the ability 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 or sell is, in fact, a security or a derivative.
27. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available through the New FCC Service except to allow Clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available through the New FCC Service.

FDAS Service

28. The FDAS Service is comprised of two main functions or services: the custody of Crypto Assets; and facilitating the purchase, sale, and settlement of trades involving Crypto Assets for clients. Under this purchase and sale execution and order fulfillment service, client trade orders are either (a) matched internally between clients of FDAS or (b) failing that, routed away and filled based on prices provided by FDAS' approved counterparties. The FDAS Service attempts to provide its clients with the best price for trade orders that is available from its internal order books and its network of approved counterparties through its order handling process. For this purpose, "best price" means the highest available price for sell orders and the lowest available price for buy orders.
29. FDAS facilitates trade execution and settlement between its clients and its counterparties in the manner described in paragraph 30 below and by recording appropriate transfers between the FDAS Wallets and the FDAS Bank Account.
30. In fulfilling its trade execution and settlement services and to the extent that a trade order cannot be matched internally between clients, FDAS engages in riskless principal trading, insofar as it trades as principal with the applicable counterparty, and then immediately executes the offsetting trade with the applicable client. Each transaction of purchase and sale is fully settled, as the FDAS Service does not currently permit the use of margin or

leverage.

31. While the FDAS Service only includes services related to bitcoin at this time, FDAS plans to expand the FDAS Service to include ether and, in the future, other Crypto Assets. The FDAS Service does not permit short selling, and currently FDAS does not extend margin to its customers.
32. FDAS will act as foreign custodian of the Crypto Assets, which will be held in the FDAS Wallets. Other than the equity requirement, FDAS satisfies the criteria of a “qualified custodian” as defined in NI 31-103.
33. FDAS has obtained a SOC 1 Type 2 examination report of its internal controls, and that includes relevant technology general controls, logistical and physical security controls, and cryptographic key management controls that are commonly included in a SOC 2 report. The Filer has conducted due diligence on FDAS, including a review of the SOC 1 Type 2 examination report, and has not identified any material concern. FDAS is currently working towards obtaining a SOC 2 Type 1 examination report and a SOC 2 Type 2 examination report before the expiry of this Decision.
34. The Filer and FDAS operate independently of each other and have different directors, officers and employees. The custody services are performed by FDAS’s personnel, who are not employees, contractors, agents or officers of the Filer.
35. FDAS operates one or more custody accounts, or FDAS Wallets, for the purpose of holding FDAS clients’ Crypto Assets. Pursuant to the services agreement between the Filer and FDAS, FDAS will not be permitted to pledge, re-hypothecate or otherwise use any Crypto Assets held for the Filer in the course of its business.
36. FDAS 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.
37. The Filer has assessed the risks and benefits of using FDAS 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 FDAS, a U.S. custodian.
38. FDAS currently maintains, or is insured under, professional liability insurance, with coverage for loss of digital assets, including the Crypto Assets held for the Filer.

Operational Details of New FCC Service and FDAS Service

39. The Crypto Assets held by FDAS for the Filer on behalf of the Filer’s Clients will be held by FDAS in the FDAS Wallets and treated as fungible with the Crypto Assets owned by other custody clients of FDAS. FDAS’ books and records system will record the amount of Crypto Assets held by FDAS in the name of the Filer on behalf of the Filer’s Clients, which record is referred to as the “FCC Digital Assets Custody Account”.
40. If a Client decides to deposit Crypto Assets for custody, the Client will contact the Filer to

request, and receive, deposit instructions. The Filer will then request the applicable deposit instruction from FDAS. FDAS will generate the deposit instruction and will communicate this instruction to the Filer, which the Filer then makes available to its Client. The Client will then transfer the Crypto Assets from his, her, their or its existing digital asset account to the FDAS Wallets in accordance with the FDAS deposit instruction provided to the Client by the Filer. Upon appropriate confirmation of the deposit by FDAS, FDAS will notify the Filer of the updated balance in the FCC Digital Assets Custody Account, and the Filer will record the Client's deposit transaction in its books and records, for display back to the Client.

41. If a Client decides to enter into a Crypto Contract to buy Crypto Assets through the New FCC Service, the Client will enter into a Crypto Contract with the Filer for the purchase. The Filer itself, in turn, will purchase the requested amount of Crypto Assets through FDAS, sell the Crypto Assets to the Client and deduct the amount of the purchase price, which includes all applicable transaction fees, from the Client's account. The Filer will record the Client's purchase transaction in its books and records, for display back to the Client.
42. If a Client decides to withdraw Crypto Assets from custody, the Client will contact the Filer to initiate a withdrawal transaction by indicating the type, quantity and destination instruction for the Crypto Assets. The Filer will relay that information to FDAS to initiate a withdrawal transaction. FDAS will promptly debit the Crypto Asset balance in the FCC Digital Assets Custody Account and will process the withdrawal transaction pursuant to the terms agreed to between FDAS and the Filer and in accordance with the instructions provided to the Filer by the Client and to FDAS by the Filer. FDAS will provide transaction confirmation to the Filer and, in turn, the Filer will reflect the Client's transaction on its books and records, for display back to the Client.
43. If a Client decides to enter into a Crypto Contract to sell some of the Client's Crypto Assets through the New FCC Service, the Client will enter into a Crypto Contract with the Filer for the sale. The Filer itself, in turn, will sell the requested amount of Crypto Assets through FDAS, purchase the Crypto Assets from the Client, deduct any transaction fee and transfer the remaining cash proceeds, at the direction of the Client, to the Client's bank account or to the Client's custody account with the Filer. The Filer will record the Client's sale transaction in its books and records, for display back to the Client.
44. The Filer will maintain books and records that will show, among other things, as at the end of each business day, the particulars of each trade that occurred during that business day, the allocation among its Clients of the Crypto Assets recorded in the FCC Digital Assets Custody Account and the amount of the Filer's cash held in the FCC Sub-Account. Clients will have access to their own accounts and records in accordance with IIROC rules. The Filer and FDAS will perform reconciliations of all relevant accounts on each business day.
45. The Filer will not extend margin, nor will it offer credit, to Clients in connection with the purchase of Crypto Assets.

Marketplace and Clearing Agency

46. To the extent that the Filer will operate a “marketplace” as that term is defined in National Instrument 21-101 *Marketplace Operation* and, in Ontario, subsection 1(1) of the Act, the Filer will seek any authorization or exemption necessary to carry on business as a marketplace.
47. The Filer will not operate a “clearing agency” or a “clearing house” as the terms are defined or referred to in securities or commodities futures legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of entering into Crypto Contracts with its Clients. 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 meets 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 that 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 of its jurisdiction is that the Trade Reporting Relief is granted, provided that:

- (a) with respect to Clients resident in an Applicable Jurisdiction, the Filer remains registered as a dealer in the category of investment dealer with the Principal Regulator and the securities regulators or securities regulatory authority in such Applicable Jurisdiction and a member of IIROC;
- (b) all Crypto Contracts with Clients resident in the Applicable Jurisdictions shall be conducted pursuant to IIROC rules imposed on members seeking to trade in Crypto Contracts and in accordance with any acceptable practices established by IIROC, as amended from time to time;
- (c) the Filer will provide the New FCC Services only to Clients as described in representation 6 and before offering the New FCC Services to an Introducing Broker, the Filer will take reasonable steps to verify that Introducing Broker has received the prior written approval of IIROC to offer Crypto Contracts to the Introducing Broker’s clients;
- (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, unless it has obtained any authorization or exemption necessary to carry on business as a marketplace, and will not operate a “clearing agency” or “clearing house” as the terms are defined or

referred to in securities or commodities futures legislation;

- (e) except as set out in condition (f), at all times, the Filer will retain FDAS as its foreign custodian and will custody all of its Clients' Crypto Assets with FDAS;
- (f) the Filer will promptly cease using FDAS as the custodian for the Crypto Assets of its Clients at any time that FDAS ceases to be regulated by the New York State Department of Financial Services as a New York State-chartered trust company, in which case:
 - (i) the Filer will hold the Crypto Assets of its Clients with a custodian that meets the definition of a qualified custodian under NI 31-103;
 - (ii) before the Filer holds Crypto Assets of its Clients with a custodian referred to in (i) above, 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; and
 - (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 take reasonable steps to verify that FDAS:
 - (i) has appropriate insurance to cover the loss of Crypto Assets held by it;
 - (ii) 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; and
 - (iii) on or before December 31, 2021, has obtained a SOC 2 Type 1 report and on or before December 31, 2022, has obtained a SOC 2 Type 2 report;
- (h) 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 for its Clients' Crypto Assets is not permitted by that regulatory authority to hold client Crypto Assets;
- (i) the Filer will use the FDAS Service to fulfil its obligations under the Crypto Contracts that the Filer enters into with its Clients so long as FDAS 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;

- (j) before a Client enters into his, her or its first Crypto Contract, the Filer will deliver to the Client a Risk Statement and will require the Client to provide electronic or written acknowledgement of having received, read and understood the Risk Statement;
- (k) the disclosure in condition (j) 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;
- (l) 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;
- (m) before a Client enters into a Crypto Contract to buy a Crypto Asset for the first time, 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 and includes the information set out in representation 16;
- (n) the Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or to include any material risk that may develop with respect to the Crypto Contracts and/or Crypto Asset and:
 - (i) in the event of any update to the Risk Statement, will promptly notify each Client of the update and deliver to them a copy of the updated Risk Statement, and
 - (ii) in the event of any update to a Crypto Asset Statement, will promptly notify each Client through website disclosures, with links provided to the updated Crypto Asset Statement;
- (o) 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 to the Principal Regulator;
- (p) in each Applicable Jurisdiction, the first trade of a Crypto Contract is deemed to be a distribution under the securities legislation of that jurisdiction;
- (q) the Filer will only trade Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives;
- (r) the Filer will evaluate Crypto Assets as set out in representations 21 and 24;
- (s) The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a customer in a Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization or court in Canada or in a Specified Foreign Jurisdiction in

relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of AML laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct;

- (t) 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 if (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;
- (u) the Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:
 - (i) change of or use of a new custodian; and
 - (ii) material changes to the Filer's ownership, its business operations, including its systems, or its business model;
- (v) the Filer will notify the Principal Regulator, promptly, of any material breach or failure in the provision of the New FCC Service, including any material cybersecurity breach of FDAS's or other custodian's systems of controls or supervision that impact the Crypto Assets of a Client held by the custodian, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets in the FCC Digital Asset Custody Account will be considered a material breach or failure in the provision of the New FCC Service;
- (w) upon request by the Principal Regulator, the Filer will provide, on a timely basis, reports to the Principal Regulator setting out, on an aggregate basis, the Client accounts where activity in connection with Crypto Contracts has occurred since the date of the last report, if any, the aggregate number of trades during that period, and the average value of the trades during that period;
- (x) the Filer will provide the following reports to the Principal Regulator within 30 days of the end of each March, June, September and December:
 - (i) 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 trades in each month of the quarter;
 4. average value of the trades in each month of the quarter;
 5. number of Client accounts with no trades during the quarter;
 6. number of Client accounts that have not been funded at the end of each month

- in the quarter; and
 - 7. number of Client accounts that hold a positive amount of Crypto Assets at the end of each month in the quarter;
 - (i) the details of any Client complaint received by the Filer during the calendar quarter related to Crypto Contracts and how such complaint was addressed; and
 - (ii) the details of any fraudulent activity or cybersecurity incident incurred by the Filer during the calendar quarter, any resulting harm and effect 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;
 - (y) 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:
 - (i) unique account number and unique client identifier, as applicable;
 - (ii) jurisdiction where the Client is located;
 - (iii) the date the account was opened;
 - (iv) the amount of fiat held with the Filer at the beginning of the reporting period and at the end of the reporting period;
 - (v) cumulative realized gains/losses since account opening in CAD;
 - (vi) unrealized gains/losses as of the report end date in CAD;
 - (vii) quantity traded, deposited or withdrawn by Crypto Asset during the quarter in number of units;
 - (viii) Crypto Asset traded by the Client;
 - (ix) quantity held of each Crypto Asset by the Client as of the report end date in units;
 - (x) CAD equivalent aggregate value for each Crypto Asset traded by the Client, calculated as the amount in (ix) multiplied by the market price of the asset in (viii) as of the report end date;
 - (xi) age of account in months.
 - (z) in addition to any other reporting required by Legislation, the Filer will provide, on a timely basis, any report, data, document or information about the New FCC Service 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 this Decision, in a format acceptable to the Principal Regulator;
 - (aa) 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 that may be useful to advance the development of the Canadian regulatory framework for trading Crypto Assets;
 - (bb) the Filer will promptly make any change 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, in consultation with IIROC, arising from the New FCC

Services;

- (cc) this Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation; and
- (dd) this Decision shall expire two years from the date of this Decision.

In respect of the Prospectus Relief

Date: November 16, 2021

“Tim Moseley”

Tim Moseley
Vice Chair
Ontario Securities Commission

“Wendy Berman”

Wendy Berman
Vice Chair
Ontario Securities Commission

In respect of the Trade Reporting Relief

Date: November 16, 2021

“Kevin Fine”

Kevin Fine
Director, Derivatives
Ontario Securities Commission

File no. 2020-0375