

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 revokes prior decision and allow Filer to use other liquidity providers -- 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.

Applicable Legislative Provisions

Statute Cited

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

Instrument, Rule or Policy Cited

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

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). On November 16, 2021, the Filer obtained a decision (the **Initial Decision**) that exempted the Filer from (i) the prospectus requirements under the securities legislation of the Jurisdiction (the **Legislation**) in respect of the Filer entering into Crypto Contracts with Clients (as defined below) to purchase, custody and sell 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**) and (ii) certain reporting requirements under the Local Trade Reporting Rules (as defined below) in respect of Crypto Contracts. The Filer has now filed an application to revoke and replace the Initial Decision in order to be able to rely upon Additional Liquidity Providers (as defined below) for purposes of fulfilling its obligations under Crypto Contracts. 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 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 (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**).

The Filer has applied for the revocation of the exemptive relief in the Initial Decision effective as of the date of this Decision.

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).

Additional Liquidity Providers means a crypto asset trading firm or marketplace that the Filer will use, other than FDAS.

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 Custody Service means the service provided by FDAS comprised of the custody of 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 services that the Filer offers 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 Crypto-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 is a client of FDAS and is the only Canadian client of FDAS. FDAS has 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 and in accordance with the terms and conditions of the Initial Decision, the Filer offers Clients the New FCC Service, which consists of two 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 offers 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 is (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 is the counterparty to each buy or sell transaction initiated by a Client. To fulfil its obligations under each Crypto Contract, the Filer, in turn, is currently a counterparty to a corresponding buy or sell transaction through FDAS. However, given Client demand for the New FCC Service, the Filer now would like the ability to be able to fulfil its obligations under Crypto Contracts with one or more Additional Liquidity Providers. 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 is 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 does not hold any proprietary position in Crypto Assets for itself other than in connection with the Crypto Contracts; it does 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 does not, 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 accesses the New FCC Service has a written agreement with the Filer that provides, among other things, that the Filer custodies the cash and Crypto Assets of the Client deposited with the Filer. This agreement clearly states that with respect to the custody of any Crypto Asset, the Filer has retained FDAS as a foreign custodian. The agreement further provides 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 charges 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 are agreed to with each Client.

13. The agreement with the Client includes 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) do 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 is 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 is 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 is 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 provides instructions for the Client to read the Crypto Asset Statement for the Crypto Asset, which includes a link to the Crypto Asset Statement on the Filer's website.

16. Each Crypto Asset Statement includes:

(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 has 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 does not maintain its own hot or cold storage for Crypto Assets. The Filer has retained FDAS as a foreign custodian in respect of the custody of Crypto Assets and in order to execute some of 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 has entered into a services agreement with FDAS for, among other things, the FDAS Custody Service. While FDAS provides services to the Filer, FDAS has no contractual relationship with the Clients and the only direct interaction that FDAS has with the Clients relates solely to the actual transfer of Crypto Assets for custody purposes, as described below. The Filer is 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 Applicable Jurisdiction.

20. The Filer now wishes to rely upon Additional Liquidity Providers to execute some of 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. None of these Additional Liquidity Providers will be affiliated or associated with the Filer or FDAS. All Crypto Assets purchased by the Filer from these Additional Liquidity Providers will be delivered immediately into the FDAS Wallet in the name of the Filer that custodies the Crypto Assets held by the Filer on behalf of Clients.

21. The Filer has taken or will take reasonable steps to verify that each Additional Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in its home jurisdiction, or that its activities do not require registration in its home jurisdiction, and that it is not in default of securities legislation in any Applicable Jurisdiction.

22. Currently, Clients are not able to negotiate the price of the Crypto Assets. However, the Filer will evaluate the price obtained from FDAS and each Additional Liquidity Provider on an ongoing basis. The Filer is subject to and will remain in compliance with the best execution obligations under IIROC rules, which, for greater certainty, require fair pricing.

23. The Filer has verified that FDAS and each Additional Liquidity Provider 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.

24. 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.

25. The Filer only offers and allows Clients to enter into Crypto Contracts to buy and sell Crypto Assets that are not each themselves a security and/or a derivative.

26. 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.

27. 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.

28. The Filer monitors ongoing developments related to the Crypto Assets available through the New FCC Service that may cause a Crypto Asset's legal status or the assessment conducted by the Filer described in representations 24 and 27 above to change.

29. The Filer acknowledges that any determination made by the Filer as set out in representations 24 to 27 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.

30. 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.

Trading Crypto Assets with FDAS and Additional Liquidity Providers

31. Under FDAS' 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. FDAS 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.

32. FDAS facilitates trade execution and settlement between its clients and its counterparties in the manner described in paragraph 33 below and by recording appropriate transfers between the FDAS Wallets and the FDAS Bank Account.

33. 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 FDAS does not currently permit the use of margin or leverage.

34. Each Additional Liquidity Provider also facilitates trade execution and settlement services in connection with Crypto Assets.

35. If a Client decides to enter into a Crypto Contract to buy Crypto Assets through the New FCC Service, the Client enters into a Crypto Contract with the Filer for the purchase. The Filer itself, in turn, will obtain pricing data for the Crypto Assets from one or more of FDAS and the Additional Liquidity Providers, and will purchase the requested amount of Crypto Assets from FDAS or one of the Additional Liquidity Providers. The Filer then sells the Crypto Assets to the Client and deducts the amount of the purchase price, which includes all applicable transaction fees, from the Client's account. The Filer records the Client's purchase transaction in its books and records, for display back to the Client.

36. 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 enters into a Crypto Contract with the Filer for the sale. The Filer itself, in turn, will obtain pricing data for the Crypto Assets from one or more of FDAS and the Additional Liquidity Providers, and will sell the applicable amount of Crypto Assets to FDAS or one of the Additional Liquidity Providers. The Filer then purchases the requested amount of Crypto Assets from the Client, deducts any transaction fee and transfers 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 records the Client's sale transaction in its books and records, for display back to the Client.

37. The Filer maintains books and records that show, among other things, as at the end of each business day, the particulars of each trade that occurred during that business day. Clients have access to their own accounts and records in accordance with IIROC

rules. The Filer and FDAS perform, and the Filer and the Additional Liquidity Providers will perform, reconciliations of all relevant accounts on each business day.

38. The Filer does not and will not extend margin, credit or other forms of leverage to Clients, and it does not and will not offer derivatives based on Crypto Assets to Clients other than Crypto Contracts.

FDAS Custody Service

39. FDAS acts as foreign custodian of the Crypto Assets, which are held in the FDAS Wallets. Other than the equity requirement, FDAS satisfies the criteria of a "qualified custodian" as defined in NI 31-103.

40. The Crypto Assets held by FDAS for the Filer on behalf of the Filer's Clients are held by FDAS in the FDAS Wallets with the Crypto Assets owned by other custody clients of FDAS. FDAS' books and records system records 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".

41. If a Client decides to deposit Crypto Assets for custody, the Client contacts the Filer to request, and receive, deposit instructions. The Filer then requests the applicable deposit instruction from FDAS. FDAS generates the deposit instruction and communicates this instruction to the Filer, which the Filer then makes available to its Client. The Client then transfers the Crypto Assets from his, her 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 notifies the Filer of the updated balance in the FCC Digital Assets Custody Account, and the Filer records the Client's deposit 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 contacts the Filer to initiate a withdrawal transaction by indicating the type, quantity and destination instruction for the Crypto Assets. The Filer relays that information to FDAS to initiate a withdrawal transaction. FDAS promptly debits the Crypto Asset balance in the FCC Digital Assets Custody Account and processes 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 provides transaction confirmation to the Filer and, in turn, the Filer reflects the Client's transaction on its books and records, for display back to the Client.

43. The Filer maintains books and records that show, among other things, as at the end of each 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 have access to their own accounts and records in accordance with IIROC rules. The Filer and FDAS perform reconciliations of all relevant accounts on each business day.

44. FDAS has obtained a SOC 1 Type 2 examination report and a SOC 2 Type 1 examination report of its internal controls, which includes relevant technology general controls, logistical and physical security controls, and cryptographic key management controls. The Filer has conducted due diligence on FDAS, including a review of these reports, and has not identified any material concern. FDAS is currently working towards obtaining a SOC 2 Type 2 examination report before December 31, 2022.

45. The Filer and FDAS operate independently of each other and have different directors, officers and employees. The FDAS Custody Service is performed by FDAS's personnel, who are not employees, contractors, agents or officers of the Filer.

46. 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 is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets held for the Filer in the course of its business.

47. 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.

48. 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.

49. 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.

Marketplace and Clearing Agency

50. The Filer does 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.

51. The Filer does 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 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 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 Initial Decision is revoked and the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation of its jurisdiction is that Initial Decision is revoked and 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 are 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 provides 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 takes reasonable steps to verify that the Introducing Broker has received the prior written approval of IIROC to offer Crypto Contracts to the Introducing Broker's clients;
- (d) the Filer does 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 or commodities futures legislation;

(e) except as set out in condition (f), at all times, the Filer retains FDAS as its foreign custodian and custodies 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 has taken 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, 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 only use FDAS or an Additional Liquidity Provider if the Filer has verified it 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 FDAS or an Additional Liquidity Provider if (i) the Filer is made aware that either FDAS or the Additional Liquidity Provider, as the case may be, is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined FDAS or the Additional Liquidity Provider, as the case may be, to be, not in compliance with securities legislation in any of the Applicable Jurisdictions;

(j) before a Client enters into his, her or its first Crypto Contract, the Filer delivers to the Client a Risk Statement and requires the Client to provide electronic or written acknowledgement of having received, read and understood the Risk Statement;

(k) the disclosure in condition (j) is prominent and separate from other disclosures given to the Client at that time, and the acknowledgement is separate from other acknowledgements by the Client at that time;

(l) a copy of the Risk Statement acknowledged by a Client is 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 provides instructions for the Client to read the Crypto Asset Statement for the Crypto Asset, which includes 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 only trades Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives;

(r) the Filer evaluates Crypto Assets as set out in representations 24 and 27;

(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, 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:

(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;

(ii) the details of any Client complaint received by the Filer during the calendar quarter related to Crypto Contracts and how such complaint was addressed;

(iii) 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; and

(iv) the details of the transaction volume implemented through FDAS and each Additional Liquidity Provider, per Crypto Asset during the quarter;

(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; and

(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: **April 5, 2022**

"Tim Moseley"

Vice Chair

Ontario Securities Commission

"Frances Kordyback"

Commissioner

Ontario Securities Commission

In respect of the Trade Reporting Relief

Date: **April 18, 2022**

"Kevin Fine"

Director, Derivatives

Ontario Securities Commission

Application File #: 2022/0002