

April 18, 2024

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO
(the Jurisdiction) AND ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW
BRUNSWICK, NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES,
NOVA SCOTIA, NUNAVUT, PRINCE EDWARD ISLAND, QUÉBEC,
SASKATCHEWAN, AND YUKON**

AND

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

AND

**IN THE MATTER OF
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* (**Staff Notice 21-327**) and Joint CSA/Investment Industry Regulatory Organization of Canada Staff Notice 21-329 *Guidance for Crypto Asset Trading Platforms: Compliance with Regulatory Requirements* (**Staff Notice 21-329**), securities legislation applies to crypto asset trading platform (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token (a **Crypto Asset**) because the user's contractual right to the Crypto Asset may itself constitute a security and/or a derivative (a **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 CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTP'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 CIRO (as defined below). On November 16, 2021, the Filer obtained a time-limited decision (the **2021 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 Crypto Assets and (ii) certain reporting requirements under the Local Trade Reporting Rules (as defined below) in respect of Crypto Contracts. Subsequently, the 2021 Decision was revoked and replaced by the decision, *In the Matter of Fidelity Clearing Canada ULC* dated April 18, 2022 (the **2022 Decision**) to allow the

Filer to rely upon Additional Liquidity Providers (as defined below) for purposes of fulfilling its obligations under Crypto Contracts.

The Filer has submitted an application to extend its existing exemptive relief in order to continue entering into Crypto Contracts with Clients to purchase, custody, sell, deposit and withdraw Crypto Assets.

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 to extend the time-limited exemption of the Filer from the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with Clients to purchase, custody, sell, deposit and withdraw 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 and replacement of the exemptive relief in the 2022 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).

Acceptable Third-party Custodian means an entity that:

- (i) is one of the following:
 1. a Canadian custodian or Canadian financial institution, as those terms are defined in NI 31-103;
 2. a custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 [*Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada*] of National Instrument 81-102 *Investment Funds*;
 3. a custodian that meets the definition of an “acceptable securities location” in accordance with the Investment Dealer and Partially Consolidated Rules and Form 1 of CIRO;
 4. a foreign custodian (as defined in NI 31-103) for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s); or
 5. an entity that does not meet the criteria for a qualified custodian (as defined in NI 31-103) and for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);
- (ii) is functionally independent of the Filer within the meaning of NI 31-103;
- (iii) has obtained audited financial statements within the last twelve months which
 1. are audited by a person or company that is authorized to sign an auditor’s report under the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction;
 2. are accompanied by an auditor’s report that expresses an unqualified opinion, and
 3. unless otherwise agreed to by the Principal Regulator, discloses on their statement of financial position or in the notes of the audited financial statements the amount of liabilities that it owes to its clients for holding their assets, and the amount of assets held by the custodian to meet its obligations to those custody clients, broken down by asset; and

- (iv) has obtained a Systems and Organization Controls (SOC) 2 Type 1 or SOC 2 Type 2 report within the last twelve months or has obtained a comparable report recognized by a similar accreditation board satisfactory to the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);

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

CIRO means Canadian Investment Regulatory Organization.

CSA means Canadian Securities Administrators.

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 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 CIRO rules.

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.

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*.

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, the Republic of Korea, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and any other jurisdiction that the Principal Regulator may advise.

Value-Referenced Crypto Asset means a Crypto Asset that is designed to maintain a stable value over time by referencing the value of a fiat currency or any other value or right, or combination thereof.

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 CIRO. The Filer is also approved by CIRO 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.

FCC Service

5. The Filer offers Clients the 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 FCC Service to Clients who are: (i) CIRO member 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 Client (as defined under the CIRO 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 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 CIRO rules.
9. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 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 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 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 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 or regulator in Canada has assessed or endorsed the Crypto Contracts or any of the Crypto Assets made available through the FCC Service;
 - (iv) the due diligence performed by the Filer before making a Crypto Asset available through the 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 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 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 location and manner, including the impact of insolvency of the Filer or the custodian;
 - (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 Contracts and the Crypto Assets held by the Filer (directly or indirectly) do not qualify for CIPF protection;
 - (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; and
 - (xi) the date on which the information was last updated.
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 or regulator in Canada

has assessed or endorsed the Crypto Contracts or any of the Crypto Assets made available through the FCC Service;

- (ii) a description of the Crypto Asset, including the background of the creation of the Crypto Asset, including the background of the developer(s) 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 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. In addition to FDAS, the Filer relies 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 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 CIRO 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 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. The Filer does not allow Clients to enter into Crypto Contracts in respect of Value-Referenced Crypto Assets.

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 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 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 FCC Service.

Trading Crypto Assets with FDAS and Additional Liquidity Providers

31. Under FDAS's 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 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 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 CIRO 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. The Filer has assessed whether FDAS meets the definition of an Acceptable Third-party Custodian.
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 CIRO rules. The Filer and FDAS perform reconciliations of all relevant accounts on each business day.
44. FDAS has obtained SOC 1 Type 2 and SOC 2 Type 2 examination reports of its internal controls. The Filer has conducted due diligence on FDAS, including a review of the SOC 1 Type 2 and SOC 2 Type 2 examination reports, and has not identified any material concern.
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 2022 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 the 2022 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 CIRO;
- (b) all Crypto Contracts with Clients resident in the Applicable Jurisdictions are conducted pursuant to CIRO rules imposed on members seeking to trade in Crypto Contracts and in accordance with any acceptable practices established by CIRO, as amended from time to time;
- (c) the Filer provides the FCC Services only to Clients as described in representation 6 and before offering the FCC Services to an Introducing Broker, the Filer takes reasonable steps to verify that the Introducing Broker has received the prior written approval of CIRO 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, and FDAS at all times will be an Acceptable Third-party Custodian;
- (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 an Acceptable Third-party Custodian;
 - (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) will hold the Crypto Assets for the Filer's clients (i) in an account clearly designated for the benefit of the Filer's clients or in trust for the Filer's clients, (ii) separate and apart from the assets of the custodian's other clients, and (iii) separate and apart from the custodian's own assets and from the assets of any custodial service provider;
 - (B) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;
 - (C) 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
 - (D) meets each of the requirements to be an Acceptable Third-party Custodian, except for those criteria in respect of which the custodian does not meet and the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions have provided prior written approval for use of the custodian.
- (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; and
 - (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;
- (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 Assets or Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives; for greater certainty, the Filer will not trade Value-Referenced Crypto Assets or Crypto Contracts based on Value-Referenced Crypto Assets;

- (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 client 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 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.
- (v) 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;
- (w) the Filer will notify the Principal Regulator, promptly, of any material breach or failure in the provision of the 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 FCC Service;
- (x) the Filer will deliver the reporting as set out in Appendix A;
- (y) 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 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;

- (z) 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;
- (aa) 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 CIRO, arising from the FCC Services;
- (bb) this Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation; and
- (cc) this Decision shall expire two years from the date of this Decision.

In respect of the Prospectus Relief:

Dated: April 11, 2024

"David Surat"

David Surat
Manager, Corporate Finance
Ontario Securities Commission

In respect of the Trade Reporting Relief:

Dated: April 18, 2024

"Greg Toczyłowski"

Greg Toczyłowski
Manager, Trading and Markets
Ontario Securities Commission

File No. 2024/0145

APPENDIX A

REPORTING

1. Commencing with the quarter ending June 30, 2024, the Filer will deliver the following information to the Principal Regulator and each of the Coordinated Review Decision Makers in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers, with respect to Clients residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December:
 - a. aggregate reporting of activity conducted pursuant to the FCC Service that will include the following:
 - i. number of Client accounts opened each month in the quarter;
 - ii. number of Client accounts frozen or closed each month in the quarter;
 - iii. number of trades in each month in the quarter;
 - iv. average value of the trades in each month in the quarter;
 - v. number of Client accounts at the end of each month in the quarter;
 - vi. number of Client accounts with no trades during the quarter;
 - vii. number of Client accounts that have not been funded at the end of each month in the quarter; and
 - viii. number of Client accounts that hold a positive amount of Crypto Assets at end of each month in the quarter;
 - b. the details of any Client complaints received by the Filer during the calendar quarter and how such complaints were addressed;
 - c. the details of any fraudulent activity or cybersecurity incidents 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
 - d. the details of the transaction volume per FDAS and each Additional Liquidity Provider, per Crypto Asset during the quarter.
2. The Filer will deliver to the Principal Regulator and each of the Coordinated Review Decision Makers, in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers, a report that includes the anonymized account-level data for the FCC Services for each Client residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December for data elements outlined in **Appendix B**.

APPENDIX B

DATA ELEMENT DEFINITIONS, FORMATS AND ALLOWABLE VALUES

Number	Data Element Name	Definition for Data Element{1}	Format	Values	Example
Data Elements Related to each Unique Client					
1	Unique Client Identifier	Alphanumeric code that uniquely identifies a customer.	Varchar(72)	An internal client identifier code assigned by the CTP to the client. The identifier must be unique to the client.	ABC1234
2	Unique Account Identifier	Alphanumeric code that uniquely identifies an account.	Varchar(72)	A unique internal identifier code which pertains to the customer's account. There may be more than one Unique Account Identifier linked to a Unique Client Identifier.	ABC1234
3	Jurisdiction	The Province or Territory where the client, head office or principal place of business is, or under which laws the client is organized, or if an individual, their principal place of residence.	Varchar(5)	Jurisdiction where the client is located using ISO 3166-2 -- See the following link for more details on the ISO standard for Canadian jurisdictions codes. https://www.iso.org/obp/ui/#iso:code:3166:CA	CA-ON

Number	Data Element Name	Definition for Data Element{1}	Format	Values	Example
Data Elements Related to each Unique Account					
4	Account Open Date	Date the account was opened and approved to trade.	YYYY-MM-DD, based on UTC.	Any valid date based on ISO 8601 date format.	2022-10-27
5	Cumulative Realized Gains/Losses	Cumulative Realized Gains/Losses from purchases, sales, deposits, withdrawals and transfers in and out, since the account was opened as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in, transfers out, deposits and withdrawals of the Digital Token to determine the cost basis or the realized gain or loss.	205333
6	Unrealized Gains/Losses	Unrealized Gains/Losses from purchases, deposits and transfers in as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in or deposits of the Digital Token to determine the cost basis.	-30944
7	Digital Token Identifier	Alphanumeric code that uniquely identifies the Digital Token held in the account.	Char(9)	Digital Token Identifier as defined by ISO 24165. See the following link for more details on the ISO standard for Digital Token Identifiers. https://dtif.org/	4H95J0R2X

Number	Data Element Name	Definition for Data Element{1}	Format	Values	Example
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Data Elements Related to each Digital Token Identifier Held in each Account

8	Quantity Bought	Number of units of the Digital Token bought in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	4358.326
9	Number of Buy Transactions	Number of transactions associated with the Quantity Bought during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	400
10	Quantity Sold	Number of units of the Digital Token sold in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	125
11	Number of Sell Transactions	Number of transactions associated with the Quantity Sold during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3325

Number	Data Element Name	Definition for Data Element{1}	Format	Values	Example
12	Quantity Transferred In	Number of units of the Digital Token transferred into the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	10.928606
13	Number of Transactions from Transfers In	Number of transactions associated with the quantity transferred into the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3
14	Quantity Transferred Out	Number of units of the Digital Token transferred out of the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	603
15	Number of Transactions from Transfers Out	Number of transactions associated with the quantity transferred out of the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	45

Number	Data Element Name	Definition for Data Element^{1}	Format	Values	Example
16	Quantity Held	Number of units of the Digital Token held in the account as of the end of the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	3641.25461
17	Value of Digital Token Held	Value of the Digital Token held as of the end of the reporting period.	Num(25,0)	Any value greater than or equal to zero rounded to the nearest dollar in CAD. Use the unit price of the Digital Token as of the last business day of the reporting period multiplied by the quantity held as reported in (16).	45177788
18	Client Limit	The Client Limit established on each account.	Num(25,2)	Any value greater than or equal to zero rounded to the nearest dollar in CAD, or if a percentage, in decimal format.	0.50
19	Client Limit Type	The type of limit as reported in (18).	Char(3)	AMT (amount) or PER (percent).	PER

^{1} Note: Digital Token refers to either data associated with a Digital Token, or a Digital Token referenced in an investment contract.